

**MEETING OF TRURO CITY COUNCIL HELD ON  
MONDAY 15 JULY 2019 at 7.00 pm at the Large Community Room, Truro Library**

**PRESENT:** The Mayor (Councillor Robert J. Smith), Honorary Freeman Cllr Wells  
Councillors Allen, Mrs Butler, Mrs Callen, Mrs Carlyon, Mrs Cox, Mrs Eathorne-  
Gibbons, Ellis, Mrs Neale, Mrs Nolan, Roden, Mrs Stokes, Mrs Swain, Tamblyn,  
Vella and Webb

**APOLOGIES:** Apologies for absence were submitted by Councillors Biscoe, Miss Jones, Nolan,  
Rich and Ms Southcombe

Also in Attendance: Roger Gazzard, Town Clerk  
Sarah Douglas-Martin, Member of the electorate

**88 DISCLOSURES OR DECLARATIONS OF INTERESTS**

**Devolution of Truro Public Library** (Minute 91, page 58)

Councillors Mrs Carlyon and the Mayor declared an interest in the above item as they are on the board of trustees for Truro Technical School (the latter in ex-officio capacity).

**89 OPEN SESSION FOR ELECTORS OF TRURO**

There were no matters raised.

**90 PROCEDURES FOR CO-OPTION**

(Appendix A)

Further to Minute 54, page 42 of Council (24.06.19), Honorary Freeman Councillor Wells reminded Members he and the Town Clerk had been tasked with agreeing "upon a fair and equitable interpretation of NALC's guidance in time for the co-option" and as a result, he had compiled the attached report (Appendix A) for consideration.

Honorary Freeman Councillor Wells explained the legal requirement for voting, as set out in the Local Government Act 1972 Schedule 12 paragraph 13, which states:

*(1) Unless otherwise provided by the council's standing orders the manner of voting at meetings of a parish council shall be by a show of hands.*

*(2) On the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.*

Honorary Freeman Councillor Wells pointed out there was no provision in Standing Orders for co-option, and there was no legislation relating to the procedures of co-option. Therefore, taking the above into account, Honorary Freeman Councillor Wells concluded there was no provision to hold a secret ballot; voting should be by show of hands, and the successful candidate would need to achieve at least fifty percent of the vote as per NALC's guidance. Therefore, this meant debate should be around whether questions should be put to candidates or not.

Councillor Mrs Neale conveyed her confusion regarding the report and sought clarification as to whether members of the public would be present during the interviews and subsequent vote. Honorary Freeman Councillor Wells confirmed that, as with other meetings of the Council, members of the public could attend, and in the interests of transparency should not be excluded. Councillor Mrs Neale commented this could create a difficult situation if a Councillor knew one of the candidates, adding the selection of the Mayor each year was by secret ballot.

Honorary Freeman Councillor Wells confirmed legislation stipulated all meetings should be conducted in public unless there was a valid reason otherwise e.g. confidentiality surrounding employment law, and the Council would be opening itself up to legal challenge if it did not follow this legislation. He also commented the Council needed to revisit the secret ballot voting for Mayoral selection ahead of next

year, but based on legislation, advised the Council may have to cease the use of secret ballots for Mayoral selection.

Councillor Mrs Cox sought clarification on the voting and the requirement of the successful candidate achieving at least fifty percent of the vote. Honorary Freeman Councillor Wells commented this was in the guidance produced by NALC that had been considered at the last meeting of Council when this item was discussed, and confirmed if a candidate did not achieve at least fifty percent of the vote, then the candidate with the lowest number of votes dropped out and another round of voting would take place. This would continue until one candidate received at least fifty percent of the vote and was, therefore, successfully co-opted.

