

# Scrutiny Panel

## Tuesday, 04 July 2023

**Attendees:** Councillor Tracy Arnold, Councillor Darius Laws, Councillor Sam McCarthy, Councillor Sam McLean, Councillor Thomas Rowe, Councillor Fay Smalls, Councillor Dennis Willetts

**Apologies:**  
**Substitutes:**

### 413 Minutes of Previous Meeting

*RESOLVED* that the minutes of the meeting held on 6 June 2023 be accepted as an accurate record.

### 414 Have Your Say! (Hybrid Scrutiny Meetings)

Mr Lance Peatting attended and addressed the Panel pursuant to the provisions of Meetings General Procedure Rule 5(1), to complain that, at the Environment and Sustainability Panel meeting held on 22 June 2023, Alderman Chillingworth was allowed longer to speak under the 'Have Your Say' item than another member of the public, who was prevented from finishing after their three minutes had elapsed, whilst Alderman Chillingworth was permitted over a minute extra. Mr Peatting asked why the security searches employed at the Town Hall was not extended to cover staff or councillors and asked what threat assessment and evidence had informed the policy. The Panel were asked to confirm that the Town Hall was a public building and whether the Council was operating within the law. Mr Peatting asked if the key issue was a lack of trust in the Council.

The Chairman gave his view that all speakers under 'Have Your Say' provisions should tighten their contributions to be three minutes or less. Regarding the security protocols in place, the Chairman referenced the murder of two sitting members of parliament in recent years and pointed out that councillors had to wear their ID passes and lanyards to identify themselves. The Chairman stated that he would have no issue with being searched, and highlighted that issues had been encountered when the most recent Environment and Sustainability Panel meeting's start time was delayed by half an hour. The Chairman underlined the importance of politicians sticking to the truth and acting in line with the Nolan Principles. Some members of the Panel indicated that they would have no issue with being searched.

Mr Peatting asked what it was that the Council feared and posited that central government feared the public because it was doing harm to the public. Mr Peatting argued that, where someone saw harm being done, they were obligated to highlight and stop it.

### 415 Year End April 2022 – March 2023 Performance Report Key Performance Indicators (KPI) and Other Performance News

Councillor Jay, Portfolio Holder for Economy, Transformation and Performance, introduced the report and went through the KPIs. Councillor Jay noted that Colchester had one of the fastest average processing times for Housing Benefit and Local Council Tax Scheme claims and changes in the Country. Regarding the number of households in temporary accommodation, the lack of housing and low supply in the housing sector had caused difficulties. The Portfolio Holder was asked what turnover there was of households in temporary accommodation and promised to seek and provide an answer to this following the meeting. Some households included children, and there was a particular difficulty in finding accommodation for larger families.

The Portfolio Holder noted the significant number of KPIs which were achieved, having been set at an appropriate level. The target for average sickness rates was eight day's and performance had improved, bringing the average recorded down to 9.1. The main area of concern was sickness leave within the Environment Team, with an additional concern being an increase in sickness leave taken within the Corporate and Improvement Team. Work was being done to address both areas of concern. The possible effects of 'Long Covid' were mentioned, and the possible increase of sick leave taken for ailments with flu-like symptoms, as a precaution. The Portfolio Holder was asked if mental health was having an effect on sickness leave rates, and whether the Council used 'mental health first aiders.' The Portfolio Holder confirmed that the Council was examining options for providing mental health support to its staff.

A Panel member asked how the Council's sickness rate compared to rates in the private sector, and what was being done to discover how the best performers managed to keep their rates low. Richard Block, Chief Operating Officer, noted that it was appropriate for officers to answer questions on support arrangements for staff. Mental health first aiders were in place at the Council and had now been put in place for colleagues in teams engaged in manual work. Free counselling was available and did not require sign off from management to be taken up. Cezara Cosma, Programme and Performance Manager, explained that the Council did not have comparative statistics from the private sector yet, but that comparison would be possible at the half-year point, including sickness rates at other local authorities and in the private sector. A Panel member pointed out that some mental health conditions arose from causes outside of work, but still affected sick leave use and the capabilities of the officers in question. The Panel member also noted that some causes of problems within work could arise from people being appointed to roles to which they were not well suited. The Portfolio Holder was asked what percentage of mental health issues reported came from issues arising unexpectedly, and what percentage may have arisen as a result of natural stresses and pressures from work of types which should and could have been predicted. The Chief Operating Officer gave assurance that every effort was made to appoint the right people to posts. A six-month probation period was used, and every support was given to appointees to help and support them in taking on their roles, but it was confirmed that, as a last resort and if an individual could not show that they could perform their role then the Council, when necessary, would end their employment. A high level of support was provided to help colleagues to succeed, but the Council had a duty to the residents of Colchester to ensure that it operated efficiently.

