



**Formal meeting of the Ascension Island Council
1630 on Thursday 7 November 2019 at the Court House**

MINUTES

Present:	HE Dr Philip Rushbrook, Governor HH Steven Chandler, Administrator Gareth Morris, Director of Resources Allen Cansick, Attorney General	Councillor Katharyn Chadwick Councillor Andrew Ellick Councillor Kitty George Councillor Andrew Hobson Councillor Alan Nicholls
In attendance:	Linda Hardiman, Head of Administrator's Office Rob Cheeseman, Crown Council Alasdair Bain, Policy and Projects Officer Jane Disley, Clerk of Council	Apologies:

1. Welcome

The Administrator welcomed all parties and explained who was present for those attending by phone.

2. Approval of minutes

The minutes of the previous formal meeting on 27 Sep were accepted and could now be published.

Action: Clerk to place on noticeboard/AIG website and circulate by email.

3. Matters arising

The following matters arising from the previous formal Council meeting on 27 Sep were addressed:

2. Low turnout at general election: This would be tabled for the next or a subsequent informal meeting.

Action: Clerk to include on agenda.

3. Approval of 22 Aug minutes: These were agreed at the 27 September formal meeting and had been placed on the noticeboard/AIG website and circulated by email.

4. Register of interests: The Administrator thanked all councillors for completing and submitting their register of interests form.

7. Council committees: Elected councillors had provided details of the two committees they wished to set up and these had been forwarded to the Governor, who had given his approval. However, concerns were raised by Cllr Ellick about the impact of having elected councillors as chairs of the committees. He felt this could lead to an Executive Council similar to the one in St Helena, which he would not wish to see. Other councillors and the Administrator were clear this would not be the case. There was some further discussion about the nature of the committees on Ascension and it was confirmed that their purpose was to focus on specific issues and report back to the Council for any decision and actions. Cllr Ellick wished to register his concern but accepted that the other councillors did not share his view. It was also proposed that the terms of reference for each committee would need to be suitable and so setting these ought to be

their first priority.

Action: Council committees to draw up draft TORs and share with Council members.

8.a) Draft Council Protocols: The Administrator hoped to present this item at the next informal meeting.

Action: Administrator to investigate and present on this at the next meeting.

8.b) Teleconference with Lord Ahmad: The teleconference had taken place on 7 October.

4. Employment Law Reform

Crown Counsel introduced the subject by providing some background explanation of the work done previously. He explained that although there was a draft Ordinance, there was no clear policy underpinning it. He went on to explain that there are good reasons why legislation should be generated by policy decisions and not vice versa. In particular, legislation is one option, not necessarily the only option, and that a policy objective could often be achieved without legislating at all, eg via a public awareness campaign. It was important, therefore, to determine first what the Council wanted to achieve in order that it could work out whether or not legislation was needed, and if so then how best to go about it.

Crown Counsel presented an options paper on the subject, and explained that today's discussion was not about making policy decisions but rather about the approach that AIG would take forward. He emphasised that AIG had limited resources and competing priorities and therefore time spent on employment law reform would, necessarily, have to be balanced against other priorities. He suggested Council members also bear in mind that the future model of Ascension remained uncertain and so some aspects of the options proposed in his paper might best be deferred until there was greater clarity, lest effort be spent on provisions that later proved unnecessary. He added that there was no disagreement that an aspiration to ensure decent terms and conditions and prevent unfair treatment and discrimination was nevertheless one worthy of pursuit. Although there could be others, he offered four options based on the content of the existing draft Ordinance:

Option 1 covers the necessary reforms that AIG needs to carry out regardless of other changes. They are necessary for continued good government and require negligible policy change as they simply clarify the law and bring it up to date with current practice.

Option 2 would introduce minimum standards of terms and conditions (T&Cs), although there might be limited benefit to legislating in this area. If the terms currently offered were not advantageous to prospective employees they would not come to Ascension to work, so if the market already provided for good T&Cs it might be undesirable to create minimum standards below that since they might then become the norm. More data was probably needed in this area.

Option 3 would introduce a right not to be unfairly dismissed. This would be a significant change and have both social and economic impacts. St Helena already has an Employment Rights Ordinance that includes unfair dismissal. However, while there were similarities, St Helena did not have the same policy on right of abode. This and other practical obstacles would need to be addressed, although discounting this option now would not prevent its review and selection in future.

Option 4 envisaged the introduction of legislation in respect of employment discrimination. This was the most complex option since it would require a form of discrimination law suitable for the unique circumstances of employment on Ascension, where the balance could be tricky between the rights of individuals and the realities of life on a remote island with limited facilities and resources. It was not clear to what extent discrimination was a problem on Ascension and so it was suggested more data would be required before a decision could be made. Furthermore, pursuit of this option would likely require external expertise, the expense of which would need to be taken in to account when balanced against other AIG priorities.

