

COUNCIL

3 August 2009

Present: The Mayor (Councillor Lloyd Surgenor), Councillors Garth Barnes, Lydia Bishop, Nigel Britter, Ken Buckland, Tim Cooper, Barbara Driver, Martin Dunne, Jacky Fletcher, Bernard Fisher, Wendy Flynn, Rob Garnham, Les Godwin, David Hall, Penny Hall, Colin Hay, Diane Hibbert, Sandra Holliday, Stuart Hutton, Steve Jordan, Robin MacDonald, Paul Massey, Paul McLain, Heather McLain, John Morris, John Rawson, Chris Ryder, Anne Regan, Diggory Seacome, Charles Stewart, Duncan Smith, Malcolm Stennett, Klara Sudbury, Pat Thornton, John Webster, Paul Wheeldon, Simon Wheeler, Roger Whyborn.

(6.30 pm – 8.12 pm)

1 Apologies: Councillor Andrew McKinlay and Andrew Wall,

2 Prayers

Stella Weaver, a lay reader from St Mary's with St Matthews opened the meeting with prayer.

Before the start of business, the Mayor indicated that he had received a request from the Echo for a photographer to take some pictures at the start of the meeting. In accordance with the Constitution this was put to the vote and was duly carried.

3 Declarations of Interest

None declared

4 Minutes

The minutes of the meeting held on 29 June had been circulated and were approved and signed as a correct record subject to page 2, para 1 'new blue and white' being amended to "old" and page 2, section 7, 3rd bullet point should read that "The Joint Improvement Board had met last week and it had been proposed that the JIB should be abolished and they should be merged with the LGA for Gloucestershire".

5 Public Questions

Question from Mr Ken Pollack (address supplied) to the Leader, Councillor Steve Jordan

Does the Council not realise that it is wholly unacceptable for any investigation/review of the Laird prosecution venture to be performed by KPMG, the Council's own external auditors, especially considering that they admit in their letter (11th July 2009) to having held regular meetings with senior officers "to discuss the case" throughout the critical period since April 2007 (when this litigious venture could/should have been aborted)?

KPMG also has an interest in preserving their existing contractual relationship with the employer, which it would be investigating and potentially displeasing.

Instead, KPMG should simply be called by independent investigators in order to give evidence of KPMG's past advice and/or views on this matter, (even if they felt unable to express those views at the time).

KPMG say they have now agreed with CBC to pronounce on:

- the "reasonableness" of the decision process (although adding the word 'process' may render this too limited an investigation);
- the "completeness" of the information presented to decision makers, including "financial implications";
- the "risk assessment and option appraisal process";
- how the Council responded to advice from auditors.

But if KPMG could not give the above advice when it mattered most, i.e. when it could have prevented serious financial loss, then providing that judgement now needs to be assigned to a wholly independent agent, not KPMG.

Reply from Councillor Jordan

KPMG are auditors appointed by the Audit Commission and not by the borough council. The Audit Commission Act 1998 sets out the duties and responsibilities of auditors which includes their right to access documents and information, and their right to publish reports. The judgement as to whether a review is undertaken rests with the auditors and not with the council. KPMG decided on the review after consultation with council officers and following receipt by them of a letter from Laurence Robertson MP requesting the auditor's intervention.

The auditors meet with senior managers on a quarterly basis to discuss key issues impacting on the council and to discuss the progress of the audit. These meetings are held to enable the auditors to understand what key issues are emerging for the council so that they may plan adequately their audit. It is not the responsibility of the auditors to tell the council how to run its affairs.

As Mr Pollock was not present at the meeting, the question and response was taken as read. The Leader indicated that Mr Pollock had asked a total of eight questions and as only two were allowed as public questions at this meeting, he would receive written replies to the others.

Question from Mr Ken Pollack (address supplied) to the Leader, Councillor Steve Jordan

It is minuted that Councillors McKinlay, Hay and Jordan left the meeting for the March 2006 decision to proceed; but the minutes do not record any further declarations of interest for this item at subsequent meetings addressing it.

