

KENT COUNTY COUNCIL

CABINET SCRUTINY COMMITTEE

MINUTES of a meeting of the Cabinet Scrutiny Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Tuesday, 21 July 2009.

PRESENT: Mrs T Dean (Chairman), Mr R Brookbank, Mr A R Chell, Mr L Christie, Mr B R Cope, Mr E E C Hotson, Mr M J Jarvis, Mr R E King, Mr J A Kite, Mr R J Lees, Mr R F Manning, Mr R J Parry (Substitute for Mrs J Law) and Mr J E Scholes

PARENT GOVERNORS: Mr P Myers and Mr O Poole

ALSO PRESENT: Mr A J King, MBE, Mrs P A V Stockell, Mr P D Wickenden and Mr D Whittle

IN ATTENDANCE: Mr P Sass (Head of Democratic Services and Local Leadership) and Mrs A Taylor (Research Officer to Cabinet Scrutiny Committee)

UNRESTRICTED ITEMS

3. Election of Vice Chairman
(Item. A3)

The Chairman explained that she hoped that the Cabinet Scrutiny Committee could become less confrontational, more inclusive, more forward looking and more constructive. The Chairman proposed three vice chairmen, one from the Conservative group (Mr Manning), one from the Labour group (Mr Christie) and the Independent Member (Mr Lees). In the absence of the Chairman the Vice Chairmen would chair the meeting in rotation.

This was agreed by the Committee.

4. Minutes - 29 April 2009
(Item. A4)

The minutes of the meeting on 29 April 2009 were approved as a correct record.

5. Follow-up Items from Cabinet Scrutiny Committee
(Item. A5)

The Chairman highlighted the information that the Director of Personnel and Development had agreed to provide at the Cabinet Scrutiny meeting on 29 April, Mrs Taylor would chase this information on behalf of the Committee.

The Committee noted the follow up report.

6. Informal Member Group on Budgetary Issues - 14 May 2009
(Item. A6)

The notes of the Budget Informal Member Group held on 14 May 2009 were agreed.

7. Informal Member Group on Budgetary Issues - 9 July 2009 (to follow)
(Item. A7)

The Chairman asked the Cabinet Scrutiny spokespeople to confirm which Members would be on the Informal Member group (IMG) on Budgetary Issues Mr Manning agreed to confirm who the Conservative Member would be after the meeting, Mr Christie confirmed that he would serve on the IMG and the Chairman confirmed that she would serve on the IMG. Mr Lees declined the offer to become a Member of the IMG on Budgetary Issues at this stage.

The Committee approved the notes of the IMG on Budgetary Issues held on 9 July 2009.

8. Options for Overview and Scrutiny
(Item. B1)

The Chairman explained that she had asked for a report on options for Overview and Scrutiny and best practice across the country because there was a need to improve scrutiny and its effectiveness. Mr A King explained that it was important to get the views of Members on the options for Overview and Scrutiny, the Leader had agreed to submit a proposal, which would be worked up and shared with the political groups, to the County Council meeting in the Autumn. Transparency was vitally important in local authorities, particularly given the composition of Kent County Council.

Mr Wickenden explained that the paper examined other ways in which Overview and Scrutiny was structured in other authorities.

The KCC model was based on directorate and portfolio responsibilities; there were a number of statutory requirements: a call-in mechanism, a Committee which scrutinised crime and disorder reduction (the Communities POC), a Health Overview and Scrutiny Committee and scrutiny of the Local Area Agreement was emerging through the Government's agenda.

Hertfordshire was quite radical in terms of the ways in which it commissioned and undertook council business. It didn't have any formal standing arrangements apart from an Overview and Scrutiny Committee that had call-in within its remit as well as the responsibilities of the Policy Overview Co-ordinating Committee, in that it co-ordinated and delegated work to Task and Finish Groups. Hertfordshire's Health Overview and Scrutiny Committee has invited a representative from each of the ten district and borough Councils to serve of the Committee.

Essex County Council was based on a Local Area Agreement themed approach – which was arguably more effective for looking at cross cutting issues but it did not necessarily effectively pick up all the business of the County Council. Essex has a joint Health Overview and Scrutiny Committee, and Mr Wickenden explained that

Kent had an arrangement with Medway Council to form a joint Health Overview and Scrutiny Committee if there was a need on a geographical basis. The Scrutiny Board at Essex County Council was effective at commissioning work and even commissioned a piece of work to the area forum to look at an issue at a local level on measles, mumps and rubella, which was an effective way of involving all relevant agencies as close to the community as possible.

Telford and Wrekin's model was based on a Local Area Agreement with limited co-option via open advertisement.

