

REPORT INTO EVENTS SURROUNDING THE DECISION BY THE CABINET TO ADOPT A SINGLE BENEFITS AND ADVICE CONTRACT WITH REFERENCE TO THE SPECIAL O&S INQUIRY HELD ON 21ST NOVEMBER 2007.

1.0. BACKGROUND AND INFORMATION.

- 1.1. For many years Cheltenham Borough Council has given grant aid to four organisations to provide advice on benefits, housing and general issues. These advisory services are important so that people are aware of their rights and the law. All of the organisations have performed satisfactorily under the current regime of grant aid related to Service Level Agreements.
- 1.2. The Cabinet agreed that, rather than fund the four organisations, there should be a Single Housing and Benefits Advice Contract to be put out to competitive tender in a report presented by the AD Community Services on 12th December 2006. The decision was taken by the Cabinet in closed session. There had been no previous consultation with the organisations involved in delivering the existing services.
- 1.3. An attempt to call the decision in by members of Social and Community O&S was refused by the Chief Executive on the grounds that a 'call-in' was premature, and that there was still a lot of time for consultation. At the same time, the Chief Executive made it clear that, in his view, the original report was the product of a political steer and should have been presented in the name of a Cabinet member.
- 1.4. Following the intervention of O&S as part of the consultative process a working group was established and a comprehensive report produced that recommended Partnership working as an alternative to the contract approach. The O&S report said that '*Unless money is the dominant factor a better approach (to that proposed in the Cabinet report on 12th December 2006) would be to enhance Partnership working between the existing agencies clearly indicating who does what and when*'.
- 1.5. The working group report was agreed at O&S on 2nd April 2007 by 5 votes to nil, and recommended the Cabinet to '*withdraw its original proposal and invite the voluntary sector organisations to make proposals as to how the benefits of closer partnership working can deliver improved advisory services for the town*'. **This meant that closer partnership working around the status quo should be pursued. The status quo involved grant aid to the four organisations.**
- 1.6. In answer to a question to the Cabinet on 23rd January 2007, an assurance was given by the then Cabinet Member for Finance and

Economic Development that the proposals were not about saving money. The question asked was ‘Given that at the Cabinet meeting of 12th December the Cabinet member Finance and Economic Development maintained that the reason for creating a single advice contract was to improve the service rather than save money, is he prepared to publicly repeat this and declare that the savings outlined in the report relating to the single contract are not the critical factor in this initiative?’ The reply was: **‘Yes. The principle reason for creating a single advice service is to seek to improve the overall quality of the service for local residents.’**

- 1.7. At the Cabinet meeting of 17th April 2007 it was agreed that a ‘twin-track’ approach be followed which looked at both the contract and the Partnership options. The Decision Notice 26/2007 said:

‘The cabinet:

- (i) *Agreed that officers take up the opportunity presented to work closely with the four voluntary sector organisations concerned to develop proposals as to how the benefits of **closer partnership working can deliver improved advisory services for the town.***
- (ii) *Agreed that a report brought back to cabinet in July 2007 outlining these proposals, together with associated legal implications **so that the decision of Social and Community Overview and Scrutiny Committee can be reviewed.***
- (iii) *Agreed this is a **twin track approach.** This work will take place alongside the existing timetable. Officers will continue to prepare tender documentation for a single advice contract, complete outstanding work and provide appropriate legal and other advice in time for the July cabinet meeting so that a decision can be taken on all available evidence’. (my emphasis)*

- 1.8. **The decision incontrovertibly indicated that a partnership approach, around the status quo of grant aid and the alternative contract approach be both looked at and brought back to a later Cabinet meeting for consideration.**

- 1.9. At the Cabinet meeting of 18th July 2007 the Cabinet accepted a final report that recommended the contract approach. **The Partnership alternative was not presented as an option in this report notwithstanding the Cabinet resolution of April 17th to include it.** Despite this, a further application to have the decision called-in on 26th July was dismissed by the Monitoring Officer on 27th July (in the absence of the Chief Executive)

- 1.10. A request as expressed by majority vote at Full Council on 28th June to include the wide range of services currently provided by the CAB in the proposed contract and funded partly by CBC was also rejected by the Cabinet.

2.0. THE HEARING – THE KEY QUESTIONS

2.1. The resolution to establish an Inquiry was agreed by O&S on 10th September and posed the following questions that needed to be examined.

- Why was the twin track approach agreed by the Cabinet at its meeting of 17th April ignored so that the 'Partnership' approach did not feature in the report back to Cabinet on 18th July?
- Why was the request by full Council to include the broad range of advisory services in the contract ignored?
- What are the implications of this? How and where can such advice as not being directly concerned with the role of a district housing authority be accessed in future by Cheltenham's citizens?
- What is in and what is not in the contract, and how much will it save?

On the evening of 21st November a Special Inquiry was held to consider these issues.

2.2. Why was the twin track approach agreed by the Cabinet at its meeting of 17th April ignored so that the 'Partnership' approach did not feature in the report back to Cabinet on 18th July?

