



Chief Executive's Department
Civic Centre
HARTLEPOOL

12 May, 2016

Councillors C Akers-Belcher, S Akers-Belcher, Barclay, Beck, Belcher, Black, Buchan, Clark, Cook, Cranney, Hall, Hamilton, Harrison, Hind, Hunter, Jackson, James, Lauderdale, Lawton, Lindridge, Loynes, Martin-Wells, Moore, Dr. Morris, Richardson, Riddle, Robinson, Sirs, Springer, Tempest, Tennant, Thomas and Thompson

Madam or Sir,

You are hereby summoned to attend the COUNCIL meeting to be held on TUESDAY, 24 MAY 2016 at 7.00 p.m. in the Civic Centre, Hartlepool to consider the subjects set out in the attached agenda.

Yours faithfully

G Alexander
Chief Executive

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COUNCIL AGENDA



24 May 2016

at 7.00 pm

**in the Council Chamber,
Civic Centre, Hartlepool.**

- (1) To receive apologies from absent Members;
- (2) To receive any declarations of interest from Members;
- (3) To deal with any business required by statute to be done before any other business;
- (4) To approve the minutes of the last meeting of the Council, held on 17 March 2016, as the correct record;
- (5) To answer questions from Members of the Council on the minutes of the last meeting of Council;
- (6) To deal with any business required by statute to be done;
- (7) To receive any announcements from the Chair, or the Head of Paid Service;
- (8) To dispose of business (if any) remaining from the last meeting and to receive the report of any Committee to which such business was referred for consideration;
- (9) To consider reports from the Council's Committees and to receive questions and answers on any of those reports;
- (10) To consider any other business specified in the summons to the meeting, and to receive questions and answers on any of those items;

(1) Periodic Review of the Council's Constitution – Report of Monitoring Officer
- (11) To consider reports from the Policy Committees:

- (a) proposals in relation to the Council's approved budget and policy framework; and
 - (b) proposals for departures from the approved budget and policy framework;
- (12) To consider motions in the order in which notice has been received; and
- (13) To receive the Chief Executive's report and to pass such resolutions thereon as may be deemed necessary;
- (14) To receive questions from and provide answers to the public in relation to matters of which notice has been given under Rule 11;
- (15) To answer questions of Members of the Council under Rule 12;
 - a) Questions to the Chairs about recent decisions of Council Committees and Forums without notice under Council Procedure Rule 12.1
 - b) Questions on notice to the Chair of any Committee or Forum under Council Procedure Rule 12.2
 - c) Questions on notice to the Council representatives on the Police and Crime Panel and Cleveland Fire Authority
 - d) Minutes of the meeting held by the Cleveland Fire Authority on 12 February 2016.

COUNCIL

MINUTES OF PROCEEDINGS

17 March 2016

The meeting commenced at 7.00 pm in the Civic Centre, Hartlepool

PRESENT:-

The Ceremonial Mayor (Councillor Fleet) presiding:

COUNCILLORS:

Ainslie	C Akers-Belcher	S Akers-Belcher
Beck	Belcher	Brash
Clark	Cook	Cranney
Griffin	Hall	Hind
James	Lauderdale	Lawton
Lindridge	Loynes	Martin-Wells
Dr Morris	Richardson	Riddle
Robinson	Simmons	Springer
Tempest	Thomas	Thompson

Officers: Gill Alexander, Chief Executive
Peter Devlin, Chief Solicitor
Andrew Atkin, Assistant Chief Executive
Chris Little, Chief Finance Officer
Sally Robinson, Director of Child and Adult Services
Denise Ogden, Director of Regeneration and Neighbourhoods
Louise Wallace, Director of Public Health
Steve Hilton, Public Relations Officer
Joan Stevens, Scrutiny Manager
Amanda Whitaker, Angela Armstrong, Democratic Services Team

154. APOLOGIES FOR ABSENT MEMBERS

Councillors Atkinson, Barclay, Gibbon, Jackson and Sirs

155. DECLARATIONS OF INTEREST FROM MEMBERS

Councillor Hall declared a personal interest in item (9) (2). Supplementary interests were declared later in the meeting as set out in these minutes.

156. BUSINESS REQUIRED BY STATUTE TO BE DONE BEFORE ANY OTHER BUSINESS

None

157. MINUTES OF PROCEEDINGS

The Minutes of Proceedings of the Council held on the 18 February and 25 February 2016, having been laid before the Council.

RESOLVED - That the minutes be confirmed.

The minutes were thereupon signed by the Chairman.

158. QUESTIONS FROM MEMBERS OF THE COUNCIL ON THE MINUTES OF THE PREVIOUS MEETING OF THE COUNCIL

Further to minute 134(a)(1), a Member referred to an alternative proposal which had been made at the Council meeting on 18th February when there had been reference to a financial loss being made by Mill House Leisure Centre. The Member advised that enquiries following that Council meeting had shown that the figure referred to in the meeting had been incorrect and the mover of the alternative proposal was asked if he would apologise for the error. The mover of the amendment advised that the information he had quoted had been provided by the Chief Finance Officer and was, therefore, accurate.

159. BUSINESS REQUIRED BY STATUTE

None

160. ANNOUNCEMENTS

The Ceremonial Mayor announced that in view of the forthcoming local government elections, she intended to make comment upon retiring councillors at the end of the meeting.

161. TO DISPOSE OF BUSINESS (IF ANY) REMAINING FROM THE LAST MEETING AND TO RECEIVE THE REPORT OF ANY COMMITTEE TO WHICH SUCH BUSINESS WAS REFERRED FOR CONSIDERATION.

None

162. TO RECEIVE REPORTS FROM THE COUNCIL'S COMMITTEES

- (1) Corporate Procurement Strategy And Policy Document And Supporting Revisions To The Contract Procedure Rules – Report of Finance and Policy Committee

The Chair of Finance and Policy Committee presented the report which advised Council that the Procurement Strategy and Policy document 2015 – 2018, submitted as an appendix to the report, had been developed following a review of several existing strategic procurement documents; the aim of the review being to update and amalgamate the existing documentation.

The major changes arising from the review were highlighted and Members were advised that in order to ensure that the Procurement Strategy and Policy document and the Contract Procedure Rules (CPR's) were synchronised, there were a number of complementary changes proposed for the CPR's which were set out in the report and supporting appendix.

The recommendations of the Finance and Policy Committee were moved by Councillor C Akers-Belcher and seconded by Councillor Cook.

The Chair of the Committee responded to questions from a Member in relation to the rationale for the introduction of additional procedures and whether he agreed that it was good practice that any external organisation bidding for contracts should have two years accounts. The Member sought clarification from the Chair that a new Healthwatch contract had been subject to the Corporate Procurement Strategy.

Councillor C Akers-Belcher declared an interest which the Chief Solicitor clarified was a potential prejudicial interest and the Councillor would be required therefore to leave the meeting.

Following the declaration of interest, the Member advised that the Vice Chair of the Finance and Policy Committee or a representative of the Labour Group's Senior Leadership should respond to the issues he had raised. A debate followed during which the Chief Solicitor urged caution and suggested that the issue should be considered outside the confines of the Council meeting. A number of Members expressed the view that a response should be provided at this meeting. The Chief Solicitor clarified that the recommendations presented to Council related only to the Corporate Procurement Strategy and Policy Document and Supporting Revisions to the Contract Procedure Rules.

In view of the advice of the Chief Solicitor, it was suggested that an additional Council meeting be convened prior to commencement of Purdah to present the facts relating to the contract. The Chief Solicitor responded by highlighting that statutory notice provisions would not allow a meeting to be convened prior to the commencement of Purdah on 24th March.

The Chief Solicitor suggested that Council agree the recommendations set out in the report and that the concerns raised at the meeting regarding contract procurement be investigated.

It was suggested also that a report be submitted to Council, by the Finance and Policy Committee, on the operation of the Procurement Strategy.

The suggestions made by the Chief Solicitor were agreed by Council. It was agreed as follows:-

- (i) The proposed changes to the Constitution and Corporate Procurement documentation were approved.
 - (ii) That concerns raised at meeting regarding Healthwatch contract procurement be investigated.
 - (iii) That a report be submitted to Council, by the Finance and Policy Committee, on the operation of the Procurement Strategy
- (2) Closure of the Assisted reproduction Unit at the University Hospital of Hartlepool – Outcome of the Joint Health Scrutiny Committee – Report of Audit and Governance Committee

The Chair of Audit and Governance Committee informed Council of the Audit and Governance Committee's recommendations following consideration of the North Tees and Hartlepool NHS Foundation Trust's (the Trust) decision to cease the University Hospital of Hartlepool's Assisted Reproductive Unit (ARU), with effect from the 31st March 2016.

The decision to close the ARU had been identified by the Audit and Governance Committee as a matter of significant concern to the residents of Hartlepool. The Audit and Governance Committee had subsequently enacted its powers within the Health and Social Care Act 2012 to scrutinise the Trusts decision and a chronology of subsequent events / meetings was appended to the Council report.

The Trust had indicated that the decision in relation to the ARU had been taken on the basis that they were unable to recruit sufficient embryologists to continue to provide the current service safely. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 stipulated that the relevant NHS body, or health service commissioner, was not required to consult on a proposal for the substantial development/variation of a health service when the decision had been taken because of a risk to the safety or welfare of patients or staff. On this assumption, the Trust was not required to consult on its decision, nor was there a requirement for the creation of a Joint Health Scrutiny Committee to take the issue forward.

On this basis, the Audit and Governance Committee had met on the 5 February (reconvened on the 26 February 2016), minutes of which were appended to the report. The recommendations of the Committee were set out in the report.

In response to the Trust's request for a Joint Scrutiny Committee (supported by the Hartlepool and Stockton NHS Clinical Commissioning Group (CCG), and

with assurances that they are “entirely open to alternatives to the closure of the ARU and would be happy to explore any viable options that were raised during the consultation process”, the Audit and Governance Committee also agreed that it would take part in a Joint Health Scrutiny Committee. This being in accordance with the requirements of the Local Authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations, as they relate to consultations on proposals for substantial variations to, or development of, services. The Joint Health Scrutiny Committee had met on the 15 March 2016, and was advised that both Durham County Council and Stockton Borough Council had declined to participate in the Joint Committee process on this issue, the reasons for which were set out in the report. In addition, following the Council’s application to the High Court, and Order stipulating that the Trust “Shall take no further step to facilitate the closure of the Assisted Reproductive Unit at the University Hospital, Hartlepool until the Court was able to consider the matter further” the Trust had refused to attend the Joint Health Scrutiny Committee meeting. The grounds for the decision not to attend were set out in the report.

In the absence of the Trust, the Joint Committee had received an update from the CCG in relation to its identification of two independent embryologists (and a third clinician), through the Clinical Senate, to undertake a review of the ARU service and any proposed changes to the pathway and provider, looking at issues of safety and sustainability of service. This review was now ongoing and assurances had been given that the Audit and Governance Committee would be fully involved in the process, including the identification of witnesses/ sources of evidence for consideration by the independent clinical experts. The Committee was also assured the decision to close the ARU was not funding related. The Joint Committee was adjourned, with no date set for it to be reconvened, and progress was reported to the Audit and Governance Committee on the 15 March 2016. The Audit and Governance Committee had noted the update from the Joint Health Scrutiny Committee and, in accordance with the powers contained within the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, agreed to reaffirm its recommendation to Full Council that the Trust’s actions, and decision, in relation to the closure of the ARU be referred to the Secretary of State for Health.

In addition, the Audit and Governance Committee had asked that in light of the behaviour of the Trust in relation to not only the proposed closure of the ARU, but also its contempt for this Council, consideration be given to the removal of the Trust’s representation on the Council’s Health and Wellbeing Board.

The following recommendations of the Committee were moved by Councillor Martin-Wells and seconded by Councillor S Akers-Belcher:-

That Council:

- i) Approves the Audit and Governance Committee’s recommendations that the Trust’s actions, and decision, in relation to the closure of the ARU be formally referred to the Secretary of State for Health; and

- ii) Considers the removal of the Trust's representation on the Council's Health and Wellbeing Board.

That Council support the Audit and Governance Committee's recommendations that:

- i) A letter be sent to the Secretary of State for Health from the Chair of the Audit and Governance Committee to:
 - a) Request that the closure of the ARU be postponed (and arrangements previously in place for the provision of embryologists be continued) to allow the full and proper investigation of the decision (background, reasons and justification) with the full involvement of the Trust);
 - b) Notify him of the Trust's contempt for the Council and disregard for Overview and Scrutiny in their failure to attend as required under Regulation 27 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013;
 - c) Request that Monitor investigate the Trust's actions in relation to:-
 - The closure of the ARU (given the flaws identified in the Trusts recruitment argument);
 - Further seek to investigate previous decisions taken by the Trust to close / move services from University Hospital of Hartlepool (UHH) (including Accident and Emergency) on the grounds of clinical safety, as the Committee questioned the robustness of evidence previously provided to support decisions, with recognition that independent advice / reviews had been involved in some instances;
 - The Trust's competency / capability to continue to provide health services, with reference to the outcome of the recent Care Quality Commission (CQC) Inspection and issues identified in relation to leadership at the UHH (*i.e. Medical care - leadership - Inadequate, Maternity and Gynaecology - leadership - requires improvement, Services for Children and Young People - leadership – requires improvement, Outpatients and Diagnostic Imaging - leadership - requires improvement*); and
 - d) A meeting be requested between the Secretary of State for Health, Hartlepool's MP and Council representatives (including Audit and Governance Committee Chair and Vice Chair) in relation to the ARU issue and the wider issue of the trust competency / capability to continue to provide health services.

This supported by the view expressed in the recent CQC report in relation to the provision of service (*i.e. Medical Care - designated as requiring improvement across three of the four headings (safety, effectiveness, caring, responsive) and inadequate in terms of management*); and

- e) Contact each member of the Council of Governors for the North Tees and Hartlepool NHS Foundation Trust to require their attendance at a meeting of the Audit and Governance Committee (in accordance with the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013) to explain why they feel the Trust can ignore a formal request to attend a meeting of the Committee.

Following presentation of the report, the Vice-Chair of the Committee paid tribute to the work carried out by the Committee and Officers supporting the Committee. Concerns were reiterated in relation to the conduct of senior representatives of the Trust who had failed to participate as required in the overview and scrutiny process.

An addendum was moved by Councillor S Akers-Belcher and seconded by Councillor Martin-Wells:-

“That as the Council’s representative on the Hartlepool and North Tees NHS Foundation Trust, Councillor Hall be instructed to formally move a vote of no confidence in the Chair and Chief Executive of the Trust at the next meeting at the Hartlepool and North Tees NHS Foundation Trust Board.”

Members expressed support of the recommendations of the Committee. Comparisons were made to the different outcomes of previous Council meetings in relation to other decisions taken on clinical safety grounds to remove services from the University Hospital Hartlepool, including Accident and Emergency services, including previous Motions to cease co-operation with the Trust.

The Chair of the Committee reiterated the comments made by the Vice Chair and expressed his appreciation to the Committee and Officers who had worked diligently to support the process. The Chair paid tribute to the invaluable advice provided by Dr Mohamed Menabawey, the Audit and Governance Committee’s invited expert witness. Referring to comments made earlier in the debate regarding removal of other services from the University Hospital Hartlepool, the Chair highlighted that Council had previously not had expert witnesses with the equivalent extensive experience and responsibilities of Dr Menabawey. The Chair clarified also that one of the recommendations of the Committee had been for Council to consider the removal of the Trust’s representation on the Council’s Health and Wellbeing Board as opposed to complete withdrawal of cooperation with the Trust.

Following further debate on previous Motions moved by Council including referral to the Secretary of State in relation to the removal of Accident and Emergency services, the Chief Solicitor reiterated the comments made by the

Chair that a Motion considered previously by Council had related to withdrawal of all cooperation with the Trust which was different to the recommendation made by the Committee in terms of the composition of the Health and Wellbeing Board.

The Chief Solicitor provided confirmation that Councillor Hall had been appointed as the Council's representative on the North Tees and Hartlepool NHS Foundation Trust, as set out in Part 7 of the Council's Constitution, and had separate obligations when serving on the Outside Body. Therefore, in terms of the addendum, it was not appropriate to direct Councillor Hall as that would be in conflict with his role on that Outside Body.

The mover and seconder of the addendum accepted the advice of the Chief Solicitor to amend the wording of the addendum as follows:-

"That as the Council's representative on the Hartlepool and North Tees NHS Foundation Trust, Councillor Hall be requested to raise the issues expressed in relation to no confidence in the Chair and Chief Executive of the Trust at the next meeting at the Hartlepool and North Tees NHS Foundation Trust Board."

The recommendations of the Audit and Governance Committee and the amended addendum were agreed unanimously by Council, by show of hands.

163. TO CONSIDER ANY OTHER BUSINESS SPECIFIED IN THE SUMMONS OF THE MEETING

1. Constitution Review - Report of Monitoring Officer

The Monitoring Officer presented a comprehensive report which reminded Council that the Constitution at Article 15 stipulated that the Monitoring Officer 'will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect'. Following the Council meeting on the 21st January, 2016, a number of motions as presented to that meeting had been referred to the Monitoring Officer in line with the above requirements. Associated with that mechanism for review and revision, there was a protocol wherein, amongst other matters, the Monitoring Officer could address issues raised by both Members and Officers, but also the public and other relevant stakeholders. A press release had been published on the Council's website with a subsequent article appearing in an edition of the Hartlepool Mail, inviting representations from the general public on matters that should be reviewed or otherwise revised within the Council's Constitution. There had been also publication on various other social media platforms as well as internal communication inviting representations to be made. No representations had been received from the general public and therefore the matters raised within the report had either come through Elected Members or Officers of the Borough Council or a result of constitutional changes or otherwise in relation to Outside Bodies and Organisations.

