

**SOCIAL AND COMMUNITY OVERVIEW AND SCRUTINY COMMITTEE  
21 NOVEMBER 2007**

**MINUTES  
(17.30 – 19.50)**

**PRESENT** Councillor Peter Allen (in the Chair), Councillors Chris Coleman, Tina Franklin, Sandra Holliday and John Webster.

Lorna Steers

**APOLOGIES** Hazel Kitchin and Jackie Sallis

**ALSO IN ATTENDANCE:** Leader (Duncan Smith), Cabinet Member Quality of Life (Chris Ryder), Councillors Barbara Driver, Rob Garnham, John Morris, Alan Nicholson, Steve Jordan and Pat Thornton

**1. INTRODUCTION**

The Monitoring Officer drew attention to a procedure note he had prepared for the meeting, together with an advice note for witnesses. In particular he asked that the Committee treat all witnesses with respect and courtesy, that all questions needed to be relevant to the Advice Contract, that it was not reasonable to expect Members or officers to breach personal confidences and that if witnesses chose not to answer a question this should be respected.

The Monitoring Officer also indicated that Cabinet members who had been involved with the decision were now prevented from attending the meeting other than as a witness or to make a representation. The Cabinet Member Environment (Councillor Garnham) sought clarification that he was not allowed to listen to the inquiry as to how others viewed the decision making process. Following brief discussion Councillor Garnham reluctantly left the meeting.

The Leader of the Council indicated that he had been specifically requested to attend the meeting.

**2. DECLARATIONS OF INTEREST**

None

**4. PUBLIC QUESTIONS**

None received .

5. INQUIRY INTO EVENTS SURROUNDING THE DECISION BY THE CABINET TO ADOPT A SINGLE BENEFITS AND HOUSING ADVICE CONTRACT

Councillor Webster introduced his report which set out his understanding of the process followed in considering future provision of certain advice services in Cheltenham. The report also contained four key questions together with appropriate witnesses to be called.

The questions together with supplementary questions and appropriate answers are set out on Appendix 1 attached.

At the conclusion of the inquiry the Deputy Chief Executive sought clarification as to the Committee's intention for the way forward; Councillor Webster indicated that he would prepare a report for future consideration by the Committee.

Councillor P Allen  
Vice Chair

## Appendix 1

### **1) 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?**

The following questions were asked by Councillor Webster to Angela Cox whose replies are shown in italics

Appendix 11; this is a clear statement of the difference between grants and contracts.

- Is there a level (ie above £144,000 as stated in the July 18<sup>th</sup> Cttee report)) at which a grant automatically becomes a contract and must abide by EU rules?

*I am not aware*

- Is it the case that if the Council decides to give a grant, then the contract rules don't apply regardless of what level the grant is?

*Correct*

- Is it the case that we decide what is a grant and what is a contract?

*Not able to answer*

The following questions were asked by Councillor Webster to Nicolas Wheatley whose replies are shown in italics

- Do you agree with this?

*Whether or not a grant becomes a contract is not determined by monetary value. It is dependant upon the intended legal relationship between parties.*

Is this why you had para 3.2e of the original report removed (p10 of appendix) – to refresh your memory it read 'To keep the status quo, a suggestion in the report, would conflict with either the Council, or European, commissioning rules. This path could be claimed to be anti-competitive and it would be difficult to evidence best value (see section 4)'.

*Para 3.2e of the original report was removed because it was not clear*

- You were asked in an e-mail dated 19<sup>th</sup> July (p61) about para 3.2e –‘keeping the status quo would conflict with the Council or EEC commissioning rules’. In your answer (p63) you make the point ‘I believe there has been some misunderstanding regarding the functions and legal status of Conditional Offer of Grant’ and go on to say that 3.2e was removed in order to avoid any confusion’. Where was this confusion?

*Conditional offers of grant had been used in the past both to pay grants and to cover cases where services had been provided which had caused confusion as to which situations created contractual relations and those which did not.*

- Could you look at the report agreed by Cabinet on 30<sup>th</sup> Oct – p99 of the appendix. Para 2.4. – it states ‘The more you specify the closer you get to a contract – what is a well drawn service level agreement but a contract?’ What do you think of that comment?

*The comment was not written by me, however it depends on what the council wishes to do - whether to make a grant for services provided or enter into a legal relationship through a contract.*

The following questions were asked by Councillor Webster to the Cabinet Member Quality of Life whose replies are shown in italics

You are down as the Accountable Cabinet member for this policy.

- What input, if any, did you have to the report of 18<sup>th</sup> July?

*I entered into discussions with officers and sought advice. It was a collective Cabinet decision.*

- Did you agree it before it went to Cabinet?

