

GOVERNANCE AND AUDIT COMMITTEE

26 November 2019

Present:- Councillor Nick Barlow, Councillor Robert Davidson,
Councillor Mark Goacher, Councillor Chris Hayter,
Councillor Sam McCarthy, Councillor Chris Pearson
(Chairman), Councillor Dennis Willetts

Also Present: - Councillor David King

179. Minutes of Previous Meetings

No minutes of previous meetings were presented.

180. Review of the Council's Ethical Governance Policies

The Committee were requested to review the Council's updated Ethical Governance Policies. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. Members heard that the suite of policies presented to them were part of the Council's overall policy framework that set out the ethics of the organisation, ensuring that decision making was correct. The Committee were advised that it was good practice to review these policies on an annual basis, although no substantive changes had been made to these documents which the Committee had previously considered. If the Committee approved the draft policies presented to it, these would be referred to full Council for ratification.

The Committee were advised that the only policy which had been invoked during the past year had been whistleblowing policy following receipt of an anonymous email. A full investigation had taken place as a result of this email, and appropriate measures had been taken.

Hayley McGrath highlighted changes that had been made to the Data Protection and Acceptable Use policies to reflect changes brought about by the Data Protection Act 2018. The policies had been strengthened to demonstrate the Council's commitment to data protection. The Income and Debt Management Policy will be the subject of a thorough review in 2020.

Councillor Willetts noted that the policies were predominantly aimed at Council staff and queried whether they took account of the role and working practices of Councillors. In response, Councillor King explained that the policies were rooted in legislation and the policies represented a combination of the Council's interpretation of that legislation and best practice guidance within the statutory framework. Councillor King further commented that it is very helpful to have the same rules for both Members and staff and raising awareness of the requirements of the policies could be something dealt with through the Member Development Group in the future. Councillor Pearson pointed out that it was the individual

responsibility of Councillors to ensure that they and their staff are aware of, and complied with, all the policies and rules that apply to them. Councillor Willetts made an enquiry as to the frequency of checks carried out on staff and Councillors to ensure compliance with the policies, and Hayley McGrath clarified that it was not Council policy to carry out routine checks, but that the rules and procedures gave the Council the authority to investigate any suggestion of wrongdoing thoroughly. All staff and Councillors had received training and guidance, and it was their responsibility ensure that data was handled and managed correctly. Councillors were reminded of their responsibility to notify Colchester Borough Council of anyone who was handling or managing data so that they could be advised whether this was permissible. The Committee were advised that data management had been improved recently through the ceasing of the practice whereby Council e-mails were forwarded to private e-mail addresses. The Committee considered that it would be appropriate for issues relating to the introduction of Councillors to the ethical governance policies and to councillors access to the Council's IT systems to be added to the update of the Review of Meetings and Ways of Working to be considered by the Committee in March 2020.

Councillor Willetts queried whether the Acceptable Use Policy could prevent legitimate criticism of Council policy by opposition Councillors. and whether such criticism would be classified as bringing the Council into disrepute. Councillor Barlow pointed out that anyone was entitled to express their fair opinion, and that there was a clear distinction between political criticism and bringing the Council into disrepute. Councillor Pearson reminded Members that common sense needed to be applied, and if there was any doubt then advice and guidance should be sought from the Monitoring Officer.

In response to an enquiry from Councillor Davidson, Hayley McGrath advised Members that the policies had been drafted by the relevant service area in the Council to which the policies applied, and that it was good governance practice to carry out this activity to ensure that policies were relevant to Colchester Borough Council and understood by both Officers and Members alike. Guidance offered by various relevant Local Government Organisations was followed, and used to assist, in the drafting of any policy. Although the review process necessitates some work from Officers, it is nonetheless a valuable process to follow.

RESOLVED that issues relating to the introduction of Councillors to the ethical governance policies and to Councillors access to the Council's IT systems to be added to the update of the Review of Meetings and Ways of Working to be considered by the Committee in March 2020.

RECOMMENDED TO COUNCIL that the revised Ethical Governance policies be included in the Policy Framework.