Councillor Mrs Eathorne-Gibbons commented the voting procedure sounded fair but agreed with Councillor Mrs Neale, feeling a Councillor would be in an awkward position if they knew a candidate and voting took place by show of hands. Councillor Vella asked if there was an issue with excluding the candidates *only* from the room during the vote. Honorary Freeman Councillor Wells reiterated as the meeting was open to the press and public this would not be possible, and pointed out if Councillors wanted a secret ballot they should have petitioned for an election to take place when the notification of the casual vacancy was issued. Members of the electorate would then have voted, by secret ballot, to fill the vacancy.

Councillor Mrs Carlyon commented she shared the concerns previously mentioned, that this had not happened before when any other co-option had taken place, and it might mean Councillors could decide to stay away from the meeting to avoid any issues. Councillor Mrs Carlyon asked if it was possible to go into closed session for voting only. Honorary Freeman Councillor Wells again reiterated the need for transparency. Councillor Webb asked if it was possible for members of the public to attend, and therefore the meeting would be transparent, but hold a secret ballot because members of the public would see it taking place. Honorary Freeman Councillor Wells reiterated the legal position once more.

Councillor Mrs Butler suggested one way to avoid this might be for candidates to send in a written statement only, of which their names would be removed before being circulated to Councillors, who would then vote on their preferred statement. Councillor Mrs Nolan commented this Council had always voted the same way and did not see why it should change now.

Councillor Smith (the Mayor), called for order during the meeting, informing Members they should not talk amongst themselves but address any comments to the Chairman at all times.

Members continued to discuss this issue. Honorary Freeman Councillor Wells returned to Councillor Mrs Butler's suggestion of candidates submitting a written statement only, commented that he felt while the suggestion had merit, candidates would need to be named in a resolution in order for an appointment to be made.

Following the above, it was proposed by Councillor Roden and seconded by Councillor Ellis that it be

**RESOLVED** that Option 1 from b) in the recommendation of the report (Appendix A) that stipulated "*The Mayor will ask all the candidates randomly the same questions, selected from those submitted by Members to the Town Clerk before the meeting*" be adopted.

The following motion was proposed by Honorary Freeman Councillor Wells, seconded by Councillor Roden:

that the recommendation in his report (Appendix A) be adopted as per below (with the inclusion of Option 1 for the second item):

Recommended that until new Procedural Guidance has been adopted,

(a) Prior to the agenda being distributed for the co-option meeting, candidates are invited to submit a personal statement setting out their experience, skills and why they want to join the City Council. These are circulated to Members together with the notice and agenda. Each candidate shall be asked to address the meeting for no longer than five minutes (the order to be decided by lot).

(b) The following interview procedure shall be selected:  
The Mayor will ask all the candidates randomly the same questions, selected from those submitted by Members to the Town Clerk before the meeting.

(c) Voting shall be by show of hands unless a recorded vote is requested under Standing Order 3(s).

(d) the Council follows the NALC's guidance for the co-option of councillors as set out in Legal Topic Note 8, paragraph 37:

“Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus, where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so the final vote is between two candidates only. Councils may use NALC's model standing order 8a to confirm the voting process for a casual vacancy where contested. An abstention is not a vote and not part of the count.”

**The motion fell.**

Following a suggestion from Councillor Mrs Cox, it was proposed by Councillor Smith (the Mayor) and

**RESOLVED** that each part of the recommendation of the report be taken one at a time, discussed if required, and voted upon in order to create the procedures for the co-option.

It was therefore proposed by Councillor Smith (the Mayor) and

**RESOLVED** that (a) Prior to the agenda being distributed for the co-option meeting, candidates are invited to submit a personal statement setting out their experience, skills and why they want to join the City Council. These are circulated to Members together with the notice and agenda. Each candidate shall be asked to address the meeting for no longer than five minutes (the order to be decided by lot).

It was proposed by Councillor Smith (the Mayor) and

**RESOLVED** that (b) the following interview procedures shall be selected: The Mayor will ask all the candidates randomly the same questions, selected from those submitted by Members to the Town Clerk before the meeting.

Councillor Mrs Neale wished for her name to be recorded as having abstained from voting on the above resolution.

