

**MINUTES OF A MEETING OF THE
STANDARDS COMMITTEE
HELD ON TUESDAY 4 DECEMBER 2012 FROM 7.00 PM TO 9.15 PM**

Present:-

Wokingham Borough Members:- *Rob Stanton, (Chairman) Chris Bowring, Ken Miall and Malcolm Richards*

Parish/Town Council representatives:- *Roger Loader, Roy Mantel and Ray Duncan*

Also present:-

John Bingham, Independent Person

Kevin Jacob, Principal Democratic Services Officer

Susanne Nelson-Wehrmeyer, Director of Legal and Electoral Services and Wokingham Borough Council Monitoring Officer

PART I

1. APOLOGIES

Apologies for absence were submitted from Pauline Helliard-Symons and Beth Rowland.

2. DECLARATIONS OF INTEREST

There were no declarations of Interest.

3. PUBLIC QUESTION TIME

There were no public questions.

4. MEMBER QUESTION TIME

There were no Member questions.

5. PARISH/TOWN COUNCIL QUESTION TIME

There were no Parish/Town Councillor questions.

6. MONITORING OFFICER'S UPDATE ON COMPLAINTS RECEIVED – VERBAL UPDATE

Susanne Nelson-Wehrmeyer, Monitoring Officer, commented that on the 19 July 2012 Wokingham Borough Council had adopted revised arrangements for the consideration of Code of Conduct Complaints against Borough councillors and parish/town councillors. The adoption of 'arrangements' for the consideration of complaints was a requirement of the Localism Act 2011.

The Committee was informed that since 19 July 2012, one complaint had been received in respect of a parish member. In accordance with the adopted arrangements one of the Council's Independent Persons and the Chairman of the Standards Committee had been consulted by her regarding what action to take in respect of the complaint. As a result it had been decided by her not to take any further action regarding the complaint, but to offer the services of the Monitoring Officer in order to seek to mediate between the two parties. However, only one party had accepted this offer.

The Committee was informed that although only one complaint had been received it had highlighted a number of issues in connection with the Standards and Ethical Conduct regime introduced by the Localism Act as well as some specific issues with regard to the

arrangements for the consideration of complaints adopted locally. A further complication had been that it related to alleged behaviour in the inter regnum period between the end of the previous national standards regime and the adoption by the Borough Council of local arrangements.

It was noted that although the Borough Council had responsibility for receiving and considering complaints against parish/town members under the Localism Act it was not able to direct a particular course of action on parish town members or councils. The experience of the complaint had also highlighted an ambiguity in the adopted arrangement in that in order to explore informal options of resolving complaints it was necessary to inform the councillor being complained of on receipt of a complaint against them whereas the existing process stated that a councillor would not be informed until after a decision had been made by the Monitoring Officer on whether or not a complaint should be progressed or not.

The Committee noted that amendments to the process following receipt of a complaint were proposed as a result and these were set out in following item.

RESOLVED: That the update from the Monitoring Officer on complaints received be noted.

7. REVIEW OF WOKINGHAM BOROUGH COUNCIL STANDARDS COMMITTEE, ADOPTED CODE OF CONDUCT AND ARRANGEMENTS FOR THE CONSIDERATION OF COMPLAINTS

The Committee considered a summary report on Agenda pages 1 to 3 and attached Appendix A on pages 4 to 25 which set out proposed changes to the composition of the Standards Committee and proposed changes to the adopted arrangements for the consideration of Code of Conduct complaints. Copies of Appendix B, the Code of Conduct adopted by Arborfield and Newland Parish Council as requested by Councillor Cowan were circulated at the meeting, as this had unfortunately been omitted from the Agenda.

It was noted that in agreeing the establishment of a revised Standards Committee, adoption of revised Code of Conduct for Wokingham Borough Council Members and adoption of arrangements for the consideration of Code of Conduct Complaints, it had been resolved by the Council that the Standards Committee review the system within six months of it coming into operation.

Susanne Nelson-Wehrmeyer commented that as a result she had written to Borough Members and all parish/town councils in early November seeking comments on the new Code and arrangements. She explained that the majority of town/parish councils in the Borough had adopted Codes of Conduct based upon the Code of Conduct adopted by Wokingham Borough Council, but that not all parish councils had done so, one example being Arborfield and Newland Parish Council which had adopted a model Code developed by the National Association of Local Councils, (NALC).

