

GOVERNANCE AND AUDIT COMMITTEE

26 JULY 2016

Present:- Councillor Pearson (Chairman), Councillor Barlow, Councillor Chaplin, Councillor Chillingworth, Councillor Willetts

Substitutes:- Councillor Hazell for Councillor F. Maclean

Also Present:- Councillor Barton, Councillor Bourne, Councillor Buston, Councillor Cope, Councillor Davies, Councillor Lissimore, Barbara Pears (Independent Person)

9. Minutes

RESOLVED that the minutes of the meeting held 28 June 2016 were confirmed as a correct record.

10. Work Programme 2016/17

Councillor Pearson introduced the work programme and highlighted that depending on the decision of Council, the Governance and Audit Committee is scheduled to have the quarterly budget reports included within the work programme.

RESOLVED that the Work Programme 2016/17 be noted.

11. Annual Statement of Accounts 2015/16

Steve Heath, Finance Manager, introduced the Annual Statement of Accounts 2015/16 report. The report requests that the Committee accept the auditors' report, note the comments in the covering report, approve the letter of representation and approve the audited statement of accounts.

Steve Heath introduced Kevin Suter, Executive Director, Ernst and Young to present the auditors' report. Kevin Suter stated that Council officers had produced a good set of financial statements, which have been audit and no significant items of issue were found. This is a very good reflection on officers' ability, particularly given the tight timescales in completing the financial statements.

Kevin Suter also stated that following the publication of the auditors' report, the audit had been completed and that there were no further issues to update the Committee on. This means that subject to the approving and signing of the relevant documents the audit can be completed and signed off. In addition the National Audit Office has issued the group instructions so it will be possible to certify the completion of the audit when the opinion is signed.

Kevin Suter, stated that Ernst and Young are proposing to issue an unqualified opinion on financial statements, and propose an unqualified opinion on arrangements for value for

money. Kevin Suter highlighted that under the value for money assessment this only related to the 2015/16 financial year and therefore does not include any impact of the EU referendum result. An opinion on this result and its impact would be included for the next financial year. Kevin Suter was also able to reconfirm the auditors' independence from the Council.

Councillor Willetts congratulated officers and auditors on the way in which the information is prepared and presented. Councillor Willetts queried the movement of reserves statement, due to the amount of money moved to reserves and suggested that the explanation note behind the move was not sufficient.

Kevin Suter stated that the auditors responsibilities relate to whether the accounts confirm to the relevant rules and regulations, which they do. With regard to this particular issue this would be something for the financial team at Colchester Borough Council would answer, as it is not within the auditors remit.

Sean Plummer, Finance Manager, stated that accounts form part of the set of financial records maintained by the Council. The budget reports that go to the Scrutiny Panel and Cabinet throughout the year provide additional information on the levels of reserves and the movements on earmarked reserves as there are in year movements. The Statement of Accounts provides a snapshot at a particular time of year; throughout the document there are notes referring to the movement of reserves which the auditors have deemed compliant with regulations. The finance team at Colchester Borough Council can look into providing additional information on this basis for future years.

RESOLVED that;

- a) The Auditors Report be approved.
- b) The Governance and Audit Committee note the comments within the covering report.
- c) The letter of representation be approved.
- d) The audited statement of accounts be approved.

12. Complaints in Relation to Councillor Biston

Councillor Pearson introduced Barbara Pears, Independent Person, who was attending the Committee for this item to provide advice to Committee members. Councillor Pearson stated that both members of the public and Councillors who wish to speak would be restricted to three minutes, with Councillor Bourne and Councillor Biston limited to ten minutes. In addition, only one contribution to the discussion would be permitted from each member of the Committee.

Councillor Willetts voiced concern that Councillors contributions would be limited to just one occasion on this important issue.

Andrew Weavers, Monitoring Officer, and author of the report, set out the contents of the report and the decision required. The Committee is required to make an initial assessment on whether Councillor Biston's conduct potentially amounted to a breach of the Members' Code of Conduct, and if so whether either one or both of the complaints requires no further investigation or merits further investigation. If the Committee determines that it does not require any further investigation it can take no further action or consider providing advice. If the Committee agree that further investigation is required then an external person would be

appointed to conduct an investigation. The Committee were informed that the decision would need to be based on the information provided within the report and the letter that had been circulated to members from Councillor Biston regarding training that he had attended.