Cllr Nicholls commented that the Constitution already included provisions concerning discrimination. Crown Counsel agreed that was right, but explained that the provisions did not address discrimination in the context of employment.

Cllr Hobson asked why Ascension had two-year fixed contracts and how this related to there being no right of

abode. Crown Counsel explained that indefinite contracts could undermine the non-permanent nature of residence on Ascension by creating an expectation that people could stay indefinitely. There followed some discussion to explore this relationship. Cllr Hobson felt people knew that if they were employed they could stay and that if they were not employed they would have to leave. He therefore did not see a cause for concern that expectations would be otherwise. The Administrator suggested that a manifest right of abode might be perceived, even if this was not a legal right, and the UK Govt policy was intended to minimise the risk of such a situation. The automatic right to renewal of an employment contract could compromise this policy.

The Governor interjected to explain that the UK Govt had been clear on its policy about right of abode and so any proposed revisions to it would likely fail. He suggested that the Council focus on other aspects that did not come into conflict with the right of abode policy, such as statutory maternity leave, appeal against dismissal etc. Cllr Chadwick suggested that there was no aspiration to challenge the right of abode policy, but rather to understand it and to understand why contracts were of two years' duration. Cllr Nicholls suggested that this was because in the past all employees came from St Helena. They were allowed leave only at the end of their contract and so it was felt that any more than two years away from their families would be unfair. Crown Counsel noted that the current Workman's Protection Ordinance Regulations only allowed contracts of either three years or two years for St Helena nationals and in practice this was extended to all nationalities employed on an Ascension contract.

There then followed a discussion about unfair dismissal. Cllr Ellick shared concerns that people might find at the end of their contract they were not offered another for trivial reasons unrelated to performance, such as that their boss did not like them, with no reason given. However, Cllr Chadwick suggested that if the three/six month career review process was used properly this ought not to happen. Crown Counsel explained that the issue would depend on how the legislation was drafted, eg either to make contract expiry a fair reason for termination, or instead to compel the employer to explain the circumstances. It very much depended on the policy that the legislation was intended to implement.

Cllr George reported that one of the main concerns was the way in which the offer of new contracts at the expiration of a current contract was handled. Although there ought to be a process, some people still got to the end of the contract and found they were not offered another but they did not know why, which was unacceptable. Therefore, no matter how long it would take, the Council should work through the employment law material as it would be this Council that recommended any new legislation. Cllr Nicholls agreed and stated that councillors had largely been elected based on dealing with this as a priority. He felt it was important to protect people from arbitrary decisions.

Cllr Chadwick asked if Council should work through the options sequentially or in parallel. Crown Counsel explained that it could be done in any way, eg option 1 could be achieved quickly while also working on options 3 and 4. It was up to councillors to determine as it would depend on what problems they felt needed to be solved. The Administrator added that it could be possible to work on all options at the same time, eg by either bringing legislation forward for one aspect while working on another, or finalising no legislation until all aspects had been comprehensively worked through.

There was further discussion about the need to make progress and deliver changes quickly whilst taking sufficient care to avoid leaving any loopholes and ensuring that adequate engagement had been carried out, not only with larger employers but also with small businesses for whom maternity and medical expenses were proportionately less affordable. Cllr Chadwick emphasised that employees needed to feel protected or they might not bring matters into the open, so it was important to address the major issues alongside simpler ones. The Policy Officer also reminded councillors that standards could be improved via policy while the details of legislation were still being developed. Crown Counsel advised that making a lot of changes at once could have unintended consequences and so he cautioned against making big changes other than via small steps.

Cllr Ellick asked if there was legislation elsewhere from which we could learn, especially from St Helena. Crown Counsel agreed that some of the St Helena legislation was useful, but explained that it would not necessarily work for Ascension because of the significant differences between the two islands. More importantly, perhaps, by adopting legislation from elsewhere there was a risk of failing to analyse our own situation in sufficient detail to allow resolution of Ascension's issues with Ascension-specific solutions.

Crown Counsel also recommended close scrutiny of the current draft legislation drawn up in 2017 since only one of the current Council members was involved in its production so others would be unaware of the thinking that drove its development. He stressed again the need to determine first which problems any legislation would be intended to solve. The Administrator stressed the uniqueness of Ascension's problems and suggested that it was important to look at the policies again but understand why we might want them and what we want them to achieve, eg with regard to unfair dismissal. He recommended holding a series of bespoke meetings to identify potential policies, talk through them, revisit old policies and create new ones where required. Once there was sufficient agreement a policy document could be created to underpin wider consultation in order to explain the Council's intentions and to ensure people understood the potential impact.

Cllr Hobson said he was wary of leaving liaison with employing organisations until later and that we ought to find out about existing T&Cs now. The Administrator agreed that it was reasonable to ask for standard contract information at this stage. All agreed that the concise documents provided by AIG for this discussion had been well put together. The Governor thanked everybody for their time and was happy with the proposed way ahead.