The Monitoring Officer advised of the background to the following recommendations which he presented to Council:-

- (i) A Members' Seminar to be held to seek views on items relating to Rules of Procedure prior to Council determination of any revisions including;
 - i) Supplementary questions
 - ii) Signatories to refer a matter to Council
 - iii) Rules around debate
 - iv) Submission of questions
 - v) Constitutional review mechanism
- (ii) A revision to the Officer Employment Procedure Rules includes a notation allowing an invitation for the Chair or Vice Chair of a relevant Committee to attend or otherwise be consulted on a Band 15 appointment, but that such appointment is the responsibility of the Head of Paid Service or his/her nominee.
- (iii) Members approve or otherwise note the following in respect of Part 7 of the Council's Constitution, as follows;
 - 1. To approve the deletion of the present reference to the Industrial Communities Alliance (present nominations being the Leader and designated substitute being the Chair of Regeneration Services Committee) and also the Director of Regeneration and Neighbourhoods.
 - 2. The current number of appointments to the Fire Authority will move from 4 to 3 representatives, which appointments will be confirmed at the Fire Authority Annual meeting to be held on 10th June, 2016. Members are asked to note this position and that political balance will still apply in respect to the 3 appointments from the Council to serve upon the Cleveland Fire Authority.
 - 3. Tees Valley Combined Authority – The Tees Valley Combined Authority Order, 2016, will establish following the exercise of the Secretary of State's powers a Combined Authority for the Tees Valley area, under the Local Democracy, Economic Development and Construction Act, 2009. For the purpose of Part 7 of the Constitution, Council are asked to note the following;
 - Council must appoint one of its Elected Member to be a Member of the Combined Authority. This will be the Leader / Elected Mayor of the constituent councils' together with a substitute Member (Deputy Leader / Deputy Elected Mayor).
 - One voting representative nominated by each constituent authority (or substitute Member as appropriate) to the Tees Valley Transport Committee.

- One voting representative nominated by each constituent authority (or substitute Member as appropriate) to the Audit and Governance Committee.
 - The Combined Authority must appoint an Overview and Scrutiny Committee with at least 3 Members of each of the constituent councils' being represented upon the Overview and Scrutiny Committee and this representation "*so far as reasonably practicable is to reflect the balance of the political parties at the time being prevailing amongst Members of the constituent councils'.*" Members are also asked to note that presently the Order to establish the Combined Authority does not allow for substitute Members to sit on the Overview and Scrutiny Committee.
- (iv) Council approve the preferred format for the Local Joint Consultative Committee, its amended remit and that minutes are forwarded to the Finance & Policy Committee for consideration.
- (v) Council approve that Part 3 of the Constitution, through the list of "Other Strategies and Plans" be removed for each Policy Committee and the Policy Framework list should be updated to read as set out in an appendix to the report.

Following presentation of the report, the Chief Solicitor responded to Members with an assurance that the Members' Seminar would be open to the public to express their views on items relating to Rules of Procedure.

The recommendations of the Monitoring Officer were agreed unanimously by show of hands.

164. REPORT FROM THE POLICY COMMITTEES

(a) Proposal in relation to the Council's budget and policy framework

(1) Community Safety Plan 2014-17 (Year 3) – Report of Finance and Policy Committee

The Chair of Finance and Policy Committee reported that the Community Safety Plan (Year 3) provided an overview of progress made by the Safer Hartlepool Partnership during 2015-16 with an update on end of year performance. The plan set out some of the Partnership activity undertaken to reduce crime and improve safety during the last twelve months and incorporated the 2016-17 annual priorities.

It was noted that the document had been agreed by the Safer Hartlepool Partnership on 22nd January, had been considered by the Audit and Governance Committee on 11th February and the Finance and Policy Committee on 15th February 2016.

The recommendation of the Finance and Policy Committee that Council adopts the Safer Hartlepool Partnership Community Safety Plan 2014-17 (Year 3) was moved by Councillor C Akers-Belcher and seconded by Councillor Richardson.

The recommendation of the Finance and Policy Committee was agreed unanimously by show of hands.

(2) Council Plan 2016/17 – Report of Finance and Policy Committee

Council was informed, by the Chair of Finance and Policy Committee, that the Council Plan was the Council's top level plan which set out how the Council would work towards achieving the priorities set out in the Community Strategy. The individual sections of the Plan had been considered by the relevant Policy Committees prior to consideration and agreement of the whole Plan by Finance and Policy Committee on 14 March. No changes had been made to the Council Plan previously circulated to Council.

Council was advised that the Council Plan 2016/17, appended to the report, set out how the Council proposed to deliver the priority outcomes. The plan contained the key actions, risks, Performance Indicators and targets, where available, which would be used to monitor progress throughout 2016/17. The Council Plan also contained the equality objectives that had been identified for publication in April. The Council had a legal duty to publish a set of equality objectives in April at least every 4 years. Since the first objectives had been published in April 2012 the Council had used the relevant outcomes and actions from the Council Plan in order to demonstrate that equality is a core part of our work.

As in previous years the timetable for producing the Council Plan meant that some target information for the Performance Indicators could not be included at this stage as the information was not yet available. Any outstanding targets would be presented to Finance & Policy Committee for agreement within the regular performance monitoring reports.

The recommendation of the Finance and Policy Committee that Council approve the Council Plan 2016/17 was moved by Councillor C Akers-Belcher and seconded by Councillor Richardson.

The recommendation of the Finance and Policy Committee was agreed unanimously by show of hands.

(b) Proposal for Departure from the Budget and Policy Framework

None

165. MOTIONS ON NOTICE

1. “That the council’s budget and decision making procedure be amended to include a ‘child poverty assessment’ that will offer guidance on the potential impact of budget measures and other key decisions (as defined by article 13 of the constitution) on the level of child poverty in the borough.”

Signed:

Councillors Brash, Riddle, Atkinson, Gibbon and Thompson

The motion was moved by Councillor Brash and seconded by Councillor Thompson.

The mover of the motion explained the rationale for the Motion. It was acknowledged that this Council was supporting initiatives already to address child and family poverty in the town. However, Council was advised that the motion was proposing a slightly different approach. Reference was made to recent reports to Council and to Finance and Policy Committee which had not included direct reference to the implications on child and family poverty.

In responding to the issues raised by the Motion, the Chair of Finance and Policy Committee responded that as a Council, the report writing guide had been amended for officers to ensure that consideration was given, in all reports that were submitted to Policy Committees, to child and family poverty matters and the various budget reports submitted to Policy Committee had done this individually. As part of the budget, the Local Council Tax Support Scheme had been preserved at 12%, the impact of cuts on front line services had been minimised, a £500,000 Child and Family Poverty Reserve had been established and the Hartlepool Living Wage and been reviewed and increased. In addition the Council had been successful in securing additional resources to the town, and the Tees Valley, to address Youth Unemployment. However, it was recognised that it was important not to be complacent and the following amendment was moved by Councillor C Akers-Belcher:-

“That Council tasks Officers with strengthening the guidance to staff and partners on how to undertake and report on child and family poverty implications in all reports to Policy Committees and Full Council”

The mover of the Motion advised that he was happy to accept the amendment.

Motion, as amended, agreed unanimously by show of hands.

2. “That this council facilitates debate upon the issue of UK membership of the EU in light of the forthcoming referendum.”

Signed:

Councillors Brash, Riddle, Atkinson, Gibbon and Thompson

The Motion's Lead Councillor advised Council that the Motion he had submitted originally, for this Council to support the UK remaining a member of the European Union, had not been accepted. The Motion had been amended, following advice from the Chief Solicitor, to refer to Council facilitating debate upon the issue of UK membership of the EU.

The following amendment was moved by Councillor Brash:-

"That this Council supports the United Kingdom's continuing membership in the European Union".

On moving the amendment, views in favour of EU membership were presented to Council. The view was expressed that Council should make a public statement supporting EU membership and should not be prohibited from expressing a view.

The Chief Solicitor confirmed that the motion submitted originally had not been acceptable. Council was advised that purdah guidance was awaited which could include restrictions on information. The Chief Solicitor advised that the amended motion could be contrary to emerging purdah guidance. In addition, the Local Authority Publicity Code operated outside an election period and referred to a Local Authority not seeking to promote a political view and taking a balanced and even handed approach. Members were, therefore, urged to take a cautionary approach.

The amendment was seconded by Councillor Thompson.

A debate ensued during which reference was made to Council meetings including debate on political issues, the benefits of information being in the public domain and the precedent set by Havering London Borough which had passed a Motion to leave the EU.

The Chief Solicitor reiterated that the amendment could potentially offend local government rules and purdah guidance and had been ruled out of order.

The Ceremonial Mayor confirmed that the amendment was ruled out of order.

Councillor Thompson seconded the 'original' motion.

Contrary views were expressed by a number of Members who considered that it was not appropriate to influence the public vote on the issue with concerns expressed at the use of Council resources on an issue which was a matter for individual choice. Members expressed their own personal views on membership of the European Union.

Councillor S Akers-Belcher declared a personal interest as Co-ordinator of Hartlepool Constituency Labour Party in relation to the European Referendum.

Following a vote by show of hands, the motion was lost.

166. PAY POLICY 2016/17

The Chief Executive reported that under Section 38 of the Localism Act, 2011, full Council had to approve a Pay Policy on an annual basis. At its meeting on 15 February 2016 the Finance and Policy Committee had considered the draft Pay Policy 2016/17.

The Committee had recommended that the Pay Policy be amended at Paragraph 13.1 to reflect that, whilst the Council does not generally support using agency workers, any agency workers operating in the Council should receive at least the Hartlepool living wage, and not the national minimum wage as originally stated. The proposed amendment to paragraph 13.1 of the Pay Policy was set out in the report. Council was requested to approve the amended Pay Policy Statement 2016/17 which was appended to the report.

An amendment was moved by Councillor C Akers-Belcher and seconded by Councillor Richardson to approve the Pay Policy Statement for 2016/17 subject to paragraphs 13 and 15 being replaced as follows:-

Paragraph 13.1 – Use of Agency Workers

“The Council does not generally support using agency workers. However there may be circumstances where engaging agency workers is the most efficient and effective way of meeting the Council’s needs. ~~If this situation applies formal approval will be sought from the relevant Assistant Director.~~ Agency workers shall only be used where there is a clear and identified business need (as an example immediate operational need or statutory/care responsibilities) which has been demonstrated to the appropriate Director. Following consultation with the appropriate Committee Chair approval may be given by the Director acting on behalf of the Head of Paid Service. Agency workers operating in the Council receive at least the Hartlepool living wage initially and at least the pay of comparable employees after 12 weeks of qualifying service.”

Paragraph 15.1 – Use of Zero Hour Contracts

“The Council does not generally support the use of zero hours contracts. However there may be circumstances where the use of zero hours contracts is the most effective and efficient way of meeting the Councils needs. ~~And the Assistant Chief Executive (or nominees) will determine when this applies. Any proposed new Zero Hour Contracts will (in line with other aspects of the Pay Policy) require the agreement of the Chief Executive in consultation with the Chair of Finance and Policy Committee.~~ Where employees are employed on a zero hours contract they are employed on a permanent or fixed term basis, are entitled to request a review of their contracted hours at any time after six months in post and are not prevented from working for other employers”

With the proposed amendments as set out above, the Pay Policy Statement 2016/17 was approved.

167. GROWING PLACE AND LOCAL GROWTH FUND ALLOCATIONS

The Chief Executive reported that a detailed report had been submitted to Council on 25th June 2015 to inform Council of the impact of delayed Government funding announcements in relation to the 'Growing Places' and 'Local Growth Fund' initiatives. The previous report had informed Council that the Government had announced details of a total national 'Local Growth Fund' grant allocation of £12 billion (£7 billion 2015/16 and £5 billion 2016/17) and had written to Local Enterprise Partnerships with details of 'indicative' allocations (to the nearest £) for 2016/17. Owing to internal BIS (Department for Business, Innovation and Skills) rules the formal funding announcement for 2016/17 had not been made and was not expected to be made until the Autumn Statement, at the earliest. This position potentially meant that Cleveland College of Art and Design (CCAD) would not be able to award a contract as they did not have the financial resources to underwrite the project until BIS had issued a formal funding letter. Therefore, in order to enable this project to progress discussions had been held between CCAD, Tees Valley Unlimited (TVU) and the Council to identify a temporary funding solution.

As part of the potential temporary funding solution Council had approved the provision of bridging finance pending the formal announcement by the Government of 'Growing Places' and 'Local Growth Fund' allocations for individual projects. Council noted that the bridging finance would only be drawn down as contractual payments became due and would be potentially be required over two financial years, with the majority costs falling in 2016/17. The Council's potential financial exposure would also be minimised as the Council's temporary funding would be the last money to be advanced.

Council was informed that the Government had recently announced details of the 'Growing Places' and 'Local Growth Fund' allocations for individual projects, which had confirmed the indicative funding allocations for the CCAD project. Council was therefore requested to note that the temporary bridging finance facilities would not now be needed and to also note that this facility had not been used in the current financial year.

RESOLVED – That the report be noted.

168. PUBLIC QUESTION

1. From Mr Fisher to Chair of Finance and Policy Committee

"Will you make a formal proposal to return the restricted but direct public participation in these full council meetings by rescinding and reversing a previous council resolution to have public questions read out by a third party and to "ban" live supplementary questions altogether?"

If the answer is YES – then THANKYOU

BUT—

If the answer is NO then please explain why your answer is NO."

The Chair of Finance and Policy Committee responded that his answer was in the negative. A Motion which came before Council on 21st January, 2016, did request that there be a 'full review' of the Council's Procedure Rules and this has been noted in the Monitoring Officer's report to Council this evening. However, the Monitoring Officer had suggested that there be further discussion on this and other topics and the Chair suggested that Council await the Monitoring Officer's recommendations, in due course. It was moved by Councillor Brash and seconded by Councillor Thompson:-

"That comparable to the consultation undertaken regarding the timing of Council meetings, consultation be undertaken on timing of Committee meetings"

Support was expressed for the reinstatement of supplementary public questions.

An amendment was moved by Councillor James:-

"That prior to consultation being undertaken, a child poverty impact assessment be carried out on the public consultation and the associated issues relating to the timing of Committee meetings"

The mover of the motion advised that he was happy to accept the amendment.

The Chair of Finance and Policy Committee referred to the Motion agreed earlier in the meeting (minute 165(1) refers) and suggested the proposed consultation be considered at the same meeting.

The mover of the motion accepted the proposal suggested by the Chair of Finance and Policy Committee.

2. From Mr Fisher to Chair of Finance and Policy Committee

"Is the "standing up" required of the members of public attending these meetings enforceable IN LAW and if so then how would that enforcement be executed?"

The Chair of Finance and Policy Committee responded that it was the usual and generally accepted practice for those attending a Council meeting at its commencement and also at its conclusion to either stand as a matter of course or upon a formal announcement by the Macebearer. It was highlighted that the Mace was a symbol of the authority of a properly constituted Council meeting through the attendance of the Ceremonial Mayor (or in his/her absence the Deputy Ceremonial Mayor) and also signified the absence of the sovereign. It was in part a historic tradition of custom and practice but one which signified the dignity and respect which should be afforded and recognised in Council proceedings. Where someone deliberately chose not to stand up this was not strictly enforceable 'in law' but the Council's Constitution recognised that 'people are expected to behave in a manner that contributes to the well being of the Borough.' Should someone choose to deliberately disregard accepted custom and practice, it was questioned why they would wish to be present but

not be respectful towards such formalities.

3. From Mr Measor to Chair Neighbourhood Services Committee

“Could an assurance be provided that the Council will not use weed killers which are known to be cancer causing?”

The Chair of Neighbourhood Services Committee responded that the Council's Health Safety and Wellbeing team, operational officers and Union representatives had reviewed working practices, risks assessments and associations COSHH documentation in light of the International Agency for Research on Cancer (IARC) report. It was highlighted that glyphosate was an active ingredient in the chemicals approved for use in the UK for weed control in public amenity areas. Operatives received regular industry training to ensure good practice in chemical use when it was deemed necessary to use them. Since 2012 the Council had used predominantly controlled droplet applicators. Used by trained operators these allowed direct targeted applications to the leaves of individual weeds which were rapidly absorbed, reducing chemical use, and so minimising the chances of chemical deposits on adjacent surfaces. However, the Council would continue to review the potential and economic impact of widening the use of integrated weed control approaches that helped reduce the need for targeted chemical application. This was in addition to continuing to review the development of industry supplier offerings that could provide economic and commercially viable alternatives which needed to be approved for public realm use which helped to address the Council's obligation to keep some areas of the public weed free, whilst minimising the use of chemicals and any potential risks to human health or the wider environment.

Concerns were expressed by one of Mr Measor's Ward Councillors that Mr Measor had initially made reference, in his question, to a particular brand of weed killer which this Council used. It was alleged that the product had been proven to be cancer causing. It was considered, therefore, that the Council should review the decision to use that product.

4. From Mr Measor to Chair Regeneration Services Committee

“Can you please provide us with an update on the progress of the compulsory purchase of the Longscar centre, and can you provide us with an anticipated completion date for the purchase, as this has gone on for over a decade?”