*Yes, I felt it to be the right way forward*

- Is it your understanding that CAB will continue to provide residual advisory services?

*I am unable to comment at this stage as the decision could be subject to ‘Call-in’ procedures that may impact on the process*

- Did you not question para 3.2e in the draft report which maintained that the status quo ‘would conflict with either the Council, or European, Commissioning Rules’.

*I looked to officers to provide relevant advice.*

- Did you ask the AD Community Services what the impact would be on general advice provision if we were to restrict our activities only to the advice needed to be offered by our district housing statutory status?

- What was his response?

*I am unable to respond to these questions because of the political dimension*

- You disagreed with the original report agreed by the Cabinet on 12<sup>th</sup> Dec. 2006, and your disagreement was minuted?

*I had initial reservations, however following further reports I was satisfied with the conclusion*

- How were your disagreements addressed?

*I am not able to answer because of the political dimension*

Councillor Franklin asked if the Cabinet Member Quality of Life was concerned that expertise/advice could be lost to Cheltenham residents. In reply it was indicated that as Cabinet Member, it had to be accepted that organisations should not have to rely on Council funding in order to continue providing services.

Cabinet Member Quality of Life expressed concern at the line of questioning which deviated from the questions as set out in the report.

The following questions were asked by Councillor Webster to the Assistant Director Community Services whose replies are shown in italics

- Can you outline the reasons why the Partnership approach wasn't pursued despite the decision taken at Cabinet on 17th April, and why it didn't figure in the Cabinet report of 18<sup>th</sup> July? (Appendix 6).

*The twin track approach was not ignored. It was discussed with each of the individual organisations at their consultation sessions.*

*Each organisation is an independent company. Whilst officers of the council can suggest and enable it is not their role to directly interfere in the business decisions of such organisations. The concept was neither taken nor developed by any of the organisations involved. Likewise in the tendering process, having been given a prior indication that two or more organisations would come forward with a 'partnership' bid, this also failed to materialise – giving a clear indication that they were not signed up to partnership working or that they felt it in their best business interests.*

*Thus the partnership approach was not ignored it simply failed to get off the starting grid leaving nothing to report on 18<sup>th</sup> July.*

- Do you agree with the e-mail from the Deputy Chief Executive of 19<sup>th</sup> June (Appendix 9) 'As soon as the legal position with regard to competitive tendering (**ie that there was no alternative**) was made clear to all concerned, then the only "partnership option" left on the table would be one based on the consortium tender'.

*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 and this was why the Deputy Chief Executive had made the above statement.*

- Is it not the case that you were only prepared to consider one contract, and that if there was to be a consortium bid, then there would have to be a lead contractor and a series of sub-contractors?

*When dealing with parties, it was not the role of the council to suggest how independent organisations should proceed*

- What input did the Cabinet member accountable for this report have into it?

*The report went through the approved cabinet report clearance process*

- What input did the Leader have?

*The report went through the approved cabinet report clearance process*

The following questions were asked by Councillor Webster to Angela Gilbert whose replies are shown in italics:-

You wrote to the Leader on 12<sup>th</sup> April (Appendix 7) outlining the basis of a Partnership approach by closer cooperation – and expressed the hope that this improvement in the way the status quo worked would constitute a 'showstopper'.

- Would that be a fair summary of the letter?

*I wrote on behalf of the four agencies who had agreed in principle to look at closer partnership working.*

- Did you get a response to it from the Leader?

*The Leader responded by arranging for a joint agency meeting as well as individual meetings with the four organisations.*

The following questions were asked by Councillor Webster to Andrew Banfield whose replies are shown in italics:-

- following the meeting of 18<sup>th</sup> July (Appendix 12) you wrote to the Leader challenging his statement at the Cabinet meeting of 18<sup>th</sup> July that it was incorrect/unfair to say that the agencies were not prepared to work together, and that the issue of Partnership working was ignored and only the idea of a contract discussed? Is that a fair summary of your letter?

*Yes, I suggested that alternative provision by way of joint working could be achievable at the time of writing*

- What was his response to it?

*Receipt of the letter was acknowledged with a response to be received in due course, however I am not aware that a response was received.*

## **2) Why was the request by full Council to include the broad range of advisory services in the contract ignored?**

The following questions were asked by Councillor Webster to Councillor Jordan whose replies are shown in italics:-

- Can you summarise what the motion put to full Council on 28<sup>th</sup> June asked for, and what was the result?

