

# Minutes

## *REGULATORY AND AUDIT COMMITTEE*

**MINUTES OF THE MEETING OF THE REGULATORY AND AUDIT COMMITTEE HELD ON TUESDAY 19 NOVEMBER 2013 IN MEZZANINE ROOM 1, COUNTY HALL, AYLESBURY, COMMENCING AT 9.00 AM AND CONCLUDING AT 10.22 AM.**

### **MEMBERS PRESENT**

Mr T Butcher (Vice-Chairman)  
Mr S Lambert  
Mr D Martin  
Mr Z Mohammed (Chairman)  
Mr R Scott  
Mr A Stevens  
Mr W Whyte

### **OTHERS IN ATTENDANCE**

Mrs A Davies, Service Director, Legal and Democratic Services  
Mr I Dyson, Chief Internal Auditor  
Ms J Edwards, Pensions and Investments Manager  
Ms M Gibb, Risk and Insurance Manager  
Mr J Gillett, Audit Executive, Grant Thornton  
Mrs C Gray, Senior Democratic Services Officer  
Ms A Poole, Trading Standards Manager  
Mr R Schmidt, Assistant Service Director (Strategic Finance)  
Ms H Wailing, Democratic Services Officer

### **1 APOLOGIES FOR ABSENCE / CHANGES IN MEMBERSHIP**

Apologies for absence were received from Bill Chapple OBE and Raj Khan. Steven Lambert was in attendance as a substitute for Raj Khan.

### **2 DECLARATIONS OF INTEREST**

There were no declarations of interest.



INVESTOR IN PEOPLE



### 3 MINUTES

The Minutes of the meeting held on 24 September were agreed and signed as a correct record.

#### Matters arising

- Page 2 – Is the Council contributing to Public Health staff pensions? – Helen Wailing to chase this action – **Action: HW**
- Page 2 – information about annual leave in regard to fraud work - Ian Dyson said that he had not had an opportunity to run the report as yet, and this would be brought to the January 2014 meeting – **Action: ID**
- Page 4 – the Accounts - the Chairman confirmed that the Accounts had been signed off without any changes.

### 4 TREASURY MANAGEMENT UPDATE

The Committee received the Report of the Pensions and Investments Manager.

Julie Edwards, Pensions and Investments Manager, told members that the Council was required to report to members on the current year's treasury management. It had previously been agreed that a mid-year report on treasury management would be reported to Regulatory and Audit Committee prior to reporting to County Council (as required by the CIPFA Code of Practice).

Julie Edwards told members the following:

- There had not been a change to UK monetary policy, with official interest rates maintained at 0.5%.
- Within the August 2013 Inflation Report, the Bank of England had stated its forward guidance, the main element of which was to defer monetary tightening at least until the ILO Unemployment Rate fell to a threshold of 7% (among a raft of caveats). The Bank had projected that the probability of this happening would remain below 50% until 2016.
- The average rate of return for BCC investments to date was 0.61%, which exceeded the weighted average LIBID benchmark rate of 0.49% by 0.12%.
- Regarding its Investment Strategy, the Council was planning to diversify to other asset classes. The Council had evaluated the use of Pooled Funds and determined the appropriateness of their use within the investment portfolio. Investments in Pooled Funds would be undertaken with advice from Arlingclose Ltd. The performance and continued suitability in meeting the Council's investment objectives would be regularly monitored. Arlingclose Ltd had recommended that the Council invested £5m in the CCLA Local Authorities Property Fund a high quality, diversified property fund managed exclusively for local authority investors which would generate rental income yield.

A member said that investments in property in other authority areas had not performed as well as hoped. Julie Edwards said that the investment would be specified as capital expenditure, and the fund had been set up specifically for local authorities.

A member referred to page 5 and asked if the proposed investments in pooled funds would be long-term investments. Julie Edwards said that due to the costs associated with entering and exiting this asset class it was anticipated that the initial investment would be for a minimum of 5 years.

A member said that collective investments made them nervous, as some were not regulated by the FSA, and asked if there were any other confidence measures in place. Julie Edwards said that a lot of reassurance should come from the Council's advisers.