Andrew Weavers informed the Committee of the background of the complaints. Andrew Weavers stated that the complaints allege that Councillor Biston did not comply with the Members Code of Conduct paragraph three relating to not breaching equality enactments. The Equalities Act 2010 provides that travellers are a group of society which are afforded protected characteristics. In addition the Council, as a public authority is required by the act to comply with the Public Sector Equality Duty which has due regard to eliminate discrimination, advance equality of opportunity and foster good relations between different groups of people in society when carrying out functions. Councillors are required to take the Public Sector Equality Duty into account when taking decisions and when undertaking communications in relation to their role as a Councillor.

In relation to these complaints, the Committee is required to decide whether Councillor Biston's comments potentially breached part of the Public Sector Equality Duty which relates to fostering good relations between different groups. Andrew Weavers outlined that Councillor Biston had stated that he was representing the views of residents in his ward, which comes under Freedom of Expression as part of the Human Rights Act 1998. Andrew Weavers stated that this is a qualified right and is subject to restrictions prescribed by law within a democratic society, which includes the prevention of disorder or crime and protection of reputation or rights of others. If the Committee decides that the complaints merit further investigation, these issues will be looked into in greater detail.

Andrew Weavers, following a query from Councillor Willetts, clarified that travellers are a group with protected characteristics under the category of race.

Have Your Say

Terry Cheelds

Terry Cheelds attended the meeting requesting assistance from Colchester Borough Council to answer a question from his son. He stated that his son, whilst walking to school, had witnessed travellers cutting down hedges, driving four wheel drive cars on fields and leaving behind waste. His son had questioned why this was able to occur, when local residents would not be able to do the same.

Further to this, Mr Cheelds stated that the Cowdray Centre Development Site was broken into by travellers. Whilst the Police were called and were helpful, the travellers stated that if the criminal damage charge was dropped they would leave the area, which they did. Mr Cheelds believed that there should be more protection for Colchester residents and questioned why this situation can be allowed to occur.

Mike Hardy

Raised a point of clarification with the monitoring officer, as he understood that there was only protection to certain groups of travellers; Romany Gypsies and Irish Travellers. Other

travelling communities are not covered by the Act, and therefore do not have protected statuses.

Mike Hardy stated that the Equalities Act defends groups against discrimination and defines the types of discrimination which are protected characteristics. Mike Hardy distributed an information sheet on the types of discrimination taken from the Government website.

Mike Hardy stated that in relation to Councillor Buston, no comments were made on any protected characteristic and therefore has not breached the Equalities Act or the Members Code of Conduct.

Mike Hardy also commented on the second complaint, believing that Councillor Bourne's interpretation of Councillor Buston's intent was inaccurate.

Councillor Cope

Councillor Cope highlighted his concerns regarding the visibility of the legal processes when issues with travelling communities are raised with the Police. Councillor Cope also believed that more information should be provided to Councillors and residents to understand the processes and to prevent the perception that nothing is happening.

Councillor Cope highlighted a number of incidents that had occurred in his ward that were reported to Police, but no information then passed on to Councillors or local residents.

Councillor Cope also questioned whether this particular issue could be a diversity, ethnicity or equality issue given that the report does not contain information from the Essex Countywide Travellers Unit on who the travellers were on that particular site.

Councillor Lissimore

Councillor Lissimore stated that she was not originally intending to speak at the meeting and thanked Councillor Cope for opting to speak at the meeting.

Councillor Lissimore stated that local residents are fully in support of Councillor Buston, and that she had not been made aware of any complaints received other than that from Councillor Bourne.

Councillor Lissimore also reminded the Committee of the incidents that had originally led to Councillor Buston's letter, and that the comments within the letter were reflecting the residents' comments on the circumstances.

Councillor Lissimore requested that membership of political parties be put to one side on this issue and that Councillors look at the words used in making their decision.

Councillor Jarvis

Councillor Jarvis spoke to the Committee and protested at the limitation on length of time allotted to speak on the issue. Councillor Jarvis clarified to the Committee the circumstances behind the inclusion of his name in the original e-mail heading which related to an e-mail template displaying the shared ward information. Following receipt of the

complaint Councillor Buston immediately clarified that Councillor Jarvis was not responsible for the comments, and this highlighted the conduct of Councillor Buston.