Kevin Jacob informed the Committee that responses had been received from the following Wokingham Borough Councillors and parish/town councils. A summary of the points is set out below:

- Councillor Gary Cowan – expressing concern over the non-voting status of parish/town representatives on the Standards Committee given the involvement of the Borough

Council in considering complaints about parish/town councillors and other parish matters;

- Councillor John Halsall – letter expressing misgiving in two categories: That the Wokingham Borough Council Code and arrangements went further than the Localism Act required and that the discipline of Councillors was being put into the hands of Officers when that should be matter exclusively for Councillors;
- Arborfield and Newland Parish Council – expressing concern over the non-voting status of parish/town representatives on the Standards Committee given the involvement of the Borough Council in considering complaints about parish town councillors and other parish matters;
- Twyford Parish Council – no comments;
- Sonning Parish Council – comments to be submitted following Council meeting in December;
- Woodley Town Council – comments to be submitted following Council meeting in December;

It was decided to consider the consultation responses made prior to looking at the amendments proposed by Officers.

The Committee discussed the concerns expressed by Councillor Cowan and Arborfield and Newland Parish Council in relation to the non-voting status of parish/town members on the Standards Committee and the effect of their non-voting status on the arrangements for the consideration of complaints involving a parish/town councillor. It was noted that in the event of a hearing into a complaint against a parish/town, only Borough Members would be able to vote on the matter. As a result, the parish/town representative would not be able to vote on 'one of their own' and that this was felt to be fundamentally unfair.

In response, Susanne Nelson-Wehrmeyer and Kevin Jacob commented that in contrast to the previous Standards regime under the Local Government Act 2000, there was no specific provision or requirement under the Localism Act 2011 to have a Standards Committee and that as a consequence there was no provision for voting parish representatives on the Committee. Whilst it was considered possible for the Borough Council to co-opt parish/town representatives to the Standard's Committee, it was not felt to be lawful for them to have voting status without the establishment of a Joint Committee which was not considered to be a practical option.

The Committee was informed that in developing the current arrangements, Officers had felt that if the Borough Council were to retain any role in the consideration of Code of Conduct complaints against parish/town members that it would be extremely important and in the interests of natural justice to seek to retain them on the Standards Committee and as part of any process for the consideration of complaints. However, it was felt that the present arrangements went as far as possible to achieve this aim.

In discussion, Chris Bowring commented that he felt that the voting status for parish/town members was not crucial because his experience of the previous Standards Committee and its complaints sub-committees was such that votes had not been necessary when complaints against parish/town councillors had been considered as Borough and parish/town members had been able to achieve consensus. Ray Duncan commented that this had also been his experience as parish/town representative on the previous Standards Committee.

Roy Mantel commented that as a parish representative on the previous Standards Committee he had strongly supported the idea of a Joint Committee between the Borough Council and parish/town councils, but that he recognised that there were felt to be concerns around the practicalities of establishing such an arrangement and further that it would have to have the agreement and participation of all 17 town and parish councils within the Borough.

Roger Loader commented that he was happy to look into the matter through the Berkshire Association of Local Councils and the National Association of Local Councils.

All Members of the Committee commented that as a matter of principle they fully understood the sentiments of Councillor Cowan and would have no issues with parish/town members having voting rights, but that they accepted that present arrangements went as far as possible. The Chairman commented that he would be happy to write to the Department for Communities and Local Government about the matter.

Susanne Nelson-Wehrmeyer referred to the letter that she had received from Councillor Halsall and commented that she had felt it appropriate to bring it to the attention of the Committee in order that the Committee could be aware of her response to the points made and so the Committee could discuss its content and so inform its review of the adopted arrangements. The Committee considered and discussed each point in turn.

- 1 Are we doing more than the law requires? Are we boiler plating statute by merely modifying what we had before and adding rather than starting ab initio?*

Susanne Nelson-Wehrmeyer commented that it was correct that the adopted arrangements did go farther than the absolute minimum allowed under the law, but that the adopted arrangements were felt to be a pragmatic and proportionate response to the Council's obligations. The Localism Act was not prescriptive and as such left much open to interpretation and discretion. The adopted Code of Conduct and arrangements were felt to be more prescriptive, but recognisable enough for Councillors familiar with the previous regime to understand and work with. It was recognised that there were alternative models available from the Local Government Association and Department for Communities and Local Government, but it was her professional opinion that these principles based models were so open and subjective as to lead to an increased likelihood of Code of Conduct Complaints arising, which would in turn be hard to assess and determine.