The member also asked if the planned investments should go to another member committee for agreement, or to the Service Director for Finance and Commercial Services. Julie Edwards said that the Treasury Management Group met monthly, chaired by the Cabinet Member for Resources.

A member asked that the amount invested in pooled funds be reported back to the Regulatory and Audit Committee – **Action: JE**

**The Committee NOTED the treasury and investment borrowing performance and the monitoring against the Prudential Indicators.**

**The Committee RECOMMENDED to County Council an amended Investment Strategy for the remainder of 2013/14 in respect of collective investment schemes and pooled funds and that the table in the report be added to the list of non-specified investments, the changes highlighted in grey.**

## **5 CHANGES TO THE CONSTITUTION**

The Committee received the report of Anne Davies, Service Director for Legal and Democratic Services / Monitoring Officer.

Clare Gray, Senior Democratic Services Officer, said that at the last meeting of the Finance, Performance and Resources Select Committee, members had considered a request submitted by a member who was concerned about the use of the urgency rule for a cabinet member decision during the election period. Urgent decisions could not be 'called-in'.

Three County Council members had not believed that this cabinet member decision taken through the urgency rule was genuinely urgent, and had said that it took away a member's right to have a call-in of the decision.

The reason for urgency had been that a number of e-petitions had been presented to the Council, which had delayed the process for a key decision being made. This had been exacerbated by the elections in May 2013, which had delayed the decision even further.

The Select Committee's concerns included:

- Concern around the wording in the constitution 'that a call in should not normally be made during the six weeks immediately before at County Council election'.
- That the decision-making process should not disenfranchise the local member or anyone who wanted to challenge the decision.

The Monitoring Officer's response to these concerns was to make amendments to the Council Constitution as follows:-

- To remove reference to a call in not being allowed during the election period.
- Where possible, to give group leaders 48 hours' notice of any urgent decision being taken. This did not apply to decisions being taken under the major emergency procedure.

A member referred to page 15, Item 18f, and said that the restrictions over access to documents could disenfranchise members. Those members who had requested that a decision be called in should have access to all the relevant papers. Anne Davies said that Select Committee members had the right to see confidential (pink) papers, providing they had a 'need to know' (see Part 4e of the Constitution).

A member referred to page 16, Item a, regarding extension of the time in which a final view could be expressed, and asked what would happen if a cabinet member did not agree to this. Anne Davies said that this had been put into the Constitution following a call-in about closure of libraries, in which a procedure had been needed to extend the five day period.

A member referred to page 16, item a ii, and said that this could disenfranchise members of a committee who were not of a majority party. The member suggested that this should be changed to require agreement by three members or by the whole Committee. This would safeguard the impunity of all members of the Committee. Anne Davies said that the wording could be changed to require the agreement of three members, with one being from an opposition party.

Another member said that they were not in favour of making this amendment, as a degree of flexibility needed to be maintained. Also, the suggestion that the agreement of one opposition member be needed would be difficult when there were two opposition groups.

A member referred to Section 20 and said that this allowed for three members of a committee to be involved.

Anne Davies said that a Select Committee could also plan in advance during a call in process, and agree a longer length of time as a Committee.

A member said that the word 'urgent' in Section 20 needed to be clearly defined. The member said that the decision being discussed had only become urgent when certain factors had been brought in.

Anne Davies said that there was no definition of urgency available, and that it was a 'thing of the moment.' Each urgent decision needed to be justified on its own merits. It tended to be a time pressure which led decisions to become urgent. Select Committees had the power to examine whether or not a decision should have been urgent.

A member referred to page 16, item a ii, and said that the comma in the first line needed to be deleted.

The Chairman said that the Constitution was a corporate document and that it was difficult to be too prescriptive. At this stage the right balance had been found.

**The Regulatory and Audit Committee considered whether any changes should be made to the constitution on the urgency rule and agreed the recommendations put forward by the Monitoring Officer.**

## **5A PETITIONS PROTOCOL**

The Committee received the report of Anne Davies, Service Director for Legal and Democratic Services and Monitoring Officer.

Clare Gray, Senior Democratic Services Officer, told members that at the April 2013 meeting of the County Council, changes had been made to the Constitution relating to petitions. These changes had been made as the Government had withdrawn guidance to allow more discretion on how petitions were approached locally, and to minimise bureaucracy (Local Democracy, Economic Development and Construction Act 2009).

