

Agenda item 7

Council Issues

Part 1: Approval of Reasons for Absence

1. Coronavirus Outbreak - Inability to attend meetings

Section 85 of the Local Government Act 1972 states that any councillor who does not attend a meeting during any continuous period of six months automatically ceases to be a councillor.

When a councillor loses office under section 85 the Council is required to immediately declare their office vacant and declare a vacancy. Any two electors can then require a by election to be held, although by-elections are currently suspended under the emergency legislation relating to COVID-19.

However, section 85 also says that this does not apply if a councillor's absence is for a reason approved by a resolution of the full council before the six months is up. Under our constitution that decision can only be approved by full Council.

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 allow meetings to be held remotely but they do not suspend the operation of the six-month rule.

Although the Council has kept meetings going as far as possible and many meetings have been successfully held via zoom, meetings are being held less frequently. This means that it is not as easy for members to ensure that they are able to attend a meeting, particularly when it is possible that they may become unwell.

The infrequency with which full council meets means that it may not be possible for any member's reasons for absence to be individually considered at a meeting of the full council before their six months expires. This could result in a member losing their seat. If that happened, then the law is clear that it is not now possible to hold a by-election until May 2021.

In order to avoid the risk that a councillor may lose their seat or be tempted to attend a meeting if they are unwell it is proposed that Council approves the absence of any member for any reason connected with the coronavirus outbreak.

Recommendation

That under section 85(1) of the Local Government Act 1972 the Council approves the following as reasons for non-attendance at meetings until the next annual meeting of the County Council:

- a. Being unable to attend a meeting as a result of illness;
- b. Being unable to attend a meeting as a result of failure of an internet connection or electronic device failing to operate correctly;
- c. Cancellation or non-convening of meetings;
- d. Any other reason which is reasonably connected with the outbreak of coronavirus in the United Kingdom.

Part 2: Changes to the Constitution

2. Coronavirus Outbreak: Virtual Meetings

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 allow the Council to meet remotely provided there is public access. This suspends the law and the constitution insofar as it is necessary to do so to allow virtual meetings.

Members of the Council have responded very positively to the changes and to date we have had a good experience of using online meetings. Sixty nine Members of the Council have participated in an ECC virtual meeting or training on zoom.

The current regulations do not allow virtual meetings to continue beyond May 2021.

The constitution has worked well for Members at virtual committee meetings. The rules at full Council are a little more prescriptive. There are two areas where it is recommended that change could usefully be made. These are:

- standing to speak
- voting

Standing to Speak

Clearly it is not necessary or helpful for members to stand when they are present at a meeting via remote access. The constitution currently states:

‘16.9.7 Only one Member to stand at a time

A Member when speaking shall stand and address the Chairman. If two or more Members indicate, the Chairman shall call on one to speak; the other or others shall then sit. While a Member is speaking, other Members shall remain seated, unless rising to a point of order or in personal explanation.’

It is proposed that paragraph 16.9.7 be amended to make it clear that members will normally stand but allow flexibility to disapply this. The paragraph then to read:

‘16.9.7 Only one Member to speak at time

Only one Member may speak at a time. Members wishing to speak shall indicate to the Chairman. Members may only speak when called upon to do so by the Chairman or if they wish to raise a point of order or personal explanation or to propose a motion of a type which may be moved during a debate. While a member is speaking, they shall stand unless the Chairman directs or agrees otherwise.'

Voting

The constitution includes provision about voting being by show of hands, which is ambiguous in the context of virtual meeting as it could mean raising your physical hand or using the 'raise hand' function, and neither of those work if a member is only able to join the meeting by telephone. Similarly, the requirement for ten members to stand to give effect to a requirement for a named vote is not particularly helpful in the context of a virtual meeting. It is therefore proposed to allow the Chairman flexibility as to the manner of voting and in the way that members indicate support for a recorded vote.

