

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL
AUDIT AND GOVERNANCE COMMITTEE

Minutes of the Meeting held on 16 February 2023 at 6.00 pm

Present:-

Cllr J Beesley – Chairman

Cllr L Fear – Vice-Chairman

Present: Cllr M F Brooke, Cllr M Howell and Cllr T Johnson

175. Apologies

There were no apologies for absence.

Councillors D Butt, M Cox, A Filer and M Phipps were present at the meeting on a virtual basis (without entitlement to vote).

The Interim Leader of the Council, Councillor P Broadhead, was present at the meeting on a virtual basis.

Councillors J Butt (Chair of Licensing Committee) and D Kelsey (Chair of Planning Committee) were present at the meeting for the discussion on agenda item 9 (Review of the Constitution).

An apology for absence had been received from the Chief Executive.

176. Substitute Members

Formal notification had been received appointing Councillor D Brown as substitute for Councillor M Cox.

177. Declarations of Interests

Councillor T Johnson referred to a potential interest in agenda item 9 (Review of the Constitution). [On receipt of advice, this declaration was subsequently withdrawn].

178. Confirmation of Minutes

RESOLVED that the Minutes of the meeting of the Committee on 01 December 2022 be confirmed as a correct record.

179. Public Issues

Before responding to a series of Public Questions relating primarily to agenda item 9 (Review of the Constitution), the Chairman reminded the Committee that although responses would be provided, all the issues would be subject to discussion later in the meeting and that any recommendations from the Committee would be referred for decision to the Council.

The Committee was advised of the receipt of seven Public Questions.

Public Questions from Mr Alexander McKinstry

Public Question 1.

I note, with dismay, that the Constitution Review Group is looking to restrict public participation at meetings once again, and that should tonight's proposals pass full Council, residents will be limited to one question / statement only on any agenda item. These restrictions were rejected by this Committee in October, on multiple grounds including contravening Nolan Principles (openness, accountability), yet here they are again - with a new restriction, namely a 15-minute limit on public contributions. Why is the Group so determined to cap public involvement, when there is no public appetite for this and public questions have never been interminable?

Response:

It must be clarified that it not proposing to introduce new or change existing provisions relating to the time limit for public participation at meetings as is suggested.

The Constitution Review Working Group considered the existing arrangements in the context of the comments and feedback from previous meetings of the Audit and Governance Committee and Council. The Council is keen to promote and encourage a greater number of residents and other interested parties to attend and participate in the democratic process.

That being said, however, the existing arrangements, without a limit on the number of questions or statements that any one person may submit on an individual item of business, has given rise to individuals presenting multiple submissions on single items which could prevent others from making representations. To assist and respond to other concerns regarding the limitations presented by the restriction in length to 100 words, it is proposed that the word limit of a submission be increased from 100 to 150 words. It should be noted, that there is no limit proposed to the number of agenda items that an individual may submit a related question or statement about.

Public Question 2.

One restriction being floated for the first time tonight is Rule 13.3.2, which is the most ominous I have ever come across in a local authority's constitution: "A protocol ... may make provision limiting the ability of a member of the public to speak on any item."

What exactly is the Constitution Review Working Group considering here? Is the Group seriously looking to impose lifetime bans on members of the public speaking at meetings and if so, do they have me specifically in mind?

Response

The changes proposed to Rule 13.3.2 seek to establish a better link between protocols adopted by the respective committees and the Council's Constitution Procedure Rules. A strengthening of this relationship is

recommended by the legal advisors following the planning case of *The Queen (on the application of the Spitalfields Historic Building Trust) v London Borough of Tower Hamlets v Old Truman Brewery Ltd* (August 2022). In this case the defendant Local Authority successfully defended a judicial review on a number of grounds including on the basis of provisions contained within the Constitution. On reviewing BCP's Constitution it appeared that the relevant provisions were not in place and consequently they are now being proposed.

For clarity, it is not proposed to impose any additional restrictions on public speaking through this amendment.

Public Question 3.

How precisely will Rule 13.3.2 operate, if it comes into force? Presumably each committee will have its own protocols and procedures given the spirit of Section 13.3 but is it anticipated, for instance, that residents will be given fair warning if a committee is considering silencing them? Will the deliberations of committees, when they discuss possible or actual impositions of Rule 13.3.2, be carried out in public (or made public)?

Response

If any of the Regulatory Committees wished to amend existing protocols or introduce new protocols, I can confirm that these would be debated in formal meetings of the respective committees for which five-clear days' notice would be provided in accordance with the appropriate Regulations.

Public Question 4.

