

# STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

Tuesday, 11 June 2019

Present: Councillor T Cox (Chair)

Councillors C Blakeley P Stuart  
C Cooke J Williamson  
P Gilchrist G Wood  
M McLaughlin

In attendance:

Independent Prof R Jones  
Persons Mr G Kerr

## 1 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

No declarations of interest were received.

## 2 APPOINTMENT OF VICE-CHAIR

**RESOLVED:**

**That Councillor Moira McLaughlin be appointed Vice-Chair of the Committee for the ensuing Municipal Year.**

## 3 MINUTES

**RESOLVED:**

**That the Minutes of the meeting of the Committee held on 26 February 2019 be confirmed as a correct record.**

## 4 GOVERNANCE REVIEW

The Director of Governance and Assurance reported that the Annual Meeting of the Council required the Committee to look at the Council's governance arrangements. The purpose was to include options to change the Council's form of governance, with an express intention to consider adopting a committee system as well as different executive arrangements. The Committee was to report back on 11 September 2019 to allow for detailed work to follow for adoption of any new form of governance from the 2020 Annual Meeting of the Council.

The report was very informative and set out the various options and arguments for the Committee, in brief, and recommended establishing a Workshop and Working Group of the Committee to examine the issues further.

The Director had sketched out what the different forms of governance looked like in his report. He informed that there was a distinct difference between the form of governance that the Council adopted and the arrangements that sat underneath each form. There were two forms of governance that the Council could choose to adopt. Principally, there was a choice between an Executive form of governance and that meant either a Leader and Cabinet or a directly elected Mayor and Cabinet or a Committee form of governance which was variations of Committees and what was permitted under the Local Government Act 1972. This was the traditional structure that Councils did operate under until 2000 but still formed the legislative basis for those functions that were retained by the Council and not mandated to the Executive.

The Director reported that of those two forms of Executive there was a directly elected Mayor which was the form of governance that Liverpool City Council had adopted. The significant differences between that and a Leader and Cabinet was that a directly elected Mayor could not be removed they were in power for four years and had a greater say over the Executive governance arrangements that sat underneath them and also had a greater say over the budget. Beyond that, there was actually very little difference between the directly elected Mayor model and the Leader model.

The Committee noted that what this Council currently had was a form of governance originally called the Strong Leader model because at the beginning, variations had been permitted within the Leader model and then after 2009, the Government of the day had decided that it had to be a Strong Leader model. This had been changed dramatically by the 2011 Localism Act which allowed the Council to make several choices of the kind of Leader and Cabinet that it wanted to adopt.

Under the current arrangements, the Leader had the say over who made a decision but under Executive arrangements, the Council was able to say how the decision was made. The procedures and arrangements that sat around the decision-making were governed, within the Council's Constitution, by what was known as the Executive Procedure Rules.

The Director also reported that this Council was almost unique in having no Executive Procedure Rules. They had been removed from the Constitution so if the Council decided to continue with this model, after September 2019, there would be a great deal of choice over how open or closed the system of decision-making could be. Equally, if the Council changed to a Committee

system and that was voted on by the Council, then it would be for a five year period, it would not be able to change the arrangements for five years.

Members noted that under the Committee system there were wide variations. Those Councils who had moved to a Committee system since 2011 did not follow the same form as that which this Council had adopted in the 1980s and 1990s. On the whole Committee systems were a lot slicker and a lot more focussed now. There were no longer the myriad of Committees with each one making a recommendation to each other and on to the Council.

Members then asked questions and made comments to which the Director responded accordingly. Issues raised included the following:

