

BATH AND NORTH EAST SOMERSET

STANDARDS COMMITTEE

MINUTES OF THE MEETING OF THURSDAY, 6TH FEBRUARY, 2014

PRESENT:-

Independent Members: Susan Toland (Chair), Dr Cyril Davies (Independent Member) and Deborah Russell (Independent Member)

Parish Representatives: Tony Crouch, Veronica Packham and Reg Williams

Bath and North East Somerset Councillors: Sally Davis, Eleanor Jackson and Malcolm Lees

Officers: Vernon Hitchman (Divisional Director, Legal and Democratic Services) and Sean O'Neill (Democratic Services Officer)

87 WELCOME AND INTRODUCTIONS

The Chair welcomed everyone to the meeting.

88 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

89 APOLOGIES FOR ABSENCE AND SUBSTITUTION

Apologies were received from Councillor Sarah Bevan and Axel Palmer.

90 DECLARATIONS OF INTEREST

There were none.

91 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

92 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

There were none.

93 ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE

There were none.

94 MINUTES OF THE MEETING OF 15 MAY 2013

The public minutes were approved as a correct record, subject to one amendment:

in the attendance list "Divisional Director, Legal and Democratic Services" should be replaced by "Monitoring Officer".

95 DCLG NON-STATUTORY GUIDANCE - OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS

Members agreed that there was no justification for amending the Code of Conduct to require the declaration of membership of a trade union in circumstances not already covered by the provisions relating to sponsorship.

Members queried why trade union membership was mentioned in the guidance, but not membership of other organisations such as the Rotary Club or the Freemasons.

RESOLVED not to recommend any changes to the Members' Code of Conduct.

96 INDEMNITIES FOR MEMBERS AND OFFICERS

A Member wondered why this item was necessary at all, since she understood that local authority members were covered by a Local Government Association scheme.

Members expressed concern about the provisions of paragraph 2.4, which require the repayment of sums expended by the Council pursuant to an indemnity in the event of conviction or a finding by a Standards process of failure to comply with the Code of Conduct. It was felt that the paragraph was badly worded and that it did not clearly distinguish criminal proceedings from the Standards process. The Monitoring Officer explained that the paragraph 2.4 was unfortunately wrongly formatted and that it should read:

2.4 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Standards proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or officer has made use of this indemnity:-

- (i) the member or officer is convicted of a criminal offence in consequence of such proceeding, or*
- (ii) in the case of Standards' proceedings a finding is made that the member has failed to comply with the Code of Conduct for Members, and*
- (iii) the conviction or finding is not overturned on appeal*

the member or officer shall reimburse the Council for any sums expended by the Council pursuant to the indemnity.

He explained that Standards proceedings had to be included because they were specified in the Local Authorities (Indemnities for Members and Officers) Order 2004. A Member pointed out that there was no appeal against a determination by the Standards Committee. The Monitoring Officer replied that any decision of the Council could be subject to judicial review. He clarified that the indemnity provisions covered all decision-making bodies of the Council and applied to co-opted members as well

as elected members. A Member pointed out that several simultaneous complaints could be made against the same member, only one of which might be upheld by the Standards Committee. He suggested that it would be wrong in such a case for the member to have to repay the full cost of defending him/herself. He also felt that there were circumstances in which a member might inadvertently breach the Code of Conduct. The Monitoring Officer responded that using the indemnity provisions was an option for members; no one could be compelled to use them.

A Member wondered how the sum to be reimbursed would be calculated in the case of proceedings relating to a collective decision where only one of the members taking the decision was criminally liable or in breach of the Code of Conduct.

A Member said that it was not clear whether the policy was intended to cover organisational culture as well as the conduct of individual members. The Monitoring Officer explained that the policy was intended to cover only individual members and officers. He also explained that the indemnity scheme would be funded partly by insurance (local authority insurance and self-insurance) and partly by expenditure from the Council's budget or reserves.

A Member felt that there should be more support for members, including a legal helpline; it was better for members to avoid problems rather than to have to incur debts to defend themselves. Members agreed that this was a good idea; the Monitoring Officer said that he would look into this. Responding to questions from a Member he said that money paid under an indemnity would not become repayable until all legal processes had been concluded by a final determination.

