

16 May, 2007

The Report of the Executive

The Executive met at County Hall, Northallerton on Tuesday 20 February, 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, Peter Sowray, John Watson OBE and Clare Wood.

Also in attendance: County Councillors John Blackburn, John Blackie, Eric Broadbent, Mrs M A de Coursey-Bayley, Heather Garnett, Paul Richardson, John Savage and Helen Swiers.

The Executive met again at County Hall, Northallerton on Tuesday 27 February, 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Chris Metcalfe, John Watson OBE and Clare Wood.

Also in attendance: County Councillors Robert Heseltine, Michael Knaggs, Les Parkes, John Savage, Jim Snowball and Mark Wheeler.

The Executive met again at County Hall, Northallerton on Tuesday, 20 March, 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Peter Sowray, John Watson OBE and Clare Wood.

Also in attendance: County Councillor Michael Knaggs.

The Executive met again at County Hall, Northallerton on Tuesday, 10 April 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, Peter Sowray, John Watson OBE and Clare Wood.

Also in attendance: County Councillors Ron Haigh and Tony Hall.

The Executive met again at County Hall, Northallerton on Tuesday, 1 May 2007.

Present:- County Councillor John Weighell in the Chair. County Councillors Carl Les, Chris Metcalfe, Caroline Patmore, Peter Sowray, John Watson OBE and Clare Wood.

Also in attendance: County Councillors John Blackburn, Ron Haigh, Margaret Hulme, Michael Knaggs, Paul Richardson and John Savage.

1. Council Plan 2007-10: Following the publication of the 2006-2009 Council Plan and as a result of a number of issues identified that format, Management Board and an Executive Working Group agreed to review and refresh the Council Plan for 2007-2010. A revised version of the Council Plan 2007-2010 has been prepared, and the draft appended to this report reflects the intention to reduce the complexity of the Council Plan, leading to a more succinct and user-friendly document. The Draft Council Plan draws on recent consultation with specific interest groups, as well as the Annual Audit and Inspection Letter, the recommendations from the CPA and JAR inspections and negotiations that have taken place as part of the Local Area Agreement. The text has been updated generally and the wording of two of the Objectives has been changed slightly to reflect recent changes in terminology – in objective 4 instead of emphasising ‘transport’ the focus is on ‘accessibility’, and in objective 7 reference is made to community engagement rather than just consultation.

16 May, 2007

In addition, the Executive has asked that the text of the draft Council Plan refer to climate change: to the contribution the Council's involvement in NYnet could make to strengthening the economy by enhancing broadband provision; and to the assessment of the Council, as part of the Corporate Performance Assessment.

The Executive RECOMMENDS –

That the draft Council Plan 2007-10, a copy of which is attached marked Appendix A, be approved.

2. Social Inclusion Strategy 2007-10: In 2003, the Safe and Sustainable Communities Overview and Scrutiny Committee approved the findings of a cross-directorate working group established to examine issues around social inclusion, in relation to services provided by the County Council and to develop a strategy to provide vision and structure to the Council's present and future work in this area. Subsequently the County Council approved its Social Inclusion Strategy in February 2004.

Due to the changes of Directorates and related work programmes there was a need to overhaul the Strategy in 2006. The Social Inclusion Working Group has been responsible for revising the Strategy. The purpose of the Social Inclusion Strategy remains the same:-

- To provide a vision and structure to the County Council's current and future work on social inclusion and to identify areas where work still needs to be done to ensure people do not suffer social exclusion.

The Strategy is also intended to act as a signposting document for people in North Yorkshire to contact the County Council on issues relating to the priorities identified in the document. Revised priorities are, however, proposed:-

- Tackling social isolation by providing better access to services and information for all
- Regenerating communities, in particular by tackling the low wage economy, removing barriers to employment and by creating more affordable housing
- Meeting the challenges associated with an ageing population by improving the quality of life for older people
- Responding to the challenges associated with disadvantage amongst children and young people by working to provide them with a better start in life
- Tackling disadvantage in specific localities

The draft Strategy provides an overview of the current situation in North Yorkshire and the improvements that the County Council will be looking to deliver by 2010. This timescale accords with the lifespan of the North Yorkshire Local Area Agreement. Action plans relating to each of the priorities are contained at the back of the document. These highlight the main areas of activity being carried out by the Council in relation to social inclusion and have been extracted from the policies that comprise the Council's policy framework. Consequently, for reasons of conciseness, the action plans are not intended as a definitive statement of every piece of work that is to be done in relation to social inclusion.