Finally, it is a sad fact that there are councillors who have been found guilty by the Standards Committee of bullying, treating people with disrespect, and /or bringing the Council into disrepute. What safeguards will be drawn up, then, to prevent Rule 13.3.2 from being abused by errant members? I can well imagine a rogue councillor looking to impose a speaking ban simply because a resident is particularly combative, or persistently critical of their political party. Perhaps that is the aim of Rule 13.3.2, as it does seem to have arisen out of nowhere.

Response

The use of words such as "guilty" and "rogue councillor" are unfortunate in the context of functions exercised by the Council's Standards and Regulatory Committees. These functions are a statutory requirement and are carefully structured as a result. As stated previously, this provision simply provides the Regulatory Committees with a robust framework to approve relevant protocols. Any changes to existing protocols or the introduction of new protocols would require approval by the relevant committee, the meeting would be open to the public and the report published five clear days before the meeting.

Public Questions from Mr Daniel Parkin

Public Question 5.

The changes to the Constitution being proposed tonight include some familiar attempts at reducing public involvement at meetings. Notably, Rule 13.4.9 - "No member of the public may ask more than one question on an individual item of business." Though the Head of Democratic Services excludes this from Paragraph 31 of his report, this was seen as a major issue at October's meeting, with members of the public and councillors deploring its effect on transparency, accountability, public enlightenment and public participation generally. So why has this proposed restriction been reintroduced?

Response

As referenced in the response to Mr McKinstry, the Constitution Review Working Group considered the existing arrangements and the comments and feedback from previous meetings of the Audit and Governance Committee and Council. The Council welcomes public participation but wishes to increase the number of opportunities for as wide as possible attendance in addressing our meetings.

Feedback has suggested that a reason for submitting multiple questions was due to the constraints of the 100 word limit. If supported this will be increased to 150 words as previously stated.

Public Question 6.

Another public restriction being proposed tonight is Rule 13.27, which removes the right of reply of petition organisers. I find this particularly disturbing because at the debate on the petition to remove Drew Mellor and Philip Broadhead on 8 November, Cllr Farr ascribed the petition to "trolls", "sad little people" who "need calling out and exposing". Why then are you removing the petitioner's right of reply, which is only 3 minutes, especially when petitioners are facing that degree of hostility and provocation?

Response

The process for debating petitions over the last 12 months where the threshold has been reached, has demonstrated that in all but one occasion, a formal motion was submitted by councillors which transferred the debate from the petition to the Motion from councillors. The debating rules for Motions is prescribed and these were found to be in conflict with the petition procedure rules. As a consequence, the petition organiser in each of these cases did not have the right of reply afforded to them. The proposed amended is a practical remedy.

Public Question 7.

Lastly, Paragraph 13 of the Head of Democratic Services' report refers to a recent High Court case and "the need to review a number of provisions in the Constitution impacted by the judgment ..." What was the case, what provisions were impacted exactly, and how?

Response

The case in question was *The Queen (on the application of the Spitalfields Historic Building Trust) v London Borough of Tower Hamlets v Old Truman Brewery Ltd* (August 2022). In this case the defendant Local Authority successfully defended a judicial review on a number of grounds including on the basis of provisions contained within the Constitution. On reviewing BCP's Constitution, it appeared that the relevant provisions were not in place and consequently they are now being proposed.

As stated in response to the earlier question, the proposed changes will establish a better link between protocols adopted by the respective committees and the Council's Constitution Procedure Rules.

180. External Auditor Update

The Committee received a copy of letter from the external auditor, Grant Thornton to the Chief Executive and Chief Finance Officer dated 10 February 2023 relating to the 2023/24 budget setting process and a copy of the letter had been circulated within a Supplemental agenda ahead of the meeting. The letter referred back to previous presentations to the Committee and set out the external audit's views on the 2022/21 'Value for Money' ('vfm') audit. There was also reference to progress with the 2023/24 budget setting process to date and, particularly the circumstances around the preparation of a potential alternative 2023/24 budget. The letter outlined and explained the auditor's concerns on a number levels, which were set out in full, around the possibility of any late amendments to the current indicative budget. The Committee was reminded that the current concerns had arisen not from the standard budget setting process as reported through the Cabinet in the usual way, but because of the submission of changes after that final budget setting process was underway.

The external auditor provided further background and explained the possible options for taking the matters forward from the auditor's perspective and set out how the process would be managed within Grant Thornton. The Committee also heard from the Acting Leader of the Council providing background to the amendments proposed and commenting on the issues being raised by the external auditors as well as setting out further detail about the proposed budget amendments. The external auditor responded to detailed questions from the Committee. Within the terms of its audit and governance remit, the Committee gave detailed consideration to the letter and the range of issues arising.