Was the lack of any further public declarations of interest a breach of council regulations or of councillors' code of conduct?

Reply from Councillor Jordan

It is the responsibility of members to observe the council's Code of Members Conduct and to make declarations of personal and prejudicial interests as appropriate. It cannot be implied that any lack of declaration on the part of any particular member demonstrates a breach of the Code.

The members referred to were members of the then Cabinet. They left the

meeting not because of a declaration of interest but to avoid any potential accusation of bias in the decision of the committee relating to Mrs Laird. This was done after taking legal advice from the Monitoring Officer, and followed Mrs Laird's attempts to take action against the cabinet collectively and individually through grievance procedures, complaints to the Standards Board and legal action.

Question from Ms Mary Nelson (address supplied) to the Leader, Councillor Steve Jordan.

In KPMG's letter of 11th July 2009, with regard to the Laird High Court case they state they *"have had regular discussions with senior officers of the Council In particular we highlighted to officers the extreme importance of the Council following appropriate processes when making key decisions about this case and drew their attention to the risks involved."*

With respect to *"drew their attention to the risks involved"*, does the Council have a written record of details of the risks raised by KPMG, and did officers communicate KPMG's specific concerns regarding the risks to the Staff and Support Services Committee? If so was this in the form of a written report?

Reply from Councillor Jordan

Minutes are not produced for the quarterly meetings with KPMG. However the auditors did indicate that they would expect the report which was presented to Staff and Support Services Committee in January 2009 to clearly articulate the risks associated in continuing or ceasing court action. Such a written report was considered by the committee in January 2009.

In a supplementary question, Mrs Nelson said that her question had not been answered. Clearly January 2009 was too late for these risks to be articulated to the committee and asked what risk assessment had been set out to the Staff and Support Services Committee in November 2008.

The Leader responded that there had been continuous risk assessment carried out over a number of years and this would all be reviewed as part of the KPMG review.

Question from Ms Mary Nelson (address supplied) to the Leader, Councillor Steve Jordan.

In the Risk Matrix, Report ref. 4.1 (second line), the **Risk** is stated as:

An internal, as well as external, review of the constitutional and governance related decision making and review processes, some of which are may (sic) not be fully documented or easily accessible, could lead to concern about governance issues and accountability.

The 3rd column estimates this risk as:

Medium: potentially evidence is less accessible or well documented in relation to non committee or cabinet related decisions and processes.

The inclusion of the above statement, that evidence is less accessible or well documented in relation to non committee or cabinet related decisions and processes, indicates that there were some decisions relating to the prosecution case which were taken outside of committee or cabinet. **Could Council confirm**

that this is the case and if so give an indication of the number and importance of such decisions that were taken by officers rather than by councillors in committee?

Reply from Councillor Jordan

The KPMG review will consider the adequacy of documented decisions, and will identify those taken by officers and those by councillors.

In a supplementary question, Mrs Nelson said that her question had not been answered and asked why a response had been deferred.

The Leader said the purpose of the KPMG review was to consider these very questions and that was why a response had been deferred.

Councillor Godwin raised a point of clarification. He pointed out that the deadline for public questions was 10 a.m. on Monday and the agenda for this meeting was published on the website at 10.15 am that same morning. This anomaly must be addressed in the future. He also asked for clarification on the rules in the constitution regarding public questions and questioned the wording relating to the two question limit as he felt it was unclear.

In response, the Chief Executive indicated that Mr Pollock had already raised the issue of the deadline for public questions. He acknowledged the difficulty that a member of the public might have in this case and said this would be reviewed. In relation to the rules about public questions, he considered that the Constitution was clear. There was a limit of two questions regardless of the member(s) to which they were addressed and this was how it had always been applied in the past. He acknowledged that this limit could be looked at as part of the review of the Constitution in the Autumn.