*Councillor Jordan read out the motion to Council as follows:-*

*This Council notes that the plans for the 'single advice contract' contained in the current draft contract and specification will not include a range of services that are currently funded by the council including such things as consumer issues; employment issues; health issues; immigration; tax; relationship breakdown; travel; utilities and so on unless there is a housing component to them.*

*This council believes that safeguarding such areas of advice is vital to the well-being of its citizens and therefore agrees that they should continue to be supported with council funding and urges the Cabinet to include them in the proposed contract.*

The motion was carried (VOTING 18 For, 14 Against, 2 Abstained)

In response to principal question 2 above the Cabinet Member Quality of Life indicated that the Council resolution was not ignored.

The following further questions were asked by Councillor Webster to Cabinet Member Quality of Life whose replies are shown in italics:-

- What due consideration did the Cabinet take at its meeting of 18<sup>th</sup> July to reject the position of full Council?

*The minutes of the Cabinet meeting show that the Cabinet expressly considered the resolution and had nothing more to add to the debate that had been held at Council.*

- Is it your understanding that the CAB will continue to provide residual advisory services?

*I am not in a position to comment on the details of the contract*

- Why was the report to Cabinet on 18<sup>th</sup> July in the name of the AD Community Services when it is clear from it that detailed discussions about its contents had gone on with Cabinet members (cf para 3.2)?

*The Monitoring Officer clarified that it was appropriate for members to commission reports from professional officers and these were in the name of officers to indicate that this was their professional advice.*

The Cabinet Member Quality of Life confirmed that the Cabinet had requested the Assistant Director Community Services to provide advice in his report of 18<sup>th</sup> July 2007.

The following questions were asked by Councillor Webster to Assistant Director Community Services whose replies are shown in italics:-

- Do you not agree that the report of 18<sup>th</sup> July was particularly politically sensitive?

*I was responding to the Cabinet's request to provide officer advice.*

- Why was your name on this report rather than the Cabinet Member accountable for it (quote rules), or why isn't it a joint report? Quote report authorship p 5 and 6 of Cabinet Report Procedure Guidelines. and Appendix one 3<sup>rd</sup> para of Andrew North's e-mail dated 11<sup>th</sup> December 2006 (Appendix 1) 'such a strong political drive should have been in the name of a member'.

*I am unable to comment on the views expressed by the Chief Executive*

- What issues did you discuss about the report with Cabinet members?

*I am not able to answer because of the political dimension*

The Assistant Director Community Services with the permission of the Chairman gave a prepared statement to principle question 2 above as follows:



*The original advice on the service specification proposal, containing a functional breakdown, presented as appendix C in the Cabinet report on 18<sup>th</sup> July 07 shows that around 76% of the existing advice functions are contained in the new service specification.*

*Those recommended for lower or non priority were advice services that are not a direct district council function and/or where a more appropriate service provider or agency exists. These included:*

- *Contracts*
- *Industrial Relations*
- *Motoring issues*
- *Time share and international travel issues*
- *Embassies and consulates*
- *Inheritance, capital gains or land tax issues*
- *Land Reform*
- *Radio, TV and Telecommunications*
- *National Health service*
- *British Nationality and Immigration.*

**3) 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?**

The following questions were asked by Councillor Webster to Andrew Banfield whose replies are shown in italics:-

- What are the implications of the contract including only advice focussed on the role of the Council as a District Housing Authority.

*The contract specifies three main areas for advice; housing, debt and benefits and related issues (immigration and employment is also covered under the contract)*

In response to a supplementary question from Councillor Webster it was indicated that clients would receive an initial interview assessment to determine their needs. If this was shown to be related to the contract clients would be referred in accordance with the arrangements with the Borough Council. If not, clients would be signposted or referred to other advice providers.

- How would you respond to the statement made by the Director of Community Services (Appendix 9) – ‘That residents of Cheltenham will thus not lose access to that broader range of services’.

*Any process that reduces resources will also reduce the level of services available. However better use of referral to other organisations, national agencies can give access to advice. Some clients will be encouraged to self help, allowing ability to concentrate on those least able to help themselves.*

- Now that the contract has been awarded, will the CAB provide the 'residual' advice services to Cheltenham's people even though they are not included in the contract?
- How will this be paid for?

The detailed responses to these questions could not be given in public session. It would therefore be necessary to defer consideration to the end of the meeting following passing of the appropriate resolution to exclude public.

Councillor Coleman asked Cabinet Member Quality of Life whether potential threats to services had been aired by Cabinet and when? In reply it was indicated that this question could not be answered due to political dimension. It was however indicated that informal discussions on the general issue had taken place. There had been differing views within individual Cabinet Members however a collective decision had been made to progress the issue for the betterment of the town. Councillor Coleman pressed the Cabinet Member Quality of Life with regard to her inability to answer due to political dimension. The Monitoring Officer indicated that it was not appropriate to continue with the line of questioning. Councillor Coleman expressed his concern that questions to which the Committee required a response were not being answered other than to refer to the political dimension which was not helpful to the inquiry. The Monitoring Officer referred to his detailed advice and indicated that witnesses did not have to answer questions if they chose not to.