Councillor Jarvis stated that he had recently visited Hilly Fields and had spoken to a number of residents who indicated their upset at the current situation. Councillor Jarvis also highlighted his frustration with the Police, who have the power to remove encampments without going through the courts. In this circumstance, the Police deemed it inappropriate to invoke Section 50 of the Criminal Justice Act.

The Hilly Fields site is a scheduled ancient monument, which is the highest protection given to sites under planning law. Councillor Jarvis highlighted the issues that had occurred on the site, which local residents were not permitted to do. Councillor Jarvis also questioned how much more damage to local amenities could be permitted.

Councillor Jarvis also highlighted his concern that the complaint was lodged due to party political reasons. Councillor Jarvis commented on commitment to the Human Rights Act and free speech and that Local Councillors should not be afraid of reflecting the views of their residents.

Councillor Jarvis stated that he believed the matter should not have come before the Governance and Audit Committee, and that there should be no further action taken.

Councillor Bourne

Councillor Bourne stated that part of her Portfolio relates to gypsy and traveller encampments under environmental protection section. As Portfolio Holder, Councillor Bourne regularly corresponds with the Essex Countywide Traveller Unit to discuss additional pitches and liaison sites.

Councillor Bourne stated that as Councillors it is necessary to manage expectations of local residents and to help to foster good relations between those who share protected characteristics and those who do not. With regard to the complaint, Councillor Bourne stated that she objected to the language used by Councillor Buston regarding the unauthorised encampment on Hilly Field. Councillor Bourne felt that the language used by Councillor Buston breached the Members Code of Conduct as it did not help to foster good relations between those who share protected characteristics.

Councillor Bourne stated that she was aware that for some residents having strangers in their local area is not welcome and can be perceived as a threat, especially when local residents do not share the same characteristics. In these situations it is necessary for Councillors to tread a cautious and respectable path when dealing with these matters.

When incidents with the travelling community occur Colchester Borough Council, Essex Police, the County Council and the Essex Countywide Travellers Unit have a protocol which has been in place for a number of years. As a result of the number of complaints and conversations held with Councillors, the Council is now reviewing this protocol. Cabinet will shortly be receiving a presentation from the Essex Countywide Travellers Unit and discuss the best way forward to deal with concerns.

Councillor Bourne stated that if Councillors have concerns regarding gypsies and travellers, they can be raised with officers or with the Portfolio Holder. Unfortunately Councillor Buston did not choose either of these potential routes. Councillor Bourne stated that the initial complaint to the monitoring officer was regarding the language used by three different Councillors. Councillor Goss apologised for comments in the press and attended equality and diversity training and Councillor Jarvis had responded quickly and stated that he didn't mean to cause offense. Councillor Bourne stated that she had spoken to members of all political parties, including Labour, regarding issues around travellers and the language used, which can stigmatise communities. Whilst the comments made may seem honest, they can lead others to take more extreme actions. In each discussion with Councillors, they had understood the reason behind making contact and not reiterated the words in future articles and communications.

Councillor Bourne stated that Councillors, as community leaders have a leadership role, and if Councillors use intemperate and incautious language it can vindicate others to be more extreme in their views.

Councillor Bourne highlighted that following comments in the local newspaper regarding Syrian refugees she had spoken to the paper and had a retraction printed. Councillor Bourne also denied that this was a party political issue, and that she had not commented in the press or on social media about this particular case. As part of the Councillors role, Councillor Bourne stated that she wished that Councillor Buston would take advice on the language used, and highlighted an extreme comment that had been posted by a member of the public underneath the article which included Councillor Buston's comments.

Councillor Buston

Councillor Buston formally objected to the time limits being imposed on his speaking time when defending accusations on this matter. Councillor Buston was disappointed that this issue had been brought to the Governance and Audit Committee.

Councillor Buston commented that his response to the Monitoring Officer with regard to the original complaint remain, in addition Councillor Buston thanked a number of local residents who had contacted him providing support.

Councillor Buston stated that the comments made were solely in relation to the rule of law, in that everyone is treated equally, and reflected the views of local residents in Lexden and Prettygate. Councillor Buston provided a brief history of the issue at Hilly Fields that led to the comments, including contact with Colchester Borough Council and the Police.

With regard to complaint one, Councillor Buston stated that all statements made were truthful and reflective of residents of the previous ward he represented as part of his role of being a Councillor. Councillor Buston stated that throughout the comments made he called for all to be treated equally before the law with no exceptions.

