

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 Wednesday, 5 August 2009.

PRESENT: Mr D L Brazier (Substitute for Mr A R Chell), Mr R Brookbank, Mr I S Chittenden (Substitute for Mrs T Dean), Mr B R Cope, Mr M C Dance (Substitute for Mr J E Scholes), Mr M J Harrison (Substitute for Mrs J Law), Mr R F Manning, Mr M J Jarvis, Mr J A Kite, Mrs E M Tweed (Substitute for Mr R E King) and Mr C T Wells (Substitute for Mr E E C Hotson).

IN ATTENDANCE: Mrs A Taylor (Research Officer to Cabinet Scrutiny Committee) and Mr P D Wickenden (Overview, Scrutiny and Localism Manager).

UNRESTRICTED ITEMS

12. Extension to the Kent TV Contract *(Item E1)*

Mr P B Carter, Leader of the Council, Mr A J King MBE, Deputy Leader of the Council, Mr P Gilroy, Chief Executive, Mrs T Oliver, Director of Strategic Development and Public Access and Mr M Banks, Barrister were in attendance for this item to answer questions from Members of the Committee)

(Mr R F Manning Vice Chairman of the Committee presiding.)

(1) Mr Chittenden declared a personal interest as he was a Member of the Board of Kent TV.

(2) The Chairman expressed his embarrassment following the previous Cabinet Scrutiny meeting on 21 July. He explained that as one of the joint Vice Chairmen of the Committee he should have warned the Chairman that the discussions developing around Kent TV were not appropriate particularly as Kent TV was not on the agenda.

(3) The Chairman explained that in early July Mrs Dean had expressed to him concern about the extension to the Kent TV contract and she had discussed her concerns with the Leader. An informal briefing with the Chief Executive, the Director of Strategic Development and Public Access and the Barrister and the Members came to a conclusion that the Chief Executive acted within his delegated powers. Mr Manning and Mrs Dean agreed that the notes of the informal briefing should be issued to the Cabinet Scrutiny Committee for information. However, Mr Manning explained that he did not expect those notes to be debated, as they were an informal note although he raised no objection at the meeting.

(4) Mr Chittenden reminded Members that Mrs Dean was not present at the meeting and so there should be very limited discussion on her actions as she was not able to respond. Mr Chittenden expressed his differing views to much of the correspondence over Kent TV but his understanding was that the 5 August meeting

had been called to discuss the issues that were raised and debated at the last meeting.

(5) In response Mr Manning stated there was one fundamental difference that today it was an agenda item to consider the process behind the extension to Kent TV – at the last meeting it was not.

(6) In response to a question about protocol from the Chairman Mr Wickenden confirmed that, Kent TV had not appeared on the agenda for the meeting on 21 July and the agenda for Cabinet Scrutiny Committee (CSC) meetings are agreed by the Chairman and Vice-Chairmen. With hindsight advice should have been offered to Mrs Dean not to continue with the debate on 21 July because the item was not on the agenda and to deal with it at the meeting would require the item to be urgent business and a reason given for the urgency. The other alternative would have been to have discussed with Members of the Committee, but not as part of the formal meeting, to discuss how the Committee would wish to proceed at a future meeting at which those Member and Officers before the Committee on 5 August would be present. Mr Wickenden quoted Appendix 4 Part 4 rule 4.11 which stated that: “the Committee may not criticise or adversely comment on any individual officer by name”. Mr Manning stated that he wanted to chair a fully informed and open debate recorded by accurate minutes which would then be presented to the next Cabinet Scrutiny Committee meeting.

(7) The Leader stated that he had had two meetings with Mrs Dean in the fortnight leading up to the CSC meeting; they had discussed the change of date, which was agreed on the basis that Members who wanted to attend the start of the Children’s Champions Board at 10am would have the opportunity because CSC would have finished by 10am. Mr Carter stated that Mrs Dean had confirmed to him that the Kent TV decision would not be called in by the Committee and that the notes of the informal briefing would be circulated for noting by the CSC. The Leader had explained to Mrs Dean that the decision to extend the contract had been part of a discussion with Mr Gilroy leading up to a decision being taken. It had been made clear that both the Leader and Cabinet Member, Mr King were fully apprised of the decision which was to be taken.