Action: Crown Counsel/Policy Officer to gather data on existing T&Cs and pull together some information on policy areas previously discussed in order to focus future attention. This would be shared with councillors.

Action: Once this work was complete, Administrator to canvass Council members on a date to schedule a first bespoke meeting to start to review and discuss policies.

5. Public holidays 2020

Crown Counsel explained that there were some public holidays that the Governor needed to make via direction or proclamation. He had already done this for St Helena and so the same had been requested for Ascension. These included adding New Year's Day, Whit Monday and the August bank holiday to the list, since these were not specifically mentioned in the relevant Ordinance, and observing Boxing Day on Monday 28 December because it would otherwise fall on Saturday. A third change would need to be approved by the Island Council. The proposal had been made to observe the Ascension Day public holiday on Friday 22 May instead of Thursday 21 May in order to provide a more efficient working week and greater flexibility for island residents. All were in favour of the proposal.

Action: Clerk to reflect this change in the published list of public holidays for 2020 once the Governor's direction/proclamation had been received.

6. Any other business

Several AOB points were raised as follows:

a) OTs/UK Joint Ministerial Council. The JMC had been postponed by Lord Ahmad because of the UK's general election. The plan was to reschedule it, possibly in March 2020.

b) Firearms Ordinance. Inspector Kewley had been ill and therefore not had the opportunity to finalise this piece of work. It would be raised at the next informal meeting for discussion and put forward for a decision at the formal meeting in December.

Action: Clerk to include Firearms Ordinance on the relevant agendas.

c) Actions tracker. The Clerk had produced a revised tracker showing actions and progress. This would be circulated with the agenda in future.

d) Runway update. Cllr Nicholls asked for an update on the runway repair project. The Administrator confirmed his understanding that the tender board was due to sit this month and a decision on contract award was expected in December.

e) Future of Ascension. Cllr Nicholls asked about the Future of Ascension work. The Administrator said it had been delayed because of the UK's 12 December general election. He said he expected to know more

when a new government was formed after the election and would encourage FCO colleagues to ensure it featured prominently on new FCO ministers agendas.

f) Harbour moorings. Cllr Nicholls asked who was responsible for maintaining harbour moorings because someone had reported to him that one was in a poor state of repair. Cllr George confirmed that repairs to AIG moorings had been carried out quite recently, but that some moorings were personal and therefore not AIG's responsibility to maintain. Cllr Nicholls asked if small tyres could be placed in between the large ones near the pier steps in order to better protect the smaller boats.

Action: Administrator to pass the suggestion to the AIG Marine Team.

g) Turtle Ponds. Reports had been received of conger eels in the Turtle Ponds and yet a request for smaller mesh over the inlets had been refused. There was likely to be a valid reason for this but no Council member was aware what this might be.

Action: Policy Officer to investigate and share his findings with Council members.

h) Post-16 further education. Cllr Chadwick reported that she had had another meeting with some of the Two Boats school teachers to progress the issue of further education. There would be another meeting involving the new Head Teacher once she arrived on island. Director of Resources noted the Head Teacher would not now arrive until March 2020 as she could not be released from her current position until their OFSTED inspection had been completed. However, he was in weekly contact with her and she was very keen to get involved; indeed, the Acting Head had sent her some material to help her prepare.

i) Hydroponics training. The Hydroponics specialist in St Helena who had offered to arrange training was due to leave at the end of November and was keen to set up something before he left. It was therefore important to make contact and establish what was being offered and whether it was suitable for Ascension's purposes.

Action: Policy Officer to make contact with him and scope possible arrangements.

j) Launch of sea rescue boat. Cllr Ellick asked how the sea rescue boat would be launched while pier works were ongoing. The Policy Officer explained that the pier work had been planned to allow for essential activities. He would confirm the details and report back on this question.

Action: Policy Officer to investigate and share his findings with Council members.

k) AIG website. It was announced that the new AIG website had gone live. Sure would be asked to ensure any 'hits' on the old site were forwarded to the new one. It was agreed that a public notice would be required to make people aware.

Action: Policy Officer to draft and publish a public notice about the new AIG website.

l) Time off for Council work. Cllr Ellick asked if it was anticipated that councillors would get time off work for the expected Employment law reform bespoke meetings without having to take leave. The Administrator said he hoped employers would be understanding and agree this when necessary. He would encourage Heads of Employing Organisations to treat such requests sympathetically.

9. Date of next meetings

It was proposed that the meeting structure be amended slightly in December to accommodate the FIRS due on 19 Dec. This was accepted and therefore the following meeting dates were agreed:

- Informal – Thursday 21 Nov at 1630
- Informal – Thursday 5 Dec at 1630
- Formal – Wednesday 18 Dec at 1630

There was no further business and the meeting ended at 1800.

J Disley

Jane Disley

Clerk of Council