

CONSTITUTION AND ETHICS COMMITTEE: MINUTES

Date: Tuesday 19th April 2016

Time: 2.00pm – 3.40pm

Place: Kreis Viersen Room, Shire Hall, Cambridge

Present: Councillors A Bailey (substituting for Cllr Smith), P Bullen, R Hickford, J Hipkin, M McGuire (Vice-Chairman, in the Chair), L Nethsingha, P Reeve and J Scutt

Apologies: Councillors D Brown, E Cearns, K Reynolds and M Smith (Chairwoman)

107. DECLARATIONS OF INTEREST

None

108. MINUTES – 4th FEBRUARY 2016 AND ACTION LOG

The minutes of the meeting held on 4th February 2016 were confirmed as a correct record and signed by the Chairman.

The action log was noted.

109. DRAFT PROPOSALS TO CHANGE MEMBERSHIP OF CAMBRIDGESHIRE HEALTH AND WELLBEING BOARD

The Committee received a report setting out proposals for changing the composition of the Cambridgeshire Health and Wellbeing Board (HWB). Members noted that the Board's membership had last been revised in 2013, when the number of County and District Councillors had been increased, while NHS membership had remained unchanged. HWBs had been established under the Health and Social Care Act 2012 as a forum for health, social care and public health to work together; in their original form, their membership had been largely of officers, with a minimum requirement of one elected councillor.

The proposed changes had been discussed by the HWB and its Working Group in the period November 2015 to March 2016, and were due to be discussed again by the HWB on 21st April. On 17th March, the HWB had agreed to invite five representatives for NHS providers to join the HWB, but had been unable to reach a conclusion on whether or how to reduce local authority membership of the Board.

The Cambridgeshire Public Service Board (CPSB) had considered the matter on 13th April; members' attention was drawn to the report to the forthcoming HWB meeting, which had been written after the CPSB meeting.* Following discussions with CPSB, it had become clear that there would be no easy way of resolving the question of how to achieve a better balance of members on the HWB, and it had been decided to present three options to the HWB (all of which included the addition of five NHS provider representatives). NHS representatives had subsequently fed back that they found it very useful to have all five Districts represented on the Board.

- Option 1: existing Councillor membership to remain
- Option 2: reduce to four County Councillors and one District Councillor
- Option 3: reduce to three County Councillors, but remain with five District Councillors, the three County members perhaps being drawn from the Chairs or Vice-Chairs of the three relevant service committees, i.e. Adults Committee, Children and Young People Committee, and Health Committee.

In the course of discussing these three options, members

- expressed considerable support for the retention of five District Councillors, on the grounds that this would help keep the Board in touch with local circumstances, needs and interests in the five districts, which were all very different from each other.

One member reported that, in the early days of the Board, when there had been only one District representative on the HWB, five District members would meet before each Board meeting and try to give a steer to their one representative; her experience as a participant in these meetings had been that it was a most unsatisfactory system. Her later experience as a CCC member on the Board was that it was already too large, and seemed to spend much of its time reviewing other people's policies and strategies rather than itself initiating action and holding people to account

- suggested that it was important to appoint elected members who would be in a position to support the Board as a strategic body; appointing Chairs or Vice-Chairs of policy and service committees should achieve this, and it might even be advisable also to appoint the Leader and Deputy Leader of CCC. Members noted that the Peterborough HWB included the Leader and Cabinet Portfolio holder in its membership
- urged that the HWB should not engage in scrutiny, as that function was being carried out by the Health Committee; it was explained that the topics currently coming to the HWB tended to encourage a questioning approach
- in relation to the suggestion that the District representatives should be those members who chaired local health partnerships, noted that not all of these partnerships were chaired by an elected member. Current District members of HWB were frequently the relevant Cabinet Portfolio holder
- noted that one NHS member had had difficulty attending meetings because of a clash between his clinical commitments and the pattern of HWB meetings which had emerged from the date-setting process, but this had now been resolved

Speaking as Chair of the HWB working group, Councillor Nethsingha reported that the group's discussions had focussed largely on the other four elements of its proposed changes, and that the principal rationale for reducing the number of elected members had been to give a better feeling of balance between local authority and NHS, without making the Board too unwieldy in size. However, the addition of five provider representatives would go some way to improve the balance, even if the number of elected members was eight or ten. She would be happy to accept the Board's judgement on councillor numbers, and welcomed the Committee's views.

