

CALL-IN SUB-COMMITTEE MINUTES

5 FEBRUARY 2018

Chair: * Councillor Phillip O'Dell

Councillors: * Richard Almond * Ms Pamela Fitzpatrick (3)
* Jo Dooley * Norman Stevenson

In attendance: Paul Osborn Minute 23
(Councillors)

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

18. Attendance by Reserve Members

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

Ordinary Member

Reserve Member

Councillor Jeff Anderson

Councillor Pamela Fitzpatrick

19. Declarations of Interest

RESOLVED: To note that the following interests were declared:

Agenda Item - Call-In of the Cabinet Decision: Library Management Contract Extension

Councillor Pamela Fitzpatrick declared a non-pecuniary interest in that she was a trustee of the Harrow Community Library. She would remain in the room whilst the matter was considered and voted upon.

20. Appointment of Vice Chair

RESOLVED: That Councillor Richard Almond be appointed Vice-Chair for the 2017/18 Municipal Year.

21. Minutes

RESOLVED: That the minutes of the meeting held on 8 February 2016 be taken as read and signed as a correct record.

22. Protocol for the Operation of the Call-In Sub-Committee

The Chair drew attention to the document 'Protocol for the Operation of the Call-In Sub-Committee'. He outlined the procedure to be followed at the meeting, and the options open to the Sub-Committee at the conclusion of the process.

In accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:

- a) inadequate consultation with stakeholders prior to the decision;
- b) the absence of adequate evidence on which to base a decision;
- c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- d) the action is not proportionate to the desired outcome;
- e) a potential human rights challenge;
- f) insufficient consideration of legal and financial advice.

He informed the Sub-Committee that the grounds a), b) and d) had been cited on the Call In notice, and this had been deemed to be valid for the purposes of Call-in.

RESOLVED: That the Call-In would be determined on the basis of the following grounds:

- a) inadequate consultation with stakeholders prior to the decision;
- b) the absence of adequate evidence on which to base a decision;
- d) the action is not proportionate to the desired outcome;
- e) insufficient consideration of legal and financial advice.

The Legal Adviser stated that the Sub-Committee, having considered the grounds for the call-in and the information provided at the meeting, may come to **one** of the following conclusions:-

- (i) that the challenge to the decision should be taken no further and the decision be implemented;
- (ii) that the matter should be referred back to the decision taker (i.e the Portfolio Holder or Executive, whichever took the decision) for reconsideration. In such a case the Call-in Sub-Committee must set out the nature of its concerns / reasons for referral for the decision taker/Executive.

RECOMMENDED ITEMS

23. Call-In of the Cabinet Decision (18 January 2018) - Library Management Contract Extension

The Sub-Committee received the papers in respect of the call-in notice submitted by 6 Members of the Council in relation to a decision made by Cabinet on 18 January 2018 regarding the Library Management Contract Extension. The contract, which had been jointly procured with the London Borough of Ealing, had been managed by the Construction Company Carillion until recently when Carillion had gone into compulsory liquidation.

The Chair advised the Sub-Committee on the suggested order of proceedings and reminded Members of the timings allowed for submissions and questions. He invited the representative of the signatories to present his reasons for the call-in.

The representative stated that:

- he was grateful that he had been kept informed by both the leader and relevant officers about the latest position regarding Library Management Contract since the recent announcement that Carillion had gone into compulsory liquidation;
- at its Cabinet Meeting on Tuesday 16 January, Ealing Council had presented an addendum to their Cabinet Report regarding extending the library contract with Carillion for a further 5 years;
- Ealing Council had, in light of the liquidation, presented an addendum to their Cabinet Report regarding extending the library contract with Carillion for a further 5 years at its Cabinet Meeting on Tuesday 16 January. However, in his view, Ealing's proposals in the addendum were too broad and long-term and he had been surprised to see that the recommendations proposed by Harrow with regard to its Library Management contract closely resembled those proposed by Ealing;
- in his view, the Library Management Contract item could have been deferred until February 2018 Cabinet meeting and he had requested this be done but his request had not been agreed;

- he had submitted the call-in because he was particularly concerned that authority to make longer term decisions over a key service area had been delegated to officers without the possibility of further public scrutiny or consultation.

The representative made the following points with regard to each of the grounds for the call-in:

Inadequate consultation with stakeholders prior to the decision:

- revised versions of recommendations B and D of the Cabinet Report relating to the Library Management Contract Extension had been tabled during consideration of the item at the Cabinet meeting of 18 January 2018. Library staff, the trade unions, the opposition, residents and library users had not been consulted regarding the proposals and this equated to inadequate consultation and inadequate scrutiny;
- furthermore, no timescales had been set out for Recommendation D. Recommendation B would allow officers to novate the contract until 31 August 2023. However, very little detail had been provided regarding any potential future provider or the nature of any potential new contract. For example, he would expect financial and legal implications, estimated costs associated with any new contract, key performance indicators, an equalities impact assessment to have been provided as part of the revised recommendations.

The action was not proportionate to the desired outcome:

- he was aware of the tight timescales and the urgent need to stabilise the Library Service. However, the revised recommendations delegated authority to officers to sign off on long-term decisions relating to the Library Management contract without further reference to Cabinet. Should the Council decide to terminate such a contract mid-term then this could prove both difficult and costly.