A Member said that the document would be improved by the addition of subheadings and notes.

Members declined to approve the policy and requested that a revised version of the paper be presented at a future meeting of the Committee.

97 REVIEW OF PROCEDURE FOR HANDLING COMPLAINTS AND SUMMARY OF COMPLAINTS RECEIVED

The Monitoring Officer presented the report. He noted that the new standards regime had now been in place for fifteen months. He felt that it was quicker and fairer than the old system, though parties still felt it was slow. The new role of Independent Person had helped streamline the process. He invited Members to suggest improvements to the complaints handling procedure.

Peter Duppa-Millar, Secretary of the B&NES Local Councils' Association, pointed out that "may" in the last line of the penultimate paragraph on page 44 should be "must".

Member pointed out that the following errors:

- there was no section 5 between the sections numbered 4 and 6
- "withdrawn" in 11.8 should be "withdraw"
- the references to section 14 in section 12 should be references to section 12
- the breakdown by party in the second line of section 13 was incorrect

A Member was concerned that there were no time limits after the 20 days specified in the first paragraph on page 40, which seemed to leave the rest of the process open-ended. A Member said that when she and another Member of the present Committee had proposed the motion to Council to set up a new standards regime, they had said that complaints should be dealt with “efficiently and expeditiously”. Unfortunately, in her view, this was currently not the case. The Monitoring Officer agreed that target timescales should be specified for the various stages of the process, and that the summary report on complaint cases should show performance against the target times and when each stage had been completed.

A Member expressed concern about the provision (second paragraph on page 43) allowing the Monitoring Officer to seek Local Resolution of a complaint after receiving a finding from the Investigating Officer of sufficient evidence of failure to comply with the Code of Conduct. The Monitoring Officer explained that a decision to seek Local Resolution would only be taken after consultation with an Independent Person and the Chair.

Members expressed concern about degree of discretion given to the Chair in section 14: “[The Council] has delegated to the Chair of the Standards Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of the matter.” The Chair agreed that this was too wide and that should be reworded, though she could not recall that she had ever exercised this power.

A Member said she was unhappy with the provision (penultimate bullet point on page 40) allowing a complaint against a “*relatively inexperienced*” member not to be investigated. In her view the onus was on newly-elected members to learn what was permitted and what was not. She was also concerned about the wide discretion given to the Monitoring Officer to decide that complaints should not be investigated. A Member pointed out that there was high turnover of town and parish councillors and that training on the Code of Conduct might not always be available to them. After discussion, it was agreed that the document should be amended to reflect the practice that decisions by the Monitoring Officer that complaints should not be investigated were taken in consultation with an Independent Person and the Chair.

A Member noted that the writing of a letter of apology was not listed as one of the sanctions available to the Committee in section 11, even though it was a sanction that had been imposed by the Committee. The Chair agreed that it should be included.

A Member suggested that the reserve town and parish members on the Committee should be invited to every meeting in order to increase their learning opportunities.

Members wished to raise issues relating to the complaint determined by the Committee at the previous meeting and to the exempt minutes of that meeting. It was accordingly

RESOLVED that the Committee having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of section 100(A)(4) of the Local Government Act 1972, that the public be excluded from the meeting for this item of business because

of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Schedule 12A of the Act as amended.

Members of the public and the Monitoring Officer withdrew from the room.

After the Committee returned to open session it was **RESOLVED**:

1. To note the procedure for handling complaints and to request that it be amended in accordance with the comments of the Committee.
2. To note the summary of complaints and to discuss it at a future meeting of the Committee.

98 SOCIAL MEDIA PROTOCOL

Members welcomed this paper.

One Member raised the issue of members using a “nom-de-blog”. Another Member suggested this was covered in the section of Appendix 1 headed “Social Media and the Code of Conduct for Members generally” and suggested that it should be the rule that whenever members used social media to comment on Council business that they were acting in their capacity as members and that they could not hide behind pseudonyms.

RESOLVED to recommend the Social Media Protocol for Members for adoption.

The meeting ended at 7.30 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services