Honorary Freeman Councillor Wells informed Members he was disappointed the recommendation in the report had not been approved and he strongly advised that Members ensured they understood what they were voting for, as if they chose not to vote for the next part of the recommendation then they were voting against legislation and therefore opening the Council up to the potential for legal action. Councillor Roden supported Honorary Freeman Councillor Wells' advice, adding if Members voted against this then they would be going against Truro City Council's Standing Orders, they would be opening the Council up to legal challenge, and it was irresponsible for any Councillor to suggest this was okay. Councillor Roden commented there were other Councils in similar circumstances who had to increase their precept to avoid bankruptcy resulting from legal fees.

Further discussion took place, including the comment the vote had been lost so therefore voting should not take place again on its components. Other Councillors discussed the potential legal ramifications of the resolution. Councillor Mrs Eathorne-Gibbons commented she trusted the advice from Honorary Freeman Councillor Wells but felt overwhelmed by the information, and though she agreed meetings should be public and transparent, she also agreed with Councillor Vella that a way of not having the candidate in the room during voting was the best way forward. It was commented candidates for employment were not usually in the room during discussion for job vacancies. Councillor Allen commented the whole process should be completely transparent and she was quite willing to stand by any vote she made.

Following the above discussion, the following motion was proposed by Councillor Vella, seconded by Councillor Webb:

that (c) in the recommendation (Appendix A) be amended to include that candidates be excluded from being present during the vote for co-option.

**The motion fell.**

Councillor Roden commented it would be possible to ask a candidate to volunteer to leave the room during the vote but pointed out if they insisted on remaining in the room then they could.

The following motion was therefore proposed by Councillor Roden, seconded by Councillor Mrs Eathorne-Gibbons:

that (c) in the recommendation (Appendix A) be amended to include that candidates be asked whether they would voluntarily leave the room during the vote for co-option.

**The motion fell.**

It was proposed by Councillor Smith (the Mayor) and

**RESOLVED** that (c) Voting shall be by show of hands unless a recorded vote is requested under Standing Order 3(s).

Councillor Vella wished for his name to be recorded as having abstained from voting on the above resolution.

It was proposed by Councillor Smith (the Mayor) and

**RESOLVED** that (d) the Council follows the NALC's guidance for the co-option of councillors as set out in Legal Topic Note 8, paragraph 37:

“Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus, where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so the final vote is between two candidates only. Councils may use NALC's model standing order 8a to confirm the voting process for a casual vacancy where contested. An abstention is not a vote and not part of the count.”

Councillors Mrs Carlyon and Mrs Cox wished for their names to be recorded as having voted against the above resolution.

## **91 DEVOLUTION OF TRURO PUBLIC LIBRARY**

The Town Clerk presented the current proposal for the devolution of the Library service and the building. The presentation outlined the position of the Council, which is summarised below:

### **Transfer of the Property**

The freehold transfer of the Passmore Edwards part of the building (at the front) needed to take place. Downstairs this included the café and computer room, on the first floor it included the Citizens Advice Bureau and the Truro BID offices, and on the second floor a storeroom with windows that needed conversion to bring it into use. There was need for a working toilet in this area, for which the plumbing and electrics were already available.

At the back of the building, Truro City Council would be taking on a new twenty-five year lease with the Truro Technical School. Scaffolding was currently in situ as repair works were taking place to meet the requirements of the trustees before signing for the transfer.

The trustees of Truro Technical School were working with the Charity Commission to sort out legalities relating to the previous agreement with Cornwall Council which did not allow for offices in the building.

The Town Clerk informed Members in 2010 the Community Lottery Fund awarded the library a sum of money to update the building, and the City Council was waiting on a response from the fund agreeing the Council would not take on any liability resulting from this. The agreement with Cornwall Council regarding the award would run out in 2030.