181. Annual review of the Members' Code of Conduct and the Council's Localism Act arrangements.

The Committee were requested to review the Councillor's Code of Conduct and to make any recommendations to Full Council they considered appropriate. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. Hayley McGrath explained that the Code of Conduct is based on the seven Nolan Principles of public life, and sets the framework within which Councillors are expected to conduct themselves, together with the process for investigating any allegations of potential breaches of the Code of Conduct. The

number of complaints received since the code came into being in 2012 were detailed in the report. A rise in the number of complaints received in 2016/2017 and 2017/2018 could be attributed to the complaints process being used when people did not agree with a decision taken by a Councillor, as opposed to being about their actual conduct, and as a result of this, only one of the complaints received during this period was deemed to merit further investigation. Overall, there had been very few referrals to the Governance and Audit Committee, although there was an anecdotal report of a rise in the number of enquiries received by the Council, as people became more aware of the existence of the Code. The Committee noted the contents of the report and did not consider it was necessary to make a recommendation to Council to amend the Code of Conduct.

RESOLVED that:-

- (a) The review of the Members Code of Conduct and Localism Act be noted,
- (b) The Members Code of Conduct and the Council's Arrangements be kept under review;
- (c) No amendments to the Members Code of Conduct or the Council's Arrangements be referred to Full Council.

182 Review of Local Code of Corporate Governance

The Committee were requested to review the Local Code of Corporate Governance. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. It was explained that the Local Code of Corporate Governance was based on principles contained in guidance issued by The Chartered Institute of Public Finance and Accountancy (CIPFA), and The Society of Local Authority Chief Executives (SOLACE) and the code had been updated for 2019-2020 to reflect some of the Council's changing priorities towards emerging issues. In response to a Councillor enquiry, Hayley McGrath drew the attention of the Councillors to page 24 of The Code which sets out the steps that have been taken to implement the six core principles set out in The Code.

In respect of Principle Two of The Code, Councillor Willetts expressed his reservations on the wording used. He queried the phrase "common purpose" in Core Principle 2. It could not be said that all Members were working towards the same goals, as they were seeking to promote their own party policies and objectives and were effectively therefore not supporting a common purpose. In particular it was the role of the opposition to scrutinise and where appropriate oppose the policies of the administration. Councillor Goacher supported the notion that "common purpose" be more precisely defined in this context. Hayley McGrath explained that the wording was based on the CIPFA/SOLACE guidance. However, the wording would be reviewed to make its meaning clearer and an amended Code would be referred to the next meeting of Committee for ratification prior to referring it to Full Council.

RESOLVED that the wording of Core Principle 2 of the Code of Corporate Governance be reviewed and a revised Code be submitted to next meeting of the Committee.

183 Gifts and Hospitality – Review of Guidance for Councillors and Policy for Employees

The Committee were requested to review the Guidance for Councillors and Policy for Employees in relation to the receipt of gifts and hospitality. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. The attention of the Committee was drawn to the process requiring the registration of gifts and hospitality and the process for checking and auditing the registers that are kept on a quarterly basis. The Committee heard that there were slightly different policies for Councillors and Employees and as such the approval of the policy had to take two slightly different routes.

RESOLVED that:-

- (a) The proposed Guidance for Councillors on Gifts and Hospitality be approved and incorporated in the Constitution,
- (b) The Gifts and Hospitality Policy for Employees be approved.

184 Review of Member / Officer Protocol

The Committee were requested to review the Member / Officer Protocol which provides a framework for good working relationships between Councillors and Officers. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. The Committee were advised that the Protocol is included in the Constitution and were invited to approve the document which had last been considered in October 2018. The document was considered to be operating well, and therefore no changes had been made to it. In response to an invitation for comments or questions on the policy, Councillor Davidson gave an example of where he felt that the Protocol had not been adhered to in the context of officer attendance at Group meetings.