The constitution currently states:

'16.10.1 General provisions about voting

- (1) On a division (except as otherwise provided in these Standing Orders) the voting shall be by show of hands or, at the discretion of the Chairman, by members standing in their places.
- (2) Before a vote is taken, any ten Members may demand a division by name by standing in their places, in which event the Chief Executive shall call on each Member of the Council to state whether he votes for, against or abstains from the motion. The votes shall be recorded and the Chairman shall declare the result.
- (3) In a division by name, the names of Members voting for and against the proposition shall be recorded in the minutes.
- (4) Where immediately after a vote is taken any Member so requires, there shall be recorded in the minutes of the proceedings of the meeting whether that Member voted for or against the question or whether that Member abstained from voting.'

It is proposed that paragraph 16.10.1 be amended to permit the Chairman to exercise discretion. The paragraph then to read:

'16.10.1 General provisions about voting

- (1) On a division (except as otherwise provided in these Standing Orders) the voting shall be by show of hands or in such manner as the Chairman may direct.

(2) Before a vote is taken, any Member may request a division by name. Upon receiving such a request, the Chairman shall allow members an opportunity to indicate their support for this request by standing in their place or in such other manner as the Chairman may direct. If ten members support the request, the Chief Executive shall call on each Member of the Council to individually vote for, against or abstain on the motion. The votes shall be recorded, and the Chairman shall declare the result.

(3) Where there has been a division by name, the names of Members voting for and against the proposition or abstaining shall be recorded in the minutes.

(4) At the request of any Member there shall be recorded in the minutes of the proceedings of the meeting whether that Member voted for or against the question or whether that Member abstained from voting. Any such request must be made immediately after a vote is taken.'

Recommendation:

To approve the amendments to the constitution as detailed above and that they be implemented with immediate effect.

3. Electronic Seal

Council is asked to agree changes to the constitution to allow the sealing of documents by electronic means. Sealing is how local authorities 'sign' key documents such as deeds and statutory orders to show that they have been approved by the authority.

The Electronic Communications Act 2000 allows sealing to take place by electronic means.

ECC's constitution does not currently allow electronic sealing. This has meant that throughout the COVID-19 outbreak officers have had to continue to visit County Hall to enter documents in the book, affix the seal and sign the book.

As a result of the outbreak many local authorities have investigated electronic sealing. The lack of a full council meeting has meant that we have not previously been able to seek approval to adopt electronic sealing during the pandemic.

Electronic sealing has the following advantages:

- No need to produce paper documents - nowadays many of the contracts we sign are huge and there is a lot of time involved in checking the

documents have been printed and bound correctly as well as time spent printing.

- An electronic document is the authenticated final version. Nowadays most lawyers work electronically rather than from the paper documents and having an electronic version which is the authenticated final version is helpful.
- No need to physically transport documents for sealing transporting the documents has a significant resource implication alongside the risks of loss.
- Faster process - sealing means that everyone can seal quickly, regardless of where they are in the world and there is no critical order of sealing. Electronic sealing software reports on the date and time of sealing. This means the documents can be signed quickly. When there are large volumes of documents it is easy to manage and keep track of signatures – we have piloted electronic signing during the pandemic and there has been a significant efficiency gain.

At the same time there are a number of risks:

- It is important to keep the security details securely. ECC operates a secure network and we believe that these risks are manageable if we follow ECC information security policies.
- A process will be needed to record those documents that are sealed electronically in the same way that we would for paper sealing including a process for the affixing and attesting of the electronic seal.
- The fact that we will no longer have any printed document to check means we lose this inherent opportunity to review the document after a 'cooling off period'. This risk is inherent with any electronic document production. The solution is to ensure that lawyers properly proofread documents before issue.

There are a number of providers of electronic signature software, most of whom operate via the internet. In order to maintain flexibility, it is proposed that the Monitoring Officer is authorised to select the provider from time to time and set requirements for the use of such seals after consulting the Chairman.

The constitution currently states:

'12.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Chairman of the Council.

A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.

The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer or the Director, Legal and Assurance should be sealed.

The affixing of the Common Seal will be attested by the Monitoring Officer or the Director, Legal and Assurance or some other person authorised by either of them, or by the Chairman or in his absence the Vice-Chairman or in his absence a past Chairman of the Council.'