Prior to responding to the question, the Chair of Regeneration Services Committee questioned why the question had not been directed to a Seaton Ward Councillor. The Chair then responded to the question by advising that the Council had obtained a formal resolution on 21st September 2015 to use its Compulsory Purchase Order (CPO) powers to acquire the Longscar to facilitate the development of the seafront. Following the formal resolution authorising the use of the Council's CPO powers the necessary legal process had been progressed. The period for objections had expired and the Secretary of State and the Planning Inspectorate would determine the timescales and next steps for the CPO. It was likely that a public inquiry would be held later in the year. In

the meantime, the Council was under a duty to try and acquire the Longscar Building by negotiation and would continue to try and negotiate the purchase of the building by agreement.

During the debate which followed the response, there was an exchange between the Chair and a Seaton Ward Councillor. The Chief Solicitor urged Members to remember to be civil to each other and then progressed to add to the response provided by the Chair. Following clarification sought from a Member in relation to what stage the Council was at in terms of the process to be followed, the Chief Solicitor advised that the Council was preparing for a Public Inquiry in view of the objections raised to the Compulsory Purchase Order made by the Council which could only now be confirmed through the Secretary of State, following the outcome of the Inquiry. The Chief Solicitor also indicated that he would write to Mr Measor with further clarification on the current position.

5. Mr Dunn to Chair Neighbourhood Services Committee

“Can the council please explain why the residents of Manor House ward are once again been giving a free service for removal of households items, for the third year running so close to the election campaign? Also can you explain how this is been funded and why it is only for the Manor House ward?”

The Chair of the Neighbourhood Services Committee responded that the activity referred to by Mr Dunn was not a ‘free’ service but part of the Manor House ‘Spring Clean’ initiative which was aimed to coincide with the time when the majority of residents would be spring cleaning their homes and throwing out items they no longer need.

Council was advised that the Manor House Ward ‘Spring Clean Initiative’ was funded annually from Ward Member Budgets. Each Councillor had a budget of £4,500 (including £500 from the Civic Lottery). It was in the gift of all Ward Members how they spent their budgets as long as the purpose was lawful and benefitted their ward or residents of their ward. The Chair highlighted that it was an excellent example of how Ward Councillors could respond to the needs of their residents and proved the worth and value of ward member budgets.

Maintaining a clean, safe and green environment was a key priority for Manor House residents and this initiative was one of many that had been funded by Manor House Ward Councillors during 2015/16. It was highlighted that a similar scheme had operated in the Foggy Furze Ward.

The Spring Clean Initiative in the Manor House ward had cost £2,417 which included a contribution from each ward member of £639 and attracted a £500 contribution from the ‘Thirteen’ housing group. As with all Council funding procedural arrangements were in place to ensure accountability and transparency. All submissions were subject to an approval process under delegated authority of the Director of Regeneration and Neighbourhoods. Progress was reported on a quarterly basis to Neighbourhood Forums and was published on-line; an annual report was also taken to Neighbourhood Services Committee outlining the full expenditure detail.

169. QUESTIONS FROM MEMBERS OF THE COUNCIL

- a) Questions to the Chairs about recent decisions of Council Committees and Forums without notice under Council Procedure Rule 12.1

None

- b) Questions on notice to the Chair of any Committee or Forum under Council Procedure Rule 12.2

None.

- c) Questions on notice to the Council representatives on the Police and Crime Panel and Cleveland Fire Authority

None.

- d) Minutes of the meetings held by the Cleveland Fire Authority and the Police and Crime Panel

None.

RETIRING MEMBERS

As this was the last Ordinary meeting of Council in the municipal year, the Ceremonial Mayor paid tribute to those Councillors that were retiring in the forthcoming local elections and thanked them for their contribution to Council and to the town.

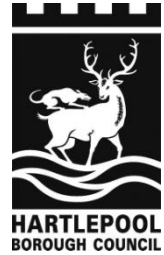
Councillors paid tribute to Councillors Brash, Gibbon, Fleet, Griffin and Simmons. Councillors responded in appropriate terms.

The meeting concluded at 10.15 p.m.

CEREMONIAL MAYOR

COUNCIL

24 May 2016



Report of: Monitoring Officer

Subject: PERIODIC REVIEW OF THE COUNCIL'S CONSTITUTION

1. INTRODUCTION

1.1 On the 17th March, 2016, Council considered a report on a variety of items, some of which were concluded through a resolution of Council and others which are again tabled within the confines of this report. The Council's Constitution at Article 15 ("*Review and Revision of the Constitution*") requires the Monitoring Officer to "*....monitor and review the operation of the Constitution to ensure the aims and principles of the Constitution are given full effect.*" Further, to make recommendations to Council '*in order to better achieve the purposes*' of the Constitution as set out in Article 1 of that document. A series of motions had been presented to the Council meeting on 17th January, 2016 which requested consideration of those items listed below;

- i) Supplementary questions for Members of the Public be reinstated in their previous form.
- ii) That the requirement for signatories to "Call in" a Policy Committee decision to be reduced to 5 Members (from the present requirement of 17).
- iii) That this Council believes the current rules around debate within the context of full Council meetings are too restrictive and prevent full and reasoned debate. Therefore Council resolves to conduct a full review of Part 4 of our Constitution (Rules of Procedure) and invites contributions from Officers, Members and the Public.
- iv) That the 7 clear working days rule for submission of Motions and questions is not practicable and that Council should resolve to shorten that period to 3 days.
- v) That "all Constitutional matters, in the first instance, be referred to the Monitoring Officer, automatically as part of the 6 monthly Constitutional Review and should be articulated in the Council's Constitution. The Monitoring Officer be requested at the same time, to take soundings from Members how best to deal with the Motions to Council. This will still ensure that Members make constitutional decisions in line with the reports presented by the Council's Monitoring Officer on a 6 monthly basis".

2. BACKGROUND

- 2.1 That earlier report to Council had also invited representations from members of the public through a press release published on the Council's website on the 4th February and subsequently in an article appearing in the Hartlepool Mail on 12th February 2016. In addition, there was publication of this invitation to make representations on a review of the Council's Constitution on various social media platforms as well as through internal communication to officers. No representations were received from the public and therefore the items raised within this report are those either generated through earlier notice of motions by Elected Members or through representations received through Council officers.
- 2.2 Council are once again reminded that the Constitution must contain;
- A copy of the Council's Standing Orders (now termed "Procedure Rules") for the time being,
 - A copy of the Council's Code of Conduct,
 - Such information as the Secretary of State shall direct, and
 - Such other information (if any) as the Council considers appropriate.
- 2.3 It will therefore be observed that provided that there is overall statutory compliance (where applicable) there is some degree of flexibility as to the information which may be included within the Council's Constitution. Notably, Part 5 of the Council's Constitution ("Codes and Protocols") has a number of references beyond the Code of Conduct for Councillors and Co-opted Members and has reference, by way of example, to the 'Planning Code of Practice', 'Code of Corporate Governance' as well as 'Guidance for Members and Officers serving on Outside Organisations and Other Bodies'. The Council operates a "committee based" governance system and therefore needs to comply with requirements in The Local Authorities (Committee Systems) (England) Regulations 2012. In addition, the principles of delegated authority are those established under Section 101, of the Local Government Act, 1972. As Members have previously been made aware, most Constitutions (introduced under the 'executive' forms of governance through the Local Government Act, 2000) are based on the modular format as specified within the then DETR document "New Council Constitutions: Modular Constitutions for English Local Authorities (December 2000)".
- 2.4 At their previous meeting, Members resolved to approve certain changes to appointments to Outside Organisations and other bodies as specified in Part 7 of the Council's Constitution. Further, the format and remit of the Local Joint Consultative Committee and associated changes were also approved by Council on the 17th March, 2016. Finally, there was a resolution to revise the Officer Employment Procedure Rules involving a notation to allow, through the invitation of the Chief Executive Officer (acting in the capacity of Head of Paid Service), for a Chair or Vice Chair of a relevant Committee to attend or to be consulted on a Band 15 appointment. For the avoidance of any doubt,

such appointments under The Local Authorities (Standing Orders) (England) Regulation, 2001, remain the responsibility of the Head of Paid Service or his / her nominee.

3. ITEMS FOR CONSIDERATION

- 3.1 Those items listed in paragraph 1.1 above are to be considered further by Council. As the issues surrounding supplementary questions, rules around debate, submission of Motions/Questions and a reference to the Monitoring Officer for a mechanism for a review, are largely matters referenced in Part 4 of the Council's Constitution (namely the Council Procedure Rules) such matters are destined to be considered through a "Members Seminar". For the avoidance of doubt, Council did previously determine that the public should be invited to such meetings. It is recommended that all these items be further considered in that format.
- 3.2 However, there is concern over item iv) which relates that Motions (irrespective of questions) should be subject to a shortened notice period of 3 days as opposed to the present '7 clear working days'. Council Procedure Rule 13.1 requires every Notice of Motion signed by at least 5 Members to be delivered to the Chief Executive Officer (as the Proper Officer) *"during normal working hours at least 7 clear working days before the date of the meeting."* Council Procedure Rule 12.2 makes reference to questions which must be submitted *"no later than noon on the Thursday of the week before the meeting."* As indicated previously, a Notice of Motion provides for the presentation of a measure which *"is one propounding a substantial issue for consideration and action"*. Ostensibly, relating to a matter which refers to the functions and powers of the Local Authority or which otherwise affects the Borough. Such a Motion cannot be moved at a Council meeting unless prior notice has been given as to the terms of the Motion and it must therefore be included within the agenda of the meeting to which the item relates. There is a statutory requirement for a summons to attend a meeting and public notice of the agenda, specifying the business to be transacted to have at least seven clear days notice. The applicable Council Procedure Rule therefore applies as a prerequisite the time period governed by legislation. It is therefore recommended that there be no change to this particular procedure rule as otherwise Council would be failing to observe and would be in conflict with prevailing statutory requirements. It is suggested that the matter relating to the submission of questions (which still requires due consideration prior to being tabled to Council) be left for determination within the Members Seminar.
- 3.3 At their previous meeting, Council as indicated requested that such a seminar be open to the public. With this in mind, there are provisional dates of the 27th June at 2pm and 28th June at 6pm to accommodate such a seminar and Members views are sought on these dates. It is envisaged, that the seminar would follow the format which was adopted when the Council looked towards changing its' governance arrangements circa 2011/12 wherein a series of "issues papers" were adopted to allow participants to determine what matters required review and which matters did not. Such a seminar would hopefully

generate collective thoughts and observations before a further report with recommendations as part of a periodic review was submitted to Council.

Recommended;

It is recommended that there be no change to Council Procedure Rule 13.1 and that a Notice of Motion must comply with the '7 clear working days' requirement.

It is requested that views of Council be made known upon a Members Seminar provisionally to be held on 27th June at 2pm and 28th June at 6pm.

4. ADDITIONAL ITEMS FOR CONSIDERATION

- 4.1 Since the meeting on the 17th March 2016, a request was made through the Council's Section 151 Officer for a review of the Budget Process (Figure 1 of the Budget and Policy Framework Procedure Rules refers). The existing tabulation of dates in the Budget Process is appended herewith at **Appendix 1**. Members will note that there are scheduled two meetings in February of each year, one to consider and approve the Council Tax level and a second to approve the calculation which incorporates the precepts approved by the Police and Crime Commissioner, Cleveland Fire Authority and the Parish Councils within the Borough. It was suggested through Elected Members, that there be consolidation of these two meetings. This is accommodated within the revised document (**Appendix 2**) upon which the approval of Council is sought. Members will note that a Council meeting in December would seek to approve the Local Council Tax Support Scheme which falls under the remit of a proposal from the Finance and Policy Committee, but the actual '*budget decision*' would revert to the timetable that has previously been adopted by the Authority, namely early in the calendar year ie., that meeting convened in February. Members will recall that the term "budget decision" has an expansive meaning and includes not only the issuing of a precept under Chapter 4 Part 1 of The Local Government Finance Act 1982, as amended, but also to the "calculation", which is strictly a mathematical exercise but which is termed as being a formal "budget decision". The practice of having a consolidated meeting to consider both these items is common within Local Government and is a practice which has been adopted by neighbouring authorities.

Recommended;

It is recommended that Council approve **Appendix 2** to be inserted at Figure 1 "Summary of Budget Process" within the Budget and Policy Procedure Framework Procedure Rules.

- 4.2 Mention has also made of the "Face the Public Events" and its present link with the Neighbourhood Forums (and also with the "Youth Parliament"). It is suggested that this particular item be referenced within the Members Seminar for further discussion and consideration. Similarly, following an earlier report to the Audit and Governance Committee and a presentation made to Elected

Members, a formative view was given on the subject of “Non Statutory Sanctions” in connection with a breach by a Member of the Council’s Code of Conduct. Members will recall that the Localism Act, 2011, removed a ‘sanctions’ based regime where a Member had engaged in proven misconduct, to an “action” based system with more subtle remedies, but not based on disqualification or suspension for any breach occasioned. For Members information, the Department for Communities and Local Government have invited responses following a case involving Saddleworth Parish Council which concerned itself with the inability to disqualify a Councillor following a criminal conviction with reference to Section 80 of the Local Government Act, 1972, which prescribes that upon conviction of a period of 3 months or more (or a suspended sentence of that nature) a Member shall be disqualified from office. In that particular case, it was felt that a conviction which fell short of this threshold was still indicative of conduct contrary to qualification as a Member of a Local Authority and upon which the Department are inviting representations. Further, they are also inviting representations as to the present “action” based system involved with the Code of Conduct regime. The procedure which was tabled before the Audit and Governance Committee is attached herewith (**Appendix 3**) for the general information of Members. However, the views of Members are requested as to whether the particular initiative should be referred to the Members Seminar or referred back to the Audit and Governance Committee on the basis of making representations to the Department of Communities and Local Government with support for the re-introduction of a sanctions based system.

Recommended;

It is recommended that Members consider whether or not their initiative to have “Non Statutory Sanctions” should be further considered at the Members Seminar or referred back to the Audit and Governance Committee to make representations to the Department of Communities and Local Government.

5. SUMMARY OF RECOMMENDATIONS

5.1 It is recommended that;

- 5.1.1 There be no change to Council Procedure Rule 13.1 and that a Notice of Motion must comply with the ‘7 clear working days’ requirement.
- 5.1.2 Views of Council be made known upon a Members Seminar provisionally to be held on 27th June at 2pm and 28th June at 6pm.
- 5.1.3 Council approve **Appendix 2** to be inserted at Figure 1 “Summary of Budget Process” within the Budget and Policy Procedure Framework Procedure Rules.
- 5.1.4 Members consider whether or not their initiative to have “Non Statutory Sanctions” should be further considered at the Members Seminar or referred back to the Audit and Governance Committee to make

representations to the Department of Communities and Local Government.

Medium Term Financial Strategy Update

The Corporate Management Team will present a report to the Finance and Policy Committee to provide an update on the financial position facing the Council for the period covered by the Medium Term Financial Strategy.

End of May / June

Prepare and approve budget framework

The Finance and Policy Committee will prepare the initial proposals for the budget, plan or strategy.

In relation to the budget this will include determining indicative Council Tax increases, corporate / department savings targets and identifying top line savings proposals

July

Individual Policy Committees

Develop and approve savings proposals to achieve targets set by the Finance and Policy Committee.

End July / August

Finance and Policy Committee

Consider and approve detailed savings proposal developed by individual Policy Committees and approve draft budget and policy proposals to be referred for consultation in line with agreed consultation arrangements determined by the Finance and Policy Committee (including statutory consultation).

End September / October

Budget Consultation - October / November

Finance and Policy Committee

The Corporate Management Team will submit a report providing an update on the impact of the Provisional Local Government Finance Settlement on the Medium Term Financial Strategy.

Consider consultation feedback and approve final budget proposals to be referred to Full Council.

November (timing determined on basis of date of provisional Local Government Finance Settlement).

Council

Consider and approve the draft budget and policy proposals based on simple majority vote.

December

Council

Consider and approve Council Tax level for Hartlepool Council Services proposed by Finance and Policy Committee based on simple majority vote.

February (meeting 1)

Council

Consider and approve statutory and council tax calculations incorporating precepts approved by Police and Crime Commissioner and Cleveland Fire Authority.

February (meeting 2)

Figure 1 Summary of Budget Process

Medium Term Financial Strategy Update – End of May / June

The Corporate Management Team will present a report to the Finance and Policy Committee to provide an update on the financial position facing the Council for the period covered by the Medium Term Financial Strategy. This will include determining indicative Council Tax increases, indicative Local Council Tax Support Scheme and savings requirements.

Individual Policy Committees – August/September

Develop and approve initial savings proposals to contribute towards achieving overall savings requirements identified by the Finance and Policy Committee, which can be approved for early implementation.

Finance and Policy Committee – September/October

Consider and approve initial savings proposal developed by individual Policy Committees which can be referred to Council for early implementation.

Budget Communication – July to September

Provision of information and explanation on the financial position facing the Council.

Finance and Policy Committee - October

Review of reserves held at 31st March.

Council – October/November

Consider and approve initial savings proposals referred by Finance and Policy Committee for early implementation.

Individual Policy Committees - December

Consider and approve final savings proposals required to achieve a balanced budget.

Council - December

Consider and approve Local Council Tax Support Service proposed by Finance and Policy Committee based on simple majority vote.

Finance and Policy Committee - January

Approve final budget proposals developed by individual Policy Committees to be referred to full Council.

Council - February

Consider and approve budget proposals and HBC Council Tax level proposed by Finance and Policy Committee. Consider and approve statutory Council Tax calculations incorporating precepts approved by Police and Crime Commissioner, Cleveland Fire Authority and Parish Councils.

