

STANDARDS COMMITTEE

29 August 2017

Present:-

Councillors R Radford (Chairman), M Asvachin, R Bloxham, P Colthorpe, A Dewhirst, G Gribble and J Mathews

R Hodgins, A Mayes and R Saltmarsh

Apologies:-

Sir Simon Day

* **9** **Exclusion of Press and Public**

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

RESOLVED that the press and public be excluded from the meeting for the following item of business under Section 100(A)(4) of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Schedule 12A of the Act namely, information relating to an individual and in accordance with Section 36 of the Freedom of Information Act 2000, by virtue of the fact that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

* **10** **Allegation of Breach of Members' Code of Conduct**

(Councillor Bloxham declared a personal interest in this matter by virtue of being a County Council representative on the RD&E NHS Foundation Trust Council of Governors, a member of the Healthy New Towns Executive Board and also Councillor for the Broadclyst Division).

The Committee considered the:

- Report of the Monitoring Officer (CSO/17/25);
- Investigating Officer's Report;
- Independent Persons Comments;
- Members' Code of Conduct; and
- Guidance/Procedural Note for the Assessment & Determination of Allegations of Breaches of the Code of Conduct for Members

relating to complaints of an alleged breach or breaches of the Members' Code of Conduct by County Councillor Randall Johnson (the subject member).

The Committee were advised that a number of complaints had been received alleging that on 25 July 2017, when presiding at a meeting of the Council's Health and Adult Care Scrutiny Committee, the subject member had failed to apply one or more of the Principles of Public life set out at paragraph 1.2 of the Council's Code of Conduct for Councillors and, in particular, had breached specific provisions set out at paragraphs 4 and 5 (a), (c), (d), (g) and (h) of the Code. It was variously alleged that the subject member had failed to treat others (and one other County Councillor in particular) with courtesy and respect and that her actions could be characterised as bullying or intimidation and/or a potential abuse or misuse of power or authority and that she had conducted herself in such a manner as to achieve her own objectives and had brought her office and/or the Council into disrepute.

In summary, the main elements of the complaints received were that the subject member:

- had not made the Committee aware of a 'proposal' of which she had been given 'notice' and had not called elected Members to speak in the order they had indicated a wish so to do;
- had allowed another elected Member to put a proposal to the Committee before that referred to above;
- had, allegedly, encouraged elected Members to vote in a particular way and herself voted on a proposal not to refer the matter to the Secretary of State;
- had showed bias and partiality in the way speakers were called and in her conduct of the meeting, not allowing fair and balanced debate;
- had not provided adequate guidance for or direction to elected Members to consider/scrutinise all relevant issues or service provision in specific areas or encourage robust questioning of the Clinical Commissioning Group representatives at the meeting;
- similarly, had not questioned or caused to be questioned the Clinical Commissioning Groups previous responses to the Committee's questions and/or address whether the requirements of a referral to the Secretary of State for Health had been met, as indicated in the papers before the Scrutiny Committee;
- should be removed or suspended from the office of Chairman of the Health & Adult Care Scrutiny Committee;

and a number of those complainants had also questioned the voting process at the meeting and the voting rights of the co-opted member representing Devon District Councils.

The Committee was advised (CSO/17/25) that, in accordance with the Council's published procedures and guidance on dealing with complaints against Members of the Council (http://www.devon.gov.uk/index/councildemocracy/county_councillors/councillorcomplaints.htm), an initial assessment of the complaint had initially been undertaken by the Monitoring Officer and, following consultation with an Independent Person appointed by the Council (as required under the above procedure), it had been felt that there was, prima facie, a case to answer and that the matter therefore merited formal investigation and a formal hearing. The option of a local settlement was not considered to be applicable in this case.

A formal investigation had subsequently been undertaken in line with the Council's Procedures and consequently and in line with the Council's procedures, the Committee was now required to consider the Investigating Officer's Report and decide whether or not, on the basis of the evidence available and the views of the Independent Person, it agreed with the findings of the Investigating Officer or would wish to institute some other course of action.

The County Solicitor further advised Members that the sanctions available to the Council in such cases were to:

- require the subject member to issue a formal, public, apology;
- recommend that the Council issue some form of public censure or 'name and shame' the subject member;
- recommend to the appropriate Group Leader that the subject member be removed from any or all offices/sub-committees;
- instruct the Monitoring Officer to arrange training;
- remove the subject member from all outside bodies appointed or nominated by the Council;
- withdraw facilities (e.g. computer); and/or
- exclude or restrict access by the subject member to some or all of the Council's offices.

