

Standards and Ethics Committee

Wednesday, 24 October 2018, County Hall, Worcester - 10.00 am

Present:

Minutes

Mr S J Mackay (Chairman), Ms P A Hill, Dr A J Hopkins and Mr R P Tomlinson

Independent Member (non-voting): Dr M Mylechreest.

Mr R Needham (Independent Person) was also in attendance.

Available papers

The Members had before them:

A. The Agenda papers (previously circulated); and

B. The Minutes of the meeting held on 25 April 2018 (previously circulated).

266 Apologies and Named Substitutes (Agenda item 1)

Apologies were received from Mr R C Adams, Dr K A Pollock, Mr C Slade and Dr P Whiteman.

267 Declarations of Interest (Agenda item 2)

None.

268 Public Participation (Agenda item 3)

None.

269 Confirmation of Minutes (Agenda item 4)

RESOLVED that the Minutes of the meeting held on 25 April 2018 be confirmed as a correct record and signed by the Chairman.

270 Code of Conduct - Complaints Update (Agenda item 5)

The Committee considered a Code of Conduct and complaints update from the Head of Legal and Democratic Services.

The Head of Legal and Democratic Services outlined the details of each complaint in turn and Committee made the following points:

Complaint 03/18

- A Cabinet member had understandably got involved in operational matters as a result of a complaint passed by an MP, but this raised the prospect of a Code complaint. However, in this case the complaint was ill-founded as the complainant was just disagreeing with the Council's stance.

Complaint 04/18

- The Head of Legal and Democratic Services advised that a member using social media referring to their official capacity would prima facie be presumed to be acting as a councillor - and therefore the Code of Conduct would be engaged. This differed from comments that were clearly made in a private capacity. The difficulty arose where occasionally there was a blurring of these roles. The requirements of the Code were contextual on the circumstances eg communication between politicians could be viewed more as part of the cut and thrust of political debate
- Some concern was expressed that communication between politicians could be treated differently in terms of engaging the Code as the Nolan principles applied equally in terms of treating individuals with respect
- In response to a query, the Head of Legal and Democratic Services advised that Members of Parliament had absolute privilege against claims of defamation. County councillors received qualified privilege from defamation actions for statements made in good faith in Council meetings. Privilege provides some protection against legal action for defamation, but did not affect whether the Code of Conduct was engaged or breached – they were separate topics
- Although it could be difficult to get a consensus of opinion on what constituted respect in terms of engagement of the Code, members thought the current filtering system for complaints worked well. This Committee had a role as a check and balance to the system. The Head of Legal and Democratic Services indicated that as Monitoring Officer, he found it very useful to seek an alternative opinion/perspective when filtering, particularly from the Chairman and/or Independent Member/Person. In this particular case, there was unanimity of opinion on the level of engagement of the Code.

Complaint 06/18

- The Head of Legal and Democratic Services commented that this particular complaint again raised questions about freedom of expression and the level of respect owed amongst politicians. The Monitoring Officer had provided advice to the councillor who was the subject of the complaint regarding the desirability of separating party politics from any formal functions exercised as a councillor
- The opportunity for the Monitoring Officer to provide advice to councillors who were the subject of a complaint, such as in this case, was seen as beneficial.

Complaint 07/18

- As was the case in this complaint, members were occasionally in receipt of Freedom of Information requests from members of the public. The Head of Legal and Democratic Services advised that there was a formal process for dealing with such requests and members should either direct the public to the relevant part of the Council's web site or forward the communication to the appropriate directorate as soon as possible.

Complaint 08/18

- It would be worthwhile to include training on the use of social media and its engagement with the Code of Conduct in the standards induction session for members. The Head of Legal and Democratic Services commented that the original member induction session did not include such guidance but a guidance note had been circulated to all councillors. This guidance would be included in the next induction session
- What were the legal implications if a member reposted a possibly defamatory third party comment on social media? The Head of Legal and Democratic Services advised that the member could be liable by reposting a defamatory statement as liability attached to the publication of defamatory statements rather than authorship as such
- A request was made that the Monitoring Officer's full report into this complaint be circulated to members of the Committee
- A member commented that members should be able to discuss issues in a rational and sensible manner without the need for enhanced protection.

271 Local Government Ethical Standards - Stakeholder Consultation (Agenda item 6)

Was there anything specific that would trigger this enhanced protection? The Head of Legal and Democratic Services indicated that councillors should indeed be able to discuss matters of public concern. The right of enhanced protection for members sat underneath the right of freedom of expression

- Whilst it would not be beneficial to restrict members' freedom of expression, members should exercise a degree of caution in exercising that right given the time and expense necessary to investigate a complaint.

RESOLVED that the formal complaints that have been made about the conduct of County Councillors be noted.

The Committee received an update on the Local Government Ethical Stakeholders Consultation.

In the ensuing debate, the following comments were made:

- The Chairman stated that the delegation from the National Committee on Standards in Public Life had given no indication about the approach taken by other councils to address standards of conduct. The delegation were surprised that there was no consensus amongst members of this Committee on whether sanctions should be re-introduced for breaches of the Code
- The delegation had been complimentary about the approach taken in this Council
- Dr Mylechreest indicated that as part of the visit, he and Dr Whiteman, as Independent Members had met the delegation. The impression given was that other councils had expressed similar concerns about the need to reintroduce the voting rights for Independent Members
- The Head of Legal and Democratic Services confirmed that Mr Tomlinson was no longer Chairman of the Committee as the constitution stated that the Chairman or Vice-Chairman of the Council could not sit as a Chairman of a Committee
- Concern was expressed about the amount of work generated as a result of the increased number of complaints received since April. The Head of Legal and Democratic Services responded that there had been an unusual increase in complaints

received over this period. He did not consider the number of complaints to be a great burden as some important issues were raised, but he hoped that this increase would not continue in the long term. It was vexatious complaints that were particularly difficult and time-consuming.

RESOLVED: that

- a) **the visit to the Council by the National Committee on Standards in Public Life as part of its review of standards in local government be noted; and**
- b) **the anticipated publication of its report in the New Year 2019 be noted.**

The meeting ended at 11.20am.

Chairman