16 May, 2007

When the earlier Strategy was approved, the Safe and Sustainable Communities Overview and Scrutiny Committee was tasked with monitoring the progress against the objectives of the Social Inclusion Strategy and has expressed a willingness to continue that practice. Progress against the action plans in the 2007-2010 version will be appraised on an annual basis.

The approved document will be produced in a professional format and distributed throughout the county to libraries and County Council offices accessible to the public.

The Executive RECOMMENDS –

That the draft Social Inclusion Strategy 2007-10 be approved and that responsibility for monitoring the progress of the Social Inclusion Strategy be delegated to the Safe and Sustainable Communities Overview and Scrutiny Committee.

3. Recording and Web Publication of Council Meetings: At its meeting on 20 December, 2006, the Council agreed a recommendation from the Executive that a sound recording of the meeting of the Council on 21 February, 2007, should be made and broadcast on the County Council's website, as soon after the meeting as was practicable. That recording was made and was published on the County Council's website two days after the meeting, on Friday, 23 February. The delay between recording and publishing arises because of the need to undertake technical tasks on the recording so that it is broken down into a series of recordings related to specific items on the agenda. Anyone wishing to access the recording of any part of the meeting is able to do so by clicking on the relevant item on the agenda, which appears on the screen, and the sound recording of just that part of the meeting is then made available. By the end of the first week of the publication, the recording had been accessed on 117 times. By the end of March the recording had been accessed 366 times and by the end of April a further 35 times.

The earlier resolution of the Council made specific reference to recording and web casting the meeting on 21 February, 2007, but made no general commitment to continuing the practice. In order to make satisfactory recordings of the proceedings and to prepare them for publication, in a form which makes it easy for the public to access, it is necessary to utilise specialist software and the time of staff with specialist skills. For the "pilot" exercise on the 21 February these were provided by Connecting Youth Culture. The Executive has been informed that, if the recording and web casting of Council meetings were to become a regular practice, however, it may be necessary to acquire further equipment and train other staff. Before any longer term commitment is entered into, therefore, the Executive believes that it should consider a report setting out the possible costs and benefits which might arise.

The Executive RECOMMENDS –

That the meeting of the Council on 16 May, 2007, should be recorded and broadcast on the County Council's website, but the Executive should consider a report on the business case for continuing such recordings thereafter.

4. Indemnities for Members and Officers: Members and officers have a statutory immunity from civil liability when acting within the powers of the authority, in good faith and without negligence. The immunity does not apply if an individual acts beyond the powers of the authority, in bad faith or negligently. Nor does it give protection from criminal

16 May, 2007

liability, or cover situations where an individual is acting on an outside body to which he or she has been appointed.

Councils have had power to give officers an indemnity against liabilities as part of their terms and conditions of employment, and to take out insurance to cover this risk. The Council agreed an indemnity policy for officers in 1998. Until recently, there has been no clear statutory power to provide an indemnity for Members. Further powers were, however, introduced by the Local Authorities (Indemnities for Members and Officers) Order 2004 ('the 2004 Order'). The Order enables authorities to grant indemnities and to take out insurance to cover the potential liability of Members and officers in a wider range of circumstances, although there are still limitations.