- There was dissatisfaction with the current form of governance.
- Whatever form of governance was adopted in future there would need to be a lot more accountability, credibility and transparency.
- 18 months would be an ideal run up to agreeing a form of governance but this review would be carried out a lot faster. Additional support would need to be bought in to rewrite the Constitution as there was insufficient capacity available in-house. This was considered the most cost efficient way to do this. The Deputy Monitoring Officer would be discussing the Council's requirements with colleagues in the North West Consortium.
- The Council would have to run with any new form of governance that was adopted for five years but the governance arrangements that sat underneath that could be changed during that period.
- If the Committee gave the Director clear instructions he was confident he would be able to provide a Constitution that would include good working practices, by this time next year, and then further amendments could be made as and when they were required.
- The Bill Local Leadership, Local Choice presented to Parliament by the Deputy Prime Minister and Secretary of State for the Environment, Transport and the Regions in March 1999 claimed that
  - the public had not been well served by the traditional ways Councils had worked;
  - the system had been inefficient, opaque and weakened local accountability; and
  - major decisions, in reality, were often taken outside of the Committee meetings.
- This was how things occasionally worked under the present form of governance. People lost confidence in their Council's decisions. Individual Councillors became disillusioned with their ability to influence local decisions and people were discouraged from standing for election. There needed to be trust between those elected to represent and lead communities and those who elected them and whom they

served. If communities were to have the leadership they needed people had to identify with the way they were governed.

- When there had been a Committee system Members had felt that they were able to have their say. Sometimes meetings were rushed and sometimes Political Groups used their majorities to try to close down debate but at least Members could make their points, challenge and take part in a debate.
- Members needed to feel that their votes meant something and their constituents needed to see what they were doing.
- A form of governance needed to be drawn up and agreed by the Council that dealt with the longstanding criticisms of the old system and dealt with the similar criticisms of the system it had operated in recent times.
- There were 66 Members on the Council. The current form of governance allowed 10 to make decisions and 56 to just make comment, except when agreeing the budget at the Council meeting etc. 56 Members were denied the opportunity to take part in 97% of the Council's decision-making.
- The Local Government Association was unable to assist with the drafting of a new Constitution. This was something that some law firms specialised in.
- Re-writing the Constitution would mean starting again with a blank sheet of paper. Some of it would be 'off the shelf' but there were 82 things that must be included) available from the Model Constitution and from other places so there may not be the exact fine tuning to be done, that might have been done, if the work had been carried out at a slower pace. The new Constitution might not be perfect but it would be lawful.
- In recent times the general public had not felt engaged with the activities of the Council and its decision-making had become remote.
- It was time to change the culture because the public wanted the Council to do this and with national politics too. Things had changed there were now five Political Groups and they were all involved in this and over time they would all come to understand that no Group had a monopoly on good ideas. The five Groups differed fundamentally on some issues but they all wanted to produce ideas that benefitted the people they served.
- The Wirral has a diverse set of communities with different needs and expectations.
- In recent times, all Members of the Cabinet had been from the same Political Group and the lack of challenge had dumbed down the quality of the debate at Cabinet meetings.
- The consistent complaints from Members of all Political groups had been that the Council meetings were frustrating for most Members because it did not debate many issues.
- If there was a change in the form of governance it took place at the following Annual Council meeting.

**RESOLVED: That**

- (1) a cross-party Workshop be established to explore available forms of governance and governance arrangements in greater detail; and**
- (2) an all-party working group be established to consider the outcome of the Workshop and make a recommendation to the Committee's meeting on 11 September 2019 to refer to the Council on 14 October 2019.**

**5 CONFIDENTIAL: CASE ID - 17020182 CCR 8355 (LGO PUBLIC REPORT)**

A report by the Lead Commissioner for All Age Independence informed that the Local Government Ombudsman (LGO) had investigated a complaint about the Council and found the Council to be at fault. It had made a number of recommendations that had been accepted in full. The Ombudsman had made the decision that the report would be published. In accordance with the recommendations the report was being considered by the Cabinet and this Committee. The report sought to set out the action that had been taken, or would be taken, to avoid similar faults in future and to meet the recommendations of the report in full which had been accepted. The findings and recommendations were specific to the adult social care case that was investigated.

This was a confidential case so the report referred to Mr X, as the son of the former service user, and for ease of reference the same approach had been taken in this report.

The care and support package had been inadequate on this occasion and the Council had taken an inordinate amount of time to investigate the complaints. Consequently, 50% of the care fees had been waived to remedy the financial loss that had been caused. A payment of £200 had been made as a remedy for the frustration and stress caused. Assessment staff, complaints staff and operational teams had all received the appropriate training (a two day course) around safeguarding led by an independent Safeguarding trainer from the university and a full apology had been offered. The Council had also referred the case to the Merseyside Safeguarding Adults Board with a request that it considered holding a formal review. This action had been taken and it had been referred to a Sub-Committee of the Merseyside Safeguarding Adults Board and a recommendation had been made to the independent Chair of the Board that this matter be put on the agenda for the meeting on 26 June 2019. The Council had also reviewed its complaints handling process, appointed additional resource to that team and it was now performing better on handling complaints.