PROTOCOL

Conduct and Behaviour of Members of Hartlepool Borough Council

1. This protocol is endorsed by those Councillors as shown in the Annex (and any supplementary annex) to this document. All signatories to this protocol will use their reasonable endeavours to ensure that its provisions are complied with when an individual acts in their 'official capacity' as an elected Member of Hartlepool Borough Council under the principles stated within the Council's Code of Conduct. For the avoidance of doubt a Member will be acting in their 'official capacity' where;

'... they are conducting the business of the Borough Council or otherwise acting, claiming to act, or giving the impression that they are acting as a representative of the Borough Council. Further, that at the time of the alleged misconduct, they were an elected or co-opted member of the Borough Council.'

2. It is also pertinent to restate what appears in the introduction to the Council's Code of Conduct namely:

'You are a representative of this Authority and the public will view you as such. Therefore your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority.'

3. This protocol is intended to have application where a complaint has been made about the conduct of an Elected Member of Hartlepool Borough Council and where the matter of complaint has been referred or otherwise has come to the attention of the Monitoring Officer under Section 28 (6) of the Localism Act, 2011.

(I) ON RECEIPT OF A COMPLAINT:

On receipt of a complaint the Monitoring Officer in unison with the Independent Persons shall endeavour (in line with adopted 'Assessment Criteria' as appended herewith Appendix 1) to seek to resolve the complaint through action that is commensurate and proportionate to the matter of complaint. An initial meeting will take place as soon as is practicable from the receipt of the complaint with the Subject Member, the Monitoring Officer and the Independent Persons. That

meeting will determine whether or not the Member recognises and accepts a finding of fault on their part and if so, they shall act in such a manner that safeguards the Council's reputation and their own role as an elected representative of Hartlepool Borough Council. This will be through the Member undertaking such appropriate action under Section 28 (11) of the Localism Act 2011, as the Monitoring Officer and the Independent Persons shall determine and may include the following;

- The provision of an apology to the complainant (and any other interested / affected party),
- The potential for the Member to make an apology at a meeting of full Council or otherwise to make a personal explanation at Council (Council Procedure Rule 15.12 refers),
- Training of the Member on the Council's Code of Conduct and the ethical framework provisions and such related matters, as may be determined,
- The withdrawal of facilities, proportionate to the breach but not prohibiting the Member exercising his/her representational role,
- The engagement of the Member in a form of mediation / conciliation that might assist in the resolution of the matter of complaint,
- Peer mentoring,
- Of the Members own volition, not to attend meetings of Council, a Committee, Sub-Committee or Forum for a relevant period of time as agreed between the Subject Member and the Monitoring Officer.

(II) PENDING THE OUTCOME OF AN INVESTIGATION:

Where a Member engages in conduct that is considered to be sufficiently grave and/or otherwise damages the reputation of the Council, the Borough or the office and role as Councillor, they will agree the following action, pending the outcome of a formal investigation;

- Absent themselves from Council, Committee, Sub-Committee or Forum during the period of any investigation (*). (The Period of absence shall not in any event exceed a period longer than 6 months.)
- An approach be made to the Group Leader, if the Member is affiliated to a political group for any internal disciplinary proceedings that may need to be instigated.
- Not to engage with a prescribed individual, provided such restrictions are lawful and proportionate in the manner of their application.
- The actions under (I) above be given consideration as being supplementary measures to be adopted.

() Section 85 (Local Government Act 1982) prescribes that failure to attend a meeting for a period of 6 consecutive months, unless the failure was due to some reason approved by the authority, will lead to cessation of office.*

(III) FOLLOWING AN INVESTIGATION:

If following an investigation or otherwise a matter being reported to the Audit and Governance Committee, the Committee upon hearing the representations from the Subject Member and being satisfied that a finding of fault is proven, will consider;

- Referring the matter to Council for the consideration of the Subject Member being removed from a Committee or Sub-Committee,
- Agree that the Subject Member should forgo their allowance for such period as determined, in accordance with the Scheme of Member Allowances (Part 6 of the Council's Constitution refers),
- Agree with the Subject Member on the basis of an expectation then arising on a finding of fault that a period of disqualification commensurate and proportionate to that finding of fault and determined as being reasonable by the Committee will be observed by the Subject Member,
- The actions under (I) above be given consideration as being supplementary measures to be adopted.

This protocol may be amended, varied or extended through agreement by the Members of Hartlepool Borough Council.

DATED

ANNEX
[list of Councillors]

COUNCIL

24 May 2016



Report of: Chief Executive

Subject: BUSINESS REPORT

1. TO MAKE APPOINTMENTS TO COMMITTEES, FORUMS AND OTHER BODIES AS REQUIRED BY THE CONSTITUTION

The proposed membership of Committees, Forums and other bodies will be circulated prior to this meeting of full Council. An invitation has been extended to leaders of the political groups and independent members of the Council to make nominations for the position of Chairs and Vice Chairs. These will be indicated on the schedules to be circulated.

2. TO MAKE APPOINTMENTS TO JOINT COMMITTEES AND OTHER OUTSIDE BODIES WHERE APPOINTMENT IS RESERVED TO COUNCIL

A list setting out suggested representatives on joint committees and other outside bodies will be circulated prior to this meeting of full Council. Prior to the meeting the leaders of the political groups and independent Members have been invited to make nominations. Council is requested to agree the suggestions which will be set out in the document, the format of which will reflect the division of outside body list in Part 7 of the Constitution.

3. BETTER HEALTH PROGRAMME – APPOINTMENTS TO A JOINT HEALTH SCRUTINY COMMITTEE

The Better Health Programme (formerly Securing Quality in Health Services (SeQIHS)) is exploring how patient health and social care needs can be most effectively delivered, now and in the future. The programme aims to continue improving the provision of services available across Darlington, Durham and Tees and Commissioners are looking to work with stakeholder organisations and public representatives.

Where an NHS body or relevant health service provider consults more than one local authority on proposals to make substantial variations or developments to services,

regulations¹ require the formation of a joint overview and scrutiny arrangement. The Joint Committee to be the vehicle through which the respective Local Authorities respond to the consultation.

A proposal for the establishment of a Joint Health Scrutiny Committee, consisting of representatives from Darlington Borough Council, Durham County Council, Hartlepool Borough Council, Middlesbrough Borough Council, Redcar and Cleveland Borough Council and Stockton-upon-Tees Borough Council, was considered by the Audit and Governance Committee on the 3rd March 2016². The Audit and Governance Committee agree:

- To the establishment of the Better Health Programme Joint Health Scrutiny Committee; and
- That the membership of the Joint Committee should consist of three Elected Members from each Local Authority, reflecting the political balance of each constituent Council.

The appointment of three Members, from the membership of the Audit and Governance Committee, is sought to serve on the Better Health Programme Joint Health Scrutiny Committee.

Recommendation

That three Members, as detailed above, be appointed to serve on the Better Health Programme Joint Health Scrutiny Committee.

4. ASSISTED REPRODUCTIVE UNIT AT THE UNIVERSITY OF HARTLEPOOL HOSPITAL - UPDATE

Council on the 17th March 2016 approved the recommendations of the Audit and Governance Committee³ in relation to the North Tees and Hartlepool Foundation Trust's decision to close the Assisted Reproduction Unit (ARU) at the University Hospital of Hartlepool, with effect from the 31st March 2016.

Further to Full Council on the 17th March 2016, an informal letter was sent to the Secretary of State for Health (attached at **Appendix 1**). In addition to this, legal action initiated by Hartlepool Borough Council culminated in a High Court hearing on the 5th April 2016, at which a Consent Order was agreed. A full copy of the Order is attached at **Appendix 1E**.

In summary the Order required that the North Tees and Hartlepool Foundation Trust:

- Engage with users around the future of the licensed fertility treatment at the ARU and consult with the Hartlepool Borough Council (HBC) individually and/or a joint committee with Stockton-on-Tees Borough Council and Durham County Council as to the proposals.

¹ Local Authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations 2013

² https://www.hartlepool.gov.uk/meetings/meeting/3335/audit_and_governance_committee

³ <https://www.hartlepool.gov.uk/meetings/meeting/3406/council>

- Take no steps to facilitate the closure of the ARU and, to its best endeavours, continue the provision of licensed treatment services until the conclusion of the consultation and a decision has been made; and
- Uses its best endeavours, alongside Hartlepool Borough Council and the Hartlepool and Stockton Clinical Commissioning Group (CCG), to ensure that consultation and engagement is completed and a final decision taken, by 31 July 2016.

In taking the issue forward within the prescribed timescale, the independent Clinical Review Team established through the Northern Clinical Senate, has now commenced its review, and will be formulating proposals for further consultation. The CCG has confirmed that it is the co-ordinating body in relation to the issue and a consultation timetable is in the process of being finalised, with discussions ongoing to facilitate the inclusion of overview and scrutiny as a statutory consultee.

Recommendation - That the update be noted.

5. PROPOSED MERGER OF THE TEESSIDE AND HARTLEPOOL CORONER AREAS.

This item was considered at Council on 21 January, 2016, when it was resolved to support the 'slotting in' of the existing Senior Coroner for Hartlepool in any amalgamation of the Teesside and Hartlepool Coroner Areas. The Ceremonial Mayor wrote to the Lord Chancellor and Secretary of State for Justice to this effect and a response was received through Caroline Dinenage MP, Parliamentary Under-Secretary of State dated 23 March, 2016.

Members will recall that following the retirement of the then Senior Coroner for Teesside, a Business Case had been submitted to the Ministry of Justice and the Chief Coroner supporting a proposed amalgamation but with Hartlepool favouring a 'slotting in' appointment to the role of a Senior Coroner in any merger. A position that was consistent with the Chief Coroner's Guidance Note No: 6 'The Appointment of Coroners'. Ultimately, the three local authorities comprising the Teesside area favoured appointment of a Senior Coroner in any amalgamated jurisdiction through 'open competition'. However, there was also the request for the Ministry of Justice to indemnify those authorities in following such a process. Whilst it is a matter for a local authority to make an appointment of a Senior Coroner, such an appointment requires the consent of the Lord Chancellor in unison with the Chief Coroner.

The response received, attached as Appendix, recognises the 'conflicting positions' of the local authorities and that at this time the Minister has 'decided not to proceed with the merger'. It was also made comment that the Minister was encouraged by 'the close working between those who work in the Hartlepool and Teesside coroner services' and should circumstances change in the future, then the Ministry would endeavour to work with the authorities 'in any future merger discussions'. The response also recognises and pays tribute to the 'dedication' and 'valuable work' undertaken by the Senior Coroner for Hartlepool and his team.

Recommendation – That Council note the present position.

D APPOINTMENTS TO COUNCIL COMMITTEES AND FORUMS

COMMITTEES AND FORUMS FULFILLING REGULATORY AND OTHER FUNCTIONS

Finance and Policy Committee* – 11 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr C Akers-Belcher <i>Chair (Leader)</i> (Lab)	7	Cllr Beck (Lab)
2	Cllr Cranney <i>Vice-Chair (Deputy Leader)/Chair Regeneration Services</i> (Lab)	8	Cllr Thompson (IND)
3	Cllr Thomas <i>Chair Adult Services</i> (Lab)	9	Cllr Hind (UKIP)
4	Cllr Clark/Lauderdale <i>Chair Children's Services</i> (Lab/IND)	10	Cllr Loynes (Con)
5	Cllr James <i>Chair Neighbourhood Services</i> (Lab)	11	Cllr Moore (UKIP)
6	Cllr Barclay (Lab)		

(*Membership NOT to include any Audit and Governance Committee members – page 3)

Adult Services Committee – 7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Thomas <i>Chair</i> (Lab)	5	Labour Member (Lab)
2	Cllr Richardson <i>Vice Chair</i> (Lab)	6	Labour Member (Lab)
3	Cllr Tennant (UKIP)	7	Labour Member (Lab)
4	Cllr Loynes (Con)		

Neighbourhoods Services Committee – 7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr James <i>Chair</i> (Lab)	5	Cllr Hunter (Lab)
2	Cllr Belcher <i>Vice Chair</i> (Lab)	6	Cllr Robinson (Lab)
3	Cllr Beck (Lab)	7	Cllr Springer (UKIP)
4	Cllr Loynes (Con)		

Regeneration Services Committee –7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Cranney <i>Chair</i> (Lab)	5	Cllr Lindridge (Lab)
2	Cllr S Akers-Belcher <i>Vice Chair</i> (Lab)	6	Cllr Morris (Con)
3	Cllr Barclay (Lab)	7	Cllr Thompson (IND)
4	Cllr Hunter (Lab)		

Children's Services Committee –7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Lauderdale/Cllr Clark (IND/Lab) <i>Chair</i>	5	Cllr Harrison (Lab)
2	Cllr Hall (Lab) <i>Vice Chair</i>	6	Labour Member
3	Cllr Moore (UKIP)	7	Cllr Lauderdale/Clark (IND/Lab)
4	Cllr Beck (Lab)		

Plus Independent Co-opted Members, including C. of E. and R.C. Representatives (with voting rights) parent governor representatives and potential other co-optees.

Corporate Parent Forum –7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

Membership same as the Children's Services Committee

Health and Wellbeing Board –4 Members (including Leader of Council)

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr C Akers-Belcher <i>Chair (Leader)</i> (Lab)	3	Cllr Clark (Lab)
2	Cllr Buchan (UKIP)	4	Cllr Thomas (Lab)

Licensing Committee –12 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Loynes <i>Chair</i> (Con)	7	Cllr Hall (Lab)
2	Cllr Morris <i>Vice Chair</i> (Con)	8	Cllr Hunter (Lab)
3	Cllr Barclay (Lab)	9	Cllr Lawton (Lab)
4	Cllr Buchan (UKIP)	10	Cllr Robinson (Lab)
5	Cllr Beck (Lab)	11	Cllr Sirs (Lab)
6	Cllr Cook (Lab)	12	Cllr Springer (UKIP)

Planning Committee –11 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr S Akers-Belcher <i>Chair</i> (Lab)	7	Cllr Cook (Lab)
2	Cllr Lawton <i>Vice Chair</i> (Lab)	8	Cllr James (Lab)
3	Cllr Barclay (Lab)	9	Cllr Robinson (Lab)
4	Cllr Belcher (Lab)	10	Cllr Springer (UKIP)
5	Cllr Black (PHF)	11	Cllr R Martin-Wells (Con)
6	Cllr Buchan (UKIP)		Cllr Morris (Con) Cllr Loynes (Con)

Audit and Governance Committee* – 7 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Martin-Wells (Con) <i>Chair</i>	5	Cllr S Akers-Belcher (Lab)
2	Cllr Cook/Cllr Tennant (Lab/UKIP)/ <i>Vice Chair</i>	6	Cllr Hamilton (Lab)
3	Cllr Cook/Tennant (Lab/UKIP)	7	Cllr Harrison (Lab)
4	Cllr Belcher (Lab)		Cllr Black (PHF)

(*Membership NOT to include any Finance and Policy Committee members.)

Plus Independent Member(s) and Parish Council representatives when dealing with standards functions and one fully co-opted representative from a responsible local policing body during consideration of Crime and Disorder Committee matters.

Civic Honours Committee** – 5 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	Cllr Cook /Cllr Lauderdale <i>Chair of Council**</i>	4	Cllr Tempest (Lab)
2	Cllr S Akers-Belcher (Lab)	5	Cllr Moore (UKIP)
3	Cllr Barclay (Lab)		<i>Cllr R Martin-Wells(Con)*</i>

** Outside of political balance calculations

*Conservative - Co-opted Member

Appointments Panel – 8 Members

Labour	Conservative	Putting Hartlepool First	UKIP	Independent

1	<i>Cllr Cook/Lauderdale Chair of Council (Lab/IND)</i>	5	Labour Member
2	Cllr C Akers-Belcher <i>Leader of Council (Lab)</i>	6	Labour Member
3	Cllr Tennant (UKIP)	7	Labour Member
4	Cllr Martin-Wells (Con)	8	Labour Member

FORUMS -**North and Coastal Neighbourhood Forum**

Comprising the following wards:

De Bruce, Hart, Headland and Harbour, Jesmond and Seaton

- | | |
|--------------------------------|---------------------------------|
| 1. Cllr Paul Beck (Vice-Chair) | 9. Cllr David Riddle |
| 2. Cllr Sandra Belcher | 10. Cllr Jean Robinson |
| 3. Cllr James Black | 11. Cllr George Springer |
| 4. Cllr Rob Cook | 12. Cllr Sylvia Tempest (Chair) |
| 5. Cllr Brenda Harrison | 13. Cllr Steve Thomas |
| 6. Cllr Tom Hind | 14. Cllr Paul Thompson |
| 7. Cllr Peter Jackson | 15. Cllr John Tennant |
| 8. Cllr Shane Moore | |

South and Central Neighbourhood Forum

Comprising the following wards:

Burn Valley, Foggy Furze, Fens and Rossmere, Manor House, Rural West and Victoria.