(8) The Kent TV contract was due to expire after the election, the proposed extension was debated when the budget was agreed in February, there was a three month staff notice period in the contract and had the contract not been extended ‘at risk’ notices would have gone out to all Kent TV staff during the period of purdah. Those issues meant that the Chief Executive had to make a decision either to distribute ‘at risk’ notices to Kent TV staff or to take the decision during purdah. The Leader explained that he was not able to make such decisions in the period of purdah. The Leader stressed that Mr Gilroy, the Cabinet Member and he had had detailed discussions on the extension of the contract, all the protocols had been followed correctly, the Barrister had confirmed that Mr Gilroy had no conflict of interest and a line should now be drawn under the Kent TV process whilst ensuring that the actions at the 21 July CSC did not happen again. There would be a full debate about the possible extension to the contract beyond March 2010 following a proper evaluation of Kent TV in the early autumn.

(9) Mr Chittenden reiterated that statements should not be made about Members who were not present at the meeting.

(10) Mrs Tweed stated that the cost of extending the contract (£350k) was within the 2009/10 approved budget, the decision taken was not a key decision so she did not see the purpose of the meeting, Mr Manning explained that the Committee had met because the process of the previous meeting had been challenged.

(11) Mr Wells asked the Leader why the factual information he had given the Committee in his previous statements had not been made available to Members previously. Mr Carter explained that he had emphasised to Mrs Dean that the Leader and Cabinet Member had been consulted on the decision taken by the Chief Executive, he had been assured that the issue wouldn't be called in and there would not be any debate. The Leader stated that had he been called to give evidence at the previous meeting that information would have been drawn to Members' attention. Mr Carter stated that it was appropriate that the facts were put forward to the CSC with the witnesses present. If Members wished to further debate the issue with Mrs Dean present the Leader would be pleased to attend.

(12) In response to a comment from the Chairman Mr Chittenden stated that Mr Manning should not feel solely responsible for the events on 21 July, there were officers present in the room at the time and no objections were raised.

(13) Mr Kite expressed his view that the issue of public perception had been key. Mr Kite felt that the comments made on 21 July were not a criticism of the political process or the individuals involved, the comments related to public perception. Mr Kite asked the witnesses to explain how the movement of the election from May to June affected the process leading up to the signing of the contract and that there was advice sought about the issue of public perception. The Leader stated that public perception would have been different if Members had been made fully aware that the Chief Executive in consultation with the Leader and Cabinet Member had made that decision through the proper process.

(14) Mr Gilroy explained that consultation had been substantial and started in September 2008 when Cabinet and the County Council had started preparation on the County Council's budget for 2009/10 and there were some contingent discussions which took place. Mr Gilroy informed the Committee of the dates when a range of discussions had taken place on the Kent TV contract. Mr Gilroy stated that the matter was raised at the February County Council meeting when it could be seen that there was provision in the proposed County Council budget to extend the contract. At the end of the ongoing dialogue/discussion it was agreed that a more measured reflective decision needed to be made about Kent TV.

(15) Mr Gilroy explained that he had delegated authority to take decisions up to the value of £1million without referring back to Members which is not unusual. He added that as Chief Executive he sat on at least 5 major executive boards where decisions were being made about county council expenditure. In terms of public perception a judgement with the Leader had to be made about what the right decision was. Members had been caught in the thrust of the discussion on 21 July and had made assumptions that there had been no consultation or discussion with the administration at all – which clearly there had been. Mr Gilroy was concerned that the Committee had not at its meeting on 21 July had the full information.

(16) The Leader explained that the costs were in the public budget and processes were followed in a correct and proper way in extending the contract. This was totally open and transparent.

(17) Mr Gilroy clarified that the Kent TV Board was not a company, it was an association of interests of people who had been brought together to monitor and evaluate the content of Kent TV and the way the service should be run. The decision was made not to compete with local media for income during its first two years.