The Council can provide an indemnity in the following circumstances:

- Where a member or officer is carrying on any function authorised by the Council,
- Where an act or failure to act falls within their powers or duties as a result of any function being exercised by them at the request of, with the approval of, or for the purposes of the Council.
- Where a Member or officer exercising a function does so in a capacity other than that of Member or officer of the authority, for example where the Member or officer acts as director of a company at the request of the Council, and is therefore acting in the capacity of director.
- Where an action is outside the powers of the Council or of the Member or officer concerned, but where it is clear that the Member or officer reasonably believed that the matter was within their powers or within the powers of the Council.
- Where a Member or officer makes a statement that certain steps have been taken or requirements fulfilled and this is not the case, provided that the Member or officer reasonably believed that the statement was true when it was made.
- In respect of legal costs, to enable a Member or officer to defend criminal proceedings arising in the context of their role in the Council, subject to the condition that if they are convicted, they must reimburse the Council or the insurer any sums paid.
- In respect of the legal costs of defending an allegation of defamation (not in respect of damages). This does not cover the situation where an individual may wish to pursue a claim of defamation.
- In respect of the cost of legal representation regarding any investigation or proceedings for an alleged failure to comply with the Member's Code of Conduct. In these circumstances the Member must reimburse the Council, or the insurers, if he or she admits a breach of the Code, or it is found that the Member has failed to comply with the Code.

No indemnity can be provided in relation to an act or omission on the part of a Member or officer that constitutes a criminal offence; or is a result of fraud, recklessness or other deliberate wrongdoing.

16 May, 2007

The 2004 Order also enables the Council to provide indemnities against liabilities incurred as Members of outside bodies, but only where the appointment to the outside body is at the request of, or with the approval of the authority, or for the purposes of the authority. It is recommended that any indemnity should only extend to appointments made by the authority, or in consequence of nomination by the authority, or where the authority has specifically approved the appointment as advancing the interests of the authority. The 2004 Order applies the same limitations on the power of the Council to provide indemnities for Members or officers acting on outside bodies as apply when acting within the authority, namely that the indemnity:

- cannot cover criminal liability;
- cannot cover liability arising from fraud, deliberate wrongdoing or recklessness on the part of the Member or officer; and
- cannot cover costs for pursuing a defamation action.

It should be noted, however, that the Council's indemnity cannot cover liability for any action which is outside the powers of the outside body, even if the action was taken in the honest belief that it was within the outside body's powers.

Where an authority has power to grant an indemnity, it may also cover any indemnity by securing the insurance of its officers and Members. Subject to the terms of the policy, this means that the policy will provide an indemnity in respect of legal liability to pay damages for pure financial loss, together with the claimant's and defence costs. The insurance will cover legal liability arising from a negligent act or accidental error or omission, or breach of statutory duty that occurs as a result of the exercise of the Council's statutory functions and powers in connection with the business of the Council. The Council's insurers have recognised and provided the officials' indemnity liability insurance cover to indemnify any officer and Member who is acting at the request, order or direction of the Council on an outside body. This can be as director, officer or trustee of or in any managerial or advisory capacity of any body corporate, trust, association or committee which is not under the authority and control of the Council.

The officials indemnity liability insurance will not apply to liabilities incurred arising from nomination or appointment to an outside body, where the body involved is a partnership with no separate legal status, and the authority's involvement in the partnership has not been approved through the Council's procedures for approving partnership arrangements. It should be recognised that insurance does not cover the following indemnities that could be provided under the 2004 Order:

- the costs of defence of any criminal proceedings; or
- the cost of legal representation regarding any investigation or proceedings for an alleged failure to comply with the Code of Conduct for Members.
- the costs of defence of defamation proceedings in relation to officers and Members against each other.

It is anticipated that the need for the provision of any indemnity would be a rare occurrence. The Council's insurers already provide indemnity cover for officers and there is no additional cost to the authority in the indemnity being extended to cover Members. The insurance does not, however, cover breach of Code of Conduct defences, or criminal defence.

16 May, 2007

A further possible issue arises in respect of complaints in relation to breaches of the Members' Code of Conduct. These can now be referred to the Monitoring Officer for local investigation, instead of being investigated by an Ethical Standards Officer from the Standards Board, before a complaint is determined by the authority's Standards Committee. This is likely to occur more, in future, as there is a move towards increased local handling of complaints. In most cases the Investigating Officer will be another officer of the authority appointed by the Monitoring Officer, and legal advice will be provided by the Monitoring Officer. In sensitive cases, or where there may be conflict of interest, it may be necessary for the Monitoring Officer to appoint an external investigator and/or an external legal adviser. This could, for example, be a former Monitoring Officer, an officer from a neighbouring authority, or external private sector legal advisers. These potential investigators or advisers in these circumstances to be vulnerable to claims of defamation. This gives rise to a further consideration in terms of the provision of indemnity to an external adviser or investigator, in relation to defamation proceedings. Such individuals are not officers of the authority and any indemnity provisions adopted by the authority would not automatically apply to them. In view of this, the Executive considered that an indemnity should be provided for external investigating officers and legal advisers in relation to the costs of defending claims for defamation, though not damages. The Council's insurance would not cover this event, but this indemnity would only apply where the individual was not covered by their own insurance.