- | | |
|-----------------------------------|----------------------------------|
| 1. Cllr Christopher Akers-Belcher | 10. Cllr Marjorie James |
| 2. Cllr Stephen Akers-Belcher | 11. Cllr John Lauderdale |
| 3. Cllr Allan Barclay | 12. Cllr Trisha Lawton |
| 4. Cllr Bob Buchan | 13. Cllr Jim Lindridge |
| 5. Cllr Alan Clark | 14. Cllr Brenda Loynes |
| 6. Cllr Kevin Cranney | 15. Cllr Ray Martin-Wells |
| 7. Cllr Ged Hall | 16. Cllr George Morris |
| 8. Cllr Lesley Hamilton | 17. Cllr Carl Richardson (Chair) |
| 9. Cllr Dave Hunter (Vice-Chair) | 18. Cllr Kaylee Sirs |

Part 7

Appointments to outside organisations and other bodies

APPOINTMENTS TO OUTSIDE ORGANISATIONS AND OTHER BODIES

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Northern Consortium of Housing Authorities	7
Northumbria Regional Flood and Coastal Committee	5
NuLeaf – The Nuclear Legacy Advisory Forum	10
Older Persons Champion (Chair of Adult Services Committee)	11
Preston Simpson Scholarship in Music	10
River Tees Port Health Authority	10
Regional Health Joint Scrutiny Committee	5
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APPOINTMENTS TO OUTSIDE ORGANISATIONS AND OTHER BODIES

Introduction and explanation

The attached schedules show the categorisation of the currently recognised outside organisations and other bodies. There are five main categories as follows:

- (i) Joint Committees
- (ii) Leadership Bodies and Partnerships
- (iii) Advisory
- (iv) Council in the Community
- (v) Other Decision Making Bodies

It will be open to the Council to make Officer nominations where appropriate in respect of most bodies, the main exception being formal Joint Committees where Member attendance is a statutory requirement. In some cases it may be possible and appropriate to make nominations of persons from outside of Council.

These sub categories have been determined as follows:

(i) Joint Committees

Part IV of the Local Government Act 1972 and other specific legislation provides that the arrangements for the discharge of functions may be through a joint Committee of two or more Local Authorities.

(ii) Leadership Bodies and Partnerships

Involvement in such bodies and partnerships will cover the following roles:

- to represent the interests of Hartlepool
- to lead the community planning process
- to be the focus for forming partnerships with other public, private, voluntary and community sector organisations to address local needs.

(iii) Advisory

Bodies which relate to the Council's functions in an advisory or influencing capacity.

(iv) Council in the community

These are bodies which do not discharge functions of the Council and where the principal role of Members who are nominated will be to represent constituency interests, whether at the Ward or Borough level.

(v) Other decision making bodies

These are decision making bodies other than Joint Committees.

(i) JOINT COMMITTEES

<u>Organisation</u>	<u>2016/17 Nominations</u>
Archives Joint Committee	(1) Cllr Hall Designated Sub:
Cleveland Emergency Planning Joint Committee	(1) Cllr James Designated Sub:
Cleveland Police and Crime Panel (Statutory Guidance applies) (Politically balanced across Cleveland area)	(1) Cllr Hunter Designated Sub: (2) Vacancy Designated Sub:
North Eastern Inshore Fisheries and Conservation Authority	(1) Chair of Regeneration Services Committee/Cllr Moore
Northumbria Regional Flood and Coastal Committee	(1) Cllr James
Tees Valley Joint Health Scrutiny Committee (Middlesbrough Chair 2016/17)	(1) Chair of Audit & Governance Cttee (2) (3) Cllr Belcher/Cllr Harrison/Cllr Tennant
Regional Health Joint Scrutiny Committee (Hartlepool Chair 2016/17)	(1) Chair of Audit and Governance Committee

(ii) LEADERSHIP BODIES & PARTNERSHIPS

<u>Organisation</u>	<u>2016/17 Nominations</u>
Association of North East Councils Sub-groups of ANEC as noted below: Leaders and Elected Mayor's Group Health and Wellbeing Board Chair's Network Collaborative Procurement Sub-Group (replaces NEPO appointment) North East Culture Partnership Board	No nominations required – appointments are no longer required for the full association (1) Leader: (Cllr C Akers-Belcher) (1) Cllr C Akers-Belcher (Chair of Health and Wellbeing Board) (1) Cllr C Akers-Belcher (Chair of Finance and Policy Committee) (1) Cllr Cranney (Chair of Regeneration Services Committee)
Durham Heritage Coast Partnership Steering Group	(1) Cllr Tempest
Economic Regeneration Forum	(1) Director or Regeneration and Neighbourhoods (2) Cllr C Akers-Belcher (Chair of Finance and Policy Committee) (3) Cllr Cranney (Chair of Regeneration Services Committee)
HMS Trincomalee Trust (3 year term expires 2017)	(1) Cllr S Akers-Belcher (2) Cllr Hall
Hartlepool and District Sports Council	(1) Cllr Belcher (2) Cllr Cranney (3) Cllr Hunter
Hartlepool Power Station (i) Community Liaison Committee (ii) Emergency Planning Committee	(1) Cllr Cranney (Chair of Regeneration Services Committee) (2) Cllr S Akers-Belcher (Chair of Planning Cttee) (3) Asst Director, Regeneration (1) Chief Emergency Planning Officer
Housing Hartlepool (3 yr term – 2016-2019)	(1) Cllr S Akers-Belcher (2) Cllr James
Housing Partnership (suggested Member with Housing responsibility)	(1) Cllr Cranney (Chair of Regeneration Services Cttee)

<u>Organisation</u>	<u>2016/17 Nominations</u>
Tees Valley Leaders and Elected Mayor's Group	(1) Leader – Cllr C Akers-Belcher (substitute Deputy Leader – Cllr Cranney) (2) Chief Executive
Limestones Landscapes Board (Suggested from one of northern wards)	(1) Cllr Thomas
Local Government Association	(1) Cllr C Akers-Belcher (2) Cllr Sirs
North East Migration Partnership Member Forum	(1) Cllr Cranney (Chair of Regeneration Services Cttee)
North Tees and Hartlepool NHS Foundation Trust	(1) Cllr Hunter
Northern Consortium of Housing Authorities	(1) Cllr Cranney (Chair of Regeneration Services Committee) (2) Cllr S Akers-Belcher (Vice-Chair of Regeneration Services Committee)
Safer Hartlepool Partnership	(1) Cllr C Akers-Belcher Leader (2) Cllr James
Standing Advisory Council for Religious Education (Term of office 2016-2020)	(1) (2) Cllr Clark/Cllr Sirs/Cllr Springer
Tees Esk and Wear Valley NHS Trust	Cllr Sirs
Tees Valley Arts – Board of Directors	(1) Cllr Tennant/Cllr Harrison
Tees Valley Leaders & Chief Executives Meeting	(1) Leader - Cllr C Akers-Belcher (Sub Deputy Leader – Cllr Cranney) (2) Chief Executive

Tees Valley Combined Authority (i) Transport Committee (ii) Audit and Governance Committee (iii) Overview and Scrutiny Committee	(1) Cllr C Akers-Belcher - Leader (Sub Deputy Leader – Cllr Cranney) (1) Labour nomination (1) Labour nomination/Cllr Tennant (UKIP) (1) Cllr S Akers-Belcher (2) Cllr James (3) Cllr Sirs
National Museum of Royal Navy Hartlepool (NMRN Hartlepool)	(1) Cllr C Akers-Belcher Leader (2) Chief Executive
Education Commission Leadership Group	(1) Chair of Children's Services Committee

(iii) ADVISORY

<u>Organisation</u>	<u>2016/17 Nominations</u>
Local Joint Consultative Committee	(1) Cllr Cook (2) Cllr Hamilton (3) Cllr James (4) Cllr Richardson (5) Cllr Tempest (6) Cllr Thomas (7) Cllr Tennant
Schools Admission Forum	(1) Chair of Children's Services Committee (2) Cllr Hall* (3) Cllr Harrison* (*Member of Children's Services Cttee)
SUEZ Recycling & Recovery UK Ltd (formerly SITA)	(1) Cllr James Chair of Neighbourhood Services Committee Designated substitute to be appointed
Tees Valley Local Access Forum (new 3 year term of office – ends 2017)	(1) Cllr Tempest

(iv) COUNCIL IN THE COMMUNITY

<u>Organisation</u>	<u>2016/17 Nominations</u>
Age UK Teesside	(1) Cllr Hind/Cllr Thomas (Older Person's Champion)
Cleveland Fire Authority	(1) Cllr Cook (2) Cllr James (3) Cllrs Moore/Martin-Wells
Durham Tees Valley Airport Board	(1) Cllr Cranney (Chair of Regeneration Services C'ttee)
Durham Tees Valley Airport Consultative Committee	(1) Cllr Cranney
Family Placement Panel (3 year term 2014-2017)	(1) Cllr Hunter
Fairtrade Town Steering Group	(1) Cllr Richardson/Cllr Springer
Hartlepool Credit Union (Nominations subject to FCA Approval)	(1) Vacancy (2) Vacancy (3) Vacancy (4) Vacancy
Hartlepool War Memorial and Crosby Homes (4 year term of office – until 2018)	(1) (Ex-officio Chairman of Council) (2) Cllr Belcher
Henry Smith Educational Charity (i) Nominated trustees – Term of office 1 year	(1) Cllr Harrison (2) Vacancy (3) Vacancy
NuLeaf – The Nuclear Legacy Advisory Forum	(1) Cllr Cranney (Chair of Regeneration Services Committee)
Preston Simpson Scholarship in Music (Term of Office 2013 – 2017)	(1) Cllr Harrison (2) Mr Chris Simmons (3) Vacancy
River Tees Port Health Authority	(1) Cllr Tempest (2) Cllr Thomas
Teesmouth Field Centre	(1) Cllr Lawton/Cllr Springer (2) Appropriate Officer
Tees Valley Environmental Protection Group	(1) Cllr C Akers-Belcher (2) Cllr Cranney (3) Cllr Sirs
Victoria and Jubilee Homes (Term of Office 2014-2018)	(1) Cllr Lauderdale (2) Cllr Beck (3) Cllr Barclay (4) Cllr Hall

<u>Member Champions</u>	
Armed Forces Champion	(1) Cllr Barclay
Heritage Champion (Member of Planning Committee)	(1) Cllr Lawton
Mental Health Champion	(1) Cllr Sirs
Older Persons Champion (Chair of Adult Services Committee)	(1) Cllr Thomas

(v) OTHER DECISION MAKING BODIES

<u>Organisation</u>	<u>2016/17 Nominations</u>
National Association of Councillors: English Region General Management Committee	(1) Cllr C Akers-Belcher (Voting) (2) Cllr S Akers-Belcher (Voting) (3) Cllr James (1) Cllr C Akers-Belcher (Voting) (2) Cllr S Akers-Belcher (Voting) (3) Cllr James
North East Regional Employers Organisation Executive	(1) Cllr James (2) Cllr Richardson (3) Cllr Thomas (1) Cllr James
Teesside Pension Fund Teesside Pension Board (3 year Term of office until 2018)	(1) Cllr Hall (1) No nomination required
Furness Seaman's Pension Fund (4 year Term of office until 2017)	(1) Mrs Mary Fleet (2) Mrs Sheila Griffin
Teesside Environmental Trust	(1) Cllr Thomas

(vi) APPROVED CONFERENCES:

Local Government Association

Centre for Public Scrutiny

National Association of Councillors (3 delegates to attend)

Councillor Mary Fleet

Civic Centre
Hartlepool
TS24 8AY

Tel: 01429 284142
www.hartlepool.gov.uk



Your Ref:

Our Ref: JS

Contact Officer/Email: joan.stevens@hartlepool.gov.uk

15 April 2016

The RT Hon Jeremy Hunt MP
Secretary of State for Health
The Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

Dear Secretary of State

CLOSURE OF THE ASSISTED REPRODUCTION UNIT AT THE UNIVERSITY HOSPITAL OF HARTLEPOOL

I am writing on behalf of Hartlepool Council following a meeting of Full Council held on 17th March 2016 that considered the actions of North Tees and Hartlepool Foundation Trust in seeking to close the valued Assisted Reproduction Unit at the University of Hartlepool Hospital site. Full Council unanimously supported a recommendation that I should bring the significant concerns of Councillors and the people of Hartlepool about this matter to your attention.

During 2014/15, Hartlepool Borough Council expressed extreme concern regarding the incremental loss of services from the University Hospital of Hartlepool (UHH) and the suitability / effectiveness of current and future planned hospital services for Hartlepool and surrounding communities. This resulted in a meeting with you on the 3rd March 2015, at which you recommended that the Local Authority develop a plan for the delivery of integrated health and social care services.

We are now in the process of developing the suggested plan, in partnership with the Hartlepool and Stockton NHS Clinical Commissioning Group ("the CCG") and other organisations. With this work ongoing, it was with some concern that we received an electronic mail message from the Trust's Chief Operating Officer / Deputy Chief Executive, on the 11th January 2016, advising us of their decision to close the Assisted Reproduction Unit ("the Unit") at the University Hospital of Hartlepool (UHH) on the 31st March 2016. The basis for the decision being that the Trust was unable to recruit sufficient embryologists to continue to provide the current service safely and a copy of the Trust's press statement is attached at **Appendix A**.

Whilst the decision to close the Unit on clinical safety grounds removed the requirement to consult, the level of significant concern expressed by residents, Elected Members and the town's MP (Mr Iain Wright) resulted in the Trust being called to explain their decision before the Council's Audit and Governance Committee (which has as its remit the Council's overview and scrutiny function), as provided for under Regulations 27¹.

¹ The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

The subsequent actions of the Trust, as outlined in **Appendix B**, have reinforced our grave concerns regarding their attitude towards, and ability to provide, health services for the residents of Hartlepool, now and in the future.

The Trust's actions resulted in the lodging of an application by the Council for Judicial Review of their decision as communicated on 11th January, 2016 (**Appendix C**). This led to an interim injunction to restrain the Trust from closing the Unit by 31st March, 2016. Secretary of State will note that the Court considered that the Council's application seeking a review of the Trust's decision was 'arguable'. (**Appendix D**). Subsequently, the parties were able to agree to a Consent Order (**Appendix E**). The Judge at the hearing on the 5 April 2016, indicated her support for the need to consult with emphasis that it should be 'carried out properly without delay or unnecessary rush'. In accordance with the requirements of the Consent Order, the Council is seeking to progress the consultation with the Trust and the CCG. However, we feel strongly that the litany of examples of poor practice, and blatant disregard for the powers of Local Authorities through overview and scrutiny, must be brought to your attention. In summary, the salient points are as follows:-

- i) The Council received informal email notification of the decision to close the Unit on the 11 January 2016. In contravention of Regulation 23¹, the Trust did not immediately notify the Council 'formally' of the decision taken and the reason why no consultation had taken place;
- ii) Reliance on 'safety grounds' as justification for closure of the Unit with no consultation, as outlined in Regulation 23¹, was not justified given the almost three month gap between the informal email notification of the cessation of the service in January 2016 and the date set for the closure of the Unit at the end of March 2016. The approach by the Trust was contrary to published Guidance² and advice from Leading Counsel was that such a 'decision' was unlawful;
- iii) No variation of service notice was submitted to the CCG prior to the decision. It was not until immediately before the High Court hearing, on 5 April 2016 that a variation notice was submitted and formally accepted by the CCG;
- iv) In contravention of Regulation 27¹:
 - Despite reasonable notice, the Trust refused a request from the Council's Audit and Governance Committee for a specific, or otherwise appropriate, member of staff from the Unit to participate in its meetings; and
 - The Trust refused to attend meetings of the committee on three separate occasions, despite previously agreeing to attend. Indeed, the Trust formally requested the Council to convene a Joint Committee (consisting of Hartlepool, Stockton and Durham Councils) for its participation and then failed to attend. At this time they contended that the Order made on 9th March (Appendix D refers) entailed they were prohibited from so participating. A view they departed from in subsequent correspondence with the Council and which reflects the terms of the Consent Order (Appendix E). Over the same period, it must be noted that the Trust actively participated in an overview and scrutiny committee held by Stockton Borough Council to discuss the decision. This appears to indicate some form of bias or at the very least a dysfunctional approach to the Trust's decision making.

² Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny (2014)

- v) Despite agreeing to a Consent Order, the Trust immediately following the hearing issued a press statement indicating that the Council had engaged in proceedings unnecessarily, which could have been avoided and which wasted public funds. Such a statement was not only inflammatory (the Council have stated publicly the costs involved) but disingenuous, in that the Trust would not accede to the Council's requests for public consultation through correspondence from the Council and when also raised through the committee. The Council through such intransigence had little alternative other than to initiate legal proceedings, which finally led to its requests being met.

At your meeting with Council representatives on the 3rd March 2015, you agreed to refer our concerns in relation to the Hospital Trust to monitor, in its regulatory role. The Trust's latest actions go even further to establish compelling grounds of their ability to properly manage and provide health services in Hartlepool, now or in the future. As such, it is requested an update in relation to your referral of the Trust to Monitor in 2015 and that the capability of the Trust management be further investigated in light of their actions and overall conduct in relation to the Assisted Reproduction Unit at the UHH.

We would like to thank you for your time in considering our concerns and look forward to hearing from you, as a matter of some urgency.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M. Fleet'.

Councillor Mary Fleet
CHAIR OF COUNCIL

CC:-

Iain Wright, MP for Hartlepool

Gill Alexander, Chief Executive, Hartlepool Borough Council

Councillor Ray Martin-Wells, Chair of the Audit and Governance Committee

Councillor Stephen Akers-Belcher, Vice Chair of the Audit and Governance Committee

Trust Statement – 11 January 2016

Fertility services provided by North Tees and Hartlepool NHS Foundation Trust will change at the end of March.

This means that licensed fertility treatments will no longer be provided, however the trust will still be providing some general infertility treatments. The trust will be working with other service providers not only to ensure that patients continue to receive treatment but also to look at alternative service model provision in the future.

The decision has been made reluctantly after a comprehensive review of the service provided at the University Hospital of Hartlepool's assisted reproduction unit, which is unable to recruit enough embryologists to continue to provide the current service safely.

A staff consultation has begun and every effort will be made to redeploy the staff within the trust.

The trust will be working with the Human Fertilisation and Embryology Authority over the coming months. Patients are being informed of the changes and they will be supported while they are transferred to another unit of their choice.