The Assistant Director – Health and Care Outcomes was in attendance at the meeting and answered Members' questions on the specific care and support

package concerned, domiciliary care and the care provider, the detail of the complaints made, safeguarding arrangements, the subsequent actions that the Council had taken and the resulting changes that had been brought about to ensure nothing like this happened again.

Members registered their extreme disappointment over what had happened on this occasion. It was a very sad case and they hoped that lessons had been learnt as a result. They could see parallels going back to 2010/11 when there had been an issue of overcharging vulnerable people which had come to light. The Council this time had either not provided the correct level of care or it had overcharged the person concerned. A refund was now being made and Members wanted to know whether the costs of the refund had been claimed back from the trusted care provider because that provider had not provided what the Council had paid them to do. The Assistant Director informed that the Ombudsman's findings were largely in relation to safeguarding processes not being identified and invoked early enough and not completed along with the fact that the Council should have reviewed the case to make sure that the right level of care was being provided. He agreed that it was a fair question to ask the care provider for some consideration and ask it to respond accordingly. The Assistant Director was unsure as to whether this had been done so agreed to look into it.

A Member enquired whether there had been any suspicion that the gentleman's care needs had not been met and that he had been in any way neglected. The Assistant Director informed that the answer was yes because the care provider had not been providing the level of care that was required. There had been some quality issues with the care that had been identified and detail of the exact specifics had been included in the report, some of it had been related to practice around using a hoist, moving and handling techniques amongst other things. Genuine concerns had been raised by the complainant about the quality of care that should have been investigated more thoroughly as safeguarding issues.

The Assistant Director confirmed that in respect of this case it had been identified that there had been a consistent under provision of time and care as well as quality issues.

Members requested the Assistant Director to present the report to the Adult Care and Health Overview and Scrutiny Committee where it could be explored in detail and he informed that he would consider this request and let the Committee have confirmation in due course. The Assistant Director would also let Members know whether or not the care provider (as a company in any form) was still providing care packages and whether this had been an isolated case or not. He was, however, confident that the Council had arrangements in place with its current providers to hopefully avoid similar cases in the future.

The Assistant Director informed that the Service Quality Performance Reports were in-depth and were submitted regularly by providers as part of the contract monitoring arrangements to the Team who worked alongside the Council's Quality Improvement Team. Jointly they were looking at contractual compliance and quality of provision. He was happy to share this information and suggested that perhaps the Health and Care Panel could receive these reports. However, he did have to be mindful that sometimes that information was commercially sensitive.

The Assistant Director reported that the Council performed well on its review targets for all those supported in Wirral with care and support packages. The reviews were inclusive of family members, representatives and the people themselves. All the Council's processes had set areas to record the views of carers and representatives, to make sure they were captured and this was the same in respect of assessments too. When people were first seen their views, their representatives and those of their carers were all noted. This was regarded as being very important. The trusted assessor process with providers had this built in and their views were taken on board. The Council was pushing its online self-assessment and self-review so people could access information and make their views known as well as request reviews if they thought the circumstances had changed. Uptake was very low but it was another avenue that the Council could use.

**RESOLVED:**

**That the report and actions that have been or will be taken, in response to the Local Government Ombudsman's recommendations be noted.**

**6 CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES**

The Director of Governance and Assurance informed that Councils were now able to own commercial companies and trade through them, either as a wholly owned company or as a joint venture with a private sector partner and trade on the markets. The Council was an organisation entrusted with public money. Consequently, in the interests of openness, transparency and accountability, the Leader had made the decision to adopt the Draft Code of Practice for the Governance of Council Interests in Companies (Draft Code) but had also referred it to the Business Overview and Scrutiny Committee meeting on 18 September 2019 (Minute No. 20 refers.) and to the Audit and Risk Management Committee meeting on 24 September 2019 (Minute No. 25 refers.) for noting prior to its adoption.