Durham County Council's model was based on a thematic approach and extensive co-option.

There seemed to be a lot of work being done on involving co-optees but at this time it was difficult to judge how effective this was proving to be. The report also looked at rapporteurs, which the POCC had considered but a scheme had not come to fruition. The London Assembly recommended a rapporteur system and in some cases a ballot was used to decide which issues to take forward.

The HOSC would be looking at refocusing and restructuring that Committee to see where it could be improved including the possibility of delegation to borough and district colleagues. In terms of the engagement of back bench Members there were a number of strands, Overview and Scrutiny was one, and the other was the localism agenda. Mr Whittle explained that the options set out in front of Members were all variations on themes there was not a one size fits all option. There was a distinction to be made around whether scrutiny is focused on LAA themes, or whether it focused on more detailed KCC business. There were no mature co-option models available apart from the education co-optees, but it seemed to work well where there were clear roles for each individual. In relation to the rapporteur model, the London Assembly had a significant resource attached to it, and that would have to be taken into account when considering that option, but it was open for discussion.

Mr Kite explained that he hoped that with such a strong majority the Council didn't miss out on the opportunities in front of it, it was necessary to look in a creative way at how we run our big communities. Scrutiny could become the Council looking inwards or outwards, but actually it should be the County and its organisations and representatives looking inwards at what the Council was doing for the County, it would be valuable to bring people with experience into scrutiny. Mr Kite suggested that the Council looked at its main sectors of customers and clients and brought in truly authoritative expertise and voices from those communities into scrutiny. Mr Kite also saw a role for those who communicated with the public, such as the media involved in Scrutiny on a non-voting basis. Mr Kite didn't see a need for a ballot to get an item onto the Scrutiny agenda, but what might be useful was a ballot to get items onto the Cabinet agenda.

Mrs Dean endorsed the involvement of partners in scrutiny and Mr Kite stated that there were two sets of partners, there were those which the Council worked with on a close basis, and also those who were recipients of services and who did not currently have close contact with the local authority.

Mr Christie stated that the concept of the media being involved in scrutiny was intriguing and an interesting concept worth further consideration. Mr Christie was

disappointed that there had been no discussion about pre-decision scrutiny and looking at strategic plans that were yet to be implemented. He hoped that pre-decision scrutiny would be high in the priorities of the County Council, without losing the ability to hold Cabinet Members to account. Mr Christie reminded Members that Kent had separated the scrutiny function from the policy overview function and he asked the witnesses whether there were authorities that had combined the two functions. Mr Wickenden explained that Essex was the other authority that separated the two functions; the other authorities had combined scrutiny of the Executive and the co-ordination role. In response to a question from Mr Christie about pre-decision scrutiny at the other authorities Mr Whittle explained that it hadn't been obvious but the research had not focussed on pre-decision scrutiny so Officers would have to go back and look at the authorities to determine whether they managed pre-decision scrutiny in an effective way. Mrs Dean explained that her understanding was that the Leader was happy that pre-cabinet decision scrutiny should take place, but it hadn't happened. The forward plans listed out those items which were open for the Cabinet Scrutiny Committee to scrutinise, but it needed to be improved.

Mr King explained that it was a process of raising the level of engagement, the key was the opportunity for Members to engage with the Cabinet, to understand the decision making process and the thinking of the administration. The Council was going through some tough economic times, and it would be important to be proactive, engagement was vital, all Members needed to engage with their constituents to ensure that the people of Kent had the opportunity to understand what the Council was doing and why. Meetings such as Cabinet Scrutiny Committee and the Policy Overview Committees were more important than they ever were.

Mr Hotson stated that he believed that the Council had not yet got local forums right, they were a key factor in demonstrating why the Council had made decisions, and for the forums to feed back to the Council on what it should be doing.

Mr R. King explained that he was keen on the idea of outside involvement in the scrutiny process, experts giving advice to Members would be of great benefit to the Committee. Positive back bench involvement was key along with engagement in policy evolution. Informal Member Groups and the rapporteur idea could be linked and report back to the Committee that commissioned the work. Mr King had concerns that coming to a conclusion by October might not give Members enough time to make an informed decision.

In response to a question from Mr Manning about measuring the success of the options for Overview and Scrutiny Mr Whittle explained that some of the options had not been in operation for long enough to make a meaningful analysis of how successful the models were. There were many questions about how it was possible to objectively measure how successful a scrutiny model was. Mrs Dean explained that her view of whether a scrutiny function was successful was whether it made a difference.