6 Communications by the Mayor

The Mayor welcomed Charlie Stewart as the new councillor for All Saints Ward and wished him all the best in his new role.

He thanked Council officers involved in the recent community events in Montpellier Park, Pittville Park and Paws in the Park at Leckhampton. Several residents had contacted him to say how important these events were to the community and that they got better every year.

He informed members of the success of the Morgan Car Centenary event held over three days at the Pump Room and the racecourse. There were owners from New Zealand, Australia, America and from all over Europe and it was a boost for the tourist image of Cheltenham.

The Mayor thanked those members who had attended the memorial service for Alderman Don Perry of Charlton Kings. He had been a former Mayor of the town and was extremely well-known in both football and cricket circles. He invited Council to stand as a mark of respect to his memory.

7 Communications by the Leader of the Council

The Leader of the Council congratulated Charles Stewart on his recent election victory as a new Liberal Democrat member of Cheltenham Borough Council for the All Saints Ward. He advised that Councillor Stewart would be taking up the vacancies on the Environment and Social and Community Overview and Scrutiny

Committees.

8 Member Questions

None received.

9 Implications of the High Court proceedings in Cheltenham Borough Council –v- Laird

The Chief Executive introduced his report which had been circulated with the agenda. He said that the report had been requested as part of the requisition for this Council meeting. He referred members to a figure of £1.6 million which was referred to in paragraph 2.3 of the report as the total estimated direct and notional cost for the period 23rd of April 2003 to 1st of July 2009. He was aware that at least one person had misunderstood these costs and he wished to clarify that these costs dated back to 2003 and it was only the more recent costs that had been incurred as a result of the High Court case. He referred to appendix 1 of the report which set out these costs in detail.

He referred to appendix 2 which contained a letter from KPMG to Mr Laurence Robertson MP which highlighted the role of the Audit Commission in this matter and the scope of their proposed review. He explained that following the receipt of the letter from Mr Laurence Robertson MP, the Council's Auditor had spoken to officers regarding their intention to carry out a review. The Chief Executive reminded members that the council's Auditor had a statutory responsibility to carry out an investigation if any objections were raised regarding the council's Statement of Accounts. Officers had considered that the proposal for a review was a reasonable and proportional response to public concern about the unsuccessful court claim against Mrs Laird. He emphasised that the terms of reference for the review had been set by the auditors and were covered in detail in the letter.

The Chief Executive explained that his report also contained his comments on the motion to be dealt with at this meeting. He referred to paragraph 4.4 where he had stressed the importance of involving elected members in the Auditor's review. However he did point out that the Auditor had disagreed with his reference to a 'joint review' as the Auditor had wished to highlight KPMG's independence in this matter. The Auditor did agree that the involvement of members would be helpful during the course of the review.

The Chief Executive referred to his concerns about the member working group which were set out in the report and covered the following:

- Officers may be diverted from other important work
- The council may suffer as a result of a blame culture developing
- Disclosure of information is still covered by legal professional privilege or other confidentiality requirements
- The statutory role of the Standards Committee in member conduct issues must be respected

Councillor Garnham referred to the letter from KPMG which stated that the review had been agreed with the Council. He wished to point out that although Council had a democratic mandate, Council had not agreed to the review as this had been done by officers. He felt it was critical that the working group referred to in the motion was set up as soon as possible and members should have the opportunity to inform the scope of the review. He insisted that a meeting with the auditors should be sought as soon as possible for this purpose.

In response, the Chief Executive said that officers had not considered that they had any real choice in the matter and to decline the review was not an option. The scope of the review was entirely drafted by the Auditor however he was sure that the Auditor would be happy to receive any representations from the working group on the scope or terms of reference for the review.

Councillor P. McLain asked for clarification on whether any external communications consultancy had been employed and if so what was the cost and on whose authority had they been engaged.