### **Tenancy Agreements, Room Hire and Running the Library**

The Town Clerk spoke about the tenancy agreements in place within the building, which included Citizens Advice Bureau, Truro BID, Link into Learning (a subsidiary of Cornwall Council), Job Line (part of the Cornwall Development Company, also a subsidiary of Cornwall Council), and the café. An item would be placed on the agenda for Council on Monday 29 July 2019 for Members to consider suggestions on lease agreements. In addition, rates for room hire would need to be agreed.

The Town Clerk commented there would be an agreement that if the City Council defaulted on running the library then Cornwall Council would be able to lease back the area and they would need to operate the service.

### **Provision of the Library Service**

The Town Clerk reminded Members the City Council would be responsible for the employment of the library staff who would transfer under pre-agreed transfer regulations. The total number of staff hours had been reduced by Cornwall Council prior to transfer and they would not be reduced further after transfer.

Cornwall Council would be providing the IT and associated infrastructure for the library, though there was a debate surrounding the age and suitability of the current equipment; the Town Clerk was aware it could take twenty minutes for the computers to load after they had been switched on. This was a problem other Councils who had also taken on libraries had encountered.

Cornwall Council would be providing the books and other media. There was a county-wide book service that facilitated this, though there was concern the media provided was not adequate

The Town Clerk confirmed both the building and service were expected to be transferred on 30 August 2019.

### **Aspirations**

The Town Clerk was in talks with the manager of the library about the opening hours, with the hope to increase usage. He was looking at a 9:00am opening if possible. The volunteer scheme and outreach with the education sector were also going to be reviewed with an aim of maximising potential.

The Town Clerk confirmed the aim was to open the library in the evenings, with the same structure that took place in the Municipal Buildings (split-shift working for the Building Facilitator). Consideration would be given to increasing the use of meeting rooms (for hire) during the day, with provision for “last minute” bookings and those who required bookings for very short periods of time. Saturday room hire was also a possibility as the library was open on Saturday mornings.

### **Security**

The Town Clerk commented Cornwall Council owned the current card-access system, which would be removed upon transfer and replaced with one by Truro City Council. It was hoped the system would integrate the ability to lock down specific parts of the building (the “wings”), leaving only the entrance, stairwell and the top meeting rooms open for room hire at certain times, and also lock the rest of the library off from the café, so the latter could open earlier than the library service was available.

Citizens Advice Bureau had also suggested they wished to work hours outside of the operating hours of the library service, so the Town Clerk would also be investigating the possibility of the front door being on a different security system.

### **Activities/Clubs and Volunteer Groups**

The Town Clerk commented clubs such as Lego clubs were proving to be very popular (at St Austell Library there was a waiting list) and he hoped to encourage more clubs to utilise the library. Suggestions from Councillors or members of the public were welcome.

The Town Clerk also advised volunteer groups were important because they were able to bid for grant funding whereas the library was not. An example of this was the garden group that had successfully funded the creation of the library garden.

### **Questions and Answers**

#### **SUSPENSION OF STANDING ORDERS**

It was proposed by Honorary Freeman Councillor Wells, seconded by Councillor Smith (the Mayor) and

**RESOLVED** that the Standing Orders of the Council be suspended in order for Councillors to remain seated during the question and answer session.

Councillor Mrs Neale agreed it was a good idea to encourage community activities, and asked what would happen if the Charity Commission and the Community Lottery Fund had not sorted out the respective issues by the date of the next Council meeting (29 July 2019). The Town Clerk responded the transfer would be delayed as it needed to be ratified by Council before it could go ahead.

Councillor Mrs Neale asked whether all the Council staff in the library would be moving back to the Municipal Buildings once the Hall for Cornwall renovations were complete as there were now more members of staff than before. The Town Clerk responded this would need to be looked at before moving back to the Municipal Buildings.

Councillor Allen commented on the café and wondered if there was room to extend the hours. The Town Clerk responded Cornwall Council had entered into an agreement with the franchise to have the kitchen fitted, and the agreement would need to be reviewed along with the agreements of the other lease-holders of the building, adding the management of the library and the café was slightly intertwined due to the opening times.

