

Standards and Ethics Committee

Wednesday, 27 April 2016, County Hall, Worcester, WR5 2NP
- 10.00 am

Present:

Minutes

Mr S R Peters (Vice Chairman), Mr R C Adams,
Mr P J Bridle, Ms P A Hill and Mr A P Miller

Independent Members (non-voting)
Dr M Mylechreest, Mr C Slade and Dr P Whiteman

Available papers

The Members had before them:

- A. The Agenda papers (previously circulated); and
- B. The Minutes of the meeting held on 1 July 2015 (previously circulated).

A copy of document A will be attached to the signed Minutes.

**246 Apologies and
Named
Substitutes
(Agenda item 1)**

Apologies were received from Mr J Baker, Mrs A T Hingley, Mr D W Prodger, and Dr K A Pollock.

**247 Declarations of
Interest
(Agenda item 2)**

None.

**248 Public
Participation
(Agenda item 3)**

None.

**249 Confirmation of
Minutes
(Agenda item 4)**

RESOLVED that the Minutes held on 1 July 2015 be confirmed as a correct record and signed by the Chairman.

**250 Co-option of
independent
member of the
Standards and
Ethics
Committee**

The Committee considered the co-option of an independent member of the Standards and Ethics Committee.

The Head of Legal and Democratic Services introduced the report and commented that there was a vacancy for the third Independent Member, which in accordance with

(Agenda item 5)

the Committee's decision in July 2015 was advertised in the local media and on the Council's website. There were a number of applications received for members of the public interested in the role, including a number of strong candidates. The applications were carefully assessed by the Chairman and Vice-Chairman of the Committee in conjunction with the Head of Legal and Democratic Services.

In the ensuing debate, the following principal points were raised:

- Were there any time limits associated with the appointment of an Independent Member? The Head of Legal and Democratic Services indicated that there was no fixed term of office for the position but appointments were subject to review by this Committee
- The Head of Legal and Democratic Services reported that an Independent Panel member, Mr Fred Noble had passed away. The view of the Monitoring Officer was that the County Panel of five Independent Persons was sufficient for the purposes of the Council and other authorities drawing from the Panel and therefore no replacement was being sought.

RESOLVED that the co-option of Mr Cliff Slade as an Independent Member of the Standards and Ethics Committee be confirmed.

**251 Guidance for
complaints
against
members -
assessment
criteria (Agenda
item 6)**

The Committee considered the guidance for complaints against members – assessment criteria.

The Head of Legal and Democratic Services introduced the report and commented that:

- He was recommending that the Committee retain the previously adopted assessment criteria. The present system had worked well to date setting out a reasonable balance between treating complaints against members seriously and those complaints not worth being investigated. The Independent Person had an important role in this respect providing a valuable independent view
- The details of formal complaints were reported to this Committee as a matter of course. Since the last report to Committee in July 2015, no formal complaints had been made concerning the conduct of members of the Council
- Mediation was an important part of the process for

resolving complains made against members

- There were a small number of informal complaints made since the last Committee meeting but these had been resolved without needing to engage the formal complaints process.

In the ensuing debate, the following principal points were raised:

- In response to a query about the timescales for making a complaint, the Head of Legal and Democratic Services indicated that there was no stipulated timescale for the submission of a formal complaint, but should a complaint be received some time after the alleged incident then it was less likely that a formal investigation would be justified. Complaints were dealt with as quickly as possible on receipt
- When would the councillor who was subject of a complaint be informed that a complaint had been made against them? The Head of Legal and Democratic Services advised that an important part of the process was that the councillor involved was informed of the complaint as soon as possible albeit without being furnished with the full details of the complaint
- In response to a query, the Head of Legal and Democratic Services commented that district councils and the Fire Authority had the same local codes of conduct to this Council as did many Parish and Town Councils. He met with the monitoring officers from these authorities on a regular basis to discuss best practice
- The Head of Legal and Democratic Services confirmed that the relevant district council monitoring officer would investigate complaints made about the conduct of parish councillors
- Had there been many complaints made by member against member? The Head of Legal and Democratic Services advised that there had been a limited number of such complaints and they had been resolved on an informal basis.

RESOLVED that:

- a) **the need for continued guidance on the assessment and filtering of complaints that members have breached their Code of Conduct be recognised; and**

252 Conduct of members - Defamation issues (Agenda item 7)

- b) the Head of Legal and Democratic Services be authorised to continue using the previously adopted assessment criteria as summarised in the report.**

The Committee considered whether any further training or a reminder should be circulated to members concerning the conduct of members.

The Head of Legal and Democratic Services introduced the report and commented that:

- A recent national case had underlined the need for members to ensure that comments they make did not breach the Code and were not defamatory
- Members needed to be aware that comments made in emails or on social media could leave councillors open to accusations of defamation and liable to claims for damages against them.

In the ensuing debate, the following principal points were raised:

- all members of the Council should be reminded through the report to Council of the Protocol for the use of Social Media in Formal meetings
- In response to a query, the Head of Legal and Democratic Services explained that the law of defamation applied whether a person was a councillor or not, it was the statement that counted in this respect. However if the statement was made whilst acting as a councillor, then the Code of Conduct would also be engaged. The law on defamation would only be engaged if serious allegations were made
- What protection did councillors have against accusations of defamatory comments made during debate at council meetings? The Head of Legal and Democratic Services advised that the law provided qualified privilege for comments made during a debate as long as those comments were made honestly. The Code of Conduct would apply to the conduct of the speaker
- The Head of Legal and Democratic Services confirmed that following the 2017 elections, all councillors would be required to comply with the Council's Code of Conduct
- The Head of Legal and Democratic Services confirmed that all councillors were required to keep their DPI Register of Interests up to date. Under the Localism Act, failure to register/declare

253 Standards case law update (Agenda item 8)

a DPI could lead to a criminal prosecution. Failure to update the Register within 28 days would mean a breach of the Code of Conduct and a possible criminal offence.

RESOLVED that:

- a) **The report be noted:**
- b) **All members of the Council be reminded of the availability of the Protocol for the use of Social Media in Formal meetings.**

The Committee considered the implications of recent standards case law.

The Head of Legal and Democratic Services introduced the report and made the following comments:

- A recent case relating to Wiltshire Council led to a Planning Committee decision being quashed. The grant of Planning Permission for a Residential Development including affordable housing had to be quashed as it was tainted by the common law rule against 'apparent bias'. One of the Councillors who had voted in favour of the development was a Director of the Housing Association likely to be awarded the contract to provide the affordable housing by the applicant developer. The Court therefore found that the decision was unlawfully made
- In the circumstances of the above case, a councillor at this council would need to declare an ODI and leave the meeting room for the consideration of the item.

In the ensuing debate, the Head of Legal and Democratic Services confirmed that the decision as to whether or not to declare an interest rested with the councillor, but there might be consequences if a relevant interest was not declared.

RESOLVED that the recent case law be noted.

The meeting ended at 11.00am.

Chairman