

## STANDARDS COMMITTEE

13 November 2017

Present:-

Councillors R Radford (Chair), M Asvachin, R Bloxham, P Colthorpe, J Mathews, R Hodgins, A Mayes and R Saltmarsh

Apologies:-

Councillors B Greenslade and Sir Simon Day

\* **11** Minutes

It was **MOVED** by Councillor Radford, **SECONDED** by Councillor Mathews and

**RESOLVED** that the minutes of the meeting of the Committee held on 3 July and 29 August 2017 be agreed as a correct record.

\* **12** Items Requiring Urgent Attention

(An item taken under Section 100B(4) of the Local Government Act 1972).

The Chair had decided that the Committee should consider this item as a matter of urgency, in order that it could consider a new guidance note for Councillors 'Sexual Harassment – Acceptable Conduct and Guidance Note' which provided information (in addition to the Code of Conduct) to provide a work place that was free from sexual harassment, including the Councils responsibilities and also the rights and responsibilities of Members.

Members also noted that the complaints procedure had been updated in line with the new guidance, but also that the guidance would align with the Officer Acceptable Behaviour Policy.

In discussion, Members asked about numbers of complaints dealt with, how false accusations could be avoided, that a respect for anonymity was essential, the consideration of 'perception' particularly if someone was experiencing harassment and / or bullying behaviour, clarification of 'contact' between Members and Officers (page 3) and use of the word 'victim' within the guidance (to be replaced with complainant).

Members generally welcomed the guidance, which provided a clear framework for acceptable behaviour and for Officers, Members, men and women to be able to work in an environment free from harassment or the fear of harassment and with clear information on processes should a complaint need to be made.

It was **MOVED** by Councillor Mathews, **SECONDED** by Councillor Bloxham, and

**RESOLVED**

(a) that the 'Sexual Harassment – Acceptable Conduct and Guidance Note' be endorsed and included as additional guidance (and published) alongside the Code of Conduct; and

(b) that the County Solicitor be authorised to make any necessary amendments to the guidance to reflect both the views of the Committee, as above, and any related links or considerations between that guidance and the Council's Acceptable Behaviour Policy.

\* **13**      **Membership**

The Committee welcomed Mr I Hipkin, as a newly appointed co-opted Member and further noted the resignation of Councillor Gribble from the Committee.

\* **14**      **Consultation on the Disqualification Criteria for Councillors and Mayors**

Members considered the report of the County Solicitor ([CSO/17/29](#)) which outlined details on a recent consultation from the Department of Communities and Local Government setting out the Government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly. The Consultation could be found at <https://www.gov.uk/government/consultations/disqualification-criteria-for-councillors-and-mayors> and the report contained a proposed response to the Consultation.

The Consultation began on 18 September 2017, would run for 12 weeks with a closure date of 8 December 2017.

The report further outlined the current disqualification criteria, under section 80 of the Local Government Act 1972, or paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 (for a directly-elected mayor of a combined authority) and section 21 of the Greater London Authority Act 1999 which disqualified someone from being the Mayor or an Assembly member under certain criteria.

It then outlined the Governments proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, if they were subject to:

- the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register');
- a civil injunction granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or
- a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.

Members noted that any changes to the disqualification criteria would require changes to primary legislation and also that the proposed changes would not act retrospectively.

The County Solicitor reported the views of Councillor Connett who had submitted comments prior to the meeting relating to civil injunctions and the danger of such powers being used to stifle or prevent honest lawful action.

In discussion, Members further raised the issues of juveniles who had committed minor offences at a young age and the potential detrimental impact on their future.

It was **MOVED** by Councillor Radford, **SECONDED** by Councillor Mathews; and

**RESOLVED** that the Consultation response be endorsed subject to the additional comments regarding civil injunctions and the views expressed above relating to juveniles.

\* **15**      **Customer Feedback Monitoring Report - Quarter 2 2017/2018**

The Committee considered the Report of the Head of Digital Transformation & Business Support ([BSS/17/14](#)) on feedback, compliments, representations and complaints received and handled by the County Council for Quarter 2 for 2017/2018.

This included volumes and themes for all types of customer feedback (Compliments, Comments and Complaints), Letters from Members of Parliament and Complaints being dealt

with by the Local Government Ombudsman about Devon County Council. In addition it provided information about the Council's performance in responding to and learning from the outcomes of complaints.

Throughout Q2 the Council received 969 items of feedback which was an increase of 87 items on Q1 and was a reversal of the downward trend over the last 15 months. Also, there had been 14 fewer complaints received across the Council in Q2 compared to Q1 (465 compared to 479).

Also, the total number of compliments received decreased slightly from 236 in Q1 to 224 in Q2.

The Committee noted that the number of MP Letters received in Q2 had risen significantly in the last quarter; with 208 MP Letters received compared to the 80 received in Q1.

In discussion, Members asked about the value of collating information on Councillor enquiries, the use of automated responses to complaints, whether staff shortage affected complaint response times and the impact of commissioned services on levels and types of complaint.

The Customer Relations & Information Governance Team Manager undertook to review the website to ensure the mechanism for submitting compliments was clear and accessible.