Mr Christie stated that Kent wasn't unique in running a Scrutiny Committee and separate Policy Overview Committees, he asked whether Officers took account of Members' experience of scrutiny in Borough Councils and how the local community were involved in borough and district level scrutiny. Councillors often spent too much time explaining why things couldn't be done, rather than how the Council

could move forward. Mr Christie asked whether the authorities looked at within the report had changed their structure following the elections in June 2009.

Mr Wickenden explained that regarding the success of Overview and Scrutiny tangible outcomes could be seen through the Select Committee process, for example the Home to School Transport review started at a local board in Dover featured as a piece of work by a Task and Finish Group and influenced the Cabinet and Council policy. Mr Wickenden explained that most authorities across the country were probably having a similar discussion following the election, whether the structures in place were still the most effective models. In response to a question from Mrs Dean Mr Wickenden explained that to his knowledge there were no borough or district councils that formally involved the County Council in their Overview and Scrutiny process.

Mr Hotson stated that October was perhaps too early for a decision over KCC's Overview and Scrutiny structure. In terms of measuring the success of Overview and Scrutiny the Comprehensive Area Assessment would be based on results and public perception and this should be taken into account when planning Committee agendas. Some authorities based their scrutiny programme on CAA targets, although KCC did not do this it would give an opportunity to include specific LAA items on Committee agendas, although it should not exclude Council business. Regarding rapporteurs, their work was vital and could be fed into the Informal Member Group process. Improving the forward plan was important in pre-decision scrutiny. Mrs Dean asked, within the authorities previously looked at, what support was available for a Member taking on the role of a rapporteur. Mr Whittle explained that he had experience of the London Assembly, each of the Assembly Members had a research officer and Members could also call on the Assembly's corporate research function – further examination would be necessary to determine what resource would be necessary. Mr Hotson explained that Maidstone Borough Council undertook a rapporteur scheme in which Members volunteered to undertake work and report back, it was a Member led process and did not take up a great deal of Officer time. Mr A. King explained that resource was limited and it would be difficult to increase that resource, the process of engagement meant that Members needed to do more for themselves.

Mr Kite explained that he was nervous of pre-decision scrutiny, he considered that the Cabinet needed to be free to make decisions and then have them scrutinised if necessary. Regarding the role of scrutiny, it should be the place where impact statements were produced and the effects of policy should be investigated. Email and website communications could be used to a much greater extent for example they could be used to inform elected Members of responses from members of the public to particular issues. Mr Kite stated that all Members of the Council were consumers of Kent's services and it was important, particularly in the difficult economic times ahead, to explain why the Council was making the decisions that it was and there should be a greater blurring of the boundaries between the borough and districts and the county council. Mrs Dean referred to e-petitioning and the website and it was important to make the website more user friendly for members of the public.

Mrs Dean reported that she had received a letter from the Federation of Small Businesses asking whether they could play a part in the scrutiny process at the Council, this was something that should be considered in making decisions about the Council's structure. Mr Jarvis commented on involving the public and made the

point that the public's perception of local government was low at present, the Council may get a low response to communications and it was important to ensure that the interest was there. Mrs Dean referred to 'Question Time' and the ways in which panel members get put forward to be on the panel. Mr Brookbank stated that it was important to fit in with the localism agenda and that service users would get involved if the issue was of importance to the community.

The views of the Committee would inform the Leader's debate and report to the County Council in October. Mr Christie asked whether the report could come back to the Cabinet Scrutiny Committee before it went to Cabinet in October. Mr A King explained that an appropriate structure would be produced for the October County Council meeting, and input from both the CSC and the POCs would be beneficial before the County Council meeting.

The Cabinet Scrutiny Committee:

- Thanked Mr A King, Mr Whittle and Mr Wickenden for attending the meeting and answering Members' questions.
- Thanked Mr A King for the opportunity in September to input further into the proposal for Overview and Scrutiny

9. Annual Unit Business Plans 2009/10
(Item. D1)

The Chairman explained that every year the Cabinet Scrutiny Committee looked in detail at three or four of the Directorate Unit Business Plans. A shortlist had been prepared by the Committee before the elections but it was for the current Committee to decide whether they wanted to add, delete or amend any of the suggestions.

Mr Parry stated that he thought Kent Highways Service would be a good Business Plan to look at in detail, particularly with the arrival of a new Cabinet Member. Each spokesperson was asked to provide Mr Sass with nominations for Informal Member Groups on four or five of the business plans.

The Cabinet Scrutiny Committee noted the report on the Annual Unit Business Plans and each group's spokesperson would provide Mr Sass with a list of priorities and nominations for the Business Plan Informal Member Groups.

