

# Shadow Dorset Council

## SHADOW OVERVIEW AND SCRUTINY COMMITTEE

### MINUTES OF MEETING HELD ON WEDNESDAY 22 AUGUST 2018

**Present:** Cllrs T Jones (Chairman), C Brooks (Vice-Chair), S Bartlett, K Brookes, M Byatt, C Finch, S Gibson, B Goringe, N Lacey-Clarke, J Sewell, J Somper, J Tanner and M Wiggins

**Apologies:** Cllrs Ray Bryan

**Also present:** Cllr A Alford, Cllr J Andrews, Cllr S Flower, Cllr Jackie Stayt and Cllr John Stayt

**Officers present (for all or part of the meeting):**

Lindsey Watson (Senior Democratic Services Officer), Lee Ellis (Scrutiny Officer), Nicola Houwayek (HR Strategic Lead) and Mark Taylor (Group Manager - Governance and Assurance)

#### 19. **Declarations of Interest**

The Chairman noted that members were not required to declare their membership of any bodies to which they had been appointed by their local authority. The Monitoring Officer clarified that members needed to declare any financial interests.

There were no declarations of interest.

#### 20. **Minutes**

In respect of minute 12 with regard to Town and Parish Councils – Principles for transfer and disposal of assets and the bullet point with regard to the DAPTC working with the Shaping Dorset Council's Programme Team (page 2 of the minutes), it was noted that the DAPTC continued to work with the programme team.

The Chairman noted that the last meeting had been a difficult meeting with people getting to know each other and how people worked together. He asked members to bear with each other during this early period for the committee.

It was proposed by J Sewell seconded C Brooks

#### **Decision**

The minutes of the meeting held on 31 July 2018 were agreed as a correct record and signed by the Chairman subject to the note about the DAPTC above.

## 21. **Public participation**

There were no representations from members of the public.

### **Statement and advice to the Shadow Dorset Council Overview and Scrutiny committee**

Stephen McNamara, a Consultant with VWV Solicitors attended the committee and provided a statement with regard to the discussion that had taken place at the meeting of the committee on 31 July 2018, with regard to the process for the appointment of the Interim statutory officers for the shadow period. The statement is attached at appendix A to the minutes.

### **Change to order of agenda items**

The Chairman reported that he had agreed to change the order of the following two agenda items and that the item on the process for the appointment of a permanent Chief Executive for the Dorset Council would be taken as the next item at the meeting.

## 22. **Process for the appointment of a permanent Chief Executive for the Dorset Council**

Nicola Houwayek (HR Strategic Lead, Shaping Dorset Council) attended the meeting to provide a presentation with regard to the process for the appointment of a permanent Chief Executive for the Dorset Council. The presentation included background to the process, including the recruitment process timeline and detail of the membership of the Senior Appointments Committee.

In response to questions raised with regard to the composition of the Senior Appointments Committee it was noted that the members were acting in their role as Shadow Councillors and that it was a politically balanced committee. There were 8 members appointed to the committee which had been agreed by Full Council at its first meeting and it was noted that the Chairman would have a casting vote in the case of an equality of votes. A concern was noted that there should be an odd number of members on the committee.

Clarification was sought in respect of the members of the Senior Appointments Committee and which councils they were also members of. A concern was expressed in respect of the public perception of this. The Chairman confirmed the councillors' council membership as follows:

Councillor Anthony Alford – West Dorset District Council

Councillor Andy Canning – West Dorset District Council and Dorset County Council

Councillor Graham Carr-Jones – North Dorset District Council and Dorset County Council

Councillor Jeff Cant – Weymouth and Portland Borough Council

Councillor Spencer Flower – East Dorset District Council and Dorset County Council

Councillor Colin Huckle – Weymouth and Portland Borough Council  
Councillor Rebecca Knox – Dorset County Council  
Councillor Gary Suttle – Purbeck District Council

In response to a question, it was confirmed that the process for appointing tier 2 officers would be similar but with a lower level of stakeholder engagement. Further information on the tier 2 appointment process and timescale would be considered at the next meeting of the Shadow Executive Committee. It was agreed that a further presentation would be provided to the next meeting of the Shadow Overview and Scrutiny Committee with regard to this process.

