

EXECUTIVE, RESOURCES AND CONTRACTS POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Minutes of the meeting held at 7.00 pm on 27 November 2023

Present:

Councillor Simon Fawthrop (Chairman)

Councillors Jeremy Adams, Felicity Bainbridge,
Mark Brock, David Cartwright QFSM, Adam Jude Grant,
Julie Ireland, Simon Jeal, Tony Owen, Shaun Slator,
Mark Smith, Melanie Stevens, Ryan Thomson,
Michael Tickner and Pauline Tunncliffe

Also Present:

Councillor Christopher Marlow, Portfolio Holder for Resources,
Commissioning and Contracts Management

49 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from Councillor Evans, Councillor Gabbert and Councillor McGregor. Councillors Tunncliffe, Bainbridge and Thomson attended the meeting as their respective substitutes.

The Committee welcomed Councillor Grant to his first meeting in his capacity as Chairman of the Environment and Community Services PDS Committee.

50 DECLARATIONS OF INTEREST

Councillor Julie Ireland confirmed that she was still hosting a Ukrainian family.

The Chairman, Councillor Fawthrop, declared that he was a Member of the Free Speech Union.

51 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions were received.

52 MINUTES OF THE EXECUTIVE, RESOURCES AND CONTRACTS PDS COMMITTEE MEETING HELD ON 17 OCTOBER 2023 (EXCLUDING EXEMPT ITEMS)

The minutes of the Executive, Resources and Contracts PDS Committee meeting held on 18 October 2023 (excluding exempt information), were agreed and signed as a correct record.

53 MATTERS OUTSTANDING AND WORK PROGRAMME

Report CSD23138

The report dealt with the Committee's business management including matters outstanding from previous meetings and the proposed work plan for the remainder of the year.

The Committee requested that the Leader be invited to the meeting in February 2024, for a further "Scrutiny of the Leader" session.

RESOLVED: That the report be noted and the Work Programme Updated.

54 FORWARD PLAN OF KEY DECISIONS

The Committee noted the Forward Plan of Key Decisions covering the period October 2023 to January 2024.

Members noted that the Investment Strategy Annual Report would be presented in June/July 2024.

55 RESOURCES, COMMISSIONING AND CONTRACTS MANAGEMENT PORTFOLIO - PRE-DECISION SCRUTINY

The Committee considered the following reports where the Resources, Contracts and Commissioning Portfolio Holder was recommended to take a decision.

A INSURANCE FUND - ANNUAL REPORT 2022/23

Report FSD23066

The report advised Members of the Insurance Fund position as at 31st March 2023 and presented statistics relating to insurance claims for the last two years. In 2022/23, the total Fund value increased from £4.002m to £4.159m. A mid-year review of the Fund had also been carried out and at this stage, it was estimated that the final Fund value as at 31st March 2024 would increase to approximately £4.298m. The position would continue to be monitored throughout the year.

In response to a question, the Director of Finance confirmed that it continued to be very difficult to secure policies in respect of cyber security.

Members noted that whilst there was not a large number of claims, it would be helpful to have some performance measures set out in the report. The

Director of Finance agreed to follow this up, noting that there had been some challenges with highways claims and discussions had taken place with Sutton who managed the claims process.

RESOLVED: That the Portfolio Holder be recommended to note the contents of the report.

B CAPITAL PROGRAMME MONITORING Q2.

Report FSD23075

On 29 November 2023, the Executive would be receiving a report summarising the current position on capital expenditure and receipts following the second quarter of 2023/24 and would be asked to agree a revised capital programme for the five-year period 2023/24 to 2027/28. The report for the Executive, Resources and Contracts PDS Committee highlighted changes to be put to the Executive and the Leader in respect of the capital programme for the Resources, Commissioning and Contract Management portfolio. The revised programme for this portfolio was set out in Appendix A and detailed comments on individual schemes were shown in Appendix B of the report.

In response to a question concerning the provision of £3m for the additional costs associated with reinforced autoclaved aerated concrete (RAAC), the Director of Finance confirmed that whilst to some extent Officers had been required to estimate any demands on the Capital Programme until surveys had been completed, the view that had been taken was that it was better to make some provision than none at all. Officers had estimated that following surveys (which cost £300k) the cost of any remedial work was likely to be in the region of £2.7m. Any funds set aside would continue to earn interest whilst unspent and if the funds remained unspent, they would return to the general fund.

In response to a question concerning borrowing for housing, the Director of Finance confirmed that there were no restrictions on borrowing to fund an advantageous housing scheme. Any business case for such a scheme would be presented to Members for consideration however, rates of interest were currently high and it was therefore in the Council's interest to wait before embarking on any borrowing for housing, bearing in mind the 40 year term for such borrowing. The general consensus was that interest rates would begin to fall in the next two years and the Council could afford to wait in order to reduce the cost of any borrowing.

RESOLVED: That the Portfolio Holder be recommended to note and acknowledge the changes to be put to the Executive on 29 November 2023.

C TREASURY MANAGEMENT - QUARTER 2 PERFORMANCE 2022/23 & MID-YEAR REVIEW

Report FSD23079

The report summarised treasury management activity during the second quarter of 2023/24. The report also included a mid-year review of the treasury management strategy statement and annual investment strategy (Appendix 4 of the report). The report ensured that the Council was implementing best practice in accordance with the CIPFA Code of Practice for Treasury Management. Investments as at 30 September 2023 totalled £379.6m (£390.6m at 30 September 2022) and there was no outstanding external borrowing.

In response to a question, the Director of Finance confirmed that an asset management review would be undertaken at the same time as the review of the pension fund.

RESOLVED: That the Portfolio Holder be recommended to

- 1. Note the treasury management performance for the second quarter of 2023/24;**
- 2. Recommend that Council approve the 2023/24 prudential indicators as set out in Appendix 4**

D MODERN.GOV SYSTEM: ANNUAL SUPPORT CONTRACT

Report CSD23107

The Modern.gov system enabled the Council to publish meeting details, committee agendas, reports and minutes, and information about councillors. The system was purchased in 2009, becoming operational in 2010, and is supported via an annual maintenance contract with Civica. The support contract had been in place for nearly fifteen years and authority to renew the annual support contract for a further five years was being sought. Although the annual value of the contract was small at £13K, its long-term nature meant that the cumulative value required Portfolio Holder decision.

Members requested that future reports set out statistics relating to the number of users and frequency of use.

In response to a question, the Democratic Services Officer confirmed that the system would be migrating to the new Azure cloud environment in December 2023.

RESOLVED: That the Portfolio Holder be recommended to approve the annual renewal of the support contract for the Modern.gov system for a further five years, at an estimated cost of £13,800 per annum (£69k over period of authorisation for renewal).

56 SCRUTINY OF THE LEADER OF THE COUNCIL

The Chairman thanked the Leader for the written update that had been provided along with the Leader's apologies for not being able to attend the meeting. Members noted that any questions arising from the update could be sent to the Leader separately and appended to the minutes.

The Leader was invited to attend the Committee meeting in February 2024 to provide a further update.

57 PRE-DECISION SCRUTINY OF EXECUTIVE REPORTS

The Committee considered the following reports on the Part 1 agenda for the meeting of the Executive on 29 November 2023:

(5) BUDGET MONITORING Q2 Report FSD23080

The report provided the second budget monitoring position for 2023/24 based on expenditure and activity levels up to the end of September 2023. The report also highlighted any significant variations which would impact on future years as well as any early warnings that could impact on the final year end position.

In opening the discussion, the chairman noted the overspend and the action being taken to achieve a balanced budget.

In response to a question, the Director of Finance confirmed that Officers only accounted for known income and as such conversations would take place with the property division concerning the impact of rent increases on income.

The Director of Finance highlighted that the Committee would be considering the draft budget at its next meeting in January 2024 and that report would detail a number of issues with any departmental overspends being factored in to the budget.

Stressing the need for rigor in the management of budgets, a Member highlighted that Directors should keep within their departmental budgets and, where there were overspends, savings and cut backs should be found in other areas of the department. If it was not possible to identify savings and mitigations, Members should be approached for supplementary estimates.

Another Member highlighted that in previous years it had been possible for Directors and their Officers to identify in-year savings resulting in balanced budgets, although it was acknowledged that this was becoming increasingly difficult. It was also recognised that the Council often faced pressures

27 November 2023

financial pressures that were difficult to predict and control such as homelessness.

The Director of Finance stressed that the role of the PDS Committees in budget monitoring was going to become increasingly important. Budget pressures were being addressed through mitigations and it was inevitable that the Council was moving towards a position where overspends in budgets would need to come from depleting reserves where they had previously been managed through the contingency. All costs would need to be scrutinised as this level of overspend was not sustainable.

Members of the Committee recognised that difficult decisions would be required in the next couple of years. A Member suggested that there was a need for the government to address the structural issues that existed in financing local government. Another Member stressed the need to consider all options, including insourcing, for some services such as SEN Transport and Foster Care, with there being a need for Member to carefully consider business cases.

RESOLVED: That Executive be recommended to

- 1. Note the latest financial position.**
- 2. Note the projected net overspend on services of £12,585k is forecast based on information as at September 2023.**
- 3. Note the comments from Chief Officers detailed in Appendix 2 of the report.**
- 4. Note the projected reduction to the General Fund balance of £1,393k as detailed in section 3.3 of the report.**
- 5. Note the full year cost pressures of £18.208m as detailed in section 3.4 of the report.**
- 6. Agree the release of funding from the 2023/24 central contingency as detailed in paragraphs 3.2.2 to 3.2.6 of the report.**
- 7. Note the drawdown of £250k from the Infrastructure Investment Fund earmarked reserve for works at the Hill Multi-Storey car Park as detailed in section 3.8 of the report.**
- 8. Identify any issues that should be referred to individual Portfolio Holders for further action.**

**(6) CAPITAL PROGRAMME MONITORING Q2
Report FSD23078**

The report summarised the current position on capital expenditure and receipts following the first quarter of 2023/24 and sought the Executive's approval to a revised capital programme.

A Member queried whether there had been any pre-decision scrutiny of the proposed depot works and if there had been, by which Committee. It was agreed a response would be provided following the meeting.

RESOLVED: That the Executive be recommended to

- (a) Note the report, including a total re-phasing of £25,375k from 2023/24 into future years, and agree a revised capital programme.**
 - (b) Note the need going forward, given the full utilisation of capital receipts by 2026/27 forecast in the report and the limited options to replenish this resource in the future, to consider funding options for all new schemes, including external borrowing where appropriate.**
 - (c) Recommend that Council approve the following amendments to the capital programme (set out in paragraph 3.3 of the report)**
 - (i) increase of £3,000k in relation to reinforced autoclaved aerated concrete (RAAC)**
 - (ii) increase of £1,893k in relation to depots**
 - (iii) increase of £700k in relation to increased costs on the social care case management system**
 - (d) Note that a report elsewhere on the agenda requests a supplementary capital estimate of £3,000k for additional costs associated with reinforced autoclaved aerated concrete (RAAC).**
- (7) LONDON BOROUGHS LEGAL ALLIANCE FRAMEWORK AGREEMENT FOR BARRISTERS
Report CSD23139**

The report sought authority to join the London Boroughs Legal Alliance (LBLA) Framework Agreement for Barristers.

In response to a question, the Assistant Director for Legal Services confirmed that the proposed framework had been deemed the most suitable and under the framework the Council had discretion over the Chambers it used and the barristers instructed.

RESOLVED: That

- 1. It be agreed that LB Bromley join the new London Boroughs Legal Alliance (LBLA) Framework Agreement for barristers for a period of 3 years with the option to extend for a further year.**
- 2. In the event the LBLA Framework Agreement is extended for a further year, authority be delegated to the Director of Corporate Services and Governance to extend access to the LBLA Framework for a further year after the initial 3-year term.**

**(8) OPERATIONAL PROPERTY REPAIR PROGRAMME UPDATE
Report HPR2023/065**

In March 2023 the Executive approved the award of construction consultancy services to commence the delivery of the OPR Programme. This report is seeking approval to commence procurement of further design led multidisciplinary consultancy services and to progress the surface car parks works tender.

In opening the discussion, the Chairman noted that some supplementary Part 2 (exempt from publication) information had been circulated to Members of the Committee in advance of the meeting.

In respect of the request to set aside £3m for investigations into possible Reinforced Autoclaved Aerated Concrete (RAAC) within the Council's estate, the Committee were informed that of the £3m, £300k was for surveys and a provision of £2.7m had been made for any remedial work arising from the surveys being undertaken. Members noted that once the surveys had been completed a report on the full impact would be presented to Members.

A Member highlighted that as this was a national issue, pressure should be put on the Government to support Local Authorities with the response to the issue of RAAC.

In response to a question concerning the remedial works that could be undertaken, the Interim Head of Special Projects explained that any remedial works would be dependent on the location and severity of any steel corrosion in the concrete and that it was not so much the RAAC that was the issue but the bearing itself.

Members were informed that desktop surveys were underway and following those surveys, where necessary, site surveys would be undertaken. It was estimated that any non-intrusive surveys would be completed by Summer 2024 and Officers anticipated providing an update to Members prior to the summer. Surveys were being undertaken on the basis of risk and to date there had been no reports of issues requiring immediate action.

The Committee requested that the Programme for Surveys setting out key milestone dates be made available to Members to enable robust monitoring.

RESOLVED: That Executive be recommended to

- 1) Note the contents of the report and agree the following recommendations:**
 - a) To note that up to £1.046m of the OPR budget as planned will be used for the essential repair of surface car parks required to maintain statutory service.**
 - b) To proceed to procurement for the works contract for the essential repair of surface car parks at an estimated value of up to £1m as set out in paragraphs 3.13, with delegated authority to the Director of Housing, Planning, Property and Regeneration to approve the detailed procurement strategy and contract award.**
 - c) To approve the procurement of Construction Consultancy Services via a competitive tender process utilising the NHS SBS framework for consultants that can provide a Building Surveying led multidisciplinary team to design and deliver the Strategic Property OPR Workstreams, with delegated authority to the Error! Unknown document property name. to approve the detailed procurement strategy.**
 - d) To note that up to an additional £0.95M of the OPR budget as planned will be used for Building Surveying led multidisciplinary teams to design and deliver the Strategic Property Workstreams. The total budget value of the appointment(s) is estimated to be £2.4m.**
 - e) To agree to delegate authority to the Director of Corporate Services and Governance to enter and manage legal matters relating to these services and works to allow matters to progress.**
- 2. To recommend to Full Council a supplementary capital estimate of £3.0m for surveys and potential remedial works associated with Reinforced Autoclaved Aerated Concrete (RAAC).**

**(9) LOCAL AUTHORITY & VOLUNTARY SECTOR LEASES
Report HPR2023/066**

A Member request had been received for a report on the Council's policy on rental subsidies for Voluntary Sector Council tenants providing community benefits. This report provided an initial overview of the property portfolio held

27 November 2023

by the Council as it related to its leasing arrangements with Voluntary Sector Organisations. Further detailed investigations would be required to confirm the assumptions presented in this report.

On behalf of the Chairman, the Interim Assistant Director for Property proposed the following additional recommendation:

2.6 Authorise the Director of Housing, Planning and Regeneration in consultation with the Director of Finance and the Portfolio Holder for Resources, Commissioning and Contract Management to negotiate a revised lease term; where the tenant takes responsibility for repair and insurance of the property and it is at a revised rental that reflects these amendments within the lease.

The Chairman queried whether the possibility of longer-term leases should be being explored. In response the Director for housing, Planning, Property and Regeneration suggested that legal advice would be required as such a change would require a further Member decision.

A Member of the Committee, who had initially requested the report, highlighted that the Council did not have a consistent policy around supporting charities through peppercorn rents. Consequently there was a wide disparity. If charities were forced to cease operation as a result of rental increases, the Council would lose the income and would also lose valuable services across the Borough. On that basis it was felt that it was reasonable for consideration to be given to offering a non-market rent.

Councillor Jeal therefore proposed the following amendment to replaced the recommendations in the report, seconded by Councillor Adams:

2.1 In recognition of the significant contribution voluntary sector organisations make to the London Borough of Bromley, members recognise that Open Market Rent is not necessarily the most appropriate benchmarking for lease renewals or rental reviews on Council owned properties let to a voluntary sector organisation.

2.2. Officers are asked to review and suggest alternative benchmarks to be considered for such rent/lease reviews going forwards , including policy provision to allow for discounted rental rates for agreements with voluntary sector tenants, taking into account the social value they provide to residents, support of statutory services and contribution towards the Council's objectives.

In response to Councillor Jeal's proposed amendments, the Director of Housing, Planning, Property and Regeneration explained that Officers would have to review the budget impact of an increase in subsidy, and this would be a large piece of work. The Director reported that the Churchill Court Letting Strategy would be presented to Committee in February 2024.

The Portfolio Holder for Resources, Commissioning and Contracts Management highlighted that the Council owned assets in order to provide services to residents. The current administration had consistently made clear that statutory services would be prioritised over non-statutory services. In respect of the issue of longer leases, it was not possible to have a one-size-fits-all approach and the Portfolio Holder urged Members to consider the possible implications to the Council of longer leases. The Portfolio Holder further noted that there had been a period of high inflation and as rents had not been increased during this period, the Council had effectively provided a subsidy. The Portfolio Holder concluded that the issues was one of how the Council chose to manage its assets however, it was important to note that the Council's capacity to subsidise non-statutory services was severely limited.

Another Member stressed that it was important to conflate rents with giving backdoor grants and it was important that rents were not used as a subsidy.

The Portfolio Holder further reported that to avoid this issues arising in the future, CPI increases would be built into all future leases.

The Chairman put the following amendment, proposed by Councillor Jeal and seconded by Councillor Adams to the vote:

2.1 In recognition of the significant contribution voluntary sector organisations make to the London Borough of Bromley, members recognise that Open Market Rent is not necessarily the most appropriate benchmarking for lease renewals or rental reviews on Council owned properties let to a voluntary sector organisation.

2.2. Officers are asked to review and suggest alternative benchmarks to be considered for such rent/lease reviews going forwards , including policy provision to allow for discounted rental rates for agreements with voluntary sector tenants, taking into account the social value they provide to residents, support of statutory services and contribution towards the Council's objectives.

Upon the vote, 5 were in favour, 10 against, 0 abstentions. The amendment was therefore LOST.

The Chairman proposed that the following additional recommendation be agreed:

2.6 Authorise the Director of Housing, Planning and Regeneration in consultation with the Director of Finance and the Portfolio Holder for Resources, Commissioning and Contract Management to negotiate a revised lease term; where the tenant takes responsibility for repair and insurance of the property and it is at a revised rental that reflects these amendments within the lease.

27 November 2023

Upon the vote, 9 were in favour, 4 against, 1 abstention. The additional recommendation was therefore CARRIED.

RESOLVED: That the Executive be recommended to

- 1. Authorise the Director of Housing, Planning and Regeneration, in consultation with the Director of Finance and the Portfolio Holder for Resources, Commissioning and Contract Management, to negotiate Payment Management Plans with Voluntary Sector Organisations whose financial integrity may be significantly impacted by rental increases.**
- 2. Authorise that a Payment Management Plan be considered where a rental increase of over 30% has occurred following a lease renewal or rent review on a Council owned property let to a Voluntary Sector Organisation.**
- 3. Authorise that Payment Management Plans provide a stepped rental increase over a period of up to 3 three years with the rent payable on the third anniversary of the lease renewal or rent review being the Open Market Rent as determined at the prior (increased rent) lease event and with all future rents to be increased annually in line with CPI (Consumer Price Index).**
- 4. Authorise that a Payment Management Plan is a one-off transitional arrangement to allow a Voluntary Sector Organisation to adjust to the new increased rent.**
- 5. Authorise the Director of Housing, Planning and Regeneration, in consultation with the Director of Finance and the Portfolio Holder for Resources, Commissioning and Contract Management, to negotiate repayment plans or other suitable financial arrangements with Voluntary Sector Organisations outside of the parameters of a Payment Management Plans as set out in paragraphs 2.2 and 2.3 of the report. These arrangements may be up to a maximum sum of £50,000 or if higher only with of the approval of the Executive.**
- 6. Authorise the Director of Housing, Planning and Regeneration in consultation with the Director of Finance and the Portfolio Holder for Resources, Commissioning and Contract Management to negotiate a revised lease term; where the tenant takes responsibility for repair and insurance of the property and it is at a revised rental that reflects these amendments within the lease.**

58 POLICY DEVELOPMENT AND OTHER ITEMS

A BT ICT CONTRACT MONITORING REPORT

Report CSD23146

The Committee considered the BT ICT contract performance report, utilising the Pan London Framework, covering the period 1st September 2022 – 31st August 2023.

The Chairman welcomed representatives from BT (Ian Withycombe - Services Delivery Manager for LBB, and Andy Taylor – Head of Local Government for London) to the meeting.

In opening the discussion, the Chairman noted that a few months previously, there had been an outage that had impacted Members' ability to access email over a weekend, otherwise performance had been very good. In response to the Chairman's comments, the Services Delivery Manager for LBB explained that the Team had been undertaking planned works to emails, this had caused an outage which had affected outlook. Assistance from Microsoft had been required and it had taken considerably longer to resolve the issue than had been hoped. However, throughout the outage access to email had been available through Webmail and Apps. The Services Delivery Manager for LBB highlighted that BT were continuously trying to improve environments. The Assistant Director for IT also reported that in response to the issues that had arisen changes had been made to the process for testing.

In response to a question, the Assistant Director for IT conformed that the costs for additional licenses had been built into the budget however, within IT Services budget forecasts could be affected by unforeseen factors such as a higher than anticipated turnover of staff.

The Chairman thanked the Head of Local Government for London (BT), Services Delivery Manager for LBB (BT) and the Assistant Director for IT (LBB) for attending the meeting.

RESOLVED: That the report be noted.

B SECTION 106 AGREEMENTS - UPDATE

The Committee received an update on Section 106 Agreements.

Members noted that there were no set time limits for the use of Section 106 funds and limits varied from agreement to agreement. A Member highlighted that there could often be a time lag between receipt of funds and it becoming clear where the funds could be best utilised for the benefit of the community.

It was noted that there was a Team of Officers who were responsible for oversight of Section 106 funds, this team included the Assistant Director for Planning as well as officers from each of the key service departments. This was to ensure that funds were utilised in the best possible way.

The Chairman noted that in the previous municipal year, the Executive, Resources and Contracts PDS Committee had set up a Task and Finish

27 November 2023

Group to review processes around Section 106 funds. The Group had concluded that less than 1% of funds received by the Council remained unspent.

RESOLVED: That the report be noted.

C RISK MANAGEMENT

Report FSD23072

The report provided the Executive, Resources and Contracts Policy, Development and Scrutiny Committee with the current iteration of the Corporate Risk Register, together with those for the Corporate Services, Finance, and Human Resources and Customer Services departments.

RESOLVED: That the Risk Registers be noted.

D CORPORATE CONTRACTS REGISTER

This report presented November's Corporate Contracts Register for consideration.

Detailed scrutiny of individual contracts was the responsibility of the six PDS Committees but ER&C PDS took an overview of the Council's larger value (£200k+) contracts to ensure that commissioning and procurement activity was progressed in a consistent manner. The report provided both the Council wide £200k+ register together with the £50k+ register specific to the ER&C Portfolio.

A full report was provided twice a year (May and November) including a detailed Part 2 report which included a commentary on each relevant contract to inform Members of any issues or developments. Otherwise, a Part 1 Register only would be provided as a 'For Information' item with an accompanying Part 2 report only for any contracts RAG rated Red by the Corporate Procurement Team.

The full report was not being provided this November cycle due to server migration of the Contracts Database. The next full report would be May 2024. No contracts had been RAG rated as Red by the Corporate Procurement Team so there was no accompanying Part 2 report.

RESOLVED: That the report be noted.

E REVIEW OF THE COUNCIL'S MEASURES ON FREEDOM OF SPEECH FOR EMPLOYEES

Report CSD22020

The Chairman of ERC PDS committee had requested a report to review the Council's process, policy and procedure to protect and defend freedom of speech for Council staff and for those who work for the Council's contactors. The report looked at the process, policy, and procedure to protect and defend

freedom of speech for Council staff and considers the measures available to staff who work for the Council's contractors.

The Committee noted the following amendments (in italics) to the recommendation and report had been proposed by the Chairman:

Paragraph 2.1 (recommendation): Members are asked to note the following:

- 2.1.1 *the fundamental importance of the right to freedom of speech to the Council's activities, and the narrow scope for interfering with political expression; and*
- 2.1.2 *the potential liabilities faced by the council if it fails to protect that right, either in relation to Councillors or Council employees.*
- 2.2 *Officers are asked to take the following actions in support of the recommendations under paragraph **Error! Reference source not found.** above:*
 - 2.2.1 *to review the Council's policies, procedures and Constitution with a view to ensuring that they reflect the fundamental importance of the right to freedom of speech; and*
 - 2.2.2 *to report to the Executive and Constitutional Working Party on progress with the review recommended at paragraph 2.2.1 above.*
- 2.3 *GP&L and the Constitutional Improvement Working Party is recommended to note this report and update the code of conduct for Officers and Members, and inform members of the Standards Committee to reflect the above recommendations.*
- 2.4 *Note the additional text added to the body of the report.*

Body of the report

4.6 Doing so risks discrimination unless an employer has also considered whether the action is both a necessary and proportionate *interference with the right to freedom of expression*. Any objective justification of a restriction is always dependent on context and is employment-specific.

4.9 ... Freedom of expression and the protection of these individual characteristics have been tested in the employment tribunal due to the potential conflict that arises between competing rights, *particularly as damages for discrimination are uncapped*.

5.2 ... A public interest disclosure must be made to certain people (e.g. the employer) in order to attract statutory protection. *An employee complaining about suppression of certain beliefs is also likely to have whistleblower protection under the Employment Rights Act and the*

27 November 2023

Equality Act.

Members sought clarification around whether the report author had agreed to the changes made to the body of the report and the Assistant Director for Legal Services (the report) confirmed that the changes were the Chairman's. A Member highlighted that during his five years serving on the Council he had never seen the body of an Officer report amended in this way. In response the Assistant Director of Legal Services confirmed that it was unusual for any Member to amend an officer report in this way and the changes has been neither approved nor disapproved by the report author.

Seeking a clarification regarding the Chairman's intention in proposing the amendment to paragraph 5.2, a Member queried whether the Chairman was expressing a desire which could be phrased as "*where possible, an employee complaining about suppression of certain beliefs should receive whistleblower protection under the Employment Rights Act...etc.*"

Paraphrasing Voltaire, the Chairman explained that the right to respectfully dissent from other points of view and give voice to that via free speech formed the basis of an enlightened society. As such, the basis of the report was to strengthen the fundamental human right to free speech within the Council, the Chairman highlighted that within the 1948 Declaration of human Rights Freedom of Speech was a right under Article 19 yet there was no right to equality. The right set out in Article 19 established that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Much of the declaration was enshrined in UK law under Article 10 of the Human rights Act, which established that "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society..." The Chairman highlighted the importance of recognising as a Council, through processes and procedures, that everyone needed to be protected from excessive restrictions or attempts to infringe freedoms, either through incorrectly applied "Groupthink" or societal bullying against reasonably held beliefs. The Chairman highlighted that there was no right to not be offended, because being offended was a choice an individual made. Freedom of speech was not democratic but was at the core of upholding fundamental democratic values. It was also understood that freedom of speech was necessarily constrained by the law however, in the free speech case of *Redmond-Bate v Director of Public Prosecutions* [1999] Lord Justice Sedley set out that this freedom encompassed "the irritating, the contentious, the eccentric, the heretical, the unwelcome and provocative". Invoking the classical Greek philosopher Socrates, he warned against state attempts to control unofficial ideas by saying "Freedom only to speak inoffensively is not worth having."

The amendments set out above were proposed by the Chairman and seconded by Councillor Slator. Upon being put to the vote 12 were in favour, 3 were against. The amendments were therefore CARRIED.

(In voting against the motion, Councillor Jeal and the Labour Members on the Committee clarified that there were not opposed to free speech but were fundamentally opposed to the principle of editing a report written by a Legal Officer.)

RESOLVED: That

- 1. The fundamental importance of the right to freedom of speech to the Council's activities, and the narrow scope for interfering with political expression be noted;**
- 2. The potential liabilities faced by the council if it fails to protect that right, either in relation to Councillors or Council employees be noted;**
- 3. Officers are asked to take the following actions in support of the resolutions (1) and (2) above:**
 - (a) to review the Council's policies, procedures and Constitution with a view to ensuring that they reflect the fundamental importance of the right to freedom of speech; and**
 - (b) to report to the Executive and Constitutional Working Party on progress with the review recommended at paragraph 3 (a) above.**
- 4. GP&L and the Constitutional Improvement Working Party be recommended to note this report and update the Code of Conduct for Officers and Members and inform members of the Standards Committee to reflect the above recommendations.**
- 5. Note the additional text added to the body of the report.**

**59 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE
LOCAL GOVERNMENT (ACCESS TO INFORMATION)
(VARIATION) ORDER 2006, AND THE FREEDOM OF
INFORMATION ACT 2000**

RESOLVED that the Press and public be excluded during consideration of the items of business referred to below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**The following summaries
refer to matters involving exempt information**

**60 EXEMPT MINUTES OF THE MEETING HELD ON 17 OCTOBER
2023**

The Part 2 (exempt) minutes of the meeting held on XXX were agreed, and signed as a correct record.

**61 PRE-DECISION SCRUTINY OF EXEMPT EXECUTIVE
REPORTS (IF ANY)**

The Committee considered the following reports on the Part 2 agenda for the meeting of the Executive on 29 November 2023:

(17) CAPITAL PROGRAMME MONITORING Q 2 PART 2 APPENDIX E

The Committee noted the Part 2 appendix and in response to a question, received updates on specific sites listed in the appendix.

The Meeting ended at 9.15 pm

Chairman