With regard to complaint number two, Councillor Buston stated that whilst no official advice or warning was given, no advice was required. Any comments made were not directed to whole communities or groups, only those individuals who had broken the law or treated residents with disrespect. Councillor Buston stated that had the police taken a keener

interest then these charges would have been against the individual and not a group. Comments made directly refer to conversations had, and therefore Councillor Buston believed that he complied with the Members Code of Conduct.

Councillor Buston also stated with the language used, he could not see anywhere where he had unlawfully discriminated against anyone; individuals break the law and membership of a group does not entitle them to do this.

Councillor Buston also highlighted that he fully supported the Council motion to help support Syrian refugees in Colchester, and that racism, hate crime and xenophobia had no place in the UK.

Councillor Buston concluded by stating that there was not a justification for the complaint as he was fulfilling his role as an elected Councillor. No part of the e-mails or interviews could be interpreted as breaching equality law or protocol, and he was not aware that anyone other than Councillor Bourne had complained. He requested that the Committee determine that conduct did not potentially amount to a breach of the Code of Conduct. In addition Councillor Buston formally requested the total cost of each traveller site in Colchester, including the legal proceedings, clean up and repairs be furnished to full Council.

Committee Discussion

Councillor Pearson invited members of the Committee to make statements on the report and the information that had been provided.

Councillor Hazell stated that she has known Councillor Buston for a number of years and did not believe that he would stigmatise any group in the community; Councillor Buston was reflecting the views of his residents. Councillor Hazell stated that she believed that Councillor Buston had no case to answer; comments underneath the online article were views of residents who were not happy with the situation.

Councillor Chillingworth stated that the Have Your Say speakers had provided a view of how residents feel about this issue. Councillor Chillingworth did not believe that any illegal action had been undertaken by Councillor Buston, and that he would not in any way encourage any hate or racism. Councillor Chillingworth stated that Councillor Buston was highlighting the incidents that had occurred on the Hilly Fields site, and did not use extreme or unlawful language. With regard to the press article these were reflecting the views of the local residents, and not inciting fear in residents. Councillor Chillingworth stated that he believed that no further action will be necessary. Councillor Chillingworth also suggested that the Borough should consider having a transit site as this would help to prevent these situations from occurring.

Councillor Barlow stated that it is difficult to divorce the comments regarding the complaint, from comments on the incident that happened on Hilly Fields. Councillor Barlow stated that Councillor Buston's wording led to misinterpretation, and that Councillors should take care of the language that they have used. Councillor Barlow also stated that whilst there could be a breach of the Members Code of Conduct, he was not convinced that an investigation would be in the public interest. Councillor Barlow suggested that a recommendation be made to Cabinet to hold a private meeting between Colchester Borough Council and Essex

County Council Councillors and Officers, Essex County Council, Essex Countywide Travellers Unit and the Police to share information and provide a greater understanding of the current situation in Colchester.

The Committee received advice from Barbara Pears, Independent Person; Barbara Pears stated that whilst the case was complex she did not believe that it warranted a further investigation as Councillor Biston was doing the best for his residents.

Councillor Pearson commented on points made by those who spoke at the meeting; Councillor Pearson highlighted that any attempt to trespass on public or private land causes immediate distress. These are matters for the Police and authorities to deal with, if the Police do not provide a suitable solution Councillors are able to take that up with the Police in different means. Councillor Pearson also highlighted that in working in the criminal justice sector, there is no evidence to suggest that members of the travelling community are any more or less likely to be prosecuted than other members of the community. Councillors have a responsibility to the community, and need to be mindful of the whole community they represent and set an example.

RESOLVED that;

- a. Both complaints merit no further investigation.
- b. *RECOMMEND* to Cabinet for consideration that a private meeting between Colchester Borough Council Councillors, Colchester Borough Officers, Essex County Council, Essex Police and the Essex Countywide Traveller Unit be held to share information and provide an update on the situation within Colchester.

13. 2015/16 Year End Review of Risk Management

Hayley McGrath, Corporate Governance Manager, introduced the report on the 2015/16 Year End Review of Risk Management. The report requests the Committee consider and note the risk management work undertaken during 2015/16, the current strategic risk register, the proposed risk management strategy for 2016/17 and endorse the report to Cabinet.