Mary Apperley was called to provide a response in respect of question 3 outlined above and replied that four existing agencies provided services within service level agreements and each was unique. She was concerned that each specialist agency might not exist under one contract and may not be available if clients needed to be referred.

Councillor Coleman sought clarification as to whether opportunity for a one to one discussion to air concerns had been given during the process. In response Mary Apperley indicated that in her view the concerns raised had not been taken into account.

The Cabinet Member Quality of Life expressed a concern that in order to be fair each of the four agencies should have been present at the inquiry if questions were to be asked regarding the contract. The Procurement Officer agreed that the current line of questioning in respect of the procurement process was unfair.

The Assistant Director Community Services provided the following response to principle question 3 above:-

*Through organisations and agencies direct - County council advice services. NHS Direct. Primary Care Trust, Surgeries, Specialist solicitors (through legal aid where applicable) Job Centre +, Connexions, Age Concern, Trading Standards, GLOMAS, GARAS, Carers Glos., et al*

*Many and varied specialist advice web sites such as DVLC, DWP, Government Direct, Shelter, Glos Hub, Guide, Armchair Advice et al. Whilst accepting not everyone has internet access most agencies, vol orgs and neighbourhood Centres are connected and will assist with technical issues.*

*Also Neighbourhood Projects and Resource Centres supply advice and sessions on Lifelong Learning, Healthy Living with Hesters Way, and other accredited organisations locally, also providing community legal services advice.*

*Specialist Forums also provide information and advice, such as the Disability, Pensioner and MAD fora. As do consumer watchdogs such as Trading Standards, OFCOM, OFWAT et al.*

The Chairman then invited the Leader to make comments and answer questions from the Committee.

Councillor Webster asked the Leader when he had become aware of the apparent confusion between grants and contracts? The Leader replied that his recollection was of an email which clarified and amended the original legal advice provided. The Leader also indicated that at no point had it been decided not to pursue the partnership arrangement, however at the Cabinet meeting held on 18<sup>th</sup> July 2007 it had become clear that despite discussions on greater partnership working no viable alternative proposition had been forthcoming. In response to a further question with regard to the reason why partnership working had not been pursued further by the agencies, the Leader indicated that it was not his role to investigate.

Councillor Webster asked the Leader if any lobbying had been done by third parties on behalf of any of the applicants. The Leader answered that there had not.

Councillor Webster asked the Leader under what circumstances would the Cabinet Member responsible for the area of work add their name to a report? In response the Leader indicated that there were three circumstances in which he thought it would be right to have a Cabinet Members name on a report:-

- if it was initiated by a Cabinet Member
- if it had been politically brought forward (such as election pledge)
- or where officers thought it was a political initiative

Councillor Webster responded that the Leader commissioned this report and that he had been copied into an email on 11<sup>th</sup> December 2006 from the Chief Executive which maintained it ought to have been in the name of a Cabinet Member. The Leader clarified that at the request of the Cabinet, the report had been prepared by the officer and signed off in accordance with the cabinet report procedure guidelines. Other than the Chief Executive's reflections in his email of 11<sup>th</sup> December, at no point in the process did the Chief Executive or Board

Directors raise concerns that they felt it was inappropriate for the report of 12<sup>th</sup> December 2006 or subsequent reports to be issued in the name of an officer.

Councillor Coleman asked whether the concerns expressed previously by Cabinet, Scrutiny and Council had been considered. The Leader confirmed that the Evaluation Panel had challenged each of the organisations on the specific areas of concern and were satisfied with the answers given.

#### **4) What is in and what is not in the contract, and how much will it save?**

The above question was put to the Assistant Director Community Services whose reply is shown in italics

*I refer you again to appendix C in the Cabinet report on 18<sup>th</sup> July 2007. The new contract will offer up an efficiency saving in excess of the original estimate.*

#### **LOCAL GOVERNMENT ACT 1972 – EXEMPT BUSINESS**

In order that the Committee could receive detailed reply to a previous question the following resolution was approved:-

**“That in accordance with Section 100 A(4) of the Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 3 of Part 1 of Schedule 12A (as amended) of the Local Government Act 1972 namely:**

##### **Paragraph 3:**

**Information relating to the financial or business affairs of any particular person (including the authority holding that information)**

Summary of an exempt minute

The Chairman recalled Andrew Banfield to answer the following questions

- Now that the contract has been awarded, will the CAB provide the ‘residual’ advice services to Cheltenham’s people even though they are not included in the contract?
- How will this be paid for?

Andrew Banfield provided detailed information relating to residual advice services as requested.