Clare Gray circulated a revised draft protocol which had two minor amendments on the third page. Members were being asked to agree the draft protocol, to replace the Government guidance, and to delegate authority to the Chief Executive to make further minor changes.

The main points of the draft protocol included:

- On local issues, petitions were usually discussed through local area forums (LAFs). A report was submitted to the LAF meeting with an officer recommendation. If the majority of members were not happy with the response, then it could be referred back to the Cabinet Member with an explanation of why it should be reconsidered.
- Online petitions should be limited to 28 days so that the Council's decision making process was not delayed.
- Responses on the petition should be reported back to the Council by the relevant Cabinet Member or Committee Chairman within six months.

A member said that the draft protocol was complex and needed to be simplified. The members referred to page 23 (final section) and said that there were too many options for people as to where to go. The member said that it was not clear who the target audience was for the draft protocol.

Anne Davies said that the protocol had been even more complicated 12 months previously, but that she was happy to redraft it. Anne Davies also said that she would like to get a protocol in place soon as petitions were currently taking up a lot of time for Democratic Services Officers. The best route for a petition was through the Local Member, and this could be added to the protocol.

The Chairman said that the draft protocol opened up more channels for petitions to be raised. Anne Davies noted that the 2009 Act required local authorities to have a facility for e-petitions, and that this was in place at the Council.

A member referred to page 24 and said that they were aware of a petitioner who had been given three different pieces of advice about where to take their petition. This included being told that at one point that it did not count as a petition. The member said that the protocol had to be as simple as possible, so that it took up less officer time.

Anne Davies said that she was happy to take the protocol away and to simplify it – **Action: AD.**

Anne Davies asked if members could agree a 28 day limit for petitions, to avoid open petitions, which could delay decisions.

A member referred to page 24 and said that this stated the role of the local Councillor.

The member said that the minimum number of signatures (20) seemed very low and was not representative, and asked if this figure was defined by statute. Anne Davies said that it was not defined by statute.

Members discussed the figure of 20 signatures. Clare Gray noted that if an issue affected only a small number, (e.g. a road containing three houses), a lower figure would be appropriate.

A member said that they would be happier for a smaller threshold for signatures to be applied to LAF petitions, but that a higher threshold should apply to a corporate-wide issue.

Anne Davies said that she would take this away – **Action: AD**

A member said that they had experienced an issue recently which involved someone abusing the petition process. This had taken up a lot of member and officer time.

Anne Davies asked members if they would prefer the local members to be informed as soon as a petition was received. Members said this would be helpful, and that in some cases the Local Member could avoid an issue going further.

A member said that the local member should be involved at the earliest stage and that any issues raised in petitions should not come as a surprise to them. The member said that they

agreed with the idea of a 'cooling-off' period for petitions. The member said that the draft protocol had been well-drafted.

## **6 ANNUAL ENFORCEMENT OF THE CHILDREN AND YOUNG PERSONS (PROTECTION FROM TOBACCO) ACT UPDATE**

Amanda Poole (Trading Standards Manager) was welcomed to the meeting and referred members to the Report starting on page 27 of the papers.

There was a statutory requirement to consider enforcement activity to prevent underage sales of cigarettes, and this report covered the period from April 2014 to March 2015.

Just over a year previously changes had been made to the Regulation of Investigatory Powers Act (RIPA), which meant that Trading Standards could no longer undertake test purchases without good levels of intelligence.

The Trading Standards service had become much more intelligence-led than in the past. The Service also now had closer links to PCSOs and volunteers in communities.

The Service was working to find out where the problems regarding underage sales lay. Nationally, smoking rates in under-18s were declining. However the sale of novel products had increased, and Trading Standards was targeting underage sales of electronic shisha. Trading Standards work was aimed at supporting public health and improvement outcomes.

Nationally, illicit tobacco was also causing a problem.