In response, the Chief Executive said that a media consultant had been engaged in the early stages of the court case to assist council officers in preparing for the likely media interest. It was envisaged that they would be used again at a later stage but this had not taken place. He was not able to give exact figures at this meeting but he agreed to notify these to Councillor McLain in writing.

****AN****

Councillor Duncan Smith welcomed the new Monitoring Officer, Sara Freckleton, to her first Council meeting. He referred to section 3.1 of the Chief Executive's report which referred to Mr Laurence Robertson as the MP for Mrs Laird who was one of his constituents. Councillor Smith wished to point out that he was also the MP for a number of Cheltenham residents who were concerned that their council tax was being used to pay for the costs of the court action. He expressed his disappointment that the full costs requested in the requisition were not discernible in the table provided and he asked when these detailed costs would be available for scrutiny by elected members and the public. He was also disappointed that no timetable had been provided for the KPMG review beyond an indication that they would report back in September 2009. Given that August was a holiday period, he considered that this detail should be made available to the public and to the media as soon as possible. It was imperative that all members had open access to KPMG. The public must have confidence that the review was not a whitewash and that any evidence or conclusions, however critical of members or officers, would be made public.

The Chief Executive replied that a wealth of detail was now in the public domain including the costs for the period 2003 to 2005 which had been included in the court claim. The detailed information regarding lawyers costs, expenses for hotel bills, meals etc had been the subject of an FOI request and all this information had been published on the Council's website. In the interests of brevity he had summarised the information in his report to make it more practical for members. He was sure that the auditors would be happy to discuss their timetable with members and would encourage members to raise any issues of concern.

Councillor Stennett took issue with the wording in 2.2 which suggested that the internal officer costs were "notional only" and the impression given by indicating that costs would come from the General Reserve. He highlighted that any monies in the General Reserve could equally be used for the benefit of the town.

The Chief Executive apologised if the wording used could be misinterpreted:- regarding internal officer costs, his intention was to highlight that these costs were not direct financial costs but clearly there was an opportunity cost in that the staff could have been assigned to other work. Regarding the General Reserve, he stressed that he was not putting any value judgement on the use of these reserves. It was purely good practice for Council to indicate where the money was coming from given that there was no specifically allocated budget.

Councillor Godwin referred to the details of the costs for 2008/09 relating to the case which had now been published on the council's website. He said that he would like to hear confirmation from the Chief Executive that the terms of reference of the KPMG review would examine every item of expenditure from cups of tea to lever arch files. He considered there were lots of questions still to answer and he wanted confirmation that the terms of reference would be drawn up in association with the working group.

In response, the Chief Executive, said that the details contained on the website indicated the level of detail that the council was now presenting to any member of the public who wanted to see it. He questioned whether it was sensible for the Auditor to examine the expenses in the level of detail that Councillor Godwin had suggested as the costs of the review would increase dramatically. It was a case of balancing cost versus benefits and in his view there were other areas where the Auditor could be making more effective use of their time. He repeated the statement he had previously made that it was up to the Auditor to determine his own terms of reference. However the Auditor had indicated that he would encourage member involvement and it would be important to him to understand the issues that members had concerns about.

The Leader thanked the Chief Executive for his report. He welcomed the clarification that the £1.6 million of costs quoted were not the costs of the High Court action. He had a number of concerns including:

- The working group should not duplicate other review work being done
- It was important to get value for money from the KPMG review given the estimated cost of £30 to £50,000
- The involvement of the chair of the Audit Committee was appropriate
- Code of conduct issues should be matters for the Standards Committee not the working group
- It would be sensible to look at recruitment possibly involving the Staff and Support Services Committee
- There was concern about the timing considering that Mrs Laird's appeal was still pending which may limit the amount of information that could be put in the public arena
- The Auditors should be able to speak to whoever they want to when carrying out the review

Councillor Rawson suggested that the Auditor needed to look at the governance issues which enabled a committee of Council, namely Staff and Support Services Committee, a responsibility for committing the Council to such a high degree of expenditure. He was also concerned that this was done without seeking his views at a time when he was Cabinet Member for Finance.