Medical director David Emerton said: "This decision is not a reflection of the quality of the service which has been provided for a number of years by the trust. We understand that this decision will be disappointing for patients. We have made every effort for some time to recruit, however we cannot continue to provide all aspects of the current service safely due to an inability to recruit embryologists.

CLOSURE OF THE ASSISTED REPRODUCTION UNIT (ARU) AT THE UNIVERSITY HOSPITAL OF HARTLEPOOL - SCRUTINY TIMELINE

- Oct 2015 - Chair of the Audit and Governance Committee (the Committee) advised of recruitment issues in the services. No indication of closure of the service.
- 11 Jan 16 - Advised of closure by North Tees and Hartlepool NHS Foundation Trust (Trust).
- 12 Jan 16 - Date for Health Scrutiny meeting set with Hartlepool and Stockton Clinical Commissioning Group (CCG) and FT (5 February 2016).
- 25 Jan 16 - Trust and CCG asked for confirmation of attendees (received confirmation).
- 27 Jan 16 - Confirmed with Trust and CCG other attendees (Dr Menabawey, MP and UNISON / Royal College of Nursing reps).
- 27 Jan 16 - Advised of Trust's concerns regarding Dr Menabawey's attendance.
- 29 Jan 16 - Asked Trust to invite Dr Mostafa (Person Responsible for treatment at the ARU) – Trust refused the invitation.
- 5 Feb 16 - Trust refused to attend the Committee meeting - Trust Solicitor attended meeting to request adjournment. Meeting adjourned.
- 6 Feb 16 - Trust attended Stockton Borough Council's overview and scrutiny committee to discuss the ARU issue, whilst refusing to attend meetings in Hartlepool.
- 16 Feb 16 - Trust and CCG advised that the adjourned meeting was to be reconvened on the 26 February 2016.
- 22 Feb 16 - CCG and Trust confirmed attendance at the scheduled meeting on 26 February 2016.
- 26 Feb 16 - Trust refused to attend the Committee meeting - Trust Solicitor / Dr Emerton attended with instruction not to answer questions and request a Joint Scrutiny Committee.
- 4 March 16 - Judicial Review - Papers lodged.
- 9 March 16 - Trust confirmed attendance at Joint Scrutiny Committee.
- 9 March 16 - Judicial Review - Interim injunction issued.
- 15 March 16 - A Joint Scrutiny Committee was convened and adjourned. Stockton Borough Council and Durham County Council declined to participate. Only Hartlepool Councillors in attendance. Trust refused to attend indicating that it would contravene the Interim Injunction to 'not do anything to facilitate closure of the unit'. CCG attended.
- 5 April 16 - High Court Hearing at which a Consent Order was agreed.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Claim No: CO/

BETWEEN:

**THE QUEEN
on the application of
HARTLEPOOL BOROUGH COUNCIL**

Claimant

-and-

NORTH TEES AND HARTLEPOOL NHS FOUNDATION TRUST

Defendant

and

**HARTLEPOOL AND STOCKTON ON TEES
CLINICAL COMMISSIONING GROUP**

Interested Party

STATEMENT OF FACTS AND GROUNDS

Introduction

1. On 11th January 2016, the North Tees and Hartlepool NHS Foundation Trust (“the Trust”) communicated its decision to cease providing licensed fertility services at the University Hospital of Hartlepool (“the Hospital”) with effect from 31st March 2016 (“the Decision”).
2. The Decision was taken without *any* consultation with Hartlepool Borough Council (“the Council”), the local authority in whose area the Hospital is located, or with other local authorities (Stockton on Tees Borough Council, Durham County Council) whose residents use the services of the Assisted

Reproductive Unit (“the ARU”) at the Hospital. The Decision was taken without consultation with the Hartlepool and Stockton on Tees Clinical Commissioning Group (“the CCG”); and before informing the CCG that closure was under consideration. The CCG was informed of the Decision a day or so before the Decision was communicated to the Council. In the circumstances, the Decision is unlawful: there is a statutory process for consulting on proposals – the Trust did not comply with this process.

3. The Council has invited the Trust to:

(a) rescind the decision to cease providing licensed fertility treatment at the ARU as of the end of March 2016;

(b) inform affected staff of this decision, and cease consulting with the trade unions and staff (as this will no longer be necessary) and withdraw any notices of termination that may have been issued; and

(c) confirm that the Trust will consult with affected local authorities in accordance with the regulation 23(2) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”), and will not cease the licensed treatment services at the ARU until after the conclusion of the consultation process.

4. The Trust has refused to rescind the Decision, and has refused to withdraw notices of termination to ARU staff.

5. The Trust has stated that

(i) it is not ‘obliged’ to consult any local authority about the proposal to reconfigure the ARU;

(ii) it considers that ‘engagement’ would be ‘useful’;

(iii) the responsible commissioning CCGs are ‘primarily responsible for consulting with the local authorities about the ARU’, although it wishes to remain involved with the consultation process;

(iv) it will continue to provide the current level of service until appropriate engagement can be carried out, but that the local authority consultation and user/stakeholder engagement be completed so that a decision can be taken before 30th March 2016.

6. The Trust has not explained, however, how the purported consultation/engagement is consistent with its refusal to rescind the Decision. The Trust has not explained, however, how the purported consultation/engagement is consistent with its refusal to withdraw the notices of termination of employment. It appears as though the consultation/engagement contemplated by the Trust will be a ‘sham’.
7. In the circumstances, the Council seeks an order quashing the Decision, and requiring the Trust to engage in lawful consultation before a fresh decision as to the future operation of the ARU can be made.

Factual Background¹

8. The ARU provides a full range of fertility services. It has held a licence with the Human Fertilisation and Embryology Authority (“the HFEA”) since 15th July 1992. In the 12 months up to 31st July 2015, the ARU provided 275 cycles of treatment.
9. On 27th November 2015, the HFEA published a report following an unannounced interim inspection of the ARU on 15th September 2015. The

¹ The factual background to this claim is described in the witness statement of Joan Stevens, the Council’s Scrutiny Manager.

inspection team recommended the continuation of the licence. The inspection team noted that:

‘staffing levels in the clinic appeared suitable for the activities being carried out. The centre is not currently fully staffed, however staffing levels are reviewed regularly and consultation sessions and treatment cycles are adjusted to take staffing levels into account. The inspection team were satisfied that the [Person Responsible] is taking appropriate action to ensure patient safety by limiting activity to take account of staffing levels.’

10. In December 2015, the full-time embryologist working at the ARU left for family reasons. The Trust has not advertised for a replacement.
11. The ARU currently has a part-time embryologist on staff, as well as the services of a locum embryologist, a specialist fertility sister, three fertility sisters, two healthcare assistants, and the services of two Consultants and an Associate Specialist.
12. The Trust has been informed that a Consultant Embryologist has offered to work at the ARU on a fixed term ten month contractual basis for a substantially reduced daily rate. The Trust has not taken up this option.
13. The Trust has been informed that a pool of embryologists working for the London Women’s Clinic – they have a clinic in Darlington – could be provided to the ARU. The Trust has not taken up this option.
14. On 11th January 2016, the Trust communicated its Decision: to cease providing licensed fertility services at the Hospital with effect from 31st March 2016.
15. The Trust made this Decision without
 - (i) informing the CCG in advance;

(ii) consulting with the Council or any of the other local authorities whose residents receive treatment at the ARU.

16. The Trust did not provide the CCG with any formal notice of a 'variation proposal'. Rather, the CCG received a telephone call informing it of the Decision on or about 11th January 2016.

17. The Council learned of the Decision through an email communication to its Chief Executive from the Trust's Chief Operating Officer (Julie Gillon), on the morning of 11th January 2016.

18. Ms. Gillon wrote that:

"I was hoping to have a quick conversation with you re the above this morning before we commence staff consultation as of today

This is the current message that we intend to send out as a reactive statement if necessary (in draft)

Fertility services provided by North Tees and Hartlepool NHS Foundation Trust will change at the end of March.

This means that licensed fertility treatments will no longer be provided, however the trust will still be providing some general infertility treatments. The trust will be working with other service providers not only to ensure that patients continue to receive treatment but also to look at alternative service model provision in the future.

The decision has been made reluctantly after a comprehensive review of the service provided at the University Hospital of Hartlepool's assisted reproduction unit, which is unable to recruit enough embryologists to continue to provide the current service safely.

A staff consultation has begun and every effort will be made to redeploy the staff within the trust.

The trust will be working with the Human Fertilisation and Embryology Authority over the coming months. Patients are being informed of the changes and they will be supported while they are transferred to another unit of their choice.

Medical director David Emerton said: “This decision is not a reflection of the quality of the service which has been provided for a number of years by the trust. We understand that this decision will be disappointing for patients. We have made every effort for some time to recruit, however we cannot continue to provide all aspects of the current service safely due to an inability to recruit embryologists.

I discussed the risks briefly with Chair of adult scrutiny at the end of the summer.”

19. On 11th January 2016, staff working at the ARU were given notices of termination of their employment, and a consultation process with the trade unions was initiated by the Trust. (This consultation is not about the underlying decision to close the ARU, but how to minimise/avoid redundancies or mitigate their effects).
20. On 5th February 2016, the Audit and Governance Committee of the Council (“the Committee”) met to discuss the Decision. Personnel from the Trust were invited to discuss the Decision and to provide information relating to it. In spite of a statutory obligation to attend the meeting and answer the Committee’s questions (see regulation 27 of the 2013 Regulations), Trust personnel did not attend the committee meeting or answer the Committee’s questions. (In advance of the meeting, the Trust asked for an adjournment of the meeting, as discussed in the witness statement of Joan Stevens).
21. The Committee resolved to make a referral to the Secretary of State for Health complaining about the process and reasoning of the Trust.
22. Following that meeting, on 16th February 2016, solicitors acting on behalf of the Trust wrote to the Council with respect to the ARU. It was explained that the Trust objected to the decision to refer the matter to the Secretary of State. It was explained that referral was

‘premature, because consultation between the trust, the relevant CCGs, and the relevant local authorities has not yet

taken place, as required by regulation 23 and regulation 30(5) of the Regulations’.

23. It was further explained that:

‘The Trust has no objection to proper consultation with the relevant local authorities about any reconfiguration of the ARU, which it considers should be conducted alongside the CCGs responsible for commissioning. The Trust wishes to make it clear that it is entirely open to alternatives to the closure of the ARU, and would be happy to explore any viable options that are raised during the consultation process.’

The Trust stated that consultation should take place with Stockton and Durham councils, as well as the Council, through the vehicle of a Joint Committee, in accordance with regulation 30.

24. The trade union representing the employees of the ARU, UNISON, issued a formal grievance, including a request to maintain the *status quo* in allowing the ARU to continue pending the outcome of the investigation into the grievance. On 19th February 2016, the Trust explained that this request was refused, stating that:

‘As you are aware from the consultation document the decision to discontinue the provision of licensed treatment has come as a result of being unable to recruit and retain sufficient embryology cover which presents a patient safety issue. It would be remiss and irresponsible of the Trust to allow the unit to continue beyond 31 March 2016 on this basis.’

In other words, the closure of the ARU will go ahead on 31st March 2016.

25. On 17th February 2016, the Council sent a letter before action to the Trust. In that letter, the Council stated that it was ‘pleased that the Trust now recognises that consultation over the future of the ARU should be carried out.’ The Council asked the Trust to confirm that it would:

- (a) rescind the decision to cease providing licensed fertility treatment at the ARU from the end of March 2016;
 - (b) inform affected staff of this decision, and cease consulting with the trade unions and staff (as this will no longer be necessary) and withdraw any notices of termination that may have been issued; and
 - (c) confirm that the Trust will consult with affected local authorities in accordance with the regulation 23(2), and will not cease the licensed treatment services at the ARU until after the conclusion of the consultation process.
26. The Trust responded substantively to the Council's letter before action on 25th February 2016. The Trust did not confirm that it would rescind the Decision; or that it withdraw the notices of termination.
27. The Trust explained that:
- (i) it is not 'obliged' to consult any local authority about the proposal to reconfigure the ARU;
 - (ii) it does consider that 'engagement' would be 'useful', and that it would be 'earnestly exploring all options';
 - (iii) the responsible commissioning CCGs are 'primarily responsible for consulting with the local authorities about the ARU', although it wishes to remain involved with the consultation process;
 - (iv) it will continue to provide the current level of service until appropriate engagement can be carried out, but that the local authority consultation and user/stakeholder engagement must be completed so that a decision can be taken before 30th March 2016.

28. The Trust stated that ‘it is imperative that engagement and consultation around the ARU is undertaken quickly, as the Trust is concerned that if it loses any more staff, there will not be sufficient experience in the Unit to provide safe treatment to patients.’ (The Trust did not explain how its refusal to withdraw the notices of termination of employment was consistent with this position: if staff are under threat of termination of their employment, it would not be surprising if they sought work elsewhere).
29. The Trust noted that it was mindful of the fact that the local authorities were shortly entering into an election period and that this would affect its ability to engage the public. It wished for a decision to be taken before ‘the election purdah’ period begins on 30 March 2016.
30. On 26th February 2016, the Committee reconvened. The Medical Director of the Trust attended. He was asked to give the assurances sought in the letter before action. He was unable to confirm that these assurances could be given.
31. The Committee agreed to convene a Joint Committee with the other local authorities affected by the Decision, with the expectation that this should take place in about fourteen days. (The Council appreciates that the other local authorities may not engage with this attempt to convene a Joint Committee, as they have indicated already that they are not inclined to take part in a Joint Committee).
32. The Council believes that before proper and lawful consultation can take place, it is necessary for the Trust to rescind its decision to close the ARU as of 31st March 2016, and to rescind the notices of termination of employment.
33. The Council also believes that proper and lawful consultation should, and could, extend beyond the ‘purdah period’, and until after the local

government elections. The opposition to the closure of the ARU is not a party-political issue within the local authority.

Legal Submissions

Summary

34. The Trust now acknowledges that consultation as to the closure of the ARU should take place with affected local authorities. This is a clear change of position from its initial stance: the communication of 11th January 2016 to the Council made no mention of consultation. It is most likely that the Trust thought that it could avoid *any* consultation by relying on an argument that clinical safety would be compromised if consultation took place. The Trust's initial position was unlawful.
35. However, the Trust's refusal to rescind the Decision (to close the ARU at the end of March 2016), and to withdraw notices of termination of employment to staff working at the ARU, betrays further unlawfulness. It is a basic principle of the law of consultation (as most recently expressed by the Supreme Court in R (Moseley) v London Borough of Haringey [2014] 1 W.L.R. 3947) that consultation must take place when a proposal is at 'a formative stage': that is, before a decision has been taken. It is one thing to consult on a preferred option (which is lawful); another to consult on a proposal where (as here) the decision-maker's mind is closed.
36. The Trust has already reached a decision to close the ARU at the end of March 2016, and has not been prepared to budge from that position, even though it has purported to offer up the possibility of consultation (and/or engagement). Any such consultation (or engagement) will be a 'sham'.

The 2013 Regulations

37. The statutory framework for consultation is set out in regulation 23 of the 2013 Regulations.

(1) Subject to paragraphs (2) and (12) and regulation 24, where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

(a) consult the authority;

(b) when consulting, provide the authority with—

(i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and

(ii) the date by which R requires the authority to provide any comments under paragraph (4);

(c) inform the authority of any change to the dates provided under paragraph (b); and

(d) publish those dates, including any change to those dates.

(2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

(3) In a case such as is referred to in paragraph (2), R must notify the authority immediately of the decision taken and the reason why no consultation has taken place.

(4) Subject to regulation 30(5) (joint committees) and any directions under regulation 32 (directions as to arrangements for discharge of health scrutiny functions), the authority may make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).

(5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation—

(a) R must notify the authority of the disagreement;

(b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and

(c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).

(6) This paragraph applies where—

(a) the authority has not exercised the power in paragraph (4);
or

(b) the authority's comments under paragraph (4) do not include a recommendation.

(7) Where paragraph (6) applies, the authority must inform R of—

(a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or

(b) the date by which it proposes to make a decision as to whether to exercise that power.

(8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.

(9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where—

(a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;

(b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or

(c) the authority considers that the proposal would not be in the interests of the health service in its area.

(10) The authority may not make a report under paragraph (9)—

(a) in a case falling within paragraph (5), unless the authority is satisfied that—

(i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;

(ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or

(b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).

(11) A report made under paragraph (9) must include—

(a) an explanation of the proposal to which the report relates;

(b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);

(c) in the case of a report under paragraph (9)(c), a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area of the authority;

(d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);

(e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;

(f) an explanation of the reasons for the making of the report; and

(g) any evidence in support of those reasons.

(12) In a case where R is a service provider and the proposal relates to services which a clinical commissioning group or the Board is responsible for arranging the provision of—

(a) the functions of R under this regulation must be discharged by the responsible commissioner on behalf of R; and

(b) references to R in this regulation (other than in paragraph (5)(c)) are to be treated as references to the responsible commissioner.

(13) Where the functions of R under this regulation fall to be discharged by more than one body under paragraph (12)(a), the duties of those bodies under that paragraph may be discharged by those bodies jointly or by one or more of those bodies on behalf of those bodies.

(14) In this regulation—

“service provider” means an NHS trust, an NHS foundation trust or a relevant health service provider;

“the responsible commissioner” means the clinical commissioning group or groups or the Board, as the case may be, responsible for arranging the provision of the services to which the proposal relates.

(i) The decision to close the ARU *without* engaging in any consultation

38. There is no doubt that the proposed closure of the ARU constitutes a ‘proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service’ within the meaning of regulation 23(1).