Insufficient consideration of legal and financial advice:

- the revised recommendations did not provide any detail regarding leases, maintenance of library sites, TUPE (Transfer of Undertakings (Protection of Employment) Regulations or whether the authority could enter into another shared service with a neighbouring local authority.

He concluded by stating that none of the above issues had been addressed due to the last minute nature of the amendments tabled at Cabinet on 18 January 2018.

Following questions and comments from the Sub-Committee, the Portfolio Holder for Community, Culture and Resident Engagement stated that:

- the measures proposed in the revised recommendations were a holding position designed to reassure all stakeholders and avoid service disruption. At the time of the Cabinet meeting, the Council's legal position with regard to Carillion had been unclear and the administration had wanted to send out a strong message that would reassure both library staff and residents about the continuity of the service. Because this had been an emergency situation with tight timescales, last minute revisions continued to be made to the tabled document until shortly before the start of the Cabinet meeting of 18 January;
- it was her understanding that although Cabinet sought to delegate responsibility to officers, nevertheless, Cabinet would still be the final arbiter in the matter in relation to longer term decisions about the library service and a report would have been submitted to a future meeting of Cabinet. In her view, the requisite legal, and financial clearances, consultation and scrutiny would only be possible once detailed proposals had been formulated by officers. This had been an emergency situation that had required swift action. Furthermore, any decision proposed with regard to the future of the contract would have to comply with the requirements of the Constitution, although she accepted that the recommendations did not explicitly state this and that the revised recommendations could have been better drafted. She added that paragraph 2.6 and paragraph 3 of Article 3B of the Council's Constitution, which dealt with Cabinet delegations stated that 'officers were accountable to the Committee from which those delegated powers derived';
- the revised recommendation E related to the requirement for officers to take urgent action with regard to smaller contracts related to the provision of library services.

Following questions and comments from the Sub-Committee, the Portfolio Holder for Finance & Commercialisation stated that he supported the above comments made by the Portfolio Holder for Community, Culture and Resident Engagement, adding that:

- this had been a fast-moving situation attracting considerable national and local attention. Cabinet and officers were impelled to take immediate action to deal with the situation. The intention behind the revised recommendations had been to provide greater flexibility by allowing officers the discretion to explore all possible options while reassuring staff and residents about service continuity;
- he too had been of the view that any final decision regarding the longer term future of the library service would have been referred back to Cabinet at a future date. He acknowledged that this could have been made more explicit in the revised recommendations.

The Legal Officer advised that it was at the discretion of the officer to whom authority had been delegated, exercising their good judgment, whether they

chose to exercise the delegation. In cases where a matter was deemed politically sensitive or had unusual features or other significant issues then it may be appropriate to refer the matter back to Cabinet for further consideration.

Following questions, the Corporate Director, Community advised that:

- Recommendation E related to negotiations with contractors to ensure continuity of service provision, for example, continued provision of the LMS (Library Management System), of all utilities to stabilize the service and arrangements being put in place with providers;
- in managing the liquidation process, the intention had been to consider bringing the service back in-house initially for a three to four month period, to explore other options regarding the future role of libraries across the borough and different operating models of service delivery. He added that in accordance with principles of good governance and safe decision-making, he fully expected to consult the relevant portfolio holders and Cabinet regarding any future actions to be taken.

The Sub-Committee proposed that the words 'subject to final consideration by Cabinet', could be inserted in any revised recommendations to clarify the position.

Both the Portfolio Holder for Finance & Commercialisation and the Portfolio Holder for Community, Culture & Resident Engagement concurred that they would be agreeable to the amendment proposed by the Sub-committee being considered by Cabinet as this would specify that Cabinet would be the final decision-maker on the matter.

The Corporate Director confirmed that this proposal would not impede the progress of work being undertaken to stabilise the service and the review of the service.

The Sub-Committee expressed the view that in the interests of good governance, legal officers should always ensure that all recommendations to Cabinet were explicit and consistent with the provisions of the Constitution.

The Sub-Committee adjourned from 8.26 to 9.00 pm for deliberations.

The Sub-Committee, noting the Portfolio Holders' comments that they were also content for the relevant recommendations to be reconsidered by Cabinet,

RESOLVED: That

- (1) the call-in on ground (a) – inadequate consultation with stakeholders prior to the decision – be upheld as:
 - the Committee wondered why the Tabled Document had not been circulated earlier in the meeting. In view of the special circumstances, the Cabinet meeting of 18 January 2018 could have

been postponed by 30 minutes to allow time for members to more fully consider the tabled document in advance of consideration of the item;

(2) the following grounds for call-in:

- (i) ground (b) – the absence of adequate evidence on which to base a decision;
- (ii) ground (d) – the action was not proportionate to the desired outcome;
- (iii) ground (f) – insufficient consideration of legal and financial advice;

all be upheld for the following reasons:

- the revised recommendation went beyond what had been intended by the Portfolio Holder for Finance & Commercialisation and the Portfolio Holder for Community, Culture and Resident Engagement. The Call-In Sub-Committee recommends that in the future any delegation of authority from Cabinet to officers should be qualified where necessary to reflect Cabinet's intentions accurately.

(Note: The meeting, having commenced at 7.36 pm, closed at 9.10 pm).

(Signed) COUNCILLOR PHILLIP O'DELL
Chair