A member referred to display of tobacco products and said that they were concerned about small shops, and the cost and practical implications of the changes to displays. Amanda Poole said that when the legislation had been brought in, the time scale for the requirement had been extended by another 18 months. Trading Standards had not received much feedback from small shops about the changes but this might increase nearer the time. The changes had not caused as many problems as predicted for the large shops. Trading Standards was very conscious that small shops struggled to survive. Closer to the time, Trading Standards would advise traders, and ensure that they were aware of the changes. Tobacco companies would also be providing advice. There were no easy answers at this stage.

A member asked how the work of Trading Standards fitted in with the Public Health responsibilities, and said that it seemed strange that the annual report came to the Regulatory and Audit Committee.

Amanda Poole said that Trading Standards spoke regularly to Public Health colleagues.

Anne Davies said that the annual report had come out of RIPA, and regulations about the use of covert surveillance by local authorities.

**The Committee noted and agreed the report as a reflection of activity over the financial year 2012 - 2013 and agreed the programme of enforcement activities to be undertaken in 2014 - 2015 as detailed below:**

- **Help people to live healthy lifestyles, make healthy choices and reduce health inequalities by ensuring that our work supports the delivery of the Public Health improvement outcomes and responsibilities that relate to the use of tobacco.**

**This work may include**

- **Establishing the prevalence of sales of illegal tobacco and intervening appropriately with regulatory partners to reduce this**
- **Use local, regional and national resources to ensure we target our resources appropriately.**
- **Promote the use of the Challenge 25 Training Pack to help prevent under-age sales by local retailers**
- **Ensure statutory warning notices are displayed in premises where tobacco is sold and advise traders about the legislation.**
- **Ensure that the restrictions on tobacco advertising in retail premises are adhered to.**
- **Ensure that the restrictions on selling from tobacco vending machines are adhered to.**
- **If robust intelligence is received, and it is appropriate to do so, conduct test purchases and consider appropriate enforcement action against traders who sell to underage children.**
- **Where intelligence suggests it is appropriate, explore alternative means of detecting sales other than by test purchases, particularly where it is apparent sellers know the purchasers concerned.**
- **Continue to participate in the Public Health Agenda and other new projects and initiatives that fit within our enforcement activities outlined above together with our own initiatives when they are felt necessary.**

## **7 RISK MANAGEMENT STRATEGY UPDATE**

The Committee received the Report of Maggie Gibb, Risk and Insurance Manager.

Maggie said the following:

- The Report summarised the discussions at the Risk Management Group (RMG) held on 11 November 2013 to review progress of the Council's Risk Management Framework.
- Graeme Finch, Contracts Manager for Adults and Family Wellbeing (AFW) Commissioning and Service Improvement had attended the meeting to update the RMG on the processes in place to manage risks relating to the Local Authority Trading Company (LATC). The LATC had gone live as Buckinghamshire Care on 1 October 2013.
- The RMG had received an update on the status of each of the risks contained within the Buckinghamshire Care Risk Register, including the progress of any ongoing actions. The RMG had asked a number of questions of the Contracts Manager relating to the risks listed, and had been given assurance that the processes in place to manage the risks were robust.
- However, one area of concern for the RMG which required development was the need to identify and document risks faced by the Council as a result of using this new model to deliver services, and in particular the contract risks.

- The RMG had requested that the AFW Contracts Manager attend the meeting in March 2014 to present the contract risk register and discuss the contract management process and contract risk escalation process.
- The RMG had also heard a presentation from Martin Dickman, Senior Manager, Place, which detailed the progress of the Energy from Waste (EfW) project, the current risk register status and the contract management arrangements in place now that the construction phase had started.
- Monthly contract management meetings were scheduled during the construction phase, which would feed into the wider governance framework for the contract.
- The RMG felt assured that the contract management arrangements in place for the construction phase and the governance framework for the EfW project were adequate and a number of areas of good practice had been noted.
- The Risk and Insurance Manager updated the RMG on the programme of work developed to support the Risk Management Strategy and to further embed a robust Risk Management process across the organisation. This included the Risk Team having attended a number of Senior Management Team meetings with services including Finance and Commercial Services (FCS), Human Resources, ICT and Place Service during the period to discuss new and emerging concerns as well as reviewing current risks.
- The risk registers for key projects such as the Museum Trust and Adult Learning Service (ALS) had also been subject to review by the Risk Team.
- The Risk and Insurance Manager had recently met with the Programme Manager for the Future Shape Programme and would be involved in reviewing risk registers/challenging governance processes for both the overarching programme and the different project work streams. Regular updates would be provided to the RMG, and the Programme Risk Register would be presented to the next RMG meeting.
- The RMG had been advised that, as part of the Contract Management Framework, initial risk management training had been provided to all Platinum Contract Managers with follow up workshop sessions currently in progress. A training programme for Gold Contract Managers was currently being developed.
- The RMG had also received an update on the project to replace the current Risk Management System, Performance Plus, which was due to expire in March 2014. An interim Risk Management solution would be needed due to the Integrated Reporting project (IRP) having been temporarily put on hold due to the development of a data warehouse as part of the Future Shape Project. An interim spreadsheet process had been agreed by the RMG.