Councillor Driver welcomed the review but regretted that Council had not been given a chance to debate the matter before the action was taken so that all members could have had a vote on the issue.

Resolved that

- 1. The report be noted**
- 2. The cost of KPMG undertaking the 'thorough review' plus any additional cost resulting from any further or additional process be met from the General Reserve.**

CARRIED (Voting 2 against and 2 abstentions)

10 Notices of Motion

Councillor Hutton seconded by Councillor Hibbert proposed the following notice of motion which had been amended and circulated to members at the start of the item.

'Following the failure of this council to win the recent legal action against Mrs Christine Laird;

This Council

(i) Acknowledges the anger and disappointment of many of the residents of Cheltenham at the financial cost and the damage to the reputation of this town following the employment of Mrs Laird.

(ii) Endorses the decision of the Chief Executive not to appeal the decision

Whilst members and officers may wish to draw a line under this matter, Council recognises that a situation like this should not be allowed to arise again.

Therefore;

Council resolves

(iii) To appoint a working group of 3 members to review reports from; an independent auditor, and the Council's Monitoring Officer, and to recommend changes to the Constitution and working practices that aim to correct flaws in process that these reports may identify. The group should operate by consensus and may co-opt up to two independent members who are not councillors or officers of CBC.

Once any court action is completed, the working group should:-

- a) Work in conjunction with KPMG and review their report in relation to the litigation against Mrs Laird*
- b) Review current recruitment and appointment processes to ensure that best practice is now followed and that the risk to the Council in future appointments is minimised*
- c) Review a report of the Monitoring Officer on internal processes for handling dispute procedures with particular focus on the roles and actions of officers and members in those processes*
- d) Recommend changes to the constitution, working practices and code of conduct that arise out of their review*
- e) That the members of the working party should be one member from each political group*
- f) That the group aim to report back to full council as soon as possible.*

Council therefore

- (iv) *Instructs all officers of this council to co-operate fully with that investigation and to make available to that group all and any information it requires'.*

In proposing the motion Councillor Hutton indicated that many Cheltenham taxpayers were angry and confused about how this situation had arisen, why certain decisions had been taken and the financial cost to the Council. He felt that the Council had a duty to ensure that lessons were learnt from the process to prevent it ever happening again and that this action would help to protect the future of the Council and of the town.

Councillor Hutton indicated that the 3 members of the proposed working group should be one member from each political group who had had no previous involvement in what had taken place and therefore had no conflict of interest.

The Leader indicated the Liberal Democrats support for the amended motion. He commented that cross party support had been maintained throughout the decision making process and he hoped this could be maintained. When consulted on the original motion he had raised a number of concerns including the need to avoid any duplication of effort between the role of the working group and the Auditor's review, the role of Standards Committee and Audit Committee in this process and the need to closely monitor the cost associated with the internal review. The Leader clarified that KPMG and the reference to 'an independent auditor' in the motion were one and the same. He indicated that the Liberal Democrats would support the motion in the interest of consensus and that their nomination was Councillor Massey.

As the former Cabinet Member for Finance and Culture, Councillor Rawson indicated that he had had the responsibility for setting the council's budget for 2009/10 under difficult financial circumstances due to the impact of the recession. He therefore resented the fact that the Staff and Support Services Committee had 'embarked on this adventure' without his support as the relevant Cabinet Member for financial matters. He felt re-assured by KPMG's letter outlining the review to be undertaken on the decision making process. He had some concerns as to how the working group fitted in with the Audit Committee which was established in the Constitution and should not be sidelined.

Councillor Sudbury pointed out that she like a number of other Councillors had not been involved in the process at a level that residents would have expected. She commented that she did not agree with the additional wording 'following the employment of Mrs Laird' to part (i) of the motion as she said it sought to negate the council's responsibility in what had happened subsequently and this should not be the case. She questioned whether co-opted independent members were necessary and suggested that the working group get on with the review as soon as possible.