The external auditor also delivered an update on the subject of progress with the 2020/21 Opinion Audit and was able to inform the Committee that the outstanding issues extensively reported to the Committee over recent months were now reaching resolution and that a concluding report would be submitted to the next meeting of the Committee on 9 March 2023. An update was also provided on the 'Value for Money' audit for 2021/22 and 2022/23 and about the delivery timetable likely to be involved. The Committee was advised that the timetabling proposals and potential additional work would need to be carefully looked at in terms of resources

and capacity within the Council's finance team and further reported back to the Committee in March.

The Chairman thanked the External Auditors, Members of the Committee and staff from the finance team for their contributions towards consideration of these important issues and it was noted that further reports would come forward to the next meeting.

181. Annual evolution of Policies for 2023/24 : Whistleblowing Policy, Anti-Fraud & Corruption Policy, Declaration of Interests, Gifts & Hospitality Policy and the Regulation of Investigatory Powers Act (RIPA) & Investigatory Powers Act (IPA) Policy

The Head of Audit and Management Assurance presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'A' to these Minutes in the Minute Book.

The report comprised the annual review of the Council's Anti-Fraud & Corruption Policy, Whistleblowing Policy, Declaration of Interests, Gifts & Hospitality Policy (for Officers) and Regulation of Investigatory Powers Act (RIPA) & Investigatory Powers Act (IPA) Policy. Review of the policies was reported to have taken place to ensure they were updated in line with best practice and legislation.

The Committee was referred to minor changes made to the Council's Anti-Fraud & Corruption Policy including updating manager guidance to clarify arrangements for contacting the Police and the Insurance Team where a theft or burglary had occurred. Appendix C of the 'Anti-Money Laundering Requirements' policy had also been updated with additional possible indicators of money laundering identified and an updated link to relevant legislation.

The Whistleblowing Policy had been updated with minor changes including amendments to the outcome template letter, an updated Children's safeguarding contact number and Employment Rights Act legislation reference. Minor amendments had also been made to the Seven Stage Whistleblowing Policy (Appendix 1) to clarify the process. In addition, in Section 6 of the policy 'How Is This Policy Implemented', the process to follow where an individual is dissatisfied with the outcome response or the process followed had been highlighted.

Some changes had been made to the Council's Declaration of Interests, Gifts & Hospitality Policy (for Officers) including a clearer statement that the Council requires all employees to consider their specific job role, not just their Council employment and personal circumstance when deciding whether to make a declaration. Guidance had also been added on the Council giving/ receiving donations and clarification made for giving/receiving sponsorship. Additional clarification has also been made of terms used regarding officer tiers in Appendix A.

The Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) Policy had been updated with some minor changes to include reference and links to Home Office Code of Practices for Covert

Surveillance and Property interference (Aug 2018), Interception of Communications (Dec 2022) and Covert Human Intelligence Sources (Dec 2022). Links to other relevant legislation were also reported to have been added throughout the document.

The changes had been approved by the Equalities Impact Assessment Panel meeting on 9 February 2023.

RESOLVED that the Audit and Governance Committee approve the Council's Anti-Fraud & Corruption Policy, Whistleblowing Policy, Declaration of Interests, Gifts & Hospitality Policy (for Officers) and the Regulation of Investigatory Powers Act (RIPA) & Investigatory Powers Act (IPA) Policy for the 2023/24 financial year.

Voting: Unanimous

182. Financial Regulations - Annual evolution for 2023/24

The Head of Audit and Management Assurance presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'B' to these Minutes in the Minute Book.

Evolutionary changes to the Council's Financial Regulations were summarised with changes shown in red text throughout the document at Appendix A to the report. The changes included the addition of a very minor clarification for maintained schools, using waiver sign off as an example, to recognise that schools have the ability to sign off certain financial matters according to their own schemes of delegation hierarchy. References to Poole Housing Partnership managing the Poole locality side of the Housing Revenue Account had been removed.

Part G, Procurement and Contract Procedures, had been subject to layout changes to the format, numbering and ordering to more naturally follow the order of activity associated in a procurement process and to align to the 'Government Commissioning & Procurement Playbook'.

For simplicity the whole of Part G had been shown in red text, to indicate a change from previous versions, although the actual requirements in the context of what is expected of Council staff when commissioning and procuring works, goods and services were not fundamentally different.

Three changes to the Corporate Schedule of Financial Delegations, Appendix 1 to the Regulations were reported including Revenue Virement delegation clarification (RV6) and a new expenditure delegation (EX13) for special severance payments to align with statutory guidance (May 2022).

A previous delegation, covering only business rates, had been expanded to now include Council Tax and any other tax rebate relief (TR1) where the Council must implement a fully funded government programme or scheme.

RESOLVED that Audit and Governance Committee approve the Financial Regulations as shown in Appendix A of the report to the Audit and Governance Committee before referral to Council for adoption.

Voting: Unanimous

183. Review of the Council's Constitution - Recommendations of the Constitution Review Working Group

The Head of Democratic Services presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'C' to these Minutes in the Minute Book.