39. In the circumstances, consultation with the affected authority (or authorities) ‘must’ take place before a decision is taken as to that substantial development or variation. (The language of regulation 23(1) is clearly that of ‘proposals’ – which necessarily implies that a decision has not been taken. See also regulation 23(2), which refers to proposals and decision).

40. The only exception to this would be if the provisions of regulation 23(2) were satisfied: that is, there is no obligation to consult as to

‘proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff’.

Regulation 23(2) does not exempt a responsible person from consulting merely because the proposed decision concerns issues of clinical safety. It exempts a responsible person from consulting where issues of clinical safety mean that there is not sufficient time to carry out consultation.

41. This interpretation of regulation 23(2) finds support in the Department of Health’s document ‘Local Authority Health Scrutiny: Guidance to support

Local Authorities and their partners to deliver effective health scrutiny’ (“the Guidance”). The Guidance states at paragraph 4.5.1:

The Regulations set out certain proposals on which consultation with health scrutiny is not required. These are:

- Where the relevant NHS body or health service commissioner believes that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff (this might for example cover the situation where a ward needs to close immediately because of a viral outbreak) – in such cases the NHS body or health service provider must notify the local authority that consultation will not take place and the reason for this.

42. There are no such circumstances here. In the instant case, there were no circumstances of clinical safety that *justified the Trust in failing to (or refusing to) consult with the relevant local authorities* (including the Council) before making the Decision.

43. Accordingly, the Trust’s failure to consult was unlawful, and in contravention of regulation 23 of the 2013 Regulations.

44. In its response to the letter before action, the Trust has stated that it is not ‘obliged’ to consult, although it says that it will be involved in consultation. The Trust states that the CCG is primarily responsible for consultation. In this regard, the Trust relies on regulation 23(12) of the 2013 Regulations which provides that the functions under this regulation (including the consultation function) are those of the ‘responsible commissioner’ where ‘R is a service provider and the proposal relates to services which a clinical commissioning group . . . is responsible for arranging the provision of’.

45. The Council does not accept that regulation 23(12) applies in the current circumstances. However, even if regulation 23(12) did apply, and the CCG was under the statutory obligation to consult, this does not mean that the Trust acted lawfully in presenting the CCG with a *fait accompli* – that a

decision had been made that the ARU would close as at the end of March 2016.

46. It is necessarily implicit in regulation 23 that *no* decision has been made before consultation takes place. There would be no point in requiring the commissioner (here the CCG) to consult on the ‘proposal for a substantial variation in the provision’ of the health service (here the closure of the ARU) if a decision to make that closure had already been made by the Trust.
47. This is obvious. First, the language of regulation 23(1) refers to ‘proposal’ – and that language applies even where, by virtue of regulation 23(12), the commissioner stands in the shoes of the responsible person (who is merely a service provider).
48. Second, the language of ‘proposal’ appears in regulation 23(4) as well, and this is connected to the role of the service provider (here the Trust, on its case) even if regulation 23(1) applies.
49. Regulation 23(4) enables an affected local authority to make comments ‘on the proposal’, and allows that authority to make a ‘recommendation’. Regulation 23(5) provides a mechanism for addressing that recommendation, where the responsible person disagrees with the recommendation. Regulation 23(5)(b) provides that ‘R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation’. If there is a mechanism to achieve agreement, it must mean that a decision has not already been made by R.
50. Regulation 23(5)(c) provides that ‘in a case where the duties of R . . . are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).’ There would be no point in involving

‘R’ (the Trust, on its case) in the steps specified in sub-paragraph (b) if R has already made up its mind: there would be nothing to agree.

51. Further, in any event, the Guidance provides at paragraph 4.3.1 that:

In the case of substantial developments or variation to services which are the commissioning responsibility of CCGs or NHS England, consultation is to be done by NHS commissioners rather than providers i.e. by the relevant CCG(s) or NHS England. When these providers have a development or variation “under consideration” they will need to inform commissioners at a very early stage so that commissioners can comply with the requirement to consult as soon as proposals are under consideration.

The Guidance understands that the consultation by the CCG needs to take place whilst ‘proposals are under consideration.’

52. On any view (if regulation 23(12) applies here), it is clear that the Trust failed to comply with the process envisaged by paragraph 4.3.1 of the Guidance. The Trust did not inform the CCG of its ‘proposal’ for the ARU at a ‘very early stage’. Rather, the Trust informed the CCG of the Decision on 11th January 2016. That was unlawful: in contravention of the implicit obligations of regulation 23, and/or in any event in direct contravention of the principles expressed in the Guidance without good or proper reason.

53. In the circumstances, the Trust’s Decision was unlawful, and should be quashed.

(ii) Failure to rescind the Decision pending ‘consultation’

54. The Trust has acknowledged that consultation as to the future of the ARU is required. However, the Trust has failed to take appropriate steps to ensure that lawful consultation can take place.

55. A pre-requisite of lawful consultation is that this takes place when the proposal is at a formative stage: that the decision-maker will keep an open mind. There can be no lawful consultation where a decision has been made, and by its actions or omissions the decision-maker has shown that it will not be prepared to change that decision.
56. Here, the decision-maker (the Trust) has stated that it will ‘earnestly explor[e] all options’, but at the same time, it has (i) refused to rescind the decision to close the ARU as at 31st March 2016, pending the outcome of consultation; and (ii) refused to revoke the notices of termination of employment, pending the outcome of consultation. Indeed, rather than exploring all options (which would obviously include keeping open the ARU), the Trust has explicitly stated to the trade unions that ‘It would be remiss and irresponsible of the Trust to allow the unit to continue to operate beyond 31 March 2016’.
57. In the circumstances, the Trust has behaved in such a way as to make any consultation (whether with the Council alone, or with the other local authorities by way of Joint Committee; whether conducted by the CCG or otherwise) a ‘sham’.
58. Further, the Trust has insisted that any ‘consultation’ is completed in advance of the ‘purdah period’. This is unfair and unreasonable. There is no requirement, from a clinical safety or other perspective, for a ‘decision’ to be taken before the end of March 2016.
59. In the response to the letter before action, the Trust say that the option of ‘running the ARU with its current staffing and consequent safety concerns until the end of the election period [5th May 2016] – would be very challenging for the Trust, and certainly not in the best interests of the patients’. The Trust’s position is disputed; but even if it was the case, that does not mean that the ARU cannot be kept open for some time *after* 31st March 2016, and before 5th May 2016.

60. The Trust's approach to 'consultation' is unlawful.

Interim Relief

61. The Council requests that the substantive hearing of this claim be expedited. However, if the matter is not considered by the Court before 31st March 2016, the claim will be 'academic', as the ARU will have closed, and staff working at the ARU will have ceased their employment.

62. Accordingly, so as to maintain the *status quo*, and allow consultation to be genuine and effective (and lawful), the Court is requested to provide interim relief in the following terms:

(i) there be an interim declaration that the Defendant has acted unlawfully in making its decision to close the ARU without consultation, and without informing the Interested Party (the CCG) at a very early stage that a proposal to close the ARU was under consideration;

(ii) there be an interim declaration that the consultation that the Defendant is purporting to undertake is improper and unlawful, as the Defendant is maintaining the decision to close the ARU and to terminate employment of ARU staff whilst purporting to 'consult' on the future of the ARU; and

(iii) an order that the Defendant maintain the ARU in operation pending the outcome of proper and lawful consultation.

63. The Council has a strongly arguable case that the Trust has acted unlawfully for the various reasons set out above; and the balance of convenience favours maintaining the *status quo* (the existence of the ARU). There can be no doubt that the Trust acted unlawfully in failing to consult and/or properly inform the CCG before making the Decision.

64. There is no basis for the contention that the ARU *must* close on 31st March 2016. There are plenty of options available to the Trust to keep the ARU open beyond 31st March 2016, so that it can make a proper and considered decision based on a conscientious consideration of the representations to be made by the Council (and others).

Conclusion

65. Permission to apply for judicial review should be granted and interim relief ordered.

66. At the final, substantive, hearing, the Council seeks the following relief:

- (1) An order quashing the Decision that the ARU be closed from 31st March 2016;
- (2) An order requiring the Trust to carry out proper and lawful consultation before making any decision to close the ARU;
- (3) An order revoking notices of termination of employment of the ARU staff, pending the outcome of that consultation;
- (4) A declaration;
- (5) Such other relief as the Court deems appropriate;
- (6) Costs.

CLIVE SHELDON QC



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref: CO/1225/2016

Appendix D

In the matter of an application for Judicial Review

The Queen on the application of Hartlepool Borough Council Claimant

versus

Tees and Hartlepool NHS Foundation Trust Defendant

On the application for urgent consideration

Following consideration of the documents lodged by the Claimant

Order by HHJ Nicholas Cooke QC, sitting as a Deputy Judge of the Administrative Court

IT IS ORDERED:

1. That the Defendant shall take no further step to facilitate the closure of the Assisted Reproductive Unit at University Hospital, Hartlepool until this court is able to consider this matter further.
2. That this matter be listed, with no less than 7 days notice to the parties, for the inter partes consideration of the claim herein for interim relief as soon as practicable.
3. Consideration is to be given to the possibility of that hearing, and any future hearings herein, being listed at a venue in the North East of England, having regards to likely local interest in the subject matter.
4. At such hearing consideration is to be given to ordering a "rolled up hearing", to take place within an abridged time scale, intended to dispose of this matter.
5. Costs reserved.

REASONS:

On the basis of the material presently before me the application for permission appears arguable. Unless an order of the type made is made now the claim concerned may become otiose, by virtue of continued intentional movement or slippage towards the closure of the facility concerned. This court should have the opportunity of considering this matter without that happening. The nature of the case indicates that the possibility of hearings nearer to Hartlepool should be considered.

Nicholas Cooke Q.C.

Signed

HHJ Nicholas Cooke QC, sitting as a Deputy Judge of the Administrative Court.

The date of service of this order is calculated from the date in the section below

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date):

- 9 MAR 2016

IN THE HIGH COURT OF JUSTICE

CO/1225/2016

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN

(Mrs Justice Cheema-Grubb)

THE QUEEN

On the application of

HARTLEPOOL BOROUGH COUNCIL

Claimant

-and-

NORTH TEES AND HARTLEPOOL NHS FOUNDATION TRUST

Defendant

-and-

HARTLEPOOL AND STOCKTON-ON-TEES

CLINICAL COMMISSIONING GROUP

Interested Party

CONSENT ORDER

UPON the terms of the schedule being reached between the Parties

BY CONSENT IT IS ORDERED THAT:

1. The interim order of HHJ Cooke QC be discharged;
2. The proceedings in this action be stayed upon the terms set out in the schedule, except for the purpose of enforcing those terms;

3. Each party shall have permission to apply to the Court to enforce the terms set out in the schedule without the need to bring a new claim; and
4. There shall be no order as to costs.

SCHEDULE

1. The Defendant will enter into user engagement around the future of the licensed fertility treatment at the Assisted Reproduction Unit (ARU) at the University Hospital of Hartlepool, which it proposes to do alongside the NHS Hartlepool & Stockton on Tees Clinical Commissioning Group (CCG).
2. The Defendant will consult with the Claimant individually and/or a joint committee of the Claimant and Stockton-on-Tees Borough Council and Durham County Council (if the latter two authorities wish to participate in a joint committee) as to the proposals around the ARU. If possible, the Defendant will carry out this consultation alongside the CCG.
3. Until the conclusion of the aforesaid consultation, and until a decision is taken on the proposal set out above, the Defendant shall:
 - a. take no step intended to facilitate the closure of the ARU, and
 - b. use its best endeavours to continue to provide licensed treatment services at the ARU.
4. The Trust and the Council will use their best endeavours, alongside the CCG, to ensure that consultation and engagement is completed and a final decision about the future of the ARU taken, by 31 July 2016.



Ministry
of Justice

Caroline Dinenage MP
Parliamentary Under-Secretary
of State for Women, Equalities
and Family Justice

MoJ ref: ADR31348

Councillor Mary Fleet
Civic Centre
Hartlepool
TS24 8AY

29rd
March 2016

Dear Cllr Fleet,

PROPOSED MERGER OF THE TEESSIDE AND HARTLEPOOL CORONER AREAS

Thank you for your letter of 15 February, addressed to the Rt Hon Michael Gove, advising of Hartlepool Borough Council's consideration of the proposed merger of the Teesside and Hartlepool coroner areas. I am replying as the Minister responsible for coroner law and policy. I apologise for the delay in doing so.

You have set out that Hartlepool Borough Council remains supportive of the proposed merger on the basis that the Senior Coroner for Hartlepool, Malcolm Donnelly, is "slotted in" as Senior Coroner for the merged area. You have also explained that the local authorities who fund the Teesside coroner area also support a merger but that this is on the condition that there is an open competition to fill the Senior Coroner role. I can confirm that my officials have also received reports from these local authorities confirming this view and requesting an indemnity to cover such an appointment process.

As you have noted, while the appointment of a Senior Coroner requires the consent of both the Chief Coroner and the Lord Chancellor, the appointment process is a matter for the local authority. Given the local authorities' conflicting positions, I have decided not to proceed with the merger. My officials will write to Middlesbrough Council and Malcolm Donnelly to confirm this. While it is disappointing to miss the opportunity to amalgamate these two areas I am encouraged that the close working between those who work in the Hartlepool and Teesside coroner services will continue, to the benefit of bereaved people in both jurisdictions. Should circumstances change, my officials will of course be pleased to work with you in any future merger discussions.

Thank you for setting out the Council's support for Malcolm Donnelly and your appreciation for his commitment, judgement, experience and character. I understand that Mr Donnelly is a very dedicated Senior Coroner who has shown excellent leadership of the Hartlepool coroner area. I am grateful for the dedication and continued hard work during this time and I would like to reassure Mr Donnelly that this outcome is not seen as a reflection on his judgement, work or experience as a Senior Coroner. I hope that this letter will end the current uncertainty and anxiety and allow the valuable work carried out by Mr Donnelly and his team to continue.

CAROLINE DINENAGE

COUNCIL
24 May 2016



Report of: Chief Executive

Subject: BUSINESS REPORT (2)

6. APPOINTMENTS PANELS

Council is requested to note that an Appointments Panel will be established for the following posts;

Assistant Director – Economic Growth and Regeneration
Assistant Director – Environment and Neighbourhoods

The Panel will consist of those members appointed to the Panel earlier in this meeting.

CLEVELAND FIRE AUTHORITY

MINUTES OF ORDINARY MEETING

12 FEBRUARY 2016



- PRESENT:**
- CHAIR:-** Councillor Jan Brunton – Middlesbrough Council
HARTLEPOOL BOROUGH COUNCIL
Cllrs Stephen Akers-Belcher, Rob Cook, Marjorie James, Ray Martin-Wells
MIDDLESBROUGH COUNCIL
Cllrs Ronald Arundale, Shamal Biswas, Teresa Higgins, Naweed Hussain
REDCAR & CLEVELAND BOROUGH COUNCIL
Cllrs Billy Ayre, Norah Cooney, Brian Dennis, Ray Goddard, Mary Ovens
STOCKTON ON TEES BOROUGH COUNCIL
Cllrs Paul Kirton, Jean O'Donnell, John Gardner, Mick Stoker, William Woodhead
- AUTHORISED OFFICERS**
Chief Fire Officer, Director of Corporate Services, Legal Adviser and Monitoring Officer, Treasurer
- BRIGADE OFFICERS**
Director of Technical Services
- APOLOGIES FOR ABSENCE:**
- Cllr Mary Lanigan – Redcar & Cleveland Borough
Cllr Tom Mawston – Middlesbrough Council
Cllr Gillian Corr, Stephen Parry – Stockton Borough Council

Members held a minute silence to mark the recent death of former long serving Cleveland Fire Authority Member Hazel Pearson OBE.

74. DECLARATIONS OF MEMBERS INTEREST

Councillors James, Martin-Wells and Woodhead declared a personal interest as members of NEREO. Minute No. 84.1 refers.

75. MINUTES

RESOLVED – that the Minutes of the Cleveland Fire Authority Ordinary Meeting on 11 December 2015 be confirmed.

76. MINUTES OF COMMITTEES

RESOLVED – that the Minutes of the Executive Committee on 22 January 2016, be confirmed.

77. COMMUNICATIONS RECEIVED BY THE CHAIR

- 1) Clair Alcock, LG: Protected Pension Ages, Scheme Advisory Board Update. Pensions Board Chair
- 2) FBU – Three Shift System
- 3) Theresa May MP – Transfer To The Home Office
- 4) Daniel Greaves, Fire Transition Director
- 5) Mike Penning MP – Local Finance Settlement

RESOLVED – that the communications be noted.

78. REPORTS OF THE CHIEF FIRE OFFICER

78.1 Emergency Services Mobile Communications Programme (ESMCP)

The Director of Technical Services informed Members that the ESMCP was a cross-government programme led by DCLG to replace the existing mobile communications service for the three emergency services (Firelink for the FRS) with a new secure system based on commercial 4G networks.

The DoTS reported that the main three objectives of the ESMPC were to be:-

- 1) **Better**, with integrated broadband data services; public service functionality; national coverage and high availability.
- 2) **Smarter**, to be more flexible, to evolve and improve over time, pay only for features required by users.
- 3) **Cheaper**, to address budget pressures, re-competed regularly to leverage market forces.

The DoTS outlined the key areas of the report which covered:

- Current Situation
- Project Transition Plan
- Financial Information
- Proposed Staffing
- Regional Governance

Councillor Kirton referred to potential for slippage and asked how robust the arrangements were. The DoTS reported that as an Authority, communications and mobilising was a critical activity and it was his role to ensure that resilience and contingency plans were in place outside of the current Airwaves network.