Members considered the issues arising from the presentation and during discussion the following points were raised:

- The stakeholder involvement could include representatives of public sector partners that the council worked with including, health partners, housing associations, youth panel and the Local Enterprise Partnership as well as businesses. The stakeholder feedback to the panel would be important and properly considered
- In respect of the psychometric testing, members were informed that an occupational psychologist would attend to talk through the results with the panel. It was noted that psychometric testing was used widely for senior appointments
- In response to a question, organisational costs in respect of redundancies were noted which would be met by each council
- It was noted that the final approach to the Chief Executive salary had not been agreed and would depend on the successful candidate offered the appointment. A salary range had been agreed
- Terms and conditions such as amount of annual leave were standard terms offered to Chief Executives
- In response to a question as to whether councillors had a pecuniary interest in respect of the appointment process and the public perception of this, the Programme Director noted that the appointments process was about bringing together the best people for the job and that redundancy costs for existing chief executives was not a factor in the decision making process. The Interim Monitoring Officer noted that this was not about the pecuniary interests of the councillors involved but that the cost of any redundancies would come from the existing councils budgets that would no longer exist on 1 April 2019. It was also noted that the Structural Change Order set out the position with regard to the redundancy of existing chief executives
- In response to a comment about increasing the size of the Chief Executive Appointment Panel from 8 to 9 members, the Interim Monitoring Officer indicated that he would be troubled by that as the panel was half way through the process and it would not be appropriate to introduce a new person at this stage. It was noted that this advice must be accepted
- A comment was noted that the public perception needed to come second to the professional HR and Legal advice that had been

- received for a technical exercise. The sole focus must be on appointing the best candidate
- In response to a concern raised, it was noted that it was standard practice to offer a salary range which would depend on the job and level of experience that a person was bringing into a role

It was proposed by J Sewell seconded by B Goringe that any Senior Appointments Committee / Panel established for the purpose of undertaking the selection process for the recruitment of senior officers (below Chief Executive/Tier 1) is constituted with 9 members rather than 8.

A comment was made that as arrangements for future processes had not yet been agreed, it would be clearer to state that any future appointments committee or panel was constituted with an odd number of members, rather than stating a specific number at this stage. The original proposer and seconder of the motion agreed with this approach and change of wording.

### **Recommendation to the Shadow Executive Committee**

That any Senior Appointments Committee / Panel established for the purpose of undertaking the selection process for the recruitment of senior officers (below Chief Executive/Tier 1) is constituted with an odd number of members.

*(Two member abstentions).*

### **23. Programme Highlight Report including Internal Audit report produced by SWAP**

In response to a request by the committee at the last meeting, members received a copy of the Highlight Report – August 2018, considered by the Shadow Executive Committee at their meeting on 21 August 2018, which included a Programme Governance Report and follow up report produced by South West Audit Partnership (SWAP). Sally White, representing SWAP, attended to provide an overview of the issues raised in the reports.

Detail of the ‘Headline Conclusions’ from the initial report was set out at page 21 of the agenda. In response to these points raised, the Programme Director had provided a detailed report on progress made in the areas and this had led to SWAP producing a follow up report. It was noted that the follow up report set out that the direction of travel was positive and identified key changes such as the formation of new themed boards and changes to previous task and finish groups. The report also recommended a schedule of further detailed audit work.

