



**MINUTES OF THE CONSTITUTION AND ETHICS COMMITTEE MEETING
HELD AT 7:00PM, ON
MONDAY, 9 JULY 2018
BOURGES/VIERSEN ROOM, TOWN HALL, PETERBOROUGH**

Present: Councillors Seaton (Chairman), Bashir, Allen, Smith, Murphy, A Iqbal, Sandford

Officers in

Attendance: Fiona McMillan, Interim Director Law and Governance & Monitoring Officer
Dan Kalley, Senior Democratic Services Officer
Rachel Edwards, Head of Constitutional Services
Amy Brown - Deputy Monitoring Officer

1. APOLOGIES FOR ABSENCE

There were no apologies received.

2. DECLARATIONS OF INTEREST

Councillor Murphy declared a personal interest in item 8 by virtue of having previously been the subject of a complaint.

3. AMENDMENTS TO THE CODE OF CONDUCT

The Constitution and Ethics Committee received a report in relation to amendments to the Council's Code of Conduct.

The Interim Director of Law and Governance introduced the report and explained that the purpose behind the report was to update the Code of Conduct taking into account legal requirements placed on the Council by the Localism Act 2011. There were some general updates to the code, including a number of typos that needed fixing, in order to reflect the Committee taking over responsibility from the Audit Committee. There were some changes to the descriptions of disclosable pecuniary interests, which were needed in order to reflect changes to the legislation. Finally the updated code outlined the steps Councillors needed to take if they thought they had a disclosable pecuniary interest. This also included an addition that members leave the room once they had declared a disclosable interest for that item, rather than current practice of remaining in the room.

The updated code also set out what 'other' disclosable interests were and stated in more detail what those 'other' interests could be.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It would be a matter of judgement for Councillors to decide what was a close friend or family member. However, the monitoring officer would be able to offer advice to any Councillor should they need further clarity.
- There was a danger of moving away from what was a fairly clear code of conduct to now include areas of ambiguity. As a Council it was important that

it did not return to more bureaucratic standards regime that was in place after the Local Government Act 2000.

- The definition of families was quite complex, adding a list to the code could be quite long and cumbersome. It was important that Councillors made a common sense judgement in those situations.
- