

CALL-IN SUB COMMITTEE

13 AUGUST 2007

Chairman: * Councillor Anthony Seymour

Councillors: * B E Gate * Stanley Sheinwald
* Jerry Miles (1) * Jeremy Zeid (1)

* Denotes Member present
(1) Denotes category of Reserve Member

[Note: Councillors Chris Mote, Leader of the Council, Paul Osborn, Portfolio Holder for Strategy and Business Support and Eric Silver, Portfolio Holder for Adult Services also attended this meeting to speak on the item indicated at Minute 28 below].

PART I - RECOMMENDATIONS - NIL**PART II - MINUTES**22. **Appointment of Chairman:**

RESOLVED: To note the appointment, at the Special meeting of the Overview and Scrutiny Committee on 12 July 2007, of Councillor Anthony Seymour as Chairman of the Committee for the Municipal Year 2007/2008.

23. **Attendance by Reserve Members:**

RESOLVED: To note the attendance at this meeting of the following duly appointed Reserve Members:-

Ordinary MemberReserve Member

Councillor Mitzi Green
Councillor Mark Versallion

Councillor Jerry Miles
Councillor Jeremy Zeid

24. **Declarations of Interest:**

RESOLVED: To note that the following interests were declared:

Agenda Item 7: Call-in of the Decision of the Special Cabinet Meeting on 25 July 2007: Key Decision – Outcome of Spring 2007 Statutory Consultations on Community Care Services – Fair Access to Care Services

- (i) Councillor Chris Mote declared a prejudicial interest in the above item arising from the fact that he was an Executive Member and had taken part in preparations for the decision. Accordingly he would remain in the room only for the purpose of making representations, answering questions or giving evidence relating to the item. He further declared a personal interest arising from a relative having been in receipt of social care.
- (ii) Councillors Paul Osborn and Eric Silver declared a prejudicial interest in the above item arising from the fact that they were Executive Members and had taken part in the decision making on this item. Accordingly they would remain in the room only for the purpose of making representations, answering questions or giving evidence relating to the item.
- (iii) Councillor Anthony Seymour declared a historical personal interest in the above item arising from a relative having been in receipt of Home Care Service, which had ceased in 2004. The Member would remain in the room and take part in the discussion and decision-making on this item.

25. **Arrangement of Agenda:**

RESOLVED: That (1) in accordance with the Local Government (Access to Information) Act 1985, this meeting be called with less than 5 clear working days' notice by virtue of the special circumstances and grounds for urgency stated below:-

Special Circumstances/Grounds for Urgency: Under Overview and Scrutiny Procedure rule 22.6, a meeting of the Call-in Sub-Committee must be held within 7 clear working days of the receipt of a request for call-in. This meeting therefore had to be arranged at short notice and it was not possible for the agenda to be published 5 clear working days prior to the meeting.

(2) all other items be considered with the press and public, with the exception that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting whilst legal advice is given to the Sub-Committee, on the grounds that it was thought likely that there would be disclosure of exempt information under paragraph 5 of Part I of Schedule 12A to the Act, in that there would be disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

26. **Appointment of Vice-Chairman:**

RESOLVED: To appoint Councillor Mitzi Green as Vice-Chairman of the Sub-Committee for the Municipal Year 2007/2008.

27. **Minutes:**

RESOLVED: That the minutes of the meetings held on 17 October 2006 and 8 January 2007 be taken as read and signed as a correct record.

28. **Call-in of the Decision of the Special Cabinet Meeting on 25 July 2007: Key Decision - Outcome of Spring 2007 Statutory Consultations on Community Care Services - Fair Access to Care Services (FACS):**

Members considered a decision taken by Cabinet at the Special Cabinet meeting on 25 July 2007 to proceed with the proposal to meet only needs that fell within the 'Critical' FACS band and that the proposed actions to mitigate this be agreed. A call-in notice had been received, which was signed by 597 members of the public. These were checked against the electoral register to satisfy the call-in requirements. The Sub-Committee received the notice invoking the call-in procedure, the relevant minute of the Cabinet meeting and the documentation submitted to Cabinet to inform their decision.

The decision had been called-in on all six grounds:

- inadequate consultation with stakeholders prior to the decision;
- the absence of adequate evidence on which to base the decision;
- the decision was contrary to the policy framework of the Council;
- the action was not proportionate to the desired outcome;
- a potential human rights challenge;
- insufficient consideration of legal and financial advice.

Deven Pillay, a member of the public representing the signatories to the call-in notice, put the case for the call-in. He presented a file providing further evidence to the call-in notice, which, after legal consultation, was submitted to the Sub-Committee and the Executive Members defending the decision. Mr Pillay stated that, whilst the Council maintained that no decision had been taken prior to the Special Cabinet meeting on 25 July 2007, he was of the opinion that it had been implemented prior to the meeting. The draft consultation, which was held with representatives of community organisations, included two options, but only one option had been included in the report submitted to the Cabinet meeting. He further stated that assessments had been made prior to the Cabinet decision and that the experiences of carers and families had not been taken into consideration.