In supporting the motion, Councillor Garnham echoed comments already made and re-iterated his earlier point that the working group should be able to influence, from the outset the scope of the review to be undertaken by KPMG and should be set up without delay.

Referring to the Leader's comments Councillor Godwin indicated that cross party decisions may have been made during the process, however this did not mean that they had been made unanimously.

Councillor Hibbert indicated that as the original motion had changed she was no longer in a position to second the motion unless the words 'following the employment of Mrs Laird' were removed from part (i).

Councillor Hutton accepted the amendment and therefore this became the substantive motion.

In seconding the motion Councillor Hibbert was very concerned about the financial cost of the failed legal action and the damage to the reputation of Cheltenham. There were flaws in the process that had been undertaken. By examining the process as set out in the motion the working group would be able to recommend changes to the Constitution and working practices to avoid a similar situation in future. The work undertaken by KPMG could feed into the conclusions of this work.

Councillor Smith commented that as the judge had made his ruling and as it was only the allocation of costs that were under appeal he could not see how the work of the working group would prejudice the Council's position and why it should not start work immediately. He proposed that the wording 'Once any court action is completed' be removed from the motion following (iii).

In response, the Monitoring Officer clarified that the legal advice provided in this case was protected by legal professional privilege and therefore could not be disclosed. However, given amended terms there was no reason why the working group could not start its review.

The following amendment was made to the motion following (iii) and accepted by Councillor Hutton:-

'The working group should:-

a) Work in conjunction with KPMG and review their report once any court action is completed in relation to the litigation against Mrs Laird.

This became the substantive motion.

In summing up Councillor Hutton stressed that it was important to get the terms of the working group right in order to bring its work together with that of KPMG and avoid any overlap. It was also important to get consensus from full Council as to the way forward and regain the confidence of the public. He advised that the Conservative nomination was Councillor Cooper.

Councillor Godwin advised that the PAB nomination was Councillor Hibbert.

The final wording of the motion was agreed as follows:

'Following the failure of this council to win the recent legal action against Mrs Christine Laird;

This Council

- (i) Acknowledges the anger and disappointment of many of the residents of Cheltenham at the financial cost and the damage to the reputation of this town.***
- (ii) Endorses the decision of the Chief Executive not to appeal the decision***

Whilst members and officers may wish to draw a line under this matter, Council recognises that a situation like this should not be allowed to arise again.

Therefore;

Council resolves

(iii) To appoint a working group of 3 members to review reports from; an independent auditor, and the Council's Monitoring Officer, and to recommend changes to the Constitution and working practices that aim to correct flaws in process that these reports may identify. The group should operate by consensus and may co-opt up to two independent members who are not councillors or officers of CBC.

The working group should:

- a) Work in conjunction with KPMG and review their report once any court action is completed in relation to the litigation against Mrs Laird**
- b) Review current recruitment and appointment processes to ensure that best practice is now followed and that the risk to the Council in future appointments is minimised**
- c) Review a report of the Monitoring Officer on internal processes for handling dispute procedures with particular focus on the roles and actions of officers and members in those processes**
- d) Recommend changes to the constitution, working practices and code of conduct that arise out of their review**
- e) That the members of the working party should be one member from each political group**
- f) That the group aim to report back to full council as soon as possible.**

Council therefore

(iv) Instructs all officers of this council to co-operate fully with that investigation and to make available to that group all and any information it requires'.

Upon a vote being taken this was CARRIED unanimously

**Resolved that
Councillors Cooper, Hibbert and Massey be appointed to the working group.**

11 To Receive Petitions

The Mayor advised that he had received a petition regarding Elmfield Park in the St Paul's area and he passed it on to the relevant Cabinet Member.

12 Any other business the Mayor determines to be urgent and which requires a decision.

There being no urgent business the Mayor declared the meeting closed at 8.12 pm.

**Councillor Lloyd Surgenor
Mayor**