The Portfolio Holder highlighted that the residual waste collected per household was slightly below the stretch target set, but the rate was improving. The Panel asked

questions regarding the sickness rates experienced by refuse collection workers, including whether there were light duties for those temporarily unable to be fully deployed, whether mitigations such as drinks and comfort breaks were available, especially in hot weather. The Portfolio Holder was also asked if wheelie bins were better for the health of collection staff than black bag collections and whether they could be rolled out in areas which currently had bag collections instead. The Portfolio Holder confirmed that light duties could be offered as part of the 'return to work' process, in line with the Council's statutory duty of care to its staff, and that drinks and portable toilet facilities were available for refuse collection staff. The use of wheelie bins was being examined as part of the overall waste review being conducted.

The Portfolio Holder was asked what evidence and benchmark data could be provided to support the statement in the report which said that the Council's performance on minimising residual waste per household was well above that of other local authorities. A Panel member referred to waste and recycling tables which used to be provided to show performance across Essex local authorities and stated a wish to see this type of information. Where the KPI report stated that the reduction of waste to landfill had been achieved by enforcement, the Portfolio Holder was asked what happened to waste from households which exceeded the three bag or wheelie bin limit, and whether there was an increase in fly tipping, or an improvement in household waste management. Another Panel member asked for details of any plans to further reduce residual waste going to landfill and increase recycling rates. The Programme and Performance Manager explained that comparison data on waste collection was available that comparison groups could be tailored to the Council's choice. The Chief Operating Officer confirmed that a league table of performance for only Essex councils could be provided, and informed the Panel that the new watchdog for local government, Oflog, would monitor performance and could provide online comparisons for members to examine.

The Portfolio Holder stated that the comparative data went back to 2021-22, with the Council performing above the averages for both the local area and for England as a whole. A Panel member urged for the Council to seek to improve performance to be amongst the best local authorities. The Portfolio Holder drew attention to the waste review underway and gave assurance that the Council was seeking to find ways to further improve and identify how well it could perform. The Leader of the Council was currently at the Annual Conference of the Local Government Association, meeting with representatives of the top performing local authority in the Country [It was later confirmed that this was Three Rivers District Council, with the lead contact being Sarah Nemes, Leader of Three Rivers Council].

Panel members noted the awards and accreditations section of the report, with one criticism being made that this lacked context, such as the rate of success and number of awards for which the Council was not nominated, or nominations which did not lead to winning an award. The Panel asked how the rate of success could be shown. A Panel member argued that showing this context would add depth and show staff achievements, further going on to note that, whilst Castle Park had won Green Flag Awards, other parks such as Lexden Park were not mentioned, with no explanation as to whether they had been entered but failed to win an award, or whether they had not been entered into the award process at all. The Programme and Performance Manager committed to adding additional content and narrative around the awards and

accreditation section in the next performance report which came to the Panel. A further question was asked as to what value for money the Council gained from the awards and accreditations that it and its officers achieved. The Programme and Performance Manager agreed to add content to cover this in the future.

#### **416 Year End covering April 2022 to March 2023 Performance Report - 2020-2023 Strategic Plan Action Plan**

Councillor Jay, Portfolio Holder for Economy, Transformation and Performance, welcomed any questions that Panel members might have regarding the report. A concern was raised by a Panel member that, whilst achievements were shown, there was a lack of context which made it difficult to judge the levels of achievement against the Strategic Plan Action Plan. The Portfolio Holder was asked if the matters covered in the report related to all three years of the Strategic Plan, or only to the single year for 2022-23. A Panel member noted that there were no metrics or targets for most of the items covered.

The Panel noted good performance in addressing the climate emergency, but a Panel member voiced concern that the Council had not moved to an electric vehicle fleet, away from petrol and diesel vehicles. Whilst noting that reasons had been given for this, including that it was not currently financially viable, the member queried whether serious issues had been overlooked, and warned that it was hard to see if performance overall was good, bad, or indifferent. The Chief Operating Officer stated a hope that the new suite of key performance indicators would show the context and evidence which was being sought by the Panel. Councillor Cory, Deputy Leader of the Council and Portfolio Holder for Resources, attended remotely and highlighted the new metrics which had been brought in and against which the Council was making good progress, including the rollout of the Green agenda, and Council carbon neutrality by 2030. The Panel noted that metrics were not included in this report, but accepted that they were now in place.

The Panel discussed the Green agenda and asked the cost per tonne of carbon dioxide removed from the Council's emissions, and how this compared to other local authorities. The Portfolio Holder for Economy, Transformation and Performance explained that this report was more a narrative document than a report of performance indicators.

The celebration of heritage and culture was highlighted and, whilst not being a statutory requirement, there was a collective political will to empower officers to work on this to maximise the contributions to make Colchester special. An important example was the successful bid to allow the refurbishing of the Natural History Museum, as an important way to regenerate the High Street. The Panel agreed that heritage made a significant difference to residents and visitors, and that the Council must make the most of its assets. The visit of His Majesty, King Charles III was given as evidence of the draw of Colchester's heritage.

*RESOLVED* that the Scrutiny Panel confirms that the Council has made satisfactory progress in delivery against its Strategic Plan Action Plan, and compliments Cabinet on the progress made.