Councillor Willetts commended the work that has been done to date in this area, but highlighted the blurring of lines on decision taking, where some decisions were now being taken by Officers under delegated authority. He was concerned that although there was no evidence of this taking place, this practice could potentially open up Officers to criticism for decisions that they had taken, and suggested that there was a potential danger of Members passing political decisions on to Officers in order to avoid political fallout. It was important that there were clear dividing lines between those who took decisions and those who provided advice.

Councillor Goacher raised concerns about decisions that were being taken by the Council's commercial companies should potentially be taken by Councillors. Councillor Pearson explained that as the commercial companies were regulated by the Committee, this was an issue that the Committee could address when it reviewed their work. It was imperative that decisions that guide the Authority had to be taken by Members, and that the residents of Colchester understood how decisions were being taken.

Councillor King reassured the Committee that executive members took their decision-making responsibilities seriously and sought to ensure that decision making was transparent. Hayley McGrath explained that the authority for officers to take decisions were clearly set out in the

Constitution. The Committee could, if it wished, review the delegated powers to ensure they were set at appropriate levels. The Committee considered that the Protocol should be approved, but it would be sensible to receive a report clarifying the position on delegated authority.

RESOLVED that

- (a) The Member / Officer Protocol be approved and included in the Constitution.
- (b) A report reviewing the Scheme of Delegation to Officers be submitted to a future meeting of the Committee.

185 Guidance for Members on Dispensations

The Committee were requested to review the Guidance for Members on Dispensations who, due to having a Disclosable Pecuniary Interest, are precluded from participating on agenda items. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report.

RESOLVED that the Guidance for Members and Co-Opted Members on Dispensations be approved and included in the Council's Constitution.

186 Guidance for Councillors and Officers on Outside Bodies

The Committee were requested to approve the Guidance for Councillors and Officers on Outside Bodies, and that the Councillors and Officers who are appointed to outside bodies and provided with a copy of the Guidance. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. Councillors were advised that the Guidance had last been reviewed by this Committee in 2013, and it was right that it now be revisited, particularly in the light of the formation of Colchester Commercial (Holdings) Limited. It was confirmed that all organisations to which Councillors or Officers were appointed did fall within the scope of this Guidance.

Councillor Willetts registered his concern about difficulties that could arise when Officers were appointed to roles outside the Council, and particularly in respect of clarity for the general public. He suggested that a solution to these potential difficulties would be for Officers appointed in this way to be granted status as an honorary Member to enable a more robust approach to be taken towards their work for the outside body, and remove them from the restrictions of the Member / Officer protocol which was designed to shield Officers from criticism. Councillor Pearson acknowledged the valid points that Councillor Willetts had made, and stated that as the arrangements for the governance of the Council's commercial companies were still in the early stages, these would be reviewed and it was suggested that Councillor Willetts held onto his concerns to raise them as part of this review process.

RESOLVED that the Guidance for Councillors and Officers on Outside Bodies be approved and incorporated in the Constitution, and that a copy of the Guidance be circulated to all Councillors and Officers who serve on outside bodies.

The Committee were requested to consider and comment on the business continuity work undertaken during the period and to endorse the Business Continuity Strategy for 2020. Councillor King, Portfolio Holder for Business and Resources, and Hayley McGrath, Corporate Governance Manager attended to assist the Committee and presented the report. Hayley McGrath explained that business continuity was concerned with ensuring that the Council could continue to deliver its functions in the event of a natural disaster or other service interruption. The Business Continuity Strategy itself does not form part of the Policy Framework itself or form part of the Constitution, however, it is part of a risk management framework which is in turn incorporated into the Constitution. Hayley outlined the changes that had been made to the Business Continuity Plan which had been updated to refer to broader Council functions, as opposed to individual service areas within the organisation, which are subject to change. Business Continuity goes hand in hand with emergency planning, and the Council was under an obligation under the Civil Contingency Act to assist emergency services in the event there was a major incident within the Borough, with a primary goal of caring for local residents who may have been displaced from their homes due to flood or other emergency. The Council building Rowan House was the borough emergency centre, and would be utilised in the event of an emergency. It was also reported to the Committee that a considerable amount of staff time had been dedicated to planning for the UK exiting the EU, particularly an exit without a deal, and the unknown implications that could have for the Authority.