The Investigating Officer had examined a total 23 complaints received from members of the public (the complainants) relating to alleged breaches of the Members' Code of Conduct by the subject member (a Member for the Broadclyst Electoral Division), in her capacity as Chairman of the Council's Health and Adult Care Scrutiny Committee.

The Investigating Officer's Report - which had been circulated in advance for the attention of Members at this meeting - had analysed the issues in detail in order that in its determination of the next steps in the process the Committee might give full regard to the issues involved. It contained the full text of each complainant's submission together with the subject member's written representations in response thereto and written submissions or summary of views of other persons whom the Investigating Officer had felt might be able to contribute to or assist the investigation by confirming, denying or otherwise commenting upon the allegations or other matters relevant or pertaining to the investigation.

The Committee noted that to a greater or lesser extent all of the complaints received had identified the same or very similar issues to those summarised above, or had made general comments and representations or expressed concerns that persons had not, in their opinion, been treated fairly and/or that the meeting had been poorly or improperly conducted. There were however no significant or material differences in the complaints/submissions which repeated many of the broad issues in nature or content and/or were, in some cases, 'third hand' reports of events.

Notwithstanding the fact that in order for a complaint to be investigated under the Council's procedure it should relate to the actions of an individual Councillor - and not generally to the conduct of a meeting or how a decision was reached - the Committee welcomed the decision of the Investigating Officer (given the two elements were clearly inextricably linked in the minds of complainants) not to exclude or reject those 'complaints' or statements out of hand; concentrating instead on the issues relating to the behaviour of the Members concerned. Nonetheless, Members of this Committee noted that a number of complainants had themselves acknowledged that the procedures at the Scrutiny Committee may not have been '*against the rules*' but had felt they had not followed '*appropriately*'.

In examining specific issues in detail, as set out hereunder, the Committee was mindful of the views of complainants, interested parties and the Investigating Officer.

A number of complainants or those interviewed had alleged that there had been a pattern of a particular Councillor having being ignored by the subject member at meetings, an allegation repeated in an article in the Western Morning News on 3 August 2017 (also appended to the Investigating Officer's Report) citing an incident at a previous meeting. The Investigating Officer was firmly of the view that this was simply not accurate - as evidenced in his Report and on the basis of that Councillor's own comments and statements. There were no grounds for saying that the subject member had prevented or denied the opportunity to any Member - on that previous occasion or on 25 July - to put a motion or amendment to the vote and any suggestion that this was part of a pattern could not therefore be substantiated and there could therefore be no procedural failure. The Investigating Officer had confirmed that this had been previously explained to and acknowledged by the Councillor concerned and he could not therefore accept that the subject member's actions in that regard supported any allegation of a breach of the Code (paragraphs 4 (a) or 5 (c) or (d)).

It was acknowledged that, at Committee meetings, the onus was on individual Members to formally move any motion or amendment from the 'floor' of the meeting - at the earliest opportunity - and that there was and never had been any procedure that obtained for motions/amendments to be 'listed' and dealt with in the order they may have 'lodged', 'registered' or 'submitted' to a third party and then to be taken automatically in turn, even if a text had been circulated in advance. Procedurally, until a proposition was formally moved it was not technically before the Committee and the person presiding at any meeting would not normally be expected to specifically remind individual members so to do even where it may be anticipated they might wish to do so.

The Committee explored the possibility of requiring Members to submit motions or amendments for Committee meetings in advance – which would need amendments to the Council's Standing Orders - but felt that would actually restrict the ability of Members to raise or pursue matters as a result of discussions at a meeting and thereby inhibit their involvement in the democratic process.

In relation to concerns that the subject member did not guide or direct Committee Members sufficiently robustly to discuss the relevant issues set out in the papers before that Committee or upon which representations had been made direct to Members, the Investigating Officer recognised that the subject member had been at pains to allow all parties present and able to speak with the Clinical Commissioning Group's representatives, public speakers and local Members attending under Standing Orders addressing the Committee first and speaking on any aspect of the situation as they saw fit. Thereafter Members of the Scrutiny Committee were invited to speak – without restriction as to subject or time - to enable them to raise any issues they may have wished so to do and enable an informed discussion/debate: only then coming to a view, having first heard all the arguments.

It was felt to be entirely reasonable to have assumed that Members of the Committee had read and digested the information before and that it was for Members themselves to refer or raise in debate and discussion any specific issues they felt were necessary or worthy of so doing. The Investigating Officer was of the view that it would be wrong for anyone to assume that there had been no consideration of the issues highlighted in the Report CS/17/23 circulated at the 25 July meeting simply because Members had chosen not to speak specifically to any of those points.