Councillor Scutt drew attention to the use of the word 'delegate' in the report's recommendation to Committee; she proposed that the recommendation should be to 'authorise the Monitoring Officer', rather than to 'delegate authority to' him. The Monitoring Officer advised that Section 101 of the Local Government Act 1972 did permit such delegation; this was frequently done by local authorities, and accepted by their lawyers as established and lawful practice. The proposal finding no seconder, Councillor Scutt withdrew it but said she would be unable to support the wording of the motion.

It was resolved, Councillor Scutt abstaining,

- a) to note the current draft proposals to make changes to the membership of the Cambridgeshire Health and Wellbeing Board (HWB)
- b) to delegate authority to the Monitoring Officer, in consultation with the Chairwoman and Vice-Chairman of the Constitution and Ethics Committee and Chairman and Vice-Chairman of the Cambridgeshire Health and Wellbeing Board, to recommend the final proposed changes to the membership of the Cambridgeshire HWB to full Council on 10th May 2016.

110. ESTABLISHING AN ASSETS AND INVESTMENTS SUB-COMMITTEE

The Committee received a report inviting it to consider the need for establishing a Sub-Committee of General Purposes Committee in order to determine the most efficient and effective governance arrangements for the administration of property investment and disposal matters.

Members noted that

- the General Purposes Committee (GPC) had already established an Investment Review Group (IRG) to assist the decision-making process regarding property-related matters
- such matters, which required decision by GPC, were increasing in number, to the extent that the IRG was struggling to keep within its monthly time-slot
- because the IRG, as a Member Group, had no decision-making powers, the matters which it discussed still required a decision by GPC
- it was proposed to create a sub-committee of GPC to handle property investment and disposal matters; as a sub-committee, it would have decision-making powers and be politically proportionate
- although the replacement of the IRG by a sub-committee would not reduce the workload for the new sub-committee, it would reduce the number of matters coming to GPC for decision, and would give the meetings a formal place within the Council's published annual meetings calendar
- Group Leaders and the present IRG were all supportive of the creation of an Assets and Investments Sub-Committee.

In the course of discussion, Members

- speaking from experience of sitting on the IRG, fully agreed with everything said in support of the proposal, pointing out that the GPC had a heavy workload and its members were not necessarily those best-qualified to consider property-related matters

- again speaking from experience of the IRG, said that the work of the Group was hampered by its lack of decision-making powers
- suggested that it would be more useful to establish a full Committee, rather than a sub-committee; this would then have its own decision-making powers, and its members could be drawn from the whole body of Councillors
- noted that the membership of a sub-committee could only be drawn from the members and substitute members of the parent committee, though other members could be co-opted onto it; while it would be possible to change who the present substitutes were, it would not be possible to increase the overall number of GPC substitutes
- commented that GPC had a wider remit and overview than just assets and investment matters and pointed out that consideration would have to be given to the effect of a new Committee on the powers of GPC
- reported that East Cambridgeshire had successfully established a small, focussed, asset management committee that had moved from being a sub-committee to a full committee because of the extent of the work it was doing
- noted that the new group, whether a Committee or a sub-committee, would have a completely different role in relation to the Council's property special purpose vehicle (SPV) from that of the SPV's Board of Directors; the new group's responsibility in relation to the SPV would be to ensure the interests of the Council were protected and monitored
- asked that, if the recommendation to Council was that an Assets and Investments Committee be established, all Members be sent draft wording for the terms of reference for the new Committee, and for revised terms of reference for GPC, for discussion in advance of the meeting of Full Council
- noted that the new Committee could be given the power to make Key Decisions, which would be subject to decision review in the same way as decisions made by Policy and Service Committees.

It was proposed by the Chairman, and agreed unanimously that

The Constitution and Ethics Committee recommend to Council the establishment of a Committee to deliver the effective governance and management of the Council's property and asset portfolio.

111. ARRANGEMENTS FOR THE APPOINTMENT OF INDEPENDENT PERSON(S)

The Committee received a report inviting it to consider what arrangements for the appointment of an Independent Person or Persons should be recommended to Council in preparation for the expiry of the current appointments on 15 October 2016. Members were advised that it would be possible for Council to reappoint the existing two people for a further period; there was no requirement in legislation that the posts be advertised again. Both were willing to continue to serve if required, and many other authorities had adopted this course.