Recommendation:

That paragraph 12.5 of the constitution be amended as set out below:

'12.5 Common Seal of the Council

The Monitoring Officer may from time to time adopt such means of sealing as from time to time considered appropriate after consulting the Chairman. This may include allowing electronic sealing in accordance with section 7A(1) of the Electronic Communications Act 2000. Affixing of an electronic seal approved in this way shall be of the same legal effect as affixing the Common Seal of the Council.

The Common Seal will be kept in a safe place in the custody of the Chairman of the Council.

A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision.

The Common Seal will be affixed to documents which in the opinion of the Monitoring Officer or the Director, Legal and Assurance should be sealed.

The affixing of the Common Seal will be attested by or affixed and attested by the Monitoring Officer or the Director, Legal and Assurance or some other person authorised by either of them, or by the Chairman or in his absence the Vice-Chairman or in his absence a past Chairman of the Council.'

4. Oral questions

The constitution at paragraph **16.12.6 Other oral questions** states that a Member may ask an oral question at a meeting of Council '...on any matter in relation to which the Council has powers or duties or which affects the area...'

It has been noted that the words '...affects the area' lack clarity and so it is proposed that they be replaced with '...affects Essex...'

Therefore, it is proposed that paragraph 16.12.6 be amended to read:

16.12.6 Other oral questions

'A Member may ask any oral question of:

- (i) the Chairman
- (ii) the Leader
- (iii) a Member of the Cabinet
- (iv) the Chairman of any Committee or Sub-Committee or
- (v) the Member appointed by Essex County Council as its representative on the Essex Police, Fire and Crime Panel,

on any matter in relation to which the Council has powers or duties or which affects Essex, but which is not capable of being dealt with under paragraph 16.12.5.

The time allotted at each meeting for the putting and answering of questions under this paragraph shall not exceed 20 minutes, without the leave of the Chairman of the Council.'

However, it has been also noted that the word 'Essex' appears frequently in the constitution and its meaning can vary according to context.

The second sentence of paragraph **1.9 Interpretation** of the constitution currently states

'Within this Constitution, except where the context otherwise requires the masculine includes the feminine and vice versa.'

It is proposed, for the avoidance of doubt, that the second paragraph be amended to read:

'Within this Constitution, except where the context otherwise requires:

- the masculine includes the feminine and vice versa, and
- any reference to 'Essex' shall be the Administrative County of Essex.'

Recommendation

That the amendments to paragraphs 1.9 and 16.12.6 of the constitution as detailed above be approved.

5. Review of Delegations Relating to Senior Management Employment Matters

A review of the relevant parts of the constitution has identified that the provisions should be clarified as to when officers may make a temporary appointment of a chief or deputy chief officer. It is proposed that the constitution is amended to make it clear say that all chief officer appointments should go to the committee, except that deputy chief officers – normally directors - may be appointed for up to a year by officers, subject to prior notification to the Leader who may require a decision to be referred to the Committee.

It is also proposed to rename the 'Committee to Determine the Pay and Conditions of Employment of Chief Officers and Deputy Chief Officers' to the 'Senior Management Employment Committee' which is shorter and more accurately describes the work of the committee.

The Senior Management Employment Committee will continue to be politically balanced, but with no standing membership. Relevant members will be appointed to the Committee based on the wishes expressed by leaders of political groups, having regard to the decisions to be taken and availability.

Recommendations

- (1) To replace paragraph 8.1.3 of the constitution with the following:

8.1.3 Senior Management Employment Committee

Membership: Five Members of the Council to include the appropriate Cabinet Member.

- (i) subject to (iv) below, to be responsible for the appointment and dismissal of Chief/Deputy Chief Officers and appeals against dismissal of such persons with the power:
 - (a) to appoint sub-committees of three Members to deal with particular appointments, dismissals or appeals; and
 - (b) to authorise the Chief Executive or his nominee to deal with a particular appointment or dismissal;
- (ii) to make decisions relating to the terms or conditions of employment of Chief/Deputy Chief Officers not already covered by the Council's Officer Employment Procedure Rules; and
- (iii) to decide the level of performance pay to be awarded to the Chief Executive and members of the Corporate Leadership Team and any proposal to make any payment to any such person above the assessed 'rate for the job' for any such role.
- (iv) The Committee is not authorised to dismiss the Head of the Paid Service, the Monitoring Officer or the Section 151 Officer.