10. KCC Membership of the Kent and Medway Fire and Rescue Authority
(Item. F1)

Mr Cope declared a personal interest as Chairman of Kent and Medway Fire and Rescue Authority.

Mr Christie had originally requested that this item be called for scrutiny by the Committee.

Mr Sass explained that places were allocated on the Kent and Medway Fire Authority in accordance with the proportionality principles in the Local Government and Housing Act 1989. The places should be allocated to each political group in

proportion to the size of each political group on the Council. A political group is defined in the regulations as two or more Members. Proportionality was largely mathematical but it was impossible to give a part of a seat to a Member so inevitably there would be an element of rounding up or rounding down in order to allocate places. KCC appointed 21 Members to the Fire Authority and the simple method explained that 21 Members was exactly one quarter of 84, one quarter of 74 was 18.5 and a quarter of 2 was a half. At the Selection and Member Services Committee in July there was no agreement about whether the Conservative or Labour group should be given the final seat on the Fire Authority so Mr Sass was asked to take the decision in consultation with the Chairman of the Selection and Member Services Committee. Mr Sass explained that he applied the same proportionality calculations to the Fire Authority appointments as those agreed at the Selection and Member Services Committee and reported to the County Council. Those calculations demonstrated the Conservative group were entitled to that seat by two thousandths of one percent.

Mrs Dean asked whether Mr Sass was aware of any further negotiations at a political level regarding this issue. Mr Sass stated that he was not involved with any such discussions. Mrs Stockell explained that she had asked Mr Sass to check that the proportionality figures were correct, the same proportionality rules had always applied on all Council Committees and Mr Wild also checked that the calculations were accurate. Mr A King explained that his recollection of the meeting was that there had been no opportunity for Members to see the Fire Authority calculations in advance of the meeting and it was therefore suggested that it be delegated to the Head of Democratic Services and Local Leadership in consultation with the Chairman of the Selection and Member Services Committee. Mr A King stated that it was entirely right that the same rules be applied in this instance as were applied for all other Committees.

Members asked Mr Sass for clarification on the figures contained within the report. Mrs Dean confirmed to Members that the same figure was applied in the first tranche of Committee allocations as in the second tranche, which included the allocations to the Fire Authority. Mr Christie asked what other considerations were taken into account when deciding whether the remaining seat should be allocated to the Conservative group or the Labour group. He pointed out that the Liberal Democrat Group had been given a seat on the Kent/Medway Joint Police Authority Appointments Committee when mathematically they were not entitled to a seat. Mrs Stockell stated that the allocations were based on the proportionality calculations agreed at the last County Council meeting.

Mr Kite expressed his concern about the line of questioning that was being put to Mr Sass, Mr Kite asked whether at any point Mr Sass had reached another conclusion about the Membership of the Fire Authority and was then told to overturn it. Mr Sass explained that he was not given any instructions by any Member of the Conservative group to come to a specific conclusion. Mr Parry asked Mr A King whether he was confident that the right decision had been made on this occasion. Mr A. King responded that yes, it was a difficult situation, but that Mr Sass had taken the justifiable solution.

Mr R. King asked whether the appointment to the Fire Authority was paid, Mrs Dean confirmed that there was a basic allowance of £1,300.

In response to a point from Mr Christie, Mr Sass stated that the Committee was perfectly entitled to ask the questions that it had done and hoped that the Committee had received a full explanation of the issue.

At the conclusion of this item the Chairman asked that the witnesses were not present during the Committee's discussions over its recommendations.

Mr Christie stated that at no time had he advocated that he would be the Labour Member, but that the Labour Group was entitled to a seat. Mr Christie proposed that the issue should be referred back to the Cabinet, or the relevant Committee, Mrs Dean seconded.

Mr Parry commented on the amount of time spent on discussing this issue, in his opinion far too much time had been spent on it.

Mr Kite stated that the Council's Committees were still dealing with the fall out from the election. He stated that the maths were right and that had led to Mr Sass making his decision.

Mr Lees stated that the report was clear but there had to be a cut off point and the Committee should move forward with the recommendation made by Mr Sass.

Mr Poole, the Parent Governor Representative, expressed his view as a resident of Kent. It had been acknowledged that the maths were not always the final deciding factor, that there were some political agreements over and above the maths. Mr Poole understood why the Labour group didn't have a seat on the Committee but as an independent person he could see no reason why a Member of the Labour group could not be on the Fire Authority. Mr Poole stated that the Council had come across as not being flexible, and did not come across well.

Mrs Dean agreed that in terms of maths it proved that the Labour group was not entitled to a seat, however it was clear that all the groups had a degree of negotiation to reflect Members expertise. Mr Christie had huge experience of the Fire Service and had connections with the government so in the opinion of the Chairman the decision to exclude him would be to the detriment of the Kent and Medway Fire and Rescue Authority.