## Capita data breach

Councillor Cory, Deputy Leader of the Council and Portfolio Holder for Resources, explained that the Council was one of many which used Capita for a number of functions involving data management. The contract in place set out the required approach from Capita, which failed to meet its requirements in this case. Affected local authorities were looking at what actions they could take to seek remedy for Capita's failure.

Sam Preston, Head of Operational Finance, highlighted that the report from the Council's Data Protection Officer focused on the policies and protections for personal data within the Council's contracts. Regarding the Capita situation, the Council had written to inform affected residents and give as much detail as possible. Capita had finished their investigation and the Council was now looking at how to obtain recompense.

The Panel discussed how the Council reviewed its procedures as to how special category personal data was handled by contractors and how safety and protection of personal data of the public could be ensured, especially where individuals are obliged to provide their personal data. The Council's duty to protect this data, and ensure contractors protected it, was emphasised. A Panel member noted that section 4.5 of the report should state that the data was no longer accessible 'to others' and that it should be underlined that the Council did not know who had access to the data before it had been secured.

Concern was raised at the statement, in 4.10 of the report, that the Council did not have data protection clauses in the terms and conditions for items purchased via purchase order, and that this specific contract had been procured via a purchase order. A Panel member criticised the way that the procurement process used had not meant that data protection policies were laid out for the contractor, to enforce their compliance. It was asked how such a contract could be laid out without obligations being placed on the third-party data processor [Capita].

Richard Block, Chief Operating Officer, welcomed this as a chance to gain recommendations that helped the Council to improve. Regarding Capita, the Chief Operating Officer explained that in this particular instance, a purchase order had been used as Capita already had a wider contract for the Council, set up using a normal tendering process, to handle personal data for revenues and benefits. The specific contract in question here had been procured under that wider contract and was already covered by the data protection requirements set out in the existing contract with Capita. The Head of Operational Finance noted that Capita's data protection practices and policies were far more extensive than what was needed to ensure data security, but that these had been negated, in this instance, by human error which was in contravention of their policies. The Panel noted the explanation, but it was pointed out that the report did not cover this detail and only gave a general statement that contracts purchased via purchase order were not covered by data protection clauses.

The Head of Operational Finance and Chief Operating Officer gave assurances that

the need to strengthen the process regarding purchase order use had been recognised, to ensure data protection clauses set out requirements expected of contractors. Whilst the Capita contract was already subject to the data protection requirements within the earlier, wider contract with that company, the Scrutiny Panel could potentially make recommendations to remedy the general data protection issues relating to procurement of contracts via purchase order. The Deputy Leader agreed that the report showed where general procedure could be improved.

A number of Panel members agreed that it appeared that the situation regarding purchase order terms and conditions on data protection in contracts needed to be tightened, to ensure data security and lay out the Council's recourse to gain compensation if third-party processors failed to comply with the terms of their agreements.

The Council's own policies stated that 'no third-party processors will be appointed who cannot comply with the data protection requirements and policies of Colchester City Council.' A Panel member suggested that the Council's policy be reviewed to show how the Council could ensure secure data processing by its contractors. A discussion was held regarding officer responsibilities to carry out ratified policies.

*RECOMMENDED* to CABINET that: -

- a) All contractors be required, in writing, to agree to comply with the data protection requirements and policies of Colchester City Council;
- b) Internal Audit be asked to review the Council's data protection policy and arrangements, specifically regarding ensuring that the Council's requirements are met by its contractors and third-party data processors.

#### **418 Work Programme 2023-24**

The Chairman suggested that, for the item scheduled regarding local skills, it may benefit the Panel to invite guests from the private sector, small and medium enterprises and Council partners.

A Panel member asked whether representatives of Essex Highways could be asked to attend a Panel meeting to answer questions regarding potholes, Master Plan issues, and highways issues in general. This could include discussion of issues relating to planning, such as infrastructure, drainage, electric vehicle charging and other matters. It was noted that there was a Local Highways Panel in operation for the Colchester area, where smaller highways schemes were discussed, and joint funding was agreed for individual schemes. A suggestion was made that the Local Highways Panel could be scrutinised, to examine how effectively the Council's financial contributions were being used. A Panel member noted that the Council's administration claimed it could run local highways better than the County Council and asked if evidence for this could be shown.

Officers suggested that the Panel should concentrate on providing added value with its potential work and recommendations on highways matters. It was noted that, if the

Panel wished to examine the work of the Local Highways Panel, then an invitation would need to be extended to the Chair of that Panel, Councillor Sue Lissimore, to attend and answer questions. Panel members also requested that invitations be sent to the Cabinet of Colchester City Council, and to Highways officers who could answer technical questions.

*RESOLVED* by the Scrutiny Panel that: -

- a) The work programme 2023-24 be approved;
- b) An additional item be scheduled, when possible, for the Scrutiny Panel to consider the operation of the Colchester Local Highways Panel and scrutinise how effectively the Council's financial contributions are being used.