Members considered the issues arising from the reports and during discussion the following points were raised:

- Members were aware of the amount of work to be undertaken and the short time scale for undertaking the work required to meet the 1 April 2019 deadline

- It was noted that support could be provided by the Centre for Public Scrutiny and the Local Government Association
- Reference was made to comments made in the report with regard to Dorset County Council involvement and support in terms of their contribution to the Shaping Dorset Council programme and consideration was given to inviting representatives of Dorset County Council to the next meeting of the committee to discuss these issues with them
- The Programme Director provided information on the level of staffing within the team which currently stood at 21 people with recruitment ongoing. In addition nearly 200 people within the councils were engaged with the plans including an oversight of areas and work around service continuity. He felt that significant progress had been made since the first SWAP report had been produced. The SWAP report had been requested by the Programme Board to ensure that processes and capacity for the work was in place
- Members recognised that improvements had been made but some issues had been carried forward to the update report
- Further audit work was to be undertaken to look at the governance of the programme
- An externally run Gateway review towards the end of September 2018 would involve SWAP and a transformation consultant and would set out to confirm whether the discovery phase had been satisfactorily completed in readiness for the main implementation phase. A second Gateway review would take place towards the end of January 2019 and would confirm all work carried out along with any contingency plan for any areas not covered. The 'go live' date for the new Council could not be moved but there could be consideration as to what would be in place by 1 April 2019 and what plans needed to be put in place
- The Programme Team were working at full capacity to deliver the actions set out in the Programme Plan. The milestones were updated every week and were reviewed along with the detail that sat below the plan
- In response to a question, the Programme Director provided information on the composition of the Programme Board. The membership of the Programme Board had been widened to include the interim officers and other managers and would be meeting on a more regular basis moving forward
- A request was made for there to be a presentation in respect of the Gateway 2 process to the Shadow Overview and Scrutiny Committee at the appropriate time
- A comment was made with regard to the Programme Milestone Plan in the Highlight Report and whether shapes could be used in addition to colours to assist in reading the chart. The Programme Director noted that this could be considered
- In response to a question, the Programme Director confirmed that notes of the Programme Board meetings were available to members on the Sharepoint site

- Consideration was given to the resources available to the Programme Team to undertake the level of work that was required. It was noted that recruitment was still underway. There was a need for particular experience and skills in certain areas which may be about staff offering part of their time to the project rather than undertaking a wholesale secondment
- 173 members of existing council staff had been involved for a period of time in service continuity workshops. Staff would also be involved in making the changes necessary to bring services together. Other officers such as monitoring officers and finance officers had been formed into groups to undertake particular areas of work
- Although there was some concern with regard to the amount of work to be undertaken to prepare for the new Council to come into life on 1 April 2019 and the resources available to carry out this work, members recognised that the recruitment process for the Programme Team was still ongoing
- The Programme Director confirmed that he trusted that the team had the resources available in order to deliver the programme

Following consideration of all of the issues above it was proposed by C Brooks seconded by T Jones

### **Decision**

That the Chief Executive and Leader of Dorset County Council be asked to attend the meeting of the Shadow Overview and Scrutiny Committee on 12 September 2018 to address the issues raised with regard to Dorset County Council in the Programme Governance Report produced by South West Audit Partnership (SWAP). The committee wish to seek assurance that action is in place by the county council to address the comments made by SWAP.

### **Recommendation to the Shadow Executive Committee**

That the Programme Milestone Plan contained within the Shaping Dorset Council Highlight Report be amended to include the use of shapes in addition to colours, in order to identify progress in the different areas.

#### **24. Shadow Executive Committee Forward Plan**

The Shadow Executive Committee Forward Plan was considered alongside the item on the Shadow Overview and Scrutiny Committee Work Programme.

#### **25. Shadow Overview and Scrutiny Committee Work Programme**

The Scrutiny Officer noted that following a meeting with the Chairman and Vice-chairman of the committee and relevant officers, a draft work programme would be brought to the next meeting of the committee. From September, the cycle of meetings would see the committee meeting in advance of the Shadow Executive Committee. In future the Shadow Executive Committee

Forward Plan would be considered during the review of the committee's work programme.