As part of the ongoing work around Business Continuity, the Council had also been looking at key issues, and recently carried out a generator test at Rowan House to ensure that staff knew how to get the building up and running in the event of a power outage. Security arrangements have also been considered for Rowan House out of hours, together with all other Council properties, the provision of which has been brought back in house from an external provider. The provision of I.T. support out of hours has also been addressed so that support can be given to the new, more flexible way of working which has been adopted by the Council.

Councillor Pearson thought it prudent that there be a backup to the Business Continuity Plan as he had recently had it confirmed that Rowan House was sited in a flood plain. Councillor Davidson enquired whether the Town Hall could still be used as an emergency centre, and sought an assurance that the working hours of senior staff would be controlled during an emergency to prevent them from being overworked. Hayley McGrath confirmed that the Borough Emergency Centre used to be in Angel Court, but had then been moved to Rowan House. It was, however the fall back position to utilise the Town Hall in the event that Rowan House could not be used as an emergency centre. Hayley also confirmed that in the event of a large disaster, it was likely that senior staff would be subject to longer than usual working hours, but that steps were in place to manage this as well as possible by way of a rota system. Councillor Davidson sought further clarification on senior officers who were nominated as 'first call officers' and whom he suspected were contacted out of hours more times than Members realised. Hayley confirmed that senior officers operate as first call officers for a month at a time, and are prevented from covering two months in a row. Generally speaking officers would expect to receive two or three calls in a month, although this could increase if the issues are weather related for example.

Councillor Willetts welcomed the process of review and praised the work undertaken by Officers, and enquired whether there had been any service failures. Hayley McGrath confirmed that there had been no serious incidents for some time, and although there had

been minor interruptions to service delivery, caused by issues such as powers cuts, the new ways of working adopted by the Council had enabled these issues to be dealt with quickly and efficiently, and it may be that the public were unaware that there had even been an issue.

In response to an enquiry from Councillor Willetts, Dan Gascoyne explained that a report had been presented to Scrutiny Panel earlier this month setting out some of the broader issues around the exit from the European Union and the work being done around this. In general terms we don't know what impact exit will have, which is why the planning work is being done now to try to enable the Council to cope with as yet unknown impacts.

RESOLVED that the Business Continuity Strategy for 2020 was endorsed.

188 Treasury Management Strategy, Mid-Year Review Report 2019-20

The Committee were requested to consider a report on the mid-year review of the Council's treasury management. Paul Cook, interim Finance Manager attended to assist the Committee and presented the report. Paul Cook presented the report and explained that following previous discussions there was some comparative information included with the report – for example the table included in section 6 of the report showing Local Authority borrowing. Councillor Davidson queried the number of investments that had been made, and enquired as to the possibility of increasing diversity in investment, and Paul Cook confirmed that he would continue to look at options when preparing the strategy for 2021.

Councillor Willetts referred to the table at section 8.2 of the report and enquired whether borrowing was being used to fund the Council's capital programme and Paul Cook confirmed that some of the capital programme was funded from revenue. Following general discussion on the mechanisms of borrowing regulation used by the Authority, Paul Cook said that he would bring further clarifying information to Committee in future.

RESOLVED that the Treasury Management Strategy mid-year review 2019-20 be approved.

189. Work Programme 2019-20

Richard Clifford, Lead Democratic Services Officer, introduced the Work Programme 2019-20. The Committee confirmed that the item on Review of the Scheme of Delegation should be added to the Work Programme for the meeting in March 2020.

RESOLVED that

(a) The Work Programme for 2019-20 be noted.

(b) The item on the review of the Scheme of Delegation to Officers be scheduled for the meeting on 10 March 2020.

The Committee resolved under Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that the following item as

they involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

190. Treasury Management Strategy, Mid-Year Review 2019-20

This minute is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to the financial or business affairs of a particular person, including the authority holding the information).