Discussing how best to approach the matter, members

- noted that the Independent Persons had been called upon to act about ten times in their first year of office, then four or five times in each of the subsequent years
- commented that five years would be rather a long time for which to appoint them and suggested that the Independent Persons be appointed on an annual basis
- suggested that, rather than being receiving an annual payment, the Independent Persons should be offered a fee of £500 per adjudication
- noted that extending the period of appointment to the end of October 2019 would avoid the difficulty of perhaps having a gap between the end of the term of appointment and the October meeting of Council.

It was resolved unanimously to recommend to Council that

- (a) Council extend the current appointment of Sean Brady and Gillian Holmes as Independent Persons to 30 October 2019.
- (b) the level of remuneration to each independent person remain at £500 a year plus expenses

112. A REVIEW OF THE LEGAL POSITION IN RELATION TO SECTION 85 OF THE LOCAL GOVERNMENT ACT 1972 AND THE SIX MONTH RULE

The Committee received a report seeking to establish whether it would be legally feasible to impose a restriction on the number of times that Cambridgeshire County Council could grant an extension to the six-month rule. Members noted that, while there was in theory no legal authority preventing the Council from adopting such a restriction, the right of Full Council to approve an extension was embedded in UK legislation, and could not be overridden locally.

The Committee noted the contents of the report.

113. SCHEME OF DELEGATION

The Committee received a report inviting it to consider the Council's scheme of delegation as set out in Part 3 of the Constitution, prior to its being agreed by Full Council at its Annual Meeting. Members noted that much of Part 3 had been agreed at the last meeting of Council.

In the course of discussion, Councillor Scutt said that she had no difficulty with delegation of specific powers to an Executive Director, as in the terms of reference of the Children and Young People Committee at Part 3B. She could not however accept the unlimited delegation to the Greater Cambridge City Deal Executive Board, where (terms of reference 4.3) 'The three Councils agree to delegate exercise of their functions to the Executive Board to the extent necessary for the Board to exercise its powers'. She could also not accept that 'the Executive Board may further delegate to officers of the three Councils', on the grounds that it was not possible for a body to which powers had been delegated further to delegate those powers.

The Monitoring Officer pointed out that any change to the City Deal Executive Board terms of reference would require approval not only by the County Council, but also by Cambridge City Council and South Cambridgeshire District Council.

Both these latter councils, and their legal officers, were content with the terms of reference as they stood; their legal officers did not perceive the delegation of delegated powers as a problem. The Greater Cambridge City Deal Executive Board had limited, defined powers, which in his view did not require amendment. Councillor Scutt said that, while she agreed with the remainder of the Council's scheme of delegation, she could not agree on this point.

It was resolved, Councillor Scutt dissenting

- to recommend to Council that it agree the scheme of delegation or such part of it as the Constitution determines it is for Council to agree (as set out in Part 3 of the Constitution).

114. ANNUAL REPORT ON WHISTLEBLOWING INCIDENTS

The Committee received the annual report on whistleblowing incidents. A copy of the Whistleblowing Policy was appended to the report. Members noted that no whistleblowing incidents had been reported to the Monitoring Officer in the past 12 months.

Discussing the report, the view was expressed that it was not necessarily good news that there had been no whistleblowing. One member commented that, while not wishing to suggest that the report was inaccurate, an explanation might be that there was a culture that discouraged whistleblowing.

The Committee noted the contents of the annual report on whistleblowing incidents.

115. A REVIEW OF THE COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT TO 4 APRIL 2016

The Committee received a report setting out the number and nature of the complaints received about Members under the Code of Conduct from 23 January 2016 to 4 April 2016. Members noted that two complaints had been received during this period; in both cases, the Independent Person had concluded that there had been no breach of the Code of Conduct.

The Committee noted the report.

116. FORWARD AGENDA PLAN

The Committee reviewed and agreed its forward agenda plan, noting that there would be no need to take a further item on the appointment of Independent Person(s) to the meeting on 5 June 2016.

117. DATE OF NEXT MEETING

It was noted that the next meeting was due to take place at 2pm on Thursday 30th June 2016.

Chairwoman

* NB Report to the Health and Wellbeing Board available at <http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=13176>