It was **MOVED** by Councillor Mathews, **SECONDED** by Councillor Bloxham; and

**RESOLVED** that the monitoring report be noted.

\* **16** **Ethical Governance Framework: Monitoring**

The Committee considered the report of the County Solicitor ([CS/17/22](#)) summarising feedback from Co-opted Members of this Committee on their attendance at meetings of the Council, Cabinet and Committees and also since publication of the above, the Cabinet meeting of 8 November 2017, to monitoring compliance by Members and Officers with the Council's ethical governance framework.

Members raised the issue of public participation following reported issues with speakers rushing their speeches, making any representation hard to hear.

The Committee were pleased to note that there had been no areas of significant concern or any indication of actions or behaviours that might be felt to have resulted in a potential breach of the Code, acknowledging also that steps would continue to be taken to address practical and procedural matters in light of Member's comments arising from both this and the previous monitoring reports in future training sessions.

It was **MOVED** by Councillor Mathews, **SECONDED** by Councillor Bloxham; and

**RESOLVED** that the update be noted.

\* **17** **LGO Annual Letter 2017**

The Committee considered the Joint Report by the Ombudsman Link Officer and Head of Digital Transformation and Business Support ([BSS/17/15](#)) on complaints made to the Local Government and Social Care Ombudsman for 2016/2017.

The report highlighted the name of change of the Ombudsman to the Local Government & Social Care Ombudsman, to reflect that it had operated, since 2010 with jurisdiction over all registered adult social care providers and was able to investigate complaints accordingly.

The Ombudsman's jurisdiction was covered by the Local Government Act 1974 and there was a statutory duty to report Ombudsman findings and recommendations as well as a duty under section 5(2) of the Local Government and Housing Act 1989 for the Monitoring Officer to prepare a formal report where it appeared that the authority, or any part of it, had acted or was likely to act in such a manner as to constitute maladministration or service failure, and where the Ombudsman had conducted an investigation in relation to the matter.

There had been a decrease in the number of complaints to the Ombudsman in 2016/17 to 118 (148 in 2015/2016) which was a positive shift. In 2016/2017 only 25 complaints that received decisions were upheld.

The report outlined the breakdown by service area as well as the breakdown of the 'decision' by the Ombudsman as to whether the complaint was investigated, upheld, advice given etc. The table at Appendix A to the report provided details of the 18 decisions of 'upheld with injustice' and the required actions by the Council.

Members noted the importance of the Council ensuring it was able to evidence it was a Council that learned from complaints and used the learning to improve and maintain the quality of the services it commissioned and provided.

It was **MOVED** by Councillor Mathews, **SECONDED** by Councillor Bloxham; and

**RESOLVED** that the Local Government and Social Care Ombudsman annual letter for 2016/2017 be noted.

\* **18**      **Voting - Standards Committee Co-Opted Members**

The County Solicitor circulated a report (appended to these minutes), to confirm the legal position of its Co-opted Members, with regard to voting rights.

Members noted that under section 13 of the Local Government and Housing Act 1989 Co-opted Members of the Committee had to be treated as non-voting Members, but outlined a method permissible in law to adopt a system of informal voting.

The Report outlined the previous arrangements of Standard Committees, before the introduction of the Localism Act 2011, that the Committee had a number of Independent Members and an Independent Chair and also a specific eligibility to vote.

The current position (after establishment of the new arrangements from 1 July 2012), was that the Council retained a non-statutory Standards Committee which was done under the general power to discharge functions by Committee contained in section 101 of the Local Government Act 1972 and to include the previous 'Independent Members' as Co-opted Members within the revised membership to preserve a greater degree of independence and objectivity.

Members noted there was a general power in section 102 of the Local Government Act 1972 to appoint a Committee including persons who were not Members of the Council but Section 13 of the Local Government and Housing Act 1989 stated that Co-opted Members shall for all purposes need to be treated as non-voting Members.

The report outlined a solution in terms of a system of informal voting to allow Co-opted Members to clearly demonstrate their views and the result would be minuted accordingly, prior to a second vote of elected Members which would stand as the formal decision of the Committee.

It was **MOVED** by Councillor Mathews, **SECONDED** by Councillor Bloxham; and

**RESOLVED** that the proposal, as outlined in the report, be welcomed and endorsed.

\* 19 **Setting the Standard - Summary of Horizon Scanning Event**

Members received an update on the Committee on Standards in Public Life Horizon Scanning Seminar on 10 July 2017 which had commented upon potential ethical standards of the future.

Members noted the comments in relation to Local Government which included;

- the suggestion there was a need for a fresh look at rules of codes of conduct for Councillors and a strengthening of the ethics system and declaration of interests, given Local Government was often the first level at which the public interacted with politics;
- the issue was not just around particular standards issues such as conflict of interests, but went wider to the issue of governance of local government where it seemed there was a rather mixed system, with little/no effective scrutiny, and defects around conduct; and
- the issue of the development around town centres was raised and the huge sums of money involved.

The Committee would keep a watching brief on the issues.