The Executive RECOMMENDS –

a) That the revised indemnity policy for officers and members set out in Appendix C to this report, be approved, subject to it being clarified that the indemnity shall apply to Directorships and nominations already in existence, and the Corporate Director, Finance and Central Services be authorised to secure appropriate insurance cover to cover the liability under this indemnity

b) That, within the terms of the indemnity policy, the Chief Executive, in consultation with the Leader of the Council, the Corporate Director, Finance and Central Services and the Head of Legal Services, be authorised to endorse the payment of indemnity to any Member or officer up to a maximum of £50,000, where such indemnity is not covered by insurance, and that any sums in excess of that figure be referred to the Executive for endorsement.

c) That the indemnity provisions recommended be extended to cover Council officers and external investigating officers and advisers appointed by the Monitoring Officer, in relation to the defence of claims for defamation arising from investigations or proceedings for an alleged failure to comply with the Members' Code of Conduct.

5. Appointment to Committees and Outside Bodies: Under the provisions of the Police Act 1996, the members of the North Yorkshire Police Authority must be appointed by a Joint Committee which consists of Councillors appointed by the North Yorkshire County Council and the City of York Council. The legislation also requires that the Joint Committee shall exercise its power to appoint members of the Police Authority so as to ensure, so far as practicable, that the members for whose appointment it is responsible reflect the balance of parties for the time being prevailing among the members of the relevant Councils, taken as a whole. It is, therefore, necessary to take into account the balance of the political groups on this Council and the balance of the political groups on the City of York Council, in order to determine the appropriate balance of political groups on the North Yorkshire Police Authority. Because the elections for the County Council and the City of York Council do not

16 May, 2007

coincide, and because the period of full elections to each of these authorities is the most likely time when significant changes might arising in the political balance on either Council, appointments to the Police Authority, in recent years, have been for a period of two years only. This enables a political proportionality rebalancing exercise to be undertaken, if necessary, following elections to either of the constituent Councils.

It has been past practice, at this Council, for the members of the Joint Committee appointed by the Council to then appoint themselves as members of the Police Authority. If this practice is to continue, it is necessary for the County Council's membership of the Joint Committee to reflect the appropriate proportional allocation of seats between the political groups, once that has been assessed in conjunction with the proportional strengths of groups on the City of York Council. This, clearly, can only take place following the elections on 3 May. It is recommended, therefore, that such a revision be undertaken, at the meeting on 16 May, 2007, once the outcome of the elections and the proportional strengths of groups for the City of York Council are known. A supplementary paper will be prepared and circulated.

In order to provide an opportunity for the Political Groups and Independent Members on the Council to propose changes to Memberships, or Substitute Memberships of Committees, or other bodies to which the County Council makes appointments, the Executive recommends below that such nominations be approved.

The Executive has made appointments to the Leeds City Region Leaders' Board and the North Yorkshire Strategic Housing Board, and recommends these be added to Schedule 5 of the Constitution.

The Executive RECOMMENDS –

a) That the future representation of the Council on the North Yorkshire Police Authority be considered, in the light of the outcome of the elections for the City of York Council and the supplementary paper to be submitted to the County Council on this issue.

b) That any proposals for changes to membership, or substitute membership, of committees or other bodies to which the County Council makes appointments, which have been brought forward by the relevant political group, at or before the meeting of the Council, be approved.

c) That the Leeds City Region Leaders' Board and the North Yorkshire Strategic Housing Board be added to Schedule 5 of the Constitution as appointments to be made by the Executive.

JOHN WEIGHELL
Chairman

County Hall,
NORTHALLERTON.
8 May, 2007