2.2.1. The Legal Services Officer responsible for advice on this subject established that the position relating to grants and contracts had been misunderstood by the AD Community Services. This was later **accepted** by the AD Community Services who said *'I believed highly specified grants could be interpreted as contracts but later legal clarification made it clear that grants and contracts were different. I originally misunderstood this'*.

2.2.2. The difference between grants and contracts was put succinctly by the Principal Procurement Officer. Contracts had to go to tender. Grants did not have to go to tender. A Service Level Agreement that related to grant aid was **not** a contract.

2.2.3. **This misinterpretation therefore meant that the partnership approach recommended in the O & S working group report was not looked at in the report to cabinet on 18th July except in the context of a contract.**

2.2.4. The agencies involved had profound problems with this. Under the contract conditions it would mean there could be only one lead contractor that all the others would have to sub-contract with. It also meant that, in the context of competition with third party agencies, the current levels of service offered by all the agencies taken together couldn't be sustained because they were not included in the contract. It therefore meant that, inevitably, some elements of what was provided would disappear.

- 2.2.5.** In other words, the organisations were prepared to work together more closely around the status quo of grant aid, but would find it difficult to cooperate around a contract. **Insisting on the contract approach ruled out Partnership working around the status quo of grant aid.**
- 2.2.6.** It is important to note that at no point have any of the organisations been criticised for the poor quality of their work or service delivery. Had the grant based partnership approach been continued, then a competitive tender would not be necessary. Since the exercise was not about money, but quality of service, this would have been the most effective way of keeping the range of services currently available. **It was never explored despite the wishes of the Voluntary Sector Agencies involved**
- 2.2.7.** This was not examined by the elected politicians whose responsibility it was to make sure that their own resolution passed on 17th April to pursue a twin track approach was properly explored. The Leader maintained that it was the Voluntary Sector bodies themselves that refused to work in partnership. This was wrong. **The Voluntary Sector agencies were prepared to work closer together on the basis of the status quo and had expressed this in a letter to him.**
- 2.2.8.** It is clear that a misunderstanding of the difference between grants and contracts meant that examination of enhanced Partnership working was ignored and that the Cabinet failed to question why the twin track approach had not been pursued. The confusion appears not to have disappeared. In a Policy Paper to the Cabinet in Oct. 2007, **after** the decision was taken by the Cabinet on the Single Advice Contract, it asked rhetorically – ‘what is a well drawn service level agreement but a contract?’ The implication is that SLAs and contracts are the same, and that a process of competitive tendering needs to be carried out to comply with the law. This is not the case. The legal distinction is clear and is stated in para.2.2.2.
- 2.2.9.** The fact that it has now been established that the legal advice was mistaken and, as a result excluded the Partnership option in the report to the Cabinet on 18th July, also raises another issue. Despite the fact that the Partnership option recommended by the O&S working party accepted by the Cabinet on 17th April was **not** examined as a result of the misunderstanding of legal advice and in my opinion appeared to constitute grounds for a call in under Article 13 of the Constitution, this did not occur.
- 2.2.10** A call-in by O&S would have been able to identify the confusion over legal advice at this stage and it may have been possible to influence the policy. It was denied, despite the evidence available and despite the subsequent clarification that legal advice in relation to grants and contracts had been misunderstood.

2.2.11. Call-in procedures were changed following this application at Full Council on 8th October 2007 so that officers would not have to arbitrate over the veracity of such a call-in in future.

2.3. Why was the request by full Council to include the broad range of advisory services in the contract ignored?

2.3.1. A Full Council resolution on 28th June, passed by 18 votes to 14 with 2 abstentions, urged the Cabinet to include advisory services currently provided by the organisations but not included in the contract. These became known as 'residual' advisory services.

2.3.2. When it was finally considered, the 'residual' items were not included in the contract. However, the issue of residual advice did play a part in the quality evaluation of the contract which was awarded on the basis of 60% for price and 40% for quality. **Only the CAB provided this residual advice.**

2.4. What are the implications of this? How and where can such advice as not being directly concerned with the role of a district housing authority be accessed in future by Cheltenham's citizens?

2.4.1. One of the changes made between the submission of the first report to Cabinet in December 2006 and the report on 18th July was to limit the provision of advice to that which related primarily to the role of the Council as a Housing Authority and related issues (including benefit and debt). This effectively meant that there would be no funding for so-called 'residual' issues. The argument was that these could be supplied by third parties, or (in the case of the CAB) would be funded from other sources.

2.4.2. By the time of the inquiry, on 21st November, it was known that the CAB had won the contract. A press release had been put out the day before, following the Cabinet meeting at which it was announced. The decision was subsequently called in by O&S to examine the bidding criterion and process, and although there were issues around 'residual' advice and the methodology used, neither of these things was sufficient to overturn the tendering process in the opinion of O&S. This call-in could not examine the policy. **That decision had already been taken.**

2.4.3. The CAB explained that they would do their best to include residual advice subject to resources and confirmed that reductions in cost would inevitably reduce the level of service. If they could handle the advice in-house, they would. They would establish a triage service that identified

what a person's problem was and how complex it was before allocating resource to tackle it. They would include services funded by the Legal Services Commission, a self help web-site as well as signposting to appropriate organisations if they lacked the resource to tackle issues in-house. The idea of having a 'one stop shop' could therefore not be realised. Because they had been excluded from the contract other sources of finance would have to be found – and at the moment this could not be guaranteed. He expected signposting to increase.