Members of the Committee commented that they recognised that the arrangements did represent more than the more than the law required, but there was nothing that they objected to.

- 2) Are we not putting into Officers' hands disciplining of Members when that should be exclusively in Members' hands?*

Susanne Nelson-Wehrmeyer commented that this was not the case in her opinion. Delegated power had been granted by Council to the Monitoring Officer to make an initial assessment of a complaint to see if it should be investigated, no further action taken, resolved informally or referred to the full Standards Committee. This could only be undertaken in consultation with the Chairman of the Standards Committee and an Independent Person. A decision on whether a Member had or had not broken the Code of Conduct could only be taken by Members through the Hearings Panel process.

The Chairman commented that if there was a judgement to be made, it would be made by Members.

The Committee also considered the examples given by Councillor Halsall in support of his comments:

- 1) *The forms for pecuniary interests issued were considerably more intrusive than the legislation requires*

Susanne Nelson-Wehrmeyer commented that the Disclosable Pecuniary Interests, (DPIs) as set out within the Localism Act included both members and their spouses. However, there were significant gaps in the legislation. For instance, a Member would, if only the DPIs were included within a Code, be able to take part in a decision relating to a planning matter involving a family member. In her view a Member of the public looking at such a decision would feel that a conflict of interest would arise in such a circumstance and it was also important to consider the public's perception of bias arising. The Act also provided for Councils to add additional categories of interests as appropriate.

Roger Loader commented that this area of the Localism Act had generated a lot of discussion when it had been considered by the Berkshire Association of Local Councils, but that he recognised that the matter of interests and appearance of bias was the sort of issue that the public did have an interest in.

- 2) *The legal requirement for a Code of Conduct is not prescriptive but only must adopt the seven principles, arrangements under which allegations can be investigated, arrangements under which decisions on allegations can be made and include at least one independent person must or may be sought in certain circumstances. If the council observes these strictures its code of conduct can be what it wishes.*

Susanne Nelson-Wehrmeyer commented that it was correct that the legal requirement for a Code of Conduct was not prescriptive and that subject to the limited specified requirements set out in the Act it could be what the Council wished it to be. Whilst the adopted Code went further than the minimum required it was felt to be both appropriate and proportionate.

- 3) *The role of the Monitoring Officer in WBC's code is an executive role and it should in my view be an advisory role.*

It was felt that the role of the Monitoring Officer was administrative and not an Executive role for the reasons already given.

- 4) *The Chairman of the Standards Committee is an appointed role and as such it has too much prominence in the code. There should be more weight on elected members, the Leader or Group Chairman.*

Susanne Nelson-Wehrmeyer commented that the office of Group Chairman did not have any legal or Constitutional standing although it was recognised that within political groups there were disciplinary structures in place. The Chairman of the Standards Committee was an appointed role, but this appointment was agreed by Council. Whilst it would have been possible to name the Leader of the Council as the person to whom the Monitoring Officer must consult within the arrangements this was not felt to be a good idea as the

prominence of any Leader of the Council within a local authority meant that they would be more likely to receive complaints about them than other Members.

The Chairman commented that the inclusion of a requirement on the Monitoring Officer to consult with both an Independent Person and the Chairman of the Standards Committee had been an amendment made by the Council in adopting the arrangements as it had been felt that this safeguard was necessary.

5) *The Independent member has an executive role where the legislation puts this role more as an advisory role.*

At the invitation of the Chairman, John Bingham commented that he did not agree that this was case. He commented that it was clear within the arrangements that the Independent Person was to be consulted, but that they would not be making decisions. Members of the Committee supported this opinion, (This role has not been designated as a member of this committee and has no voting rights).

6) *Where there exists a complaint about a Parish councillor, the legislation does not require the same procedure as the Borough but a more appropriate procedure can be put in place.*

Susanne Nelson-Wehrmeyer commented that whilst this statement was correct it would be administratively difficult and more complicated to have different arrangements for investigating complaints. It was more efficient and proportionate to have one process and in her opinion it was hard to see the rationale for a dual system. In the case of dual hatted Members it also raised the possibility of a complaint against the same member being investigated under different processes. This would likely lead to allegations of procedural unfairness.