RESOLVED : –

- (i) **That the formal response to DCLG, (Appendix A, Annex A), confirming that Cleveland Fire Authority will transition to the new Emergency Services Network via the ESMCP programme, be approved subject to the following caveats:-**
 - **that the system provides, as a minimum, the same level of coverage and resilience as the existing Airwave system;**
 - **that the Authority's transition funding and steady state costs are not significantly different to the figures as reported to the Fire Customer Group and in the Fire and Rescue Authority's Financial Information and Sign-Off Pack.**
- (ii) **That the proposed implementation of staffing arrangements, extending the three grant-funded temporary posts within the ICT department from March 2017 to March 2019, to cover the technical workloads associated with the transition, be noted.**
- (iii) **That the proposed North East FRS Regional Governance model (Appendix B) for the ESMCP programme be noted.**

78.2 Public Consultation on Emergency Services

The CFO updated Members on the Government's response to the recent public consultation on a range of proposals to increase joint working between emergency services, in order to improve effectiveness and deliver savings for the public.

The CFO tabled a document entitled 'Police & Crime Bill: Emergency Services Collaboration' which outlined the background and an overview of Part 1 of the Bill.

He reported that on 5 January 2016 the Government reported that DCLG was transferring to the Home Office and on 10 February 2016 legislation went through parliament as part of the Police and Crime Bill, which had significant consequences in relation to allowing Police and Crime Commissioners (PCCs) to take some courses of action that would be outside the Fire and Rescue Service's control.

The CFO reported that the PCCs would be considering their next steps following the elections in May. Councillor Arundale stated that the Authority should maintain that the system it currently operates is still fit for purpose. The Chair agreed to forward that view.

Councillor Ayre asked if police and fire merge which governance will be followed. The CFO referred to the various options outlined in the tabled document. Councillor Ovens pointed out the potential difficulties of two different organisations having a single employer.

RESOLVED:-

- (i) That the contents of the report be noted**
- (ii) That any next steps be considered by Members and additional reports received as appropriate.**

(2.25pm) Councillor Akers - Belcher left the meeting

78.3 Community Integrated Risk Management Plan (CIRMP) Annual Review - Alternative Proposal: Three Watch Duty System

The CFO provided Members with an update regarding the proposal to amend the Community Integrated Risk Management Plan (CIRMP) by introducing a Three Watch Duty System. He reported that the proposal had been reported to Members in detail through the Executive and Overview & Scrutiny Committees and acknowledged that it was outside of the principles of the Grey Book Terms and Conditions and EC Working Time Directive.

The CFO outlined the benefits of the Three Watch Duty System, as detailed at para 4 of the report, and reported that the Brigade Management had entered into negotiations with the FBU, in good faith, with the intention to reach a local agreement which varied the conditions of service for staff who volunteered to adopt the new duty system. He informed Members that there had been a joint referral to the Technical Advisory Panel (TAP) which had concluded it was unable to recommend either of the options.

The CFO reported that as Brigade Management were unable to make fundamental changes to the three shift system proposals and the FBU were unable or unwilling to agree to a collective agreement on behalf of the volunteering firefighters that would provide the necessary derogations under the Working Time Regulations, the Fire Authority and Brigade Management had no choice but to discontinue its efforts to introduce the three shift system proposal.

78.3 Community Integrated Risk Management Plan (CIRMP) Annual Review

- Alternative Proposal: Three Watch Duty System continued

This left the Authority with little option but to continue with the implementation of the third year of the previously agreed CIRMP 2014 – 2018, which entailed:

- the closure of the Marine Fire Station and the associated relocation of staff and appliances;
- the withdrawal of the Hydraulic Platform from the operational fleet;
- the commencement of the transition of wholetime-staffed appliances to the retained (on-call) duty system.

Councillor Dennis asked if 35% of FBU members had said 'yes' to the Three Shift System, were the other 65% a definite 'no'? Mr Davy Howe, FBU Secretary, who had been observing the meeting, reported that a full and extensive workplace ballot of Members had taken place and around 70% said a definite 'no'. Of the Members that turned up, 98% said 'No'.

RESOLVED:-

- (i) **That the contents of the report be noted**
- (ii) **That the findings and recommendations of the Independent Expert on behalf of the NJC Technical Advisory Panel (Appendix A) be noted.**

78.4 Draft Service Plan Priorities 2016/17

The Director of Corporate Services (DoCS) reported that each business year the Brigade's Executive Leadership Team undertakes key strategic and integrated risk management and financial planning activities to ensure that the strategic direction is reviewed and remains appropriate and that annual priorities are set to ensure the delivery of that direction.

The DoCS reported that these planning activities for 2015/16 were now complete and referred Members to the detailed draft Priorities for 2016/17, stemming from the following two main sources:

• Community Integrated Risk Management Plan (CIRMP) 2014 -18 Year 3 priorities

which reflect the Authority's current risk assessment outcomes, the outcomes from the CIRMP consultation exercise and the medium term financial position including the use of the Authority's reserves; and

• Corporate priorities identified by the Brigade's Executive Leadership Team as a result of a strategic risk assessment (the opportunities that will support or the threats that will prevent the achievement of the Authority's strategic outcomes).

- OD12: New Complex on Queens Meadow Business Park Consisting of Administrative Headquarters, Fire Control, Learning and Development Centre and Asset Resource Centre
- OD15, 16: Revenue Budget 2016/17
- ER1: Emergency Response: Industrial and Commercial
- ER3: Major Estate Rebuild and Refurbishment Programme
- ER3 (iii): Build a New Community Fire Station at Thornaby
- ER3 (iv): Build a New Community Fire Station at Grangetown
- ER3 (v): Refurbish Stranton Community Fire Station

78.4 Draft Service Plan Priorities 2016/17 continued

- ER3 (vi): Refurbish Guisborough Community Fire Station
- ER3 (vii): Refurbish Loftus Community Fire Station
- ER6: Introduce Combined Aerial Rescue Pumps into the Brigade's Fleet
- ER7: De-staff Marine Fire Station
- ER9: Prepare for the Introduction of On-Call Crewing Arrangements for the Second Fire Engine at either Thornaby, Grangetown or Redcar Fire Stations
- C1: Emergency Services Collaboration
- C1.1 Collaboration with Cleveland Police (CP)
- C61.2 North East Ambulance Service (NEAS) Partnership
- C61.3 Tees Valley Shadow Combined Authority
- C61.4 Fire as a Health Asset
- C2: Leadership, Culture and Valuing our Workforce

The DoCS confirmed that the final approved priorities would be published in the Authority's Service Plan 2016/17 in April.

Councillor Dennis referred to the use of first responders and asked if the Authority could be confident that all firefighters attending would be fully trained. The CFO confirmed that the clinical governance of NEAS assured compliance and the training programme delivered to firefighters was accredited by NEAS.

The CFO reported that to date, three casualties who were clinically dead had been resuscitated by regional fire crews participating in the trial. Members commented that our firefighters should be applauded for the work they do.

RESOLVED:-

- (i) **That following consideration, the final draft Service Plan Priorities 2016/17, as attached at Appendix 1, be approved and included within the Authority's Service Plan 2016/17.**
- (ii) **That the publication of the Authority's Service Plan 2016/17 in April 2016, be noted.**

78.5 Safeguarding Children, Young People and Vulnerable Adults Policy

The Chief Fire Officer (CFO) reported that the Safeguarding Children, Young People and Vulnerable Adults Policy reflected the Authority's commitment to ensuring this group of individuals were given an equal right to protection from abuse, harassment, violence and aggression regardless of their age, race, religion, ability, gender, language, background or sexual identity and considers the welfare of the child, young person or vulnerable adult as paramount.

He reported that this new policy was implemented and underpinned by two key procedures, which were:

- The Safeguarding Children and Young People Procedure
- The Safeguarding Vulnerable Adults Procedure

78.5 Safeguarding Children, Young People and Vulnerable Adults Policy continued

RESOLVED:-

- (i) That the Authority's Safeguarding Children, Young People and Vulnerable Adults Policy (Appendix 1) be approved.**
- (ii) That the Safeguarding Children and Young People Procedure at Appendix 2 and Safeguarding Vulnerable Adults Procedure at Appendix 3 be noted.**
- (iii) That Councillor Jan Brunton be appointed as the Authority's Safeguarding Member Champion 2015/16, as recommended by the Executive committee at its meeting on 22 January 2016.**

78.6 Information Pack

- 78.6.1 Fire & Rescue Service Monthly Bulletins
- 78.6.2 Campaign Launches
- 78.6.3 Fire Brigade Long Service and Good Conduct Medals

RESOLVED – that the information pack be noted.

79. JOINT REPORT OF THE CHIEF FIRE OFFICER AND TREASURER

79.1 Medium Term Financial Strategy 2016/17 – 2019/20

Revised copies of Appendix G were circulated to Members which reflected minor changes to the Revenue Support Grant.

The Treasurer outlined the Medium Term Financial Strategy (MTFS) which had been reviewed to reflect the impact of the 2016/17 Local Government Finance Settlement announcement on 17 December 2015. The report covered:

- Background and Budget History 2010/11 to 2015/16
- Provisional Local Government Finance Settlement 2016/17
- Government Funding Allocations
- Update MTFS Forecasts 2016/17 to 2019/20
- Council Tax and Business Rates Forecast 2016/17
- Council Tax Level 2016/17
- Strategy for Managing Revised Forecast Deficits 2016/17 to 2019/20
- Reserves Review
- 2016/17 to 2018/19 Capital Programme
- Use of One-Off Resources to support the CIRMP

The Treasurer reported that over the next 4 years the Authority would need to make further cuts of £3.982m and as Government grant cuts would be front loaded, recommended that one-off resources be used to support the budget in 2016/17 and 2017/18, providing slightly longer lead times to implement the necessary budget reductions.

He reported that using one-off resources in 2016/17 and 2017/18 would not provide a permanent solution to address the impact of ongoing additional Government grant cuts and this would only be recommended on the basis that Members approve the proposals to balance the budget and support the Chief Fire Officer's implementation of these changes over the next few years.

79.1 Medium Term Financial Strategy 2016/17 – 2019/20 continued

The Treasurer reported that over the last 5 years (2011/12 to 2015/16) the Authority had faced significant financial challenges owing to the impact of sustained Government grant cuts and the restriction of Council Tax increases. He noted these grant cuts have had a greater impact on the Authority owing to its high dependency on Government grant.

The Treasurer reported that the LGF settlement confirmed that further significant Government funding cuts will be implemented over the next 4 years, although the provisional LGF settlement restores an element of resource equalisation within the funding system meaning the Authority's grant cuts would not be as high as forecast.

The Treasurer highlighted that by 2019/20, the Authority would only receive Government funding of £12.270m, compared to £22.555m in 2010/11 – a cut of £10.285m, which equates to a reduction of 46%.

The Treasurer referred Members to paragraph 6.5 of the report which summarised how one off resources would be used to support the CIRMP in light of the Three Watch Duty System Proposal being rejected. The CFO reported that the Brigade had circa 369 firefighter posts and 104 would be removed over the life of this MTFS.

The Chair invited Davy Howe, FBU Secretary, to comment. Mr Howe said he understood the situation the Authority, the CFO and the firefighters were in and that the funding mechanism was not fair to Cleveland. He noted that 18 years ago the Brigade had more than 600 firefighters and today there were 369, with plans to cut a third more. He acknowledged the Sir Ken Knight report that stated firefighters attended fewer fires than in the past and said this was down to the extensive community safety work carried out. Mr Howe expressed concern that when resources are reduced and community safety work is affected then there may be an increased risk of fires and fire injuries.

Councillor Ayre noted that Mr Howe's response on behalf of the FBU had raised a lot of serious issues and asked to see these points in writing. The Chair stressed the need for the budget to be set today and the report needed to be approved. The CFO informed Cllr Ayre that all of the issues raised by the FBU had been clearly addressed during the consultation period for the CIRMP 2014-18 and acknowledged that Cllr Ayre had not been a Member of the Fire Authority at that time.

Councillor Dennis queried whether historical risk was used to determine response standards. The CFO confirmed that the Brigade did not use historical data to measure risk and that a whole range of data is used in the risk formula.

Councillor Dennis asked if the Brigade could respond to an incident today the same way it would have 15 years ago and asked if there was a point where the risk could no longer be managed. The CFO acknowledged the concerns raised and assured that risk and response were both evaluated and if the Brigade could not respond it would be deemed a failing Fire Authority.

The Chair confirmed that the Authority had met with Government many times to lobby against the continued cuts in grant for Cleveland.

79.1 Medium Term Financial Strategy 2016/17 – 2019/20 continued

Councillor James asked how closely the Brigade monitors new houses being built and the potential income these will generate. The Treasurer confirmed that the districts update forecasts in increased house building for four years with an annual review.

The LAMO asked Members to vote on the recommendations. All Members voted in favour of the recommendation with the exception of Councillors Ayre and Woodhead, who abstained.

RESOLVED:-

- i) That the use of one-off resources of £0.764m in 2017/18 and £0.258m in 2018/19 as part of the recommended strategy for managing the front loaded Government grant cuts over the period 2016/17 to 2019/20 be approved and Members noted this will provide a longer lead time to implement permanent budget reductions.
- ii) That the CIRMP savings proposals for the period 2016/17 to 2019/20 detailed in paragraph 6.7 be approved.
- iii) That a 2016/17 Council Tax increase of 1.9%, which equates to a Band D Council Tax of £71.70 and supporting statutory calculations detailed in the revised Appendix G, which includes the following Council Tax levels, be approved:

Property Band	2016/17		Annual increase £
	Annual Council Tax	Weekly Council Tax	
	£	£	
A	47.80	0.92	0.89
B	55.77	1.07	1.05
C	63.73	1.23	1.19
D	71.70	1.38	1.34
E	87.63	1.69	1.63
F	103.57	1.99	1.94
G	119.50	2.30	2.23
H	143.40	2.76	2.68

Approximately 64% of households are in a Band A or B

- iv) That Indicative Council Tax increases of 1.9% for 2017/18, 2018/19 and 2019/20, be approved.

79.1 Medium Term Financial Strategy 2016/17 – 2019/20 continued

- v) That the 2016/17 revenue budget as detailed in Appendix E, which includes the 2016/17 CIRMP savings proposals, be approved.**
- vi) That the updated capital programme for 2016/17 to 2018/19 as detailed in Appendix F, which underpins the continued implementation of the Asset Management Plan approved by the Authority on 25th July 2014, be approved.**
- vii) That the financial impact of the net Council Tax and Business Rate Collection Fund deficit of £410,000, which is mainly owing to the impact of Rateable Value appeals which are back-dated to 1st April 2013, be noted. That the recommended strategy that this amount is funded from a combination of an increase in the Council Tax base and the establishment of a 2016/17 Occupancy Target of £364,000, be approved. That the achievement of the 2016/17 Occupancy Target will be underwritten from the Un-earmarked General Fund Reserve, be noted.**
- viii) That Members authorise the Chief Fire Officer and Treasurer, in consultation with the Chair, to determine whether the Authority should apply for a 4 year settlement from the Government when more information of this arrangement is available.**

80. REPORT OF THE TREASURER

80.1 Treasury Management Strategy 2016-2017

The Treasurer reported that the Treasury Management Strategy 2016/17, detailed at Appendix 1, had been considered by the Audit and Governance Committee on 13 November 2015 and covered:

- Economic Background and Outlook for Interest Rates
- Treasury Management Outturn position for 2014/15
- Treasury Management Strategy 2015/16 mid-year review
- Treasury Management Strategy 2016/17
- Minimum Revenue Provision and Interest Cost and other regulatory information

He reported that since the Audit & Governance Committee on 13 November 2015, prudential indicators and other regulatory information had now been completed and were attached at Appendix 2.

RESOLVED:-

That the report be noted and the following detailed recommendations from the Audit & Governance Committee for the 2016/17 Treasury Management Strategy and related issues, be approved:

80.1 Treasury Management Strategy 2016-2017 continued

i) Investment Strategy

- a. The use of Government Treasury Bills/Gilts and the appointment of King and Shaxson as custodian.**
- b. The addition of Svenska Handelsbanken to the counterparty list with a limit of £1m and time limit of three months.**
- c. Counterparty limits as set out in Appendix 1 paragraph 9.8.**

ii) Minimum Revenue Provision (MRP) Statement

The MRP statement outlined in Appendix 1 paragraph 10.2.

iii) Prudential Indicators 2016/17

The prudential indicators detailed in Appendix 2.

- 81. LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION ORDER) 2006
RESOLVED - “That under Section 100(A) (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 3 & 4 below of Part 1 Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006”, namely information relating to an individual, namely information relating to the financial or business affairs of any particular person (including the authority) holding that information and namely information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.**

82. CONFIDENTIAL MINUTES

RESOLVED – that the Minutes of the Cleveland Fire Authority Ordinary Meeting on 11 December 2015 be confirmed

83. CONFIDENTIAL MINUTES OF COMMITTEES

RESOLVED – that the Confidential Minutes of the Executive Committee on 22 January 2016 be confirmed.

84. CONFIDENTIAL JOINT REPORT OF THE TREASURER AND LEGAL ADVISER AND MONITORING OFFICER

84.1 Pay Policy Statement 2015/16 – Salary Review

The Chief Fire Officer, Director of Corporate Services and Director of Technical Services left the meeting.

The Treasurer and Legal Adviser and Monitoring Officer provided an outline of the Pay Policy Statement 2015/16 – Salary Review.

**COUNCILLOR JAN BRUNTON
CHAIR**