Members considered issues for the work programme and during discussion the following points were made:

- There was a need for assurance with regard to the readiness of critical services and any contingencies in place
- The committee had a focus on 'Safe and Legal' from day 1
- A request was made to include a review of the future operation of leisure facilities in Dorset, which was to be considered by the Shadow Executive Committee on 17 September 2018
- The Chairman asked for there to be a presentation of services covered by each council to be held in the autumn

In response to a comment, the dates of future meetings of the committee would be recirculated to committee members.

**26. Urgent items**

There were no urgent items.

**27. Appendix A**

Statement and advice to the Shadow Dorset Council Overview and Scrutiny Committee

Chairman and members,

**Intro**

Thank you for giving me the opportunity of addressing you this morning on a matter of urgency. I intend to present to you the results of my investigation into the allegations made by Cllr Trite to the OS Committee on 31/7/18. He said that the selection procedure for the interim statutory positions was uneven, unfair and inappropriate. He said that the selection panel was "loaded in favour of certain candidates"

These are extremely serious allegation

I will set out my reasoning shortly but at the very start I want to make clear that my conclusion and professional advice Cllr Trite is mistaken. This selection was neither uneven, unfair nor inappropriate.

**Who I am**

I am Stephen Mcnamara, a consultant with VVV solicitors. I am a solicitor of over 35 years' experience including 24 years in local authorities and most

recently 16 years as HoLs at BCC. I have been a consultant with VWV for 6 years bar for one year in Myanmar where I was a consultant on a rule of law programme

### **Why an independent person was appointed**

When Jonathan Mair learnt of the allegations he was of the view that this should be immediately investigated. Firstly because of the seriousness of the allegations and also because a selection process is being undertaken for the permanent positions.

He was rightly of the view that this had to be investigated by an independent person given that he has been appointed as the interim Monitoring Officer. He wanted there to be no possibility that he would be accused of bias

### **The allegations**

I have not had the opportunity of meeting with Cllr Trite (he is now on holiday until 31/8), but on 15/8 he sent a detailed account of what he said at the meeting on 31/7 to Mr Mair. This explains his reasoning as to why he believes the selection process unfair and includes the text of the statement he made to you on 31/7. I have reached a definitive view on the merits on his allegations on the basis of his letter. I would have liked to have met him, as a matter of courtesy, before giving my advice but the urgency of the matter precludes this.

This is his statement

***"Mr Chairman, thank you for allowing me to speak when I'm not a member of this Committee. I feel quite uncomfortable saying this, but I would feel more uncomfortable within myself if I didn't say it. My concern centres on the process recently used for the selection of an Interim Head of Paid Service and an Interim s.151 Officer.***

***"A senior serving council officer in Dorset has described the composition of the selection panel to me as, in practice, loaded in favour of certain candidates, and I regret to say that I have to agree. If each of the six council leaders who comprised the selection panel had had a separate chief executive and a separate s.151 officer, I would not be sitting here and I'd consider this process an example of the proverbial level playing field. But in fact three of these six leaders on the selection panel had the same chief executive and the same s.151 officer who were candidates for these Shadow Dorset Council positions.***

***"Given the close, supportive, empathetic and co-operative working relationship which normally exists between leaders and their most senior officers, I believe that the reasonable man or woman in the street would consider that this distinction between leaders within the panel would be wrongful and could, in practice, favour a particular candidate for each of these posts. (And the candidates who work with three of the leaders rather than with one were, indeed, duly appointed.)***

***"I want to make it absolutely clear here that I'm saying exactly nothing about the respective merits and qualities - or demerits if they have any -***



***of any of the candidates themselves. The personalities concerned are immaterial. It's the skewed realities behind the selection arrangement to which I point, and I know they concern others too. I have heard them described as corrupt. I would not go that far, but I cannot escape the belief that they were uneven, unfair and inappropriate - and something very similar is, I understand, intended for the selection of the actual Chief Executive and s.151 Officer of the new Council very shortly."***

You will note that he refers to the view of others that the process was "corrupt". He seeks to distance himself from that allegation

If there had been evidence of corruption ie dishonest or fraudulent conduct by those in power, typically involving bribery, then my intention was to ensure that it was reported to the police

His accusation amounts to an allegation of a biased decision making process.