Hayley McGrath stated that risk management forms an important part of the governance framework, providing reassurance that decisions are being made in the correct way. Risk Management is not a process to eliminate risk, but to identify risks in decision making to ensure that decisions are based on good reasons with an understanding of the impact and potential issues. Hayley McGrath stated that risk management is not viewed negatively at Colchester Borough Council, but as a method to make the most out of opportunities and new ways of working.

Hayley McGrath outlined that the risks are split into three different categories, Strategic, Operational and Project. The strategic risks are those owned by the senior management team and relate to the future direction of the organisation. Operational risks are those that relate to the day to day operation of the Council and project risks are those identified as part of specific initiatives.

The Risk Management strategy is brought to the Governance and Audit Committee each year to ensure that it is still fit for purpose. Once the Committee endorses the strategy, it

then goes to Cabinet, and then Council before being incorporated into the constitution.

With regards to the work undertaken during 2015/16, a significant amount of work has been carried out to improve the health and safety across the organisation. There has also been support provided to the Colchester Stadium and Football Club Safety Advisory Group including creating a link between the group and Colchester Borough Council's Safety Advisory Group. In addition the Council has also been working with Colchester Garrison Safety Advisory Group due to the strong links between Colchester Borough Council and the Garrison which benefits a number of civic events.

Within the Council the change and performance team have also been embedding the identification of risk into the project management processes, with information and guidance now available to all staff.

Hayley McGrath outlined that there had been no changes to the processes used to identify and control risk. The identification of risks continues to be regular meetings with managers and the senior management teams. An audit of risk management is carried out each year, and there were two level two recommendations which included refreshing the information available to staff online and around a formal review of operational risk registers. Work with the Council's partnerships, North Essex Parking Partnership and Joint Museum service both continued with information presented to both of their committees.

Hayley McGrath also commented on the strategic risk register which sets out the future risks that are considered significant.

Councillor Barlow questioned the risk around the result of the EU referendum and whether it should be broken down into the internal impact on the Council and the external impact, such as the local economy, of the decision made. In response Hayley McGrath stated that this is a new risk which will constantly be altered when more information is available; discussions with Senior Management Team on this particular risk are likely to occur every quarter. Areas of funding that directly affect the Council will be included within the financial risks.

Following a query from Councillor Willets, Hayley McGrath confirmed that the risk of a failure to provide effective and visible political and managerial leadership had been removed in July 2015, and that risk 3d should refer to risk 3c.

Councillor Chillingworth thanked Hayley McGrath for the report and work involved, and Councillor Hazell stated that she was pleased to hear the positivity involved within the risk management strategy. Hayley McGrath stated that the Council is not risk adverse, but recognizes risk in its decision making.

RESOLVED that;

- a) The risk management work undertaken during 2015/16 be noted
- b) The Governance and Audit Committee considered and commented on the current risk register
- c) The Governance and Audit Committee considered and commented on the proposed risk management strategy for 2016/17
- d) The Governance and Audit Committee *RECOMMEND* the 2015/16 Year End Review of Risk Management report to Cabinet.

14. Review of Meetings and Ways of Working

Councillor Pearson introduced the item on the review of meetings and ways of working. The report requested that the Committee note the contents of the report, and agree that a further report be presented to the next meeting of the Committee providing more detail of the process and methodology of the review.

Andrew Weavers highlighted that the review will be able to proceed, if agreed, once the Council has approved a change to the Terms of Reference, which is being put to Council on 27 July 2016.

Members of the Committee welcomed the report and emphasised the importance of the review. Committee members highlighted a range of issues including increasing the level of representation from different age groups and increasing diversity on the Council. In addition, Committee members highlighted the possibility of changing meeting locations and improving accessibility. Councillor Pearson stated that if there are any further suggestions for consideration that they be sent to the Democratic Services Officer.

Committee members also discussed the requirement on Councillors to fully participate in the review due to the significant amount of work required. The Committee also welcomed suggestions of inviting Councillors, members of the public and other external stakeholders to an additional meeting and incorporating their views into the review. The Committee suggested that this meeting could take place at a time and date that is more convenient for members of the public to attend, such as a Saturday.

Andrew Weavers stated that the Independent Remuneration Panel was shortly to be convened, and as part of its remit would be looking at methods to remove barriers to participation in public office; all political groups are welcome to participate in the process.

RESOLVED that:

- a) The Governance and Audit Committee noted the contents of the report.
- b) A report be submitted to the September Governance and Audit Committee providing more detail behind the process and methodology of the review.