Roger Loader and Roy Mantel commented that they felt it was sensible for there to be single process, especially if the relatively small number of complaints were taken into consideration. It was felt that it was unnecessary to have separate processes, but that this could always be reviewed in the future if it were to become necessary.

Following the discussion of the consultation comments received, the Chairman asked Members if they felt specific changes needed to be made to the adopted Code of Conduct and supporting arrangements in light of the comments received or if they were content to recommend that the arrangements continue as adopted. In doing so, the Chairman specifically asked Members to indicate whether or not they were satisfied with the responses given to the comments made by Councillor Halsall in respect of each of the points raised. All Members indicated that they were satisfied with the responses given.

It was agreed that subject to the consideration of the amendments proposed by the Monitoring Officer within her report, no additional changes were required to the adopted Code of Conduct or supporting arrangements as a result of the comments received.

Kevin Jacob and Susanne Nelson-Wehrmeyer then introduced the proposed amendments shown as 'track changes' on pages 4 to 25. A summary of these changes had been set out Agenda page 2.

In relation to page 4, para 9.1.1 Composition and Membership of the Standards Committee it was highlighted to the Committee that it was proposed to amend the

membership of the Committee by the deletion of provision of co-opted independent members on the Committee. Kevin Jacob commented that it was not now felt appropriate to include independents on the Committee in light of further consideration and advice available.

In connection to para 9.1.1 (b) on page 4, Kevin Jacob commented that the highlighted change of wording was intended to clarify the membership requirements in connection to parish and town representatives in order to make it clearer that of the three parish/town council representatives, no more than two of the three should come from a parish council or no more than two of the three should come from a town council. The aim of this provision was to ensure that there would be parish representatives on the Committee who had experience of and could relate to the different characteristics of parish and town councils. The Committee was informed that Councillor Pauline Jorgensen had asked for a clarification of the original wording.

In discussion, the Committee supported the principle behind the provision, but felt that the clarity could be further improved along with other grammatical corrections.

It was suggested that the following alternative wording be used,

“b) three co-opted non-voting parish or town Members. Of the three Members, at least one Member should be a member of a parish council and at least one should be a member of a town council. The process for appointing town and council representatives shall be overseen by the Monitoring Officer and the Independent Person and any recommended appointment agreed by the Council.”

In connection to the arrangements to be followed following receipt of a complaint, Members' attention was drawn to the changes in the timescale, (para 9.1.13.1) in notifying a complainant of the outcome of the Monitoring Officer's decision regarding the complaint.

Members of the Committee strongly welcomed the proposed changes to the process for notifying Members that a complaint had been received against them as set out in para 9.1.13.2 on Agenda page 6. The consequence of the change was that Members would be informed of the complaint as soon as it was received rather than after the Monitoring Officer had made a decision on whether any further action should be taken regarding the complaint. The Chairman commented that it was in the interest of natural justice that Members should be informed as soon as possible that a complaint had been made against them.

Kevin Jacob commented that the proposed change was also practical in that it was impossible to seek to find an informal resolution to a complaint, (as set out within para 9.1.13 (a)) without informing the Member complained of about of the complaint.

The Committee's specific attention was also drawn to the proposed amendment to para 9.2.1.1. The intention was to make clearer the existing link between the Code of Conduct and supporting protocols within the Constitution such as the Member/Officer protocol. This was a technical change and reflected similar wording within Codes of Conduct within other local authorities.

Ray Duncan questioned whether it was necessary to include provision for anonymous complaints. Susanne Nelson-Wehrmeyer commented that it was felt necessary to include provision for this in accordance with other requirements for 'Whistleblowing' corporately.

The process made clear that if an anonymous complaint was received, it might not be possible to give it the same weight as complaint from a named individual.

The Committee then discussed what further action to take. It was noted that a number of further consultation response from parish councils might be received later in December. . Members of the Committee indicated that subject to no new significant issues being raised by these responses, they did not feel that any further review of the Code of Conduct or arrangements for the consideration of complaints was required. Members commented that they were happy to recommend the proposed changes set out in Appendix A to the Constitution Review Working Group.

RESOLVED: That having reviewed the Code of Conduct and arrangements set out in Chapter 9.1 of the Constitution as adopted on 19 July 2012 and subject to no significant issues being raised with the Chairman of the Standards Committee by 31 December 2012, the amendments to Chapter 9.1 as set out in Appendix A to the report be recommended to the Constitution Review Working Group.

These are the Minutes of a meeting of the Standards Committee

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