Mr Pillay expressed the view that the consultation was not genuine, because the decision was about making cuts, not containing costs. To illustrate this, Mr Pillay read out statements from patients whose care services had been cut. He stated that there were four legal precedents with regards to lawful consultation processes and urged the Council to take these into consideration. He further stated that the two consultation documents, one on FACS and the other on Day Centre Charges, which were sent out simultaneously, looked similar and had confused people, which subsequently impacted on the outcome of the consultation process. Mr Pillay drew attention to an extract from the impact assessment in the FACS report which acknowledged it would be difficult to accurately predict how many people would be affected by the decision and that the report failed to take into consideration the impact on carers' lives who feared they now would be unable to provide the same level of care.

In conclusion, Mr Pillay stated that the purpose of a FACS policy was to promote individual living, but that at present patients were subjected to harm, abuse and

neglect. He added that the Department of Health FACS eligibility criteria were to maintain patients' independence over time.

Upon being invited to respond, the Portfolio Holder for Strategy and Business Support stated that Cabinet had not made a decision prior to the meeting. He further stated that it was common practice that only one option was submitted for consideration and that Cabinet had the choice of not varying the eligibility criteria. With regards to the consultation documents, he stated that separate documents had been prepared for people with learning difficulties. He added that no complaints had been received about the two similar consultations being carried out simultaneously. It was explained that consultation guidelines had been followed and that key stakeholders were included. There had been widespread publicity, which included questionnaires sent to over 4000 people, meetings with stakeholders, Open Public Question Time and information at community notice boards.

Addressing the second ground for call-in, the Portfolio Holder for Adult Services stated that the Council needed to reduce expenditure and that Cabinet relied on the Chief Financial Officer's advice on savings. It was explained that no reductions in services would be made until the patient had received an individual review and a month's notice would be given if care services would be reduced. It was further explained that care services would not be cut for patients who were assessed as having critical needs and that a formal monitoring group would review anyone who needed to change accommodation. The Portfolio Holder added that the Council recognised the contributions made by the voluntary sector to further develop individual support.

The Leader of Council stated that the decision was not contrary to the Council's policy framework. The decision was taken to retain expenditure identified in the Council's budget. It was further explained that the decision did not contradict flagship 5.4 as stated in the Council's Corporate Plan as care would still be provided for individuals with critical needs. The Leader further stated that each Local Authority should determine the needs of local residents.

Responding to the fourth ground for call-in, the Portfolio Holder for Adult Services stated that the decision was proportionate to the desired outcome. It was explained that the Council had overspent in the last three years and that the joint funding of the Primary Care Trust cost the Council £3.5 million per year. The Portfolio Holder added that the community care budget was subjected to management action, which sought to achieve good value for money. He stated that the Council's reserves were low compared to other Councils and that it was not intended to make significant savings, but to contain costs.

The Portfolio Holder for Strategy and Business Support queried what human rights were affected by the decision and stated that at this stage no rights had been breached. He further stated that at the point of reassessment the individual's personal circumstances were an important part of the assessment.

In response to the last ground for call-in the same Portfolio Holder stated that there was no evidence that legal or financial advice had been ignored. It was explained that the Chief Financial Officer and Monitoring Officer were frequently consulted and that both officers had approved the Cabinet report. The Portfolio Holder further stated that the position of carers was taken into account at every stage.

In response to questions from Members of the Sub-Committee, Executive Members provided clarification of the following issues:

- assessments made prior to the Cabinet decision were undertaken to continue to provide care for those with substantial needs;
- it was confirmed that the decision to cut costs was to maintain services;
- the inclusion of a second option in the consultation to maintain current care services would not have been helpful, as it would have obstructed a useful outcome of the consultation;
- carers were entitled to an assessment at any time.

In response to questions from Members of the Sub-Committee, Mr Pillay stated that the Council had failed to respond to a majority of members of the public who opposed the decision. He further stated that the effect the decision would have on people with a learning disability was discriminatory. It was also stated that if care was reduced for patients with substantial needs they would become critical, which would implicate a greater cost in the long term.

In relation to the decision before the Sub-Committee, some Members expressed concern that although extensive consultation had taken place, only one option had been offered in the final document. However, the majority of Members were satisfied with the consultation. The Sub-Committee generally felt that sufficient evidence had been provided to base the decision on, although some Members were concerned that two issues had been overlooked. Some Members queried whether flagship 5.4 of the Council's Corporate Plan included patients with substantial needs, but the majority of the Sub-Committee agreed it would only cover those with critical needs and therefore the decision was not contrary to the Council's policy framework. Members agreed that the Council should look after its most vulnerable residents. The majority of the Sub-Committee felt this decision was needed to prevent severe consequences, stating that the action was proportionate to the desired outcome. Regarding the potential human rights challenge, some Members felt that although it would not uphold in legal terms, the moral aspect should have been taken into consideration. Members were of the view that there was no evidence that the decision would result in a breach of human rights. Some Members expressed concern about the paucity of legal advice in the Cabinet report, but the majority view was that sufficient consideration had been given to legal and financial advice.

Upon being put to a vote it was

RESOLVED: That the grounds for the call-in be rejected and the decision be implemented.

29. **Extension and Termination of the Meeting:**

In accordance with the provision of Overview and Scrutiny Procedure Rule 6.6 (ii) (b), it was

RESOLVED: (1) At 9.55 pm to continue until 10.30 pm;

(2) at 10.27 pm to continue until 11.00 pm;

(3) at 10.55 pm to continue until 11.15 pm.

(Note: The meeting having commenced at 8.05 pm, closed at 11.13 pm)

(Signed) COUNCILLOR ANTHONY SEYMOUR
Chairman