The Investigating Officer was equally clear that there was no evidence to suggest – notwithstanding the opinions and perceptions of others - that any of the normal, accepted, responsibilities of the person presiding at a meeting were not properly exercised by the subject member at the meeting on 25 July 2017 or that the subject member had thereby breached the provisions of paragraph 5 of the Code.

As to allegations about the composition of the Committee and voting thereat, the Investigating Officer was content that the appointment, composition and voting rights of members of that Committee had been properly determined by the County Council. He had however highlighted that the wording of the Council's Constitution may not, in all respects, have been up to date or consistent – as acknowledged by the Council's Officers – but equally recognised those errors of omission would and could not override the provisions of the law. Schedule 1 of paragraph 12 of the Local Government Act 2000, clearly provides that an English Principal Council may permit a co-opted member of an overview and scrutiny committee of the authority to vote at meetings and the Council's Standing Orders also clearly provides (Standing Order 21) that *'All committees (including any Statutory Committee) will be appointed by the Council. The Council will decide on the size of each committee and how many voting or non-voting members it will have'*. Further, the Investigating Officer was satisfied that there was no impediment or irregularity in the arrangements put in place by the Council to exercise scrutiny arrangements under The Local Government Act 2000 and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

In relation to complaints about the voting process and validity of votes, the Committee shared the view of the Investigating Officer that it was perfectly acceptable for the subject member (as Chairman) to have voted for the proposal before the Scrutiny Committee, there being no statutory or procedural requirement that a Chairman must only exercise their second or casting vote. That could not therefore constitute a breach of the Code of Conduct.

The Committee also noted that the issues or 'complaints' raised by a number of complainants about the actions of the co-opted member of the Scrutiny Committee at the meeting could not be considered by the County Council as the Member was not a County Councillor and would,

therefore, automatically fail the overriding criteria tests to be applied to any complaint. Should complainants wish to pursue those matters then any such complaints would therefore have to be made to East Devon District Council's Monitoring Officer.

The Committee acknowledged that the Investigating Officer had accepted that a number of the exchanges between Members and the Chairman were terse and not as good tempered as might reasonably be expected, no doubt because passions were running high among all those present – both Members and public alike. Unedifying that it may have been and while the events may not have reflected well on any member or the Council they were not in the Investigating Officer's view, unacceptable in terms of behaviours or the requirements of the Code of Conduct and were not sufficient therefore to warrant being a breach of paragraph 4 or 5(h) of the Code of Conduct. Further, the Investigating Officer was not persuaded that any breach of paragraph 5(h) of the Code had been demonstrated or convinced of the argument that the subject member's actions amounted to 'manipulation' or that there was any evidence of bias, partiality or foreknowledge on her part of any Members position that would be to the detriment of any other Members participation in the meeting amounting to a breach of paragraphs 5 (c) or (d) of the Code. Nonetheless and while acknowledging the above viewpoint Members were equally of the view that the Council should be seen to be responding to those concerns and perceptions to avoid any recurrence in the future, even if no breach of the Code was found.

The Committee noted that, in preparing his Report, the Investigating Officer had been clear that it was not his role to decide whether the decision ultimately taken by the Scrutiny Committee was right or wrong or if the behaviour or conduct of individual member(s) was motivated by personal considerations or feelings, only to consider if those behaviours may have overstepped the mark and represented a clear breach of the standards expected of Elected Members and of the Code of Conduct. In his view, the concerns expressed related more to individuals' perceptions of the motivation of individuals and the 'appropriateness' and 'correctness' of the process followed and the attitudes and intentions of those involved rather than any clearly evidenced breach of the Code of Conduct. While he accepted that complainants may hold strong views about the subject member's comments/conduct – and of other members present - these were not in his opinion, sufficient to uphold any allegation of a breach of the Code warranting any formal disciplinary or summary action.

The Investigating Officer had therefore concluded that there had not been any procedural or administrative failure in the way in which the Scrutiny Committee had been appointed, convened or conducted or any failure of process or abuse of power in the Scrutiny Committee's determination of the matters before it. Any suggestion that the decision of the Scrutiny Committee should be overturned or quashed and/or that a further meeting be held to reconsider the issues - to preclude any subsequent legal challenge - was outside the scope of his investigation.

The Investigating Officer advised the Committee that following circulation of his Report to the Committee he had been made aware of further 'issues' raised by two persons – both of whom had submitted complaints previously - about the actions of the Co-opted Member of the Committee and the continuing membership of councillors upon the Scrutiny Committee, which were substantially the same as raised by other complainants and as referred to in his Report.