Councillor Mrs Carlyon asked who was paying for structural alterations to enable the change of security. The Town Clerk replied there would be no structural alterations; no additional doors were required. The Town Clerk confirmed the original estimated costs for the library still stood, but commented this year there were some savings due to the delay of transfer, though somewhat absorbed by legal fees. At the end of July there would be an additional charge as three quotes were currently being sought for works to be carried out for the security.

The Town Clerk confirmed he had seen a copy of the Community Lottery Fund agreement and did not feel it to be too onerous.

Honorary Freeman Councillor Wells asked if locking the wings of the building would compromise fire safety regulations. The Town Clerk confirmed the City Council would have a fire safety risk assessment carried out (of which Cornwall Council had a separate one).

Councillor Smith (the Mayor) queried who would be responsible for the day-to-day issues relating to the library, its service and staff. The Town Clerk responded the

Library Manager would deal with issues relating to the six members of library staff and service, and report anything of significance to him. The two part-time cleaners would report to Buildings Facilitator, as would any issues arising with the building that tenants may report. After the Municipal Buildings had been reopened there would be the need for two Buildings Facilitators; one for the library and one for the Municipal Buildings.

Following a question from Councillor Webb, the Town Clerk confirmed library and cleaning staff now knew the position of the City Council and the transfer. He also confirmed only two of the six library staff were full-time, the rest were part-time. A consultation period for the staff had already taken place but due to the delay in transfer there was likely to be another meeting nearer the end of the summer.

The Town Clerk confirmed the library budget had been revised in March 2019, then delayed until June. However, a revised budget would be submitted to Councillors, though the Town Clerk did not expect an increase in either this, or next year's, budget.

It was confirmed Cornwall Council was leaving the computers in the library, but if a member of the library staff wanted to log onto the City Council network, they would need to access it via a different computer. The Library Manager had a good signal for the City Council Wi-Fi from her office, which was helpful.

To conclude, the Town Clerk advised Members if they had any other questions about the library to contact him at any time.

**Standing Orders were resumed.**

Councillor Smith (the Mayor) thanked the Town Clerk for his presentation, Honorary Freeman Councillor Wells for his report, and the Committee Clerk for her work.

**92 COMMON SEAL**

It was proposed by Honorary Freeman Councillor Wells, seconded by Councillor Smith (the Mayor) and

**RESOLVED** that the Common Seal be affixed to any document or documents necessary to give effect to the resolutions passed by the Council at this Meeting.

The meeting closed at 8:04 pm.

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MAYOR

## REVIEW OF CO-OPTION OF COUNCILLORS PROCEDURE

Following the full Council meeting held on 24<sup>th</sup> June 2019, here is my analysis and recommendations relating to the procedure for the co-option of councillors that should be adopted by Truro City Council.

### Introduction

Co-option of Councillors is not specifically mentioned in either legislation or Truro City Council's Standing Orders. However, there are two statutes that govern the process, guidance from the NALC and one of the Council's Standing Orders can be used as a basis for the procedure to follow.

Further, the Town Clerk and his staff have researched best practice from other councils. The Council should be seen to be as open, fair and transparent as possible in the process it follows, so that it does not open itself to the possibility of legal challenge.

### Legislation

The Local Government Act 1972 schedule 12 paragraph 13:

13 (1) Unless otherwise provided by the council's standing orders the manner of voting at meetings of a parish council shall be by a show of hands.

(2) On the requisition of any member of the council the voting on any question shall be recorded so as to show whether each member present and voting gave his vote for or against that question.

Paragraph 39:

39 (1) Subject to the provisions of any enactment (including any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.

(2) Subject to those provisions in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

### Truro City Council's Standing Orders

Standing Order 3(s):

- s **Unless standing orders provide otherwise, voting on a question shall be by a show of hands. At the request of a councillor, the voting on any question shall be recorded so as to show whether each councillor present and voting gave his vote for or against that question.** Such a request shall be made before moving on to the next item of business on the agenda.

