

## BIRMINGHAM CITY COUNCIL

# CO-ORDINATING O&S COMMITTEE – PUBLIC MEETING

1000 hours on Friday 15<sup>th</sup> February 2019, Committee Rooms 3 & 4

### Action Notes

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**Present:**

Councillor Mariam Khan (Deputy Chair)

Councillors Tahir Ali, Deirdre Alden, Albert Bore, Debbie Clancy, Liz Clements, Roger Harmer and Rob Pocock

**Also Present:**

Professor Colin Copus, Emeritus Professor of Local Politics, De Montfort University

Councillor Brett O'Reilly, Cabinet Member for Clean Streets, Waste and Recycling

Clive Heaphy, Chief Finance Officer

Kate Charlton, City Solicitor

Dawn Hewins, Director of HR

Darren Share, Director for Waste Services

Russell Johnston, HR Business Partner

Emma Williamson, Head of Scrutiny Services

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### 1. NOTICE OF RECORDING/WEBCAST

The Chair advised that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site ([www.civico.net/birmingham](http://www.civico.net/birmingham)) and that members of the press/public may record and take photographs except where there were confidential or exempt items.

Cllr Khan thanked Cllr John Cotton for his time as Chair of this committee and wished him well in his new role as Cabinet Member.

Cllr Khan then proposed that

- The agenda be varied so that the call-in request be considered after item 5;
- The sixth item, Deputy Leader update, to be deferred to a later meeting, in light of the call-in request received for consideration at this meeting.

## **RESOLVED:-**

To consider the request for call-in received after item 5 on this agenda.

To defer the Deputy Leader update item to a later meeting of the Co-ordinating O&S Committee.

## **2. APOLOGIES**

Apologies were received from Cllrs Mohammed Aikhlaq, Charlotte Hodivala, Penny Holbrook.

## **3. DECLARATION OF INTERESTS**

Clarification on the declarations of interest required was sought, and later in the meeting Cllrs Liz Clements and Rob Pocock declared a pecuniary interest relating to the Request for Call-In item regarding contribution by trades union to election funding. Dispensation had been granted by the Chairman of the Standards Committee. Cllr Mariam Khan declared a non-pecuniary interest as a member of a trades union.

## **4. ACTION NOTES/ISSUES ARISING**

(See document No 1)

The action notes from the meeting held on 11<sup>th</sup> January 2019 were agreed.

## **5. STRENGTHENING AND DEVELOPING THE ROLE OF FULL COUNCIL IN THE POLICY PROCESS**

(See document No 2)

Professor Colin Copus, Emeritus Professor of Local Politics, De Montfort University, presented thoughts on how to develop the full council meeting based on his research.

There is no council that has fundamentally rethought what the full council meeting is about, and Birmingham has the opportunity to lead the way here.

The Local Government Act 2000 sought to introduce a parliamentary style system, but did not consider reformulating full council as a form of parliament, nor ways to make full council more relevant to local communities.

So some authorities have experimented with green papers, setting out a policy issue for debate; and white papers setting out the Executive's intention – in other words policy debate at different stages rather than just at the end. Open question times have also been considered; and early day motions experimented with where members lay down motions, not necessarily to debate but to raise any issues of concern.

Another idea has been to have a Speaker instead of a chair of the Council, to champion the role of full council with the Executive. This has not been particularly successful and many have gone back to a chair, as the change was in effect little more than a title change.

How to question external bodies is also something many councils have grappled with – a lot of work is done in these bodies, and full council is a forum to challenge and hold to account.

Other practices have included having a “state of the borough” address setting out the success or otherwise of policies to generate debate; single issue debates or full council taking on a scrutiny role in considering issues.

To get genuine debate and real public interest in council meetings, he proposed that they need to be unscripted, and unsupported by group lines, with genuine public question time- to stimulate debate and uncover issues of importance

But key is to get genuine debate and full council to be a place where decisions are made and developed. To achieve this, there is a need to challenge some of the common practices. For example, councils could reflect on the party group system, whereby many areas of policy are determined in private group meetings ahead of public consideration, and that can be where the real debate takes place. Some of this has to be brought to full council or it will wither on the vine.

In the debate that followed the following points were made:

- The opportunity for scrutiny to institute debate was alluded to but the resources for scrutiny have reduced significantly, so the role scrutiny plays has reduced, in this council and in others. Scrutiny committees are not bringing forward the ideas and proposals that were envisaged as they have not got the resources to do this. For example, scrutiny led the debate on the future of waste several years ago, and set a policy direction, which was then adopted by full council and belatedly followed up by the Executive. This is not happening, and we need to correct that balance between Executive and Scrutiny. Scrutiny is an important resource for full council to make informed decisions;
- The balance of decision and debate needs to change: council does not have that opportunity to debate and therefore influence the decision making of the Executive;
- Engaging wider members and others in influencing policy development is currently done through scrutiny, but does not leave time for other scrutiny;
- To have a vibrant democracy we need to make it easier for all councillors to engage;
- There does need to be a realignment between full Council and the Executive; perhaps the key is to distinguish the strategic and long term policy issues which are the proper remit of council, which set the policy direction of the city;
- Ensuring that scrutiny committees link to that strategic role that full council has is also critical, but need to think about how to do this – there are lots of examples of where this is not working, but not so many where it is. There needs to be flexibility in agendas to ensure that the right scrutiny report gets to full

council at the right time. Councils should also consider at what point decisions are taken – one option would be to have the policy development/scrutiny work, then a full council debate followed by groups then agreeing the policy line to adopt.

- The current public question time is very stilted, but Birmingham's approach is pretty typical and can be dissatisfying for the member of the public. Perhaps an area for discussion could be submitted, that could lead to a set debate within a certain time, or alternatively have meetings just for questions from the public.