The Committee considered a series of recommendations from the Constitution Review Working Group which had met on two further occasions since last reporting to the Council in December 2022. The objective of the work remained finalisation of the current phase of work prior to the inception of the new Council from May 2023. Any recommendations arising from the Committee would be referred to full Council for adoption.

The Committee was referred to a number of issues which the Working Group had identified as requiring no further action or which could be deferred for consideration by the new Council after the elections. The Committee was also presented with details of issues recommended by the Working Group for consideration by the Committee. In respect of each item a summary explanation was provided and the proposed changes shown in 'track changes' format for ease of reference and comparison as part of the detailed discussion at the Committee.

Although there was broad consensus, there was particular discussion around issues relating to public participation at meetings and the Committee was informed that, since reference of this matter back to the Committee by Council, an Equality Impact Assessment had been undertaken and received by the Working Group. Reflecting this, the Committee were of the view that the period for public questions should remain at 15 minutes whilst retaining the discretion of the Chairman to extend the time allowed. It was also agreed that the number of permitted questions should be limited to a maximum of three on any individual item of business although, within the 15 minutes period, questions be taken on a 'rotation' basis with a questioner's second questions only being allowed after all other questioners had asked their first questions. There was also support for increasing the maximum word limit per question to 150 words as proposed by the Working Group and as set out in the report.

The Committee also considered a proposed series of changes to and associated with the scheme of delegation to the Planning Committee and particularly around the number of public representations required to trigger referral of an application to the Committee and how this was being applied on practice. Consideration was also given to the role of ward Councillors within this context. Following discussion on the item, it was agreed not to support the recommendation at that time but rather to have the matter brought back to the Committee, if possible on 9 March 2023, with the objective of allowing officers and the Constitution Review Working Group time to reflect on various points raised during the meeting and, to the extent

considered appropriate, to provide further clarity and or possible compromise solutions.

RECOMMENDED that

- (a) the amendments to the Constitution relating to the Regulatory Committees, as detailed in paragraphs 13(a) to (e) to this report, be approved;**
- (b) the amendment to Part 4D, Procedure Rule 23.4 (Substitute Members), as detailed in paragraph 15 to this report, be approved;**
- (c) the insertion of paragraph 1.1.2 to Article 1 (Powers and Duties of the Council) and the amendment to Part 4A, Procedure Rule 25.2 (Additional Rights of Access for Councillors), as set out in paragraphs 18 and 19 to this report, be approved;**
- (d) no changes be made to the structure or frequency of meetings of the Overview and Scrutiny Committees at this time but this be considered by the Council following the elections in May 2023;**
- (e) the dates for the respective Overview and Scrutiny Committees, as set out in paragraph 28 to this report, be agreed for 2023/24, subject to the subsequent review by the Council after the elections;**
- (f) the amendments to Part 4D, Procedures Rules 13.4 to 13.27 (Public Questions, Statements and Petitions), as detailed in paragraph 39 to this report, be approved, subject to paragraphs 13.4.9 and 13.5.7 being amended to read:-**
 - 13.4.9 no member of the public may ask more than three questions on any individual item of business as defined on the agenda of the meeting. Any person submitting multiple questions may not ask their second, or where applicable, third question until other members of the public, if any, have asked their first, or where applicable, second question, subject to the Chair's discretion.**
 - 13.5.7 no member of the public may make more than three statements on any individual item of business as defined on the agenda of the meeting. Any person submitting multiple statement may not make their second, or where applicable, third statement until other members of the public, if any, have made their first, or where applicable, second statement, subject to the Chair's discretion;**
- (g) the amendments to Part 6, Schedule 1 (Arrangements for dealing with allegations of breach of the Code of Conduct for Councillors), as set out in paragraph 43 to this report, be approved;**
- (h) the amendment to Part 4A, Procedure Rule 24.3, (Access to document – Overview and Scrutiny Committees), as set out in paragraph 52 to this report, be approved;**
- (i) any necessary and consequential technical and formatting related updates and revisions to the Constitution be made by the Monitoring Officer in accordance with the powers delegated.**

Voting: Unanimous

RESOLVED that the amendments to Part 3A, (Responsibility for Functions – Planning Committee) and Part 4A (Meeting Procedure Rules – Voting), as set out in paragraph 57 to this report are not supported at this stage but be brought back to the Audit and Governance Committee, if possible on 9 March 2023, with the objective of allowing officers and the Constitution Review Working Group time to reflect on various points raised during the meeting and, to the extent considered appropriate, to provide further clarity and or possible compromise solutions.

Voting: Unanimous

184. Next meeting

The next meeting of the Committee was on 09 March 2023.

The meeting ended at 10.29 pm

CHAIRMAN