Members voted on Mr Christie's proposal but the proposal was not carried.

The Cabinet Scrutiny Committee:

- Thanked Mr A King, Mrs Stockell and Mr Sass for attending the meeting and answering Members' questions.

11. Extension to the Kent TV contract *(Item.)*

Concerns were expressed about the decision taken by the Chief Executive to negotiate a new contract for Kent TV with Ten Alps plc for a period of 7 months to a value of £350,000. (This is referred to as a "contract extension" because the new contract has the effect of extending the existing contract with Ten Alps plc). Before it was decided to exercise a formal call-in procedure the Chairman and the Conservative spokesperson met with the Chief Executive, the Director of Strategic

Development and Public Access and the Barrister (Contracts and Procurement) on 15 July. The Barrister subsequently sent an email to the Chief Executive in which he set out the reasons given for his view that the Chief Executive did not have a conflict of interest. Two issues were of concern to the Chairman and the Conservative Spokesperson; the first was whether the decision had been taken properly by an Officer of the County Council (as opposed to it being a Member-level decision) and the second matter was whether Mr Gilroy was the most appropriate person to take that decision.

Discussion regarding special circumstances

Because the original contract did not contain an explicit provision for an extension, it was necessary to enter into a new contract on the same terms and conditions as the existing contract, for a period of seven months. Due to the value of the contract, special circumstances had to be deemed to apply to avoid the need to seek competitive tenders for the new contract. Questions were asked about the existence of special circumstances and the issue of perception and sensitivity.

Reference was made to the special circumstances that were deemed by the Chief Executive to exist in relation to the contract extension as set out in the notes of the informal meeting held on 15 July.

Discussion in relation to the signing of the contract by the Chief Executive

A large proportion of the discussion on 21 July related to the issue of whether it was proper and appropriate for the Chief Executive to personally sign the new contract, in view of the fact that he was also the Chairman of the Board of Governors of Kent TV.

The Chairman stated that at the informal briefing, Members had come to the conclusion that in terms of the process followed, the Chief Executive was perfectly entitled to exercise an authority that the guidelines of the County Council gave him. This was supplemented in the written advice from the Barrister (Contracts and Procurement), in which it was made clear that the Chief Executive did not have any conflict of interest in this matter. The role of the Board of Governors was clearly set out at points (a) to (e) of the Barrister's note circulated to Committee Members.

Members discussed the public perception of the Chief Executive both authorising the special circumstance and signing the contract extension. In particular, the following views were expressed:

- Mr Manning raised concerns about the sensitivity of the issue and the public perception of Mr Gilroy being both the Chief Executive and the Chairman of the Board of Governors of Kent TV.
- Mr Christie raised concerns whether, perception wise, it was a reasonable decision for the Chief Executive to take, his views were that public perception might be that somehow there was a conflicting interest.
- Mr Hotson suggested that for the future, the Chief Executive should not be in a position to take such decisions and it should be another officer or a Member level decision because there could be the perception of a conflict of interest.

- Mr Hotson stated that it was unforgiveable that there was a period of four of five months when there was no Member involvement or knowledge, and that should not happen in the future.
- Mr Kite stated that this situation failed the public perception test
- Mr Christie remarked that the decision to extend the contract was taken during April, but the contract was only signed on 15 July, the same day as the informal meeting.
- The Chairman explained that neither she nor the spokespersons had exercised an official call in of this issue firstly because they were satisfied that the Chief Executive had the authority to exercise this decision. The issue was whether it was an appropriate decision for him to take and that was a matter of judgement.
- Mr Parry raised concerns about the period of time in which there was no Member involvement. In future Members should be notified at the earliest opportunity of what was going on.
- Mr R King explained that it was a matter of Member involvement and which decisions should be made by the Cabinet.
- Mr Scholes stated that it was inconceivable that the public wouldn't think that there would be a conflict of interest. He also asked whether the matter should not have been brought to the attention of the Cabinet
- In response to a question, the Chairman stated that she had had a discussion with the Leader on this subject and he explained that he did have a discussion with the Chief Executive prior to this decision being taken so it was assumed that the Cabinet were aware

The Cabinet Scrutiny Committee agreed that:

- the minute of the meeting be shared with Mr Carter, Mr Gilroy, Ms Oliver and any other relevant Members and Officers;
- the agenda for the September meeting of the Cabinet Scrutiny Committee contain two items. One on the viability and success of Kent TV and the other to discuss the process behind decisions such as the extension to the Kent TV contract.