(18) Mr Brazier explained that he had not been in possession of all the facts, he understood that there had been a failure to realise that there would not be sufficient time to retender the contract, and that negotiation would then cross the purdah period. The note of the informal briefing suggested that Mr Gilroy had not sought advice on the issue of potential conflict of interest. There was a question of public perception and it would have been advisable for Mr Gilroy to have taken advice on that matter. In response Mr Gilroy stated that officers had to declare interests in the same way as Members, he had no pecuniary interests or other interests in Kent TV. The cost of the extension was in the budget, Kent TV was in the Business Plan. Once Members had decided on the Business Plans and the policy it was the job of officers to undertake the work. Mr Gilroy informed the Committee that reference to Kent TV in the Business Plans had not been called in for scrutiny.

(19) Mr Chittenden stated that there had been a failure to communicate; he would have expected a briefing note which may have negated the need for the meetings. He asked why there had been no briefing note. Mr Gilroy explained that he had a chronology of dates on which he had had detailed discussions with the Leader and other Members and in addition the County Council had had the opportunity to comment when the business plans and the budget were approved.

(20) In response to a question from the Chairman the Barrister confirmed that the contract was 'new' rather than an extension, this was for technical reasons relating to the 'spending the Council's money' document.

(21) Mr Dance explained that as a Cabinet Member at the time he had been fully informed about the issues.

(22) Mr Wells referred to the public perception test and the difference in the Member and Officer code regarding determination of what public perception might be. In response to the point about Business Plans Mr Harrison explained that they were often hundreds of pages long and it was probable that not all Members read all of the Business Plans.

(23) Mr Kite stated that he had concerns about the timing of the contract, and the decision being required during purdah. Undoubtedly there was a public perception issue, his view was that Mr Gilroy and the Leader had behaved entirely properly throughout, but in future it was vital that the Council concentrated on the timing of contracts. Mr Carter had a view that the decision would be taken in two stages, one would be a six month extension and following a review and evaluation a decision would have to be taken on the future of the Kent TV contract. Mr Cope stated that public perception depended on which way the issue was addressed.

(24) Mr Jarvis raised his concern about public confusion over 'new' contracts and contract extensions and the Council needed to ensure that it was clear to the public in future. In response Mr Gilroy explained that procurement processes were very clear but it was important that in the public domain a full explanation was given and this would be discussed further.

(25) Mr Brookbank explained that at the previous meeting he had formed a view about public perception; following the facts presented he had come to a different view. He felt that the previous meeting had not been handled well.

(26) Mr Chittenden expressed his view that the extraordinary meeting had not served any purpose; there was an agreement for further discussion in September.

(27) Mr Manning wanted to record that, in his capacity as Joint Vice Chairman, he offered his apologies for not adhering to the protocols and naming officers in the way he had.

(28) Mr Wickenden quoted from an email sent by Mrs Dean to Mr Sass, Mr Manning, Mr Christie and Mr Lee in which she reiterated the conclusions of the previous CSC meeting.

"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."*

(29) The Leader explained that there would be a proper review of the successes and the weaknesses of Kent TV and at an appropriate time he would discuss the issue with the CSC but September might be too early.

(30) Mr Gilroy explained that the process had been discussed but that perhaps the next stage should relate to the viability and success of Kent TV. Mr Wickenden explained that those decisions were from the record of 21 July meeting. Before the next meeting there would be a discussion between the Chairman and Vice Chairmen of the CSC about the way the issue should be handled, if at all, at the September meeting.

(31) Mr Harrison suggested that an IMG be set up to look at Kent TV to report back to the Committee.

(32) It was agreed that:-

(33) The Committee, having examined the process in extending the Kent TV contract for the seven month period have resolved to take no further action

(34) Mr Chittenden asked that his abstention be recorded.

Post meeting note from the Chairman:

Following the meeting I have sought clarification on the Leader's remarks concerning decisions that may or may not be made during the Purdah period. I have established that whilst the Leader could have taken the decision to extend the contract during this period, the Code of Recommended Practice on Local Authority Publicity issued under the Local Government Act 1986 states that:

"Particular care should be taken when publicity is issued immediately prior to an election or by-election affecting the authority's area to ensure that this could not be perceived as seeking to influence public opinion, or to promote the public image of a particular candidate, or group of candidates. Between the time of publication of a notice of an election and polling day, publicity should not be issued which deals with controversial issues, or which reports views or policies in a way that identifies them with individual members or groups of members."

It follows therefore that giving cognisance to all circumstances the Leader acted appropriately.