In accordance with the Council's procedures, the same Independent Person that had been consulted initially had again been consulted on the findings of the Investigating Officer's Report. In summary, and as reported at the meeting, the former had endorsed the latter and its findings. Having read the Report carefully and having considered the issues raised, the Independent Person had agreed with the Investigating Officer's views expressed at paragraphs 70 and 72 of the his Report that there had not been any procedural or administrative failure in the way in which the Scrutiny Committee had been appointed, convened or conducted. Further, and having had regard to the commentary and conclusions of the Investigating Officer's Report, the Independent Person had concurred that there had been no indication of the Code having been breached in any way; accepting that Members'

behaviour may not have been ideal and that some had been vociferous in their approach although that was not of itself a breach. The Independent Person did not believe the subject member had done anything wrong in calling Members to speak in the order she had identified them or they had been identified to her by her Vice-Chairman or Officers at the meeting. In accepting that any suggestion that the Scrutiny Committee's decision should be '*overturned or quashed and/or that a further meeting should be held to reconsider the issues*' was outside the scope of this investigation, the Independent Person did nonetheless acknowledge that the Scrutiny Committee could itself decide to reconsider the matter if it so wished, which should be recognised.

The Committee noted that one of this Committee's Co-opted Members was unable to attend this meeting and had asked that his support for the findings of the Investigating Officer be reported.

In light of the above, the matter having been debated and the Committee having:

- considered the Investigating Officer's Report and the various submissions and representations appended thereto;
- regard also to the circumstances and to the options and/or alternatives set out in the County Solicitor's Report CSO/17/25;
- any other relevant factors or views expressed as indicated above;
- regard to the advice of the Independent Person:

It was **MOVED** by Councillor Gribble, **SECONDED** by Councillor Mathews and unanimously

RESOLVED

(a) that the Investigating Officer's Report be acknowledged and endorsed as an exhaustive and thorough piece of work;

(b) that the Committee finds that the allegations are not proven and that there has not been any breach of the Code of Conduct or that they disclose any sufficiently serious potential breach that might warrant punitive action or sanction or that the subject member failed to apply one or more of the Principles of Public Life;

(c) that there is no evidence to support any allegation that the subject member failed to adhere to the Code of Conduct or had failed to treat others with respect or had failed to act in the public interest or had acted improperly or did not have regard to the relevant facts before taking part in any decision making process as alleged, specifically, in relation to paragraphs 4 and 5(a), (c), (d), (g) and (h) of the Code and that that complaints cannot therefore be upheld;

(d) that, notwithstanding the above, the Committee accepts that the events of the Health and Adult Care Scrutiny Committee meeting on 25 July 2017 may not reflect well on individual Members or upon the Council as a whole, and further recognises that the perception gained by persons present at the meeting or subsequently viewing the webcast is not that which would have been desired: Group Leaders should therefore be asked to remind Members of the need to conduct themselves appropriately and respectfully at all times;

(e) that, additionally, the subject member be strongly reminded of the importance of the work of scrutiny committees - reinforcing the value of neutrality in scrutiny both generally and in calling the 'health service' to account – and the need to be even handed and scrupulously fair, recognising that failure to do so may be perceived as a deliberate act; the difference between perception and reality being not easily countered;

(f) that in light also of the evident lack of awareness of some Members of the procedures to be followed at meetings, further training be offered (i) to Members on the rules of debate including procedures relating to the moving of motions and amendments and voting at committee meetings and to remind them that assistance was available through the Council's Democratic Services & Scrutiny Secretariat to help them in ensuring consideration of any matter by a Committee and in drafting motions or amendments and (ii) to Chairmen and Vice-Chairmen of Scrutiny Committees, generally, relating to the management of those procedures at meetings;

(g) that Members be also reminded of the need to ensure microphones are switched on and used particularly when meetings are webcast and that Officers examine the potential within the current audio system to ensure that Members' microphones are switched on remotely, if necessary, to ensure that their contributions are heard and recorded on the webcast;

(h) that, additionally, the Procedures Committee be asked at its next meeting to ensure the wording of the Council's Constitution in relation to the appointment and membership of Scrutiny Committees is accurate and consistent throughout and reflects the provisions of the law and that the presentation of information about such appointments at the Annual Meeting of the Council is similarly made clearer in future; and

(i) that complainants be advised that any complaint over the conduct of the Health and Adult Care Scrutiny Committee's Co-opted Member cannot be dealt with by the County Council and that as that Member was currently an East Devon District Councillor any such complaints should be referred to East Devon District Council's Monitoring Officer.

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

STANDARDS COMMITTEE
29/08/17