2.5. What is in and what is not in the contract, and how much will it save.

2.5.1. The contract process has saved in excess of £102,000s a year from an original budget of £256,800 – a cut of more than 40% in the budget. Inevitably this means a decrease in currently funded services provided not only by the CAB, but by CCP, CCSC and CHAC. It is likely that the drop in centre at the LHS Resource Centre and the training facilities linked to it will close; Cheltenham Community Support Centre will probably close and the loss of their rent could lead to the Lower High Street Resource Centre closing; the credit union may be in danger; services for young people with difficult problems run by CCP could disappear; the bond schemes by CHAC which accessed private accommodation for young people and families will go and the overall support offered by the agencies to the most vulnerable people will be substantially reduced. CHAC will certainly contract, and could close.

2.6. MEMBER AND OFFICER ROLES.

2.6.1. One of the issues that has bedevilled this process is whether or not it should be officer or member led. The problem with officer led reports is that the questioning of so-called professional advice is interpreted as a slur on the officers – even when, as in this case, their interpretation of the advice has been proved to be incorrect. Attempts to question the advice at the Cabinet meeting of 18th July were stopped for this reason.

2.6.2. The Leader was asked under what circumstances he believed a report should be made in the name of a Cabinet member rather than an officer. He responded by identifying three circumstances:

- Where the report was initiated by a Cabinet member
- Where it was 'politically' brought forward
- Where officers think it is political.

2.6.3. This report was 'commissioned' by the Cabinet 'following a detailed discussion of the issues'. In addition, the Chief Executive indicated that this should have been the case in these circumstances 'because there was such a heavy political steer'. The Leader maintained that an officer view that this should go in the name of a member 'had never been imparted to him', **despite** the fact that he had been copied into the e-mail from the Chief Executive on 11th December 2006, the day before the report was initially taken to Cabinet.

2.6.4. The result of this is that it was not possible for members to challenge the content of reports. At the Cabinet meeting of 18th July, an attempt to question the AD Community Services interpretation of legal advice was stopped by the Leader, who chaired the Cabinet. Criticism of officers was, in his view, tantamount to questioning their integrity, and anyone doing so risked bringing the Council into disrepute. Because the decision was not called in, the misinterpretation of legal advice could not be examined and corrected.

3.0. RECOMMENDATIONS AND FINDINGS.

- (i) The resolution agreed by the Cabinet on 17th April to pursue a twin track approach which examined a competitive contract option and a collaborative partnership option around grant aid was not pursued because the legal advice was misunderstood. It was initially maintained that the status quo (of grants paid to VS bodies) was illegal, and only a competitive contract approach could be pursued. As the whole Partnership approach recommended by Overview and Scrutiny could only be constructed around grants rather than contracts it was not pursued. **As a result the Cabinet agreed a contract approach which inevitably meant the demise of some of the organisations.**
- (ii) This issue was the direct result of a political initiative by the Leader and the Cabinet. There were regular discussions between the AD Community Services and the Leader/ Cabinet on this issue. Despite this, it was maintained that this was entirely an officer report. Where Cabinet members discuss the content of such policy reports in future, it is in both the interests of the Council as a whole and the appropriate lead officer to submit either a joint report, or the report in the name of a member. Once a member accepts officer advice, they must be responsible for any decision taken based on that advice whether it is as a result of a Cabinet decision or their input to a report prior to the Cabinet agreeing it. As such they should take some if not total responsibility for reports, and be prepared to be scrutinised on them. **The advice given to officers in 'Cabinet Report Procedure Guidelines' needs to be revisited. Cabinet Members must take more active ownership of politically contentious reports.**
- (iii) The original motivation for the change was supposed to be about improving the quality of the service. It is too early to judge whether or not this will be achieved, but it is certain that a range of facilities currently attached to the advice agencies will be jeopardised or disappear and that this will affect some of the most vulnerable people in the town, and it is also clear that in excess of £100,000s a year has been 'saved' on advisory services. **The conclusion that this was about saving money, despite assurances given to the contrary, cannot be escaped.**

- (iv) The 'Call-in' procedure is a critical mechanism to ensure that executive decisions are properly scrutinised. There is clear evidence that in misunderstanding legal advice, only the contract option was examined in the report that went to Cabinet on the 18th July, despite the resolution by Cabinet to look at both the Contract and the Partnership approaches. This would have been identified had the decision been properly scrutinised. **Now that the Constitution has been changed and a different mechanism introduced to secure a call-in, this can not happen again.**
- (v) The process of scrutiny at CBC is starved of resources. The same officer who was advocating a contract approach was responsible for servicing the O&S working group that advocated a different approach. **This should not happen. Liaison with other bodies and councils in Gloucestershire to 'pool' O&S resources to make sure that there is proper independent support for such scrutiny should be explored. If proper Scrutiny cannot be supported in Districts, the whole prospect of their effective governance must be called into question.**

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4th January 2008.