### **The investigation**

My investigation was

- as to how the interim office holders were selected,
- whether there was any evidence that that process was flawed
- whether, in particular, there was any reason to believe that there might have been bias and
- whether there was any evidence of corruption

On 15/8 I interviewed Nicola Houwayek as the HR consultant supporting the establishment of the new council. She told me that she believed that the practice of the members at the selection panel was exemplary. She told me that, consistently with good practice, candidates were asked the same questions and marked. She had no concerns with the process at all

On 16/8 I interviewed Cllr Flower as chairman of the Selection Panel. He said that he believed it had been a fair and rigorous process and that he did not believe that there had been any bias

On 17/8 I interviewed Bryony Houlden (chief executive of sw council). She acted as independent advisor to the panel. She said that she had no concerns at all about the process. She was impressed by the rigour and care shown by all the members

I reviewed and read every the marking sheet. These were filled in a thoughtful and reflective fashion

There was no evidence of anything untoward in the behaviour of any of the members

There was no evidence of anything untoward in the behaviour of any of the officers

There was no evidence that any candidate had an unfair advantage

There was no evidence that the composition of the selection panel was loaded in favour of certain candidates

There was no evidence of any corruption

### **The law**

My primary interest as a local government lawyer is in decision making. There is a considerable body of law which clarifies that when a local authority takes a decision it must act in a manner consistent with its statutory duties, that it must take into account what is relevant and discount what is irrelevant, that it must follow proper process etc

An unfair decision is an unlawful decision and a council must not take unlawful decisions

This simple principle bears repeating

An unfair decision is an unlawful decision and a council must not take unlawful decisions

A biased decision is an unlawful decision

There are requirements which precludes members or officers from taking part in a decision if they have a financial interest in the decision or if they have predetermined the issue or if they are biased.

Bias arises if the decision to be taken could engage with their personal interests, or with the personal interests of close family members or personal friends

Bias does not arise merely because there exists a professional relationship between individuals . That is not a recognised category of bias

Therefore, as an example, there is no bias if a manager interviews a temporary member of staff for a permanent position

### **Analysis**

I have explained that bias does not arise because of a professional relationship. This means that the argument made in the statement of Cllr Trite is flawed. There is simply no basis for the allegation that the selection panel had some sort of bias built into it merely because some leaders shared a chief executive or s151 officer.

Therefore Cllr Trite is mistaken. There is no evidence that this was not a level playing field.. There is simply no ground for the assertion that the process was unfair

I will also argue this by a different route. If Cllr Trite were correct, then a council could not countenance any selection process where an interviewer had had a professional relationship with an interviewee.

Indeed, in respect of the permanent statutory positions the Cllr Trite argument would exclude any member being involved who had had any professional relationship with any of the candidates

And ,as noted before, a manager could not be involved in interviewed an internal candidate for a permanent position

This again shows that the Cllr Trite argument is flawed

Cllr Trite refer to the view of "the reasonable man or woman". Reference to a hypothetical observer is sometimes helpful in understanding the law. The reference is best construed as to an objective and fair minded observer who is not unduly cynical nor naïve who has some knowledge of law and practice and with familiarity with the law concerning lawful decision making.

I am afraid that the Cllr Trite "reasonable man or woman" is overly cynical

### **Conclusion**

On occasion lawyers are accused of "sitting on the fence". I am not

My advice is definitive and couched in deliberately forceful terms. I make no apology for that

I am happy to answer any questions

**Duration of meeting:** 9.30 - 11.33 am

**Chairman**

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