Senior Management Employment Sub-Committee – Terms of Reference

Membership: Three Members of the Council to include the appropriate Cabinet Member.

- 1. To exercise any of the Committee's powers with respect to any particular Deputy Chief Officer (but not changes affecting more than one such post).
- (2) To add new sub-paragraphs (k)-(n) to paragraph 15.1.4 of the constitution (limits on delegations to officers):

- (k) Nothing in this Scheme of Delegation allows any officer to make the decision to appoint or dismiss a chief officer or deputy chief officer other than
- (i) to make a temporary or interim appointment of a deputy chief officer for up to one year (with any decision to re-appoint or extend a temporary post beyond a year being referred to the Senior Management Employment Committee);
 - (ii) to dismiss a person appointed under (i) or
 - (iii) to make decisions relating to a Head of Service reporting to a Director.
- (l) Any proposal for an officer to make a temporary or interim appointment of a deputy chief officer in accordance with (k) must be notified to the Leader and the decision referred to the Senior Management Employment Committee if the Leader so requires.
- (m) Nothing in this Scheme of Delegation allows any officer to make any decision about the pay or any other remuneration of a chief officer or deputy chief officer other than one falling under (k), other than to adjust their pay to the assessed 'rate for the job' for their pay grade.
- (n) Nothing in this Scheme of Delegation allows any officer to alter any aspect of pay grades A or B.

6. Membership of the Health and Wellbeing Board

The Health and Wellbeing Board is a committee of the council established in accordance with Section 194 of the Health and Social Care Act 2012. In this way, the Act makes some statutory requirements about membership and the council can add to that statutory membership in order to meet local needs.

The principal strategic bodies in the NHS that cover the Essex area are the Sustainability and Transformation Partnerships (STPs). Essex is unique in having three STPs covering the county area: Hertfordshire and West Essex STP, Suffolk and North-East Essex STP, and Mid and South Essex STP. In all three cases Essex County Council is not the only local government partner.

Having the Independent Chairs of the three STPs sitting round the table will help secure NHS buy-in to the needs and ambitions of the people of Essex.

Council is asked to agree that the Board's composition be amended to include, as full voting members of the Essex Health and Wellbeing Board the Independent Chairs of:

- Suffolk and North-East Essex STP
- Hertfordshire and West Essex STP
- Mid and South Essex STP.

It is expected that STPs will transition into Integrated Care Systems (ICSs) and the proposed changes to the constitution will enable this to happen without further changes to the constitution being required.

Additionally, the constitution currently allocates a place to the 'NHS Commissioning Board Essex LAT Director', a position and job title that no longer exists and requires replacing with 'Representative of NHS England', a change that will permit the current appointee to continue.

While these recommendations would increase the size of the Board from 30 to 33, the on-going changes to the structure of the NHS in the Essex area mean there will be an opportunity to bring the number of HWB members down again. It is understood that the NHS intends that all Clinical Commissioning Groups within each of the STP areas will be merging. This means the number of CCGs will reduce from seven to three by April 2021. This in turn will allow the membership of the HWB to be rationalised accordingly once those changes are in place

Recommendation:

That the constitution of the Board as shown in paragraph 8.1.8 of the Constitution be amended to read:

'Quorum

The quorum for the Health and Wellbeing Board will be one quarter of the voting membership and will include:

- at least one Essex County Council Elected Member
- at least one Clinical Commissioning Group Representative
- Essex County Council *either* Director of Adult Social Care, Director of Children's Services or Director for Public Health.