The Committee received copies of the Decision Notice, the reports considered at meetings of the Shareholder Board on 27 June 2018 and 19 March 2019 and the Minute extracts in respect of the Business Overview and Scrutiny and

the Audit and Risk Management Committees who had considered the Draft Code of Practice last September.

The Committee noted that the intention of the Draft Code of Practice was to promote and ensure good governance in relation to those companies in which the Council was a shareholder and create a 'blueprint' for an approach to company interests in concert with the Council's adopted Commercial Strategy (minute to item 40 refers, Cabinet 26<sup>th</sup> November 2018). It was also noted that the Draft Code was in accordance with the local government model.

The Director reported that a lot of work had been undertaken to produce what was a national example and the model now used up and down the country and was put out by professional bodies. It was a model that had been checked through various law firms. There was one difference to what was here and what was in the national model. The national model contained a suggestion that Council owned companies were held through a separate holding company. When this was discussed at the Shareholder Board with the Leader, it was considered that the Council should not operate through a holding company but each company should be looked at separately so that was a change that was incorporated and the only change that differed from the national model. The structure of it followed the CIPFA/ SOLACE Model Code of Corporate Governance that the Council had adopted as its Corporate Code.

The Director was then asked a number of questions by Members about the Council's companies, their meetings and minutes and how their operations were scrutinised which he answered accordingly. The Director was reminded that the Committee had previously asked for a list of all the companies that the Council was involved in, solely and as a joint venture and agreed to present it to a future meeting. The list would also be presented to a future meeting the Audit and Risk Management Committee.

**RESOLVED:**

**That the Code of Practice for Governance of Council Interests in Companies be noted.**

**7 APPOINTMENT OF PANELS**

The Committee was requested to formally establish the Standards Panel and Standards Appeal Panel in accordance with paragraph 9.5 of Article 9 of the Council's Constitution and the Protocol for Dealing with Complaints against Members.

**RESOLVED: That**

- (1) a Standards Panel and Standards Appeal Panel be formally established pursuant to paragraph 9.5 of Article 9 of the Council's Constitution;**
- (2) Membership of the Standards Panel comprise:**  
**Councillors C Blakeley (Con), C Cooke (Green), P Gilchrist (Lib Dem) and Paul Stewart (Lab); and G Wood (Lab);**
- (3) Membership of the Standards Appeal Panel comprise:**  
**Councillors T Cox (Con), M McLaughlin (Ind); and J Williamson (Lab);**
- (4) each Political Group may nominate an 'Alternative Member' from his/her Political Group to sit on a Standards Panel or Standard Appeals Panel, providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Committee); and**
- (5) the Director of Governance and Assurance be requested to arrange a training event for all Members of the Council in September 2019.**

## **8 WEBCAST PROJECT UPDATE – VIEWING STATISTICS**

The Committee considered a report which it had requested at its last meeting on 29 August 2019 that provided it with an update on the Council and its Committees webcast viewing statistics.

Members noted that a number of recent Council meetings had generated significant public interest, necessitating use of 'overflow rooms' where members of the public who were unable to access the Council Chamber viewing gallery could watch proceedings via the web link. As a result, some statistics did not (positively) reflect the full level of public interest for specific meetings. It was also noted that some archive views of meetings could be generated by Council officers who utilised the archive to assist in the preparation of meeting Minutes and actions arising as a result of Member debate.

The viewing figures for the Municipal Year 2018/19 (67 meetings) were as follows:

- 1842 'live' views during all meetings
- 6911 access views to the archive
- 8753 Total

A breakdown of the above figures was attached to the report at Appendix 1.

Members raised concerns about the poor quality subtitles/transcriptions that appeared at the bottom of the webcasts. It was proposed that Public-I be informed that the quality was not as good as had been expected. However, Members were informed that officers were working with Public-I, the webcasting company, to bring about improvement and were purchasing an additional piece of kit to address the issue. Links were also being included to direct people to other services that would help with this issue. It was noted that, there was a particular problem which was caused by the local accent. Other applications were also being explored.

**RESOLVED: That**

- (1) Public-I be given the opportunity to address the problem of the poor subtitles/transcriptions with the provision of the add on to the webcasting system on order; and**
- (2) this Committee will continue to monitor the Council's webcasting arrangements and subsequent viewing statistics, during the ensuing Municipal Year.**