\* 20 **Local Authorities and Standards Regimes - Representations from South West Local Authorities**

The Committee noted the recent representations made by Standards Committees across the South West, particularly in Somerset, regarding the limits on sanctions that could apply against Councillors and also the lack of middle ground between criminal sanctions for transgressions around disclosable pecuniary interests and relatively 'tame' sanctions for other transgressions.

A number of suggestions had been made to the Minister in relation to suspension of Councillors, sanctions for behaviour in a Councillors personal life and the role of the Independent Person.

The Ministers response highlighted that the current arrangements were adequate, but they had publically committed to reviewing the Local Authority Standards Arrangements. They further responded in relation to Section 80 of the Local Government Act 1972, which outlined a range of criteria preventing someone from standing for public office.

The Government were also consulting on the disqualification criteria for Councillors to bring that into line with modern sentencing guidelines and frameworks (See Minute 14).

The County Solicitor reported the views of Councillor Connett that he opposed the suggestion in the letter that Standards Committees have the power to suspend a Councillor.

Members discussed that whilst there might be room for additional measures in terms of sanctions, there was no desire to return to the previous Standards Regime.

\* 21 **Local Determination of Complaints**

The County Solicitor reported that, since the last meeting, there had been no complaints concerning an alleged breach of the Members Code of Conduct.

**\*DENOTES DELEGATED MATTER WITH POWER TO ACT**

The Meeting started at 2.15 pm and finished at 3.33 pm



## **STATUS OF CO-OPTED MEMBERS OF THE STANDARDS COMMITTEE**

Report of the County Solicitor

**Recommendation:** that the report be noted.

### **Introduction**

1. This report has been produced in order to confirm the legal position of its Co-opted Members, with regard to voting rights. Under section 13 of the Local Government and Housing Act 1989 Co-opted Members of this Committee must for all purposes be treated as non-voting Members. However, it appears permissible in law to adopt a system of informal voting as set out in this report.

### **Background / Scope**

2. The Standards Committee consists of seven Councillors and five representatives who are referred to in this report as "Co-opted Members".

3. The Council has also appointed two 'Independent Persons' under the provisions of the Localism Act 2011, who have a statutory role under the standards regime in terms of complaints and advice in that regard. Those Independent Persons are not Members of the Standards Committee.

4. There is no provision in Law for Co-opted Members of the Standards Committee to be given voting rights. The report's intent is to suggest a process that can inform the voting process.

### **The previous position**

5. Until 1 July 2012, section 53 of the Local Government Act 2000 required Councils to establish a Standards Committee, with a membership including at least one person who was not a Member, or an officer, of that or any other relevant authority – in this report referred to as an 'Independent Member'.

6. Members may recall that Devon's Standards Committee had a number of Independent Members and Section 53 specifically provided that the Standards Committee must be chaired by an Independent Member. It also specifically provided that Independent Members were entitled to vote at meetings of the Standards Committee, but these provisions no longer apply.

### **The Current Position**

7. In establishing new arrangements from 1 July 2012, under the provisions of the Localism Act 2011, this Council decided to retain a non-statutory Standards Committee which was done under the general power to discharge functions by Committee contained in section 101 of the Local Government Act 1972.

8. It further decided to include the previous 'Independent Members' as Co-opted Members within the revised membership of the Standards Committee, to preserve a greater degree of independence and objectivity. This Council is clear that Co-opted Members carry out a valuable role in influencing the views of the Committee and monitoring the Councils adherence to ethical governance issues and standards generally.

9. There is a general power in section 102 of the Local Government Act 1972 to appoint a Committee including persons who are not Members of the Council – which is the power used to appoint the Co-opted Members of the Committee. However, by virtue of section 13 of the Local Government and Housing Act 1989 Co-opted Members shall for all purposes need to be treated as non-voting Members.

# Minute Item 18

10. It is with regret that neither this Committee nor the Council has the power to override the statutory position and grant Co-opted Members a formal vote. The power of general competence in the Localism Act 2011 is subject to any pre-existing statutory restrictions and is therefore of no assistance here.

11. That having been said, the views of the Co-opted Members are extremely valuable, need to be respected and add an 'independent' perspective.

12. It is, however, permissible to adopt a system of informal voting. Therefore, where a vote is required the Chair would first put the matter to an informal vote by all Members of the Committee. This would allow the Co-opted Members to clearly demonstrate their views to all present and the result would be minuted accordingly. The matter would then need to be put to a second vote of elected Members only and this vote would stand as the formal decision of the Committee. Officers are of the view that this is the only lawful method of conferring some form of voting rights upon Co-opted Members.

## **Summary / Conclusion**

13. This Committee and the Council wished to retain the services of Co-opted Members as they carry out a valuable role in influencing the views of the Committee. It is not possible to grant them formal voting rights, but it would be permissible to adopt a system of informal voting if this Committee wishes to do so.

**JAN SHADBOLT**

[Electoral Divisions: All

## **Local Government Act 1972: List of Background Papers**

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<b><u>Background Paper</u></b>	<b><u>Date</u></b>	<b><u>File Reference</u></b>
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Nil