Membership

Voting Members	
Statutory Members	How Nominated or Appointed
3 County Councillors*	As nominated by the Leader of the County Council
Essex County Council Director of Adult Social Care (DASS)	By appointment to post
Essex County Council Director of Children's Services (DCS)	By appointment to post
Essex County Council Director of Public Health (DPH)	By appointment to post
Representative of Health Watch Essex	Appointed by Health Watch Essex
Representative of North East Essex CCG	Appointed by North East Essex CCG
Representative of Mid Essex CCG	Appointed by Mid Essex CCG
Representative of West Essex CCG	Appointed by West Essex CCG

Representative of Basildon & Brentwood CCG	Appointed by Basildon & Brentwood CCG
Representative of Castle Point and Rochford CCG	Appointed by Castle Point and Rochford CCG
Other Members	How Nominated or Appointed
Chief Executive of Essex County Council	By appointment to post
Independent Chair, Suffolk and North-East Essex STP/ICS	Appointed by the Board on the nomination of the STP/ICS
Independent Chair, Hertfordshire and West Essex STP/ICS	Appointed by the Board on the nomination of the STP/ICS
Independent Chair, Mid and South Essex STP/ICS	Appointed by the Board on the nomination of the STP/ICS
4 Borough/City/District Council Representatives	Appointed by the Board on the nomination of the Borough/City/District Council Leaders and Chief Executives Group
3 Voluntary Sector representatives	Appointed by the Board on the nomination of Borough/City/District Council Leaders and Chief Executives Group
Representative of NHS Commissioning Board (NHS England)	Nominated by Regional Director, NHS England
3 Representatives of Essex Acute Hospital Trusts	Appointed by the Board on the nomination of the Trusts
2 Representatives from Essex mental health and non-acute providers	Appointed by the Board on the nomination of the Trusts
1 Representative from Mid and South Essex Clinical Commissioning Groups in common	Appointed by the Board on the nomination of Mid and South Essex Clinical Commissioning Groups Joint Committee in Common
Non-Voting Members	
Essex Police, Fire and Crime Commissioner	By election to post
Independent Chair of the Essex Safeguarding Children's and Adults Boards	By appointment to posts

7. Membership of the Audit, Governance and Standards Committee

The Audit, Governance and Standards Committee undertook an effectiveness review in early 2020 on 9 March 2020. One outcome of the review is that the composition of the committee be amended to include a co-opted independent member to be recruited by the committee.

The constitution currently states:

'8.1.2 Audit, Governance and Standards Committee

Membership: Ten Members.'

Recommendation:

That the membership of the committee as shown in paragraph 8.1.2 of the constitution be amended to read:

'8.1.2 Audit, Governance and Standards Committee

Membership: Ten Members of the Council and one non-voting co-opted Member.

The co-opted Member shall be appointed the committee for a term of not exceeding four years and shall be selected by the Committee following public advertisement. At the expiry of the term of appointment the vacancy shall be advertised and a further selection process undertaken. The sitting member shall be eligible for reappointment.

8. Outside Bodies

Appendix 3 of part 26 of the Constitution is a list of Approved Bodies. Members appointed as County Council representatives to Approved Bodies may claim expenses from the Council for attending meetings if they do not receive payment from any other organisation.

A new body, the Mid and South Essex NHS Foundation Trust has been created by merging the Southend University Hospital NHS Trust and the Basildon and Thurrock University Hospitals NHS Foundation Trust both of which are shown in the constitution and to which we could make appointments.

Recommendations:

1. That the list of Approved Bodies in Appendix 3 of Part 26 of the Constitution be amended to include the newly formed Mid and South Essex NHS Foundation Trust and remove the Basildon and Thurrock

University Hospitals NHS Foundation Trust and the Southend University Hospital NHS Foundation Trust.

2. The numbering of the alphabetical list of Approved Bodies as shown in Appendix 3 of part 26 of the Constitution to be amended to take account of the changes.

Part 3: Dates of Future Meetings

9. Dates of Future meetings of the Council

The dates of the forthcoming meetings of Council are usually noted at the annual meeting of Council. However, as the annual meeting of Council has been postponed it is proposed that they be noted at this meeting.

Recommendation:

That it be agreed that the meetings of the Council will be held on Tuesdays at 10am on 13 October and 8 December 2020 and 16 February, 11 May, 13 July, 12 October and 7 December 2021