

**NOTES**  
**OF THE MEETING OF THE**  
**PERFORMANCE MANAGEMENT BOARD**  
**WEDNESDAY 24 NOVEMBER 2010**

Held at 7.00 pm in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford

**PRESENT:**

Councillors S Bennett (Chairman), Mrs S P Bailey, B Buschman, C J Evans (substitute for Councillor K A Khan), A MacInnes, Mrs J M Marshall, J A Stockwood, Mrs M Stockwood (substitute for Councillor M M Champion), D G Wheeler

**ALSO IN ATTENDANCE:**

Councillors J A Cranswick, J E Fearon R M Jones and G R Mallender

**OFFICERS PRESENT:**

C Bullett	Deputy Chief Executive (CB)
D Mitchell	Head of Partnerships and Performance
V Nightingale	Senior Member Support Officer
L Reid Jones	Democratic Services Manager
D Swaine	Head of Corporate Services

**APOLOGIES FOR ABSENCE:**

Councillors M M Champion and K A Khan

29. **Declarations of Interest**

There were none declared.

30. **Cabinet Call In – Establishment of a Non Profit Distributing Arrangement for the Leisure Management Contract with Parkwood Leisure Ltd**

Councillor Jones, as lead signatory, referred to the reasons for the call-in as set out on the call-in request form, as follows:

‘The Cabinet recommendation proposes a significant change to Rushcliffe’s Leisure Management Contract with Parkwood without adequate or proportionate Member Scrutiny. The proposals contained within the Cabinet item have not been considered by the Member Working Group on Leisure Centres which is reviewing short and long term options and that scrutiny should occur as extensions to the Parkwood Contract could have a significant impact on long term plans for Leisure Strategy in Rushcliffe.’

He went onto to provide a detailed submission giving justification for the call-in referring expressly to four areas of concern as follows:

- An inadequacy of scrutiny by Councillors prior to the decision being made

- That the significant affect of the extension to the contract on the long term leisure strategy for the Council had not been adequately considered
- The proposals and the decision did not address Parkwood's commitment to improving services to match the increased funds that the extended contract provided and;
- The report considered previously by Cabinet and its decision lacked care and attention to the impact of the proposals on former Council staff employed at the leisure centres

Commenting further Councillor Jones stated that he believed strongly that the proposals did not address in detail, Parkwood's commitment to improving the services its provides in proportion to the increased funds available from the extended contract, Furthermore he was concerned that the report and the decision did not appear to provide, or have taken account of, details regarding consultation and the impact on former Council employees still under TUPE terms and conditions.'

As part of his submission Councillor Jones, emphasised that he and the other signatories recognised the importance of the saving to the Council arising from the Cabinet decision. He also recognised that it was important that Leisure Centres provided fair and accessible services. However, the Cabinet's decision had been called in primarily because there had not been adequate scrutiny by Members before the decision had been made. Councillor Jones stated that such scrutiny would have helped to ensure a more transparent and accountable process and he believed strongly that greater scrutiny was required.

Referring to the report considered by Cabinet, Councillor Jones stated that the proposed significant changes to the provision of leisure in the Borough and the contract extension should have been considered by a Member Panel. He explained that immediately before the Cabinet meeting the Leisure Facilities Strategy Member Panel had met and that Members of this Panel had not been notified of the impending Cabinet decision. He then went onto to state that on 3 November the Partnership Delivery Group had received an annual report from Parkwood Leisure and the forthcoming decision to be made by Cabinet had not been raised and therefore it could not be scrutinised by Members.

Commenting further Councillor Jones stated that he felt that the extension to the contract could have a significant impact on the Council's long term strategic plans for leisure and that the report upon which Cabinet made its decision, did not adequately explain these implications. He added that the justification given for the decision appeared to be that the arrangement provided significant value for money, security and savings associated with not having to undertake a further procurement exercise in 2017. However he believed that this limited the options for the renewal of the contract. Furthermore the report did not explain how variations to the contract could be accommodated within the 15 year timeframe and it did not describe the base costs for the five year extension, both of which were important issues and should have been fully scrutinised.

Councillor Jones stated that Parkwood Leisure had already applied the model to two other contracts it held and therefore their conversion costs were likely to

be low. Furthermore the report did not state if Parkwood Leisure had, or were required to, give any undertakings to use the savings for improving the services for residents. He felt that the Council should receive guarantees that the money would be used to improve services within the Borough.

By way of conclusion Councillor Jones stated that the report and the decision did not consider the impact of the proposals on former Council staff. He felt that the report was unclear regarding the terms and conditions for former Borough Council staff, that it did not refer to the impact on pay and pensions and that there was no reference to consultation with affected staff. For these reasons he felt that the decision should be referred back to Cabinet and that Cabinet should be requested to refer the matter to the Leisure Facilities Strategy Member Panel to consider the impacts and potential risks.

Councillor Fearon, Cabinet portfolio holder for Community, responded to the lead signatory's points as follows. Addressing the final point made by Councillor Jones first he explained that from the original 150 employees that had previously transferred to Parkwood Leisure only six were now employed in the same capacity. He stated that there would be no changes to their terms and conditions whilst they remained in the same employment.

Commenting on the Council's future leisure strategy, Councillor Fearon stated that the decision would have no impact on this and the Member Panel's views would be welcomed on the future of leisure provision in the Borough. To this end he confirmed that Parkwood Leisure would be invited to a meeting of the Member Panel in 2011 to provide evidence in relation to the future strategy. He reminded Members that when the Leisure Centre management contract was originally let, a Non Profit Distributing Organisation arrangement had been agreed as an acceptable model for the provider, however at that time contractors offering this model were unsuccessful. In respect of the savings these had been included previously in the budget workshop discussions by Councillors with the saving having been identified in the Council's agreed budget.

Councillor Fearon went on to explain that the original contract had a five year extension clause built in and that officers, being mindful of the changing expectations and demands of leisure, believed that this was a good deal. He felt that changing from Parkwood Leisure Ltd to Parkwood Community Leisure Ltd was merely a technical change.

Councillor Cranswick, Cabinet portfolio holder for Finance and Asset Management, stated that the issue had formed part of the budget decision made by Council earlier in the year and that Cabinet's decision was merely taking forward that arrangement. He added the Council's agreed budget had been acceptable for both Councillor Jones and Evans, and therefore they should both be well aware that the arrangement was just delivery of the Council's agreed budget.

Commenting on the issue of the effect of the decision on future leisure provision he stated that the Council could still add or remove leisure centres if it wished. He informed Members that increasing the contract and sharing in

the NNDR<sup>1</sup> savings equated to significant savings for the Council over the fifteen years.

Following questions from Members of the Board regarding the potential risks associated with the eligibility for relief and the various organisations involved the Head of Partnerships and Performance explained that as far as Nottinghamshire County Council were concerned there was no change to the contract. He explained that officers had been investigating the possibilities for approximately 12 months and had taken advice from other local authorities who had taken a similar approach. Furthermore additional internal and external legal advice had been sought on the matter. Following further questions regarding the operation of NNDR, the Chairman explained that this issue had not been included in the original call- in request and was therefore not a matter for consideration or discussion.

Councillor Evans queried whether budget workshops were now to be considered as part of scrutiny and he queried why Cabinet had not referred the changes and extension to the contract to the Leisure Facilities Strategy Member Panel. He felt that as the contract now ran until 2022 it was a significant commitment and greater scrutiny would have helped to ensure greater transparency and accountability.

At this point in the meeting Councillor Cranswick stated that there was no change to the contract except that the proposed extension had been introduced in order to facilitate the savings. He also stated that the consideration of contracts was not part of the Leisure Facilities Strategy Member Panel's remit. Councillor Fearon concurred with this statement and added that the contract was flexible enough to allow for variations in the delivery of leisure in future.

Members of the Board queried the references in the report to the terms and conditions for staff and the Head of Partnerships and Performance explained that Parkwood Leisure and Parkwood Community Leisure were harmonising the terms and conditions over all contracts. He assured Members that nothing had changed for the six staff who had originally transferred from the Council. Regarding the £20,000 costs to the Council for the enhanced conditions the Head of Partnerships and Performance stated that due to promotions and staff leaving Parkwood had recognised that this was no longer required.

When asked for clarification if the Cabinet's decision could be referred to Council for consideration the Monitoring Officer set out the options available to the Board when determining the call-in. He added that it was not possible to refer the decision to Council as this could only be the case if there was evidence to substantiate that the decision was outside the agreed budget and policy framework. . The Deputy Chief Executive (CB) reminded Members that the budget had been approved by the Council in March 2010 and it had included this saving and therefore the decision could not be referred to Council as it was within the approved budget and policy framework.

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<sup>1</sup> NNDR = National Non Domestic Rates

Following a question regarding the negotiations concerning legal and admin costs Members were informed that these had been established at £10,000 each.

Members of the Board queried whether Parkwood Community Leisure would achieve the reduction in liability for NNDR. In response Officers stated that a legal opinion had been sought and the Council's policy had been checked. However, it was Parkwood's responsibility to submit a claim.

In summing up Councillor Jones, as lead signatory, stated that the debate had shown that greater scrutiny prior to Cabinet's decision had been required. He welcomed the assurances regarding the TUPE arrangements for former staff, however he did not feel that a line in a budget report equated to a proposal on a contract. He went onto to question the flexibility of the contract and the need to agree to the extra five years.

Councillor Jones stated that in 2007 when the original contract had been tendered Parkwood had scored highly in competitiveness however he was concerned that with this new arrangement other providers might have been able to offer more savings. Furthermore he did not feel that the issue of how Parkwood would use the money for the benefit of Rushcliffe residents had been addressed and the Member Panel should have been consulted and Parkwood's invitation to attend a meeting in the new year was not sufficient.

Councillor Fearon stated that the Member Panel were looking at the Council's Leisure Strategy and not Cabinet's decision. He assured Members that Cabinet believed the decision was the right one and that it was proportionate and necessary, particularly as it provided much better value for the Council. He went on to state that negotiations were two way and officers had worked hard to get the best deal for the Council and its residents. Councillor Cranswick reiterated that Cabinet's decision was not in the remit of the Member Panel and that in making its decision Cabinet had considered all the relevant information.

Some Members of the Board felt that the decision should be referred back to the next of Cabinet but when put to the vote it was defeated.

It was then proposed to put to the vote to uphold the Cabinet's decision.

It was AGREED that Cabinet's decision be upheld.

### **31. Constitution Review**

The Head of Corporate Services reported that the Constitution Review Member Panel had met on four occasions to undertake the review. At each meeting the Panel considered areas for revision and amendment under the headings of:

- Inclusion of new legal duties and revisions in line with further guidance
- Practical aspects that have caused difficulties in the past, clarity of wording and legal anomalies

In summary the key areas that the review focused on were:

- Revisions to the Council procedure rules including clarity regarding scope of questions and motions and submission deadlines
- The possible introduction of public questions at full Council meetings
- Revisions to the scrutiny call-in procedure
- The future role of the Employment Appeals Committee
- The need for a review of the Scheme of Delegation with this being presented to a future meeting of Cabinet and Council for agreement
- The format and content of the Forward Plan and Cabinet reports

The report set out the substantial areas of revision highlighted by the Member Panel and these were set out in the appendices of the report.

The Head of Corporate Services explained that the Panel had considered the introduction of a public questions facility at full Council meetings. However the Member Panel had been unable to reach an agreed view on this. As part of the review the Panel had also considered the Employment Appeals Committee and its terms of reference agreeing that these were very wide and far reaching. The Panel's Members had agreed that they still wished to have a role in this process. However, subject to Council's agreement, the Panel agreed that the committee's terms of reference and the Council's officer employment procedure rules should be reviewed.

Having considered the report of the Member Panel and the appendices outlining proposed revisions to the Constitution, Members asked a number of questions. In response to a query regarding the policy framework the Head of Corporate Services explained that for some strategies and policies it was discretionary as to whether there were reported to Council, whereas some others on the list no longer existed. Therefore the list had been updated to reflect this.

The Board queried why the revisions to the Constitution did not include references to the Council operating the Leader and Cabinet model. The Head of Corporate Services explained that this arrangement had been dealt with separately as it came about from legislative requirements, and not as a result of the Constitution review. He added that this matter would result in changes to the Constitution and that it would be reported to Cabinet and Council as and when necessary. .

With regard to Member Panels and Working Groups, Members were concerned that an agreement between group leaders regarding minority parties witnessing procedures had not been included. It was agreed that the agreement was still in place and would be referred to as a protocol within the Constitution.

The Board considered in detail the matter of introducing a public questions facility at full Council meetings. Following a question on the deliberations of the Member Panel the Chairman explained that some Members had felt that it was their role to ask questions on behalf of the community whereas others had felt it gave the public more engagement with the Council. Having considered this issue the Board agreed to recommend the introduction of public questions to Cabinet and requested this be reflected in the Cabinet report.

In conclusion the Chairman stated that following the review and Cabinet and Council's decisions further training was required in order that Councillors understood the Constitution. In line with this the Member Panel had requested that the Member Development Group considered its report and this was reflected in the recommendations.

Having considered the report of the Constitution Review Member Panel the Performance Management Board AGREED the following recommendations to Cabinet:

- A) the amendments to the Council's Constitution set out within the following draft documents:  
Part 1 - Summary and explanation – **Appendix 1**  
Part 2 - Articles 1 to 16 – **Appendix 2**  
*(Only Articles 1, 2, 3, 4, 5, 6, 9, 13, 14 and 15 have been amended. As there are no changes to Articles 7, 8, 10, 11, 12 and 16 these are not included in appendix 2)*  
Part 4 – Rules of Procedure – Council Procedure Rules only – **Appendix 3**  
Part 4 – Rules of Procedure – Overview and Scrutiny Procedure Rules (from Paragraph 16 (Call-in) onwards only) – **Appendix 4**  
*(Note: The amended text is underlined within the text of each appendix but not in appendix 4 as this is replacement text)*  
Part 3 – Responsibility for functions recommendation C (ii) below sets out the proposal that a separate review of this to be undertaken.  
Part 5 – Codes and Protocols and Part 6 – Members Allowances are not included as no changes have been proposed.
- B) the introduction of a public questions facility with the necessary text being added to the Constitution to reflect this
- C) that the Head of Corporate Services be requested to review (i) the terms of reference for the Employment Appeals Committee and the Officer Employment Procedure Rules, Part 4 – Rules of Procedure and (ii) Part 3 – Responsibility for functions and Article 12 – Officers; and report the findings of these reviews to the necessary Council Committees.
- D) that the Member Development Group be asked to consider the Member Panel's report in order to determine areas where training and development would assist in increasing awareness and understanding of the revised Constitution and its operation.

The meeting closed at 9.05 pm.