A member asked if the risks on the Ringway Jacobs Contract were regularly assessed. Ian Dyson said that the risks for the project had been assessed previously when the Strategic Client had attended the RMG. The Ringway Jacobs contract had a very thorough risk management process. The Regulatory and Audit Committee could request to look at the risks again.

A lot of work was currently going on about the Ringway Jacobs contract, including internal audit work and work by the Chief Executive following outcomes from a Select Committee. The Ringway Jacobs contract risks also formed part of the quarterly meetings between Internal



Audit and the Service Director for Place. Ian Dyson said that there was nothing alarming in the risk management process for the project, but that this should not be confused with the contract management process.

**The Committee noted the report.**

## **8 REPORTS FROM EXTERNAL AUDITOR**

The Committee received the Annual Audit Letter for Buckinghamshire County Council and the Grant Certification Work Plan for Buckinghamshire County Council from Grant Thornton, the external auditors.

### **Annual Audit Letter for Buckinghamshire County Council**

Julian Gillett (Grant Thornton) said that this was the final audit 'wrap-up' letter. The letter did not contain any new messages. Grant Thornton had issued two unqualified opinions, on the final accounts and on the value for money conclusion.

A member referred to page 25 (page 9 of the report) and said that the word 'adequate' did not convey a strong sense of achievement. Julian Gillett said that the use of the word in audits was slightly different. The external auditors did not have any current concerns regarding value for money and were aware that the Council had strong reserves in place. The Council did have a savings gap, and this was something which the external auditors would be monitoring.

Ian Dyson said that 'adequate' was a good rating in audit terms.

A member said that the Audit Letter was a very pleasing report.

A member referred to page 21 (page 5 of the report) and asked about the difficulties in obtaining evidence. Julian Gillett said that Grant Thornton's approach had been quite different from the Audit Commission's approach. One difficulty had been in obtaining enough detail for the audit work. A meeting had been held with the Council and officers would be given more time in the following year to obtain information, and external auditors would ask for information in a different way, and be as clear as possible.

A member referred to page 20 (page 4 of the report) and asked about the grant claim which needed certification. Julian Gillett said that teachers' contributory salary was £99m. The external auditors were required to look at between £21m and £22m.

The Chairman thanked Julian Gillett for the report and said it was good to see an unqualified opinion.

### **Grant Certification Work Plan for Buckinghamshire County Council**

Julian Gillett referred members to the Work Plan and said that the only return in 2011-12 that was audited was the teachers' pensions return. This was also the only return that would need to be audited in 2012-13.

**The Committee noted the reports.**

## **9 FOR INFORMATION - REPORT OF THE SURVEILLANCE COMMISSIONER 2012-13**

Members noted the Report.

## **10 FORWARD PLAN - STANDING ITEM**

The Committee noted the Forward Plan. The draft petitions protocol would need to be added to the Forward Plan for the January 2014 meeting.

An Internal Audit Report with a Ringway Jacobs Improvement Plan would need to be added to the Forward Plan for January 2014.

**11 DATE AND TIME OF NEXT MEETING**

28 January 2014, 9am, Mezzanine Room 3, County Hall, Aylesbury

**12 EXCLUSION OF THE PRESS AND PUBLIC**

**RESOLVED**

**That the press and public be excluded for the following item which is exempt by virtue of Paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)**

**13 CONFIDENTIAL MINUTES OF THE MEETING HELD ON 24 SEPTEMBER 2013**

**CHAIRMAN**