Standing Order 8(a): **Voting on appointments**

- a Where more than two persons have been nominated for a position to be filled by the council and none of those persons has received an absolute majority of votes in their favour, the name of the person having the least number of votes shall be struck off the list and a fresh vote taken. This process shall continue until a majority of votes is given in favour of one person. A tie in votes may be settled by the casting vote exercisable by the chairman of the meeting.

This standing order matches the one from the NALC's model standing orders. There is no provision in the Standing Orders for a secret ballot.

### Other Councils

Here are three comments from other councils on the procedures they follow:

(a) I cannot imagine anything more likely to create bad feeling among the public than closed interviews for a co-option, followed by a secret ballot vote. If people aren't prepared for some sort of challenge why would they be willing to be considered as candidates for co-option? After all, if they stood for election, they would face a grilling on the doorsteps and at hustings. We invited four candidates to make speeches, timed to five minutes. No q + a to avoid any suggestion of planted questions or anything like that. Then we voted to eliminate the least popular, then again to go down to two, then a final time to find a winner. All in public and all by show of hands.

In terms of q + a there is also an advantage going first, if you give a really good answer everyone else just has to repeat it or say they agree which can leave them looking a bit limp. If you are going to do that then every question should be to every candidate to avoid personal favours or hatchet jobs, and maybe mix up the order of answering rather than sticking to alphabetically, so Aaron Aardvark doesn't get in first every time.

(b) We have co-opted before and we did this in open session for total transparency. We did not interview them though, they were all asked to send in a written statement which gave a brief potted history, why they wanted to become a member of the Town Council and what skills they will be 'bringing to the table'. I read out the names of all the co-option candidates and then read out each statement in turn but in random order, but did not identify the individuals name at that point. The problem with this is that it doesn't allow for a question and answer session.

If there are two or more candidates in an election process, our Standing Orders state that it will be conducted by written ballot. I open the papers, count the votes, which are verified by the Deputy Town Clerk who is with me, and then I hand the winner to the Chairman to publicly announce the name of the co-opted councillor.

(c) In the past when we have done this, I have suggested that the other candidates remain outside of the chamber whilst interviews are being done, but any member of the public who is not a candidate can stay. I agree with your members that the process should be transparent and fair so it should be in public session with the arrangement as above.

As far as voting is concerned, that should be governed by your Standing Orders. If they permit a secret ballot under certain circumstances, or when resolved by members - then fine. If Standing Orders don't permit it then you are on slightly stickier ground I would suggest. Technically you could resolve to suspend standing orders to allow it but that will look messy and less transparent.

### Conclusion

Clearly, due to legislation and the absence of a Standing Order permitting it, voting cannot be by secret ballot. The winning candidate must achieve 50% plus of the votes of those present. I consider the Council should adopt new Procedural Guidance to cover future co-options.

Recommended that until new Procedural Guidance has been adopted,

(a) Prior to the agenda being distributed for the co-option meeting, candidates are invited to submit a personal statement setting out their experience, skills and why they want to join the City Council. These are circulated to Members together with the notice and agenda. Each candidate shall be asked to address the meeting for no longer than five minutes (the order to be decided by lot).

(b) One of the following interview procedures shall be selected:

Option 1 – The Mayor will ask all the candidates randomly the same questions, selected from those submitted by Members to the Town Clerk before the meeting.

Option 2 – No questions are asked of the candidates.

(c) Voting shall be by show of hands unless a recorded vote is requested under Standing Order 3(s).



(d) the Council follows the NALC's guidance for the co-option of councillors as set out in Legal Topic Note 8, paragraph 37:

“Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so the final vote is between two candidates only. Councils may use NALC's model standing order 8a to confirm the voting process for a casual vacancy where contested. An abstention is not a vote and not part of the count.”

Cllr C.H. Wells