Cllr Khan thanked Professor Copus for his attendance and input. The Committee will consider his evidence as part of the on-going inquiry.

## **7. REQUEST FOR CALL IN: WASTE MANAGEMENT – INDUSTRIAL ACTION UPDATE - PUBLIC**

(See document No 3)

The committee received a request for call-in on the above report, agreed at Cabinet on 12<sup>th</sup> February 2019.

The meeting was adjourned to enable members and officers to take advice with regards to declarations of interest.

The meeting resumed and:

Declarations of interest were made in relation to this item: Cllrs Liz Clements and Rob Pocock declared a pecuniary interest regarding contributions made by trades unions to election funding. Dispensation had been granted by the Chairman of the Standards Committee. Cllr Mariam Khan declared a non-pecuniary interest as a member of a trades union.

Cllr Phil Davis set out the reasons for the request for Call-In, highlighting call-in criteria 6:

*the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do*

He said that the Council was in a very serious position with regards to this dispute, with the impact being felt by residents with bins not being emptied. The Council must be seen to be taking all necessary steps to resolve this and the decision to take legal action is controversial. Therefore there should be opportunities for a wider group of members to look at that decision, and to understand the reasoning. It is unfortunate that we have ended up in a situation which only the courts can resolve, and so we need to hear what other alternatives were considered. This call-in is a key part of the democratic process, allowing committee members chance to question the Cabinet Member about the decision taken.

In response the Cabinet Member outlined the reasons for the decision noting that with any litigation there is risk, but to avoid a drawn out dispute with significant

costs it was agreed to put a final offer to Unite the Union, but time limited. Otherwise if Unite the Union chose to reject the offer, this industrial dispute could drag on until the Employment Tribunal proceedings and the Executive did not believe that would be in the interests of the citizens of Birmingham or the financial interests of the City Council. Therefore a final offer was made, which was rejected and so the Council must move to seek an injunction.

Members raised a number of issues to clarify the timescales and the processes involved. Within the course of that discussion, it was acknowledged that the very useful explanation given by Andrew Burns QC at Cabinet on 12<sup>th</sup> February should form part of the report as it outlined in detail the reasons for seeking to settle before applying for an injunction and what the courts would be looking for.

Other issues discussed included:

- The basis for the injunction was that Leading Counsel was of the view that it was likely that the current industrial action was unlawful. As Andrew Burns QC stated at Cabinet on 12<sup>th</sup> February the “reason for the strike is effectively to promote discrimination between different unions and that is a reason which is excluded from protection under the strike and industrial action legislation”.
- It was also clarified that injunction proceedings would happen more quickly than Employment Tribunal proceedings (where the earliest date was February 2020, though an application for an earlier hearing had been made);
- Members asked about the risk of “contagion” (i.e. the decision precipitating further claims from elsewhere) and the precedent this might set as set against the commercial justification for offering payments. The details of the risk assessment – likelihood and impact – were discussed in the private part of the meeting as this information was set out in a private report. However in the public part of the meeting the Cabinet Member and the Chief Finance Officer emphasised that there were risks with all options which had to be balanced.
- In response to a question on why the 15<sup>th</sup> January decision was exempt from call-in but the 12<sup>th</sup> February decision was not, the City Solicitor explained that in January the Council was in ACAS talks and it was hoped that parties would move to binding arbitration. Those talks continued post 15<sup>th</sup> January and on the 18<sup>th</sup> January the Council learned that the Employment Tribunal claims would not be heard until February 2020 which meant that the issue of the validity of claims would not be determined until then. Talks therefore progressed on ways to mitigate the financial impact if the industrial action continued until 2020 and Unite the Union put other options on the table that had not been put on the table before 15<sup>th</sup> January. Those options needed to be given careful consideration including legal and financial risk assessment and then come back to Cabinet for another decision. The Council was therefore in a different place on 12<sup>th</sup> February in that there were firm options for Cabinet to consider that had arisen out of the ACAS talks including an option to re-affirm the injunction position. In addition, because options had changed it was important that there was full transparency as to what these were.

- The City Solicitor further clarified that legal proceedings had not been issued whilst the call-in period was on-going, but that, as agreed at Cabinet, pre-action correspondence had started;
- The Cabinet Member also confirmed that the door was still open for Unite the Union to come back to talk, however the final offer had been made.

The Chair formally moved that in view of the nature of the business to be transacted which includes exempt information indicated the public be now excluded from the meeting:

Paragraph 4 and 5 S12A Local Government Act 1972

This was agreed by the Committee and the Committee went into private session.

On return to public session, it was:

**RESOLVED:-**

The Committee resolved to call-in the decision for reconsideration by Cabinet, with seven votes in favour and none against, on the grounds that:

*5 – the Executive appears to have overlooked some relevant consideration in arriving at its decision – that the information given by the QC at Cabinet should be fully considered as part of the report;*

*6 – the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do – that, due to the significant nature of the decision, Cabinet review its decision in light of all the information available;*

*8 – there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council – that the information given by the QC at Cabinet should be fully considered as part of the report.*

A report will be prepared for Cabinet to reconsider its decision as outlined above; in particular ensuring that full consideration is given to the explanation given by Andrew Burns QC at the Cabinet meeting on 12<sup>th</sup> February.

**8. WORK PROGRAMME**

(See document No 4)

It was proposed that the committee look at governance processes, in particular cabinet decision making and delegations.

**RESOLVED:-**

That the work programme be noted and a terms of reference for a future piece of work on governance be considered at a future meeting.

**9. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)**

None.

**10. OTHER URGENT BUSINESS**

None.

**11. AUTHORITY TO CHAIRMAN AND OFFICERS**

**RESOLVED:-**

In an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee

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The meeting ended at 1315 hours.