

<b>3 May 2017</b>		<b>ITEM: 8</b>
<b>General Services Committee</b>		
<b>Procedure for a ward petition calling for a vote of no confidence or censure of an elected Member and calling for voluntary resignation</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Non-key decision	
<b>Report of:</b> David Lawson, Monitoring Officer		
<b>Accountable Head of Service:</b> David Lawson, Monitoring Officer		
<b>Accountable Director:</b> Lyn Carpenter, Chief Executive		
<b>This report is public</b>		

## **Executive Summary**

This report considers the options for a “Right of Recall Scheme” for local government either through calling upon government to introduce national legislation or the options that might be available to Thurrock Council to develop a local scheme and is pursuant to a successful amended Motion at debated at Full Council in July 2016.

The amended resolution read as follows:

***“Thurrock Council calls upon the government to introduce legislation to provide for a right of "Recall" of local government councillors, alongside Thurrock Council also exploring the possibilities to introduce its own local recall scheme”***

- 1. Recommendation(s)**
  - 1.1 That the Committee consider whether to recommend to Full Council the proposed amendments to the Constitution at Appendix 1 to address the situation where ward residents may have lost confidence in their elected Member and wish to petition for a Full Council debate of No Confidence or Censure and Call to resign.**
  - 1.2 Alternatively ask officers to undertake further research.**
- 2. Introduction and Background**

- 2.1 Elected Members of a unitary Council such as Thurrock, on taking office, declare that they will duly and faithfully fulfil the duties of the office according to the best of their judgment and ability. They also undertake to observe the Code of Conduct. There is a procedure for addressing complaints relating to the Code of Conduct but there is no procedure at present for electors to censure or request the resignation of a Member who, by action or inaction effectively repudiates the solemn declaration made upon taking the office of Councillor.
- 2.2 Full Council resolved in July last year to request the Secretary of State for Communities and Local Government to legislate for a Recall Scheme in Local Government, and meanwhile that consideration be given to a scheme for introduction in Thurrock. In the interim a number of possible options for both submission to the Secretary of State and for a local scheme have been consulted upon with Group Leaders.
- 2.3 By way of background the Local Government Association has published a Guide to Becoming a Councillor which states that

*“being an effective Councillor requires both commitment and hard work. Councillors have to balance the needs and interests of residents, the political party they represent (if any) and the Council. The Councillor’s role and responsibilities include:*

- *representing the ward for which they are elected*
- *decision-making*
- *developing and reviewing Council policy*
- *scrutinising decisions taking by the Councillors on the Cabinet*
- *regulatory, quasi-judicial and statutory duties*
- *community leadership and engagement.*

*Most Councillors hold regular drop-in surgeries... a chance for residents to meet you and discuss their problems and concerns. You may also need to spend time visiting constituents in their homes. On top of this you will be dealing with letters, emails and phone calls from constituents. When dealing with casework or Council business you may need to meet with Council staff, during the working day...Then there are Council and Scrutiny meetings...and quasi-judicial Committee. The number and length of these meetings varies from Council to Council. If you are a member of a political party you will also be expected to attend political group meetings, party training and other events”.*

- 2.4 Even A level students in the UK are required consider the extent of “democratic deficit” in the curriculum for Politics A and AS-level examinations.

*“A democratic deficit occurs where a government institution falls short in their representation practices or where individual members of the institution have low esteem in the eyes of the public”.*

Measures to address the issue, however, are few and limited in the UK. A research article on the use of recall in different Parliamentary jurisdictions including the United States and Canada, and the use of “collective recall” by citizens’ action to initiate elections in Japan, Switzerland and Germany was published in the Law Journal of the University of New South Wales in 2011. The author was Professor Anne Twomey, who is now the Professor of Constitutional Law at the University of Sydney, and was writing when the proposal for legislation in the UK was at a very preliminary stage and is listed as a background paper to this report.

2.5 Parliament since has enacted legislation in respect of the House of Commons under the Recall of MPs Act 2015 using a petition procedure. The Act establishes three alternative conditions for opening a recall petition:

- first, that an MP is convicted in the UK of an offence and receives a custodial sentence that is not overturned on appeal brought within usual time limits; or
- secondly, following a report from its Committee on Standards, the House of Commons orders the suspension of an MP from the service of the House for a period of at least 14 days, or 10 sitting days; or
- thirdly, an MP is convicted under Section 10 of the Parliamentary Standards Act 2009 (the offence of providing false or misleading information on allowances claims) regardless of the sentence imposed.

A recall petition will not be opened where a UK Parliamentary general election is to be held within the next six months; a recall petition is already underway in respect of the MP; or the MP’s seat has already been vacated. The fact that the MP loses his or her seat under a recall petition does not prevent that MP standing as a candidate in the by-election.

2.6. Group leaders have been consulted on the possible criteria for a local Thurrock “recall scheme” and advised:

- there is currently no statutory right of recall for elected councillors in local government nor any option of suspension from office for a breach of the Code of Conduct since the enactment of the Localism Act 2011
- Beyond this an elected Member will cease to be an elected councillor if any of the following occurs:
  1. Non-Attendance: Section 85(1) of the Local Government Act 1972 provides that if a member of an authority fails, throughout a period of 6 successive months from the date of their last attendance, to attend any meeting of the authority, they shall cease to be a member of the authority, unless the non attendance was for a

reason approved by the authority before the expiry of the 6 month period;

2. Employed by the local authority or holds a paid office under the authority (including joint boards or committees but certain limited exceptions);
3. Holds a politically restricted post;
4. Bankruptcy restrictions order or interim order (subject to detailed rules);
5. Sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine;
6. Disqualified under the Representation of the People Act 1983 (which covers corrupt or illegal electoral practices and offences relating to donations);
7. Disqualification upon conviction in court for failing to register or declare a DPI or participating or voting with a DPI;
8. Ceasing to be a registered local government elector when only ground to stand as a candidate (If this was the only qualification claimed by the Member their name must appear on the register at the time of their nomination and throughout their term of office - this is an ongoing qualification.

- Voluntary Non Binding local Protocols

- i. Kingston Council last year put forward and passed a “councillor recall scheme” – apparently a number of scenarios can trigger a petition calling for a by-election. Where one or more of these criteria are met, the Monitoring Officer considers the circumstances and whether a petition should be launched on the council web site calling for the resignation of the councillor concerned.
- ii. If more than 33% of the registered electors in the ward in question sign the petition, there would be an expectation that the councillor concerned would resign thereby triggering a by-election. But the arrangement is a non-statutory protocol with no statutory basis and could be ignored by the Member concerned.
- iii. No other council in the UK has followed this example to date. It is also open to criticism that it appears to be unclear over the boundaries between the scheme and the Members Code of Conduct and the statutory roles of the Monitoring Officer and the Statutory Independent Person(s)

## Options and Analysis of Options

- 3.1 It is clear that any mandatory scheme will require enabling legislation for central government but that still poses the question of what sort or nature of enabling legislation local government may wish to seek, even if Parliament is minded to accede to the request. In order to give the request more traction it suggested that the Committee agree an agenda of its requirements and consult with other authorities to gain support for their submission to the Secretary of State.
- 3.2 As to developing an interim local scheme of recall it has been seen that Kingston Council has issued such a local scheme of “recall” but that this is open to criticism because it is not actually a “recall scheme” but rather a procedure initiated by unelected officers to launch a public petition to canvass residents’ views as to whether a elected Member should effectively resign and cause a by-election. It also arguably blurs the roles of the Monitoring Officer and Statutory Independent Persons as well as the parameters of the Members Code of Conduct. Finally it appears to be misnamed because the Member concerned could simply ignore the recommendation and refuse to resign.
- 3.3 It is important to note that there are existing provisions under the Thurrock Constitution to bring an item to Full Council on the confidence or otherwise of Council as to whether a Member is discharging their office effectively. Firstly Members have a right under Council Procedure Rule (**CPR**) 17 to submit a Motion of “no confidence in any office holder.” The effect of such a Motion, if carried, is not to remove the office holder from their office but rather to express Full Council’ opinion as to their discharge of their office. Clearly the Leader, a portfolio holder, a committee chair are office holders but equally it can be argued so are individual councillors. Secondly a sufficient number of residents can already trigger a Full Council debate by a petition containing 1,500 signatures.
- 3.4 Therefore under our existing provisions either Members or a sufficient number of residents could initiate a debate at Full Council on whether they had confidence in an individual office holder (Member) which arguably is the same outcome as the Kingston Council Scheme as the decision whether to resign or not would still rest with the individual Member concerned.
- 3.5 In the circumstance rather than design a “recall scheme” which isn’t really a recall scheme because it has no mandatory power it was recommended in consultation with Group Leaders that a clarification and amendment of the existing Petition Scheme could address a situation where a sufficient number of ward residents wished to object to the performance of their elected Member. For example via a “Petition of No Confidence or Censure and Call to Resign” This could be done already under Petition Scheme Rule 7 above but

at **Appendix 1** is a suggested modification of the Petition Scheme to address the situation of ward residents feel they are being badly served.

- 3.6 In this suggested modification to the Petition Scheme there is a ward threshold necessary to generate a Full Council debate, a limited number of objective grounds for bringing such a petition, taking care not overlap with the existing procedures for Members' Code of Conduct complaints. It is suggested that the advantage of this approach is that it builds and clarifies an existing provision, it tailors it to ward concerns, the threshold and grounds would tend to exclude vexatious, frivolous or party political petitions whilst allowing Council to demonstrate transparency and preparedness to debate ward residents' concerns where a sufficient level of concern has arisen
- 3.7 Should such a local scheme allowing for a "Ward Petition of No Confidence and Call to resign" prove acceptable to the Committee it may also inform any submission to the Secretary of State for a mandatory scheme via legislation.

#### **4. Reasons for Recommendation**

- 4.1 This report follows the resolution and debate at Full Council

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 Group Leaders were consulted prior to drafting the report

#### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 The proposal is intended to address democratic deficit and provide electors with a means of expressing censure against elected Members who fail to carry out responsibilities

#### **7. Implications**

##### **7.1 Financial**

Implications verified by **Laura Last**  
**Management Accountant**

All costs will be funded from existing legal budgets

##### **7.2 Legal**

Implications verified by **David Lawson**  
**Deputy Head of Legal and Monitoring Officer**

The implications are contained within the body of the report.

### 7.3 **Diversity and Equality**

Implications verified by **Natalie Warren**  
**Community Development and Equalities  
Manager**

No direct implications as a result of this report

### 7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

### 8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

Local Government Association publication: "Making a Difference – Your Guide to Becoming a Councillor". The publication is on the LGA website with an open copyright.

"The Recall of Members of Parliament and Citizens Initiated Elections" by Anne Twomey, now Professor in Constitutional Law at Sydney University published in the University of New South Wales Law Journal, Volume 34(1) (2011) protected by copyright.

### 9. **Appendices to the report**

- Appendix A - Ward Petition for Vote of No Confidence and Call to Resign

### **Report Author:**

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## **APPENDIX A**

### **Draft Constitution Chapter 1, Part 2 – Article 3 Petition Scheme**

#### **6. Ward petition relating to no confidence or censure in an elected Member and call to resign**

6.1 A petition in respect of any matter relating to a recommendation that an elected Member of Council should consider resigning from office will be dealt with as at 6. 2 – 6.5 below.

6.2 The petition to be initiated on the Council's e-petition site for a period of 2 calendar months or until the specified electoral threshold at 6.4 is reached, whichever is the sooner. A petition in writing may also be submitted fulfilling the requirements set out in 6.4 below.

6.3 The petition must cite one of more of the following grounds:

- the Member has attended less than 20% Council meetings of which they are a Member, as defined by section 85(1) Local Government Act 1972, within a municipal year at the date upon which the petition is launched and where the Member's absence has not been approved by the Council itself;
- the Member has been convicted of a crime since election for which a prison sentence (whether suspended or not) has been imposed and the appeal period has expired without the sentence being overturned or becoming spent;
- the Member has since election and without reasonable excuse or explanation failed to engage in constituency work for a period of 6 months;
- the Member has since election been subject to a finding of a breach of the Members Code of Conduct after a hearing by the Standards & Audit Committee Panel for which a sanction of public censure has been imposed by the Council and any relevant appeal period has expired without the finding and sanction being overturned or no more than 3 months has elapsed since the expiry of any appeal period at the date upon which the petition is launched.

6.4 The petition must reach a specified electoral threshold (being calculated by reference to local government electors registered on the first day of the month in which the petition is launched or submitted) of at least 33 % of electorate numbers for the Member' ward being validly subscribed to the e-petition.

6.5 If the petition reaches specified electoral threshold it will be debated by the full Council unless otherwise contrary to the provisions of the petition scheme or is within 6 months of the scheduled election of the elected Member concerned.



6.6 The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be debated by Councillors for a maximum of 15 minutes.

6.7 The Council will then debate, without amendment the recommendation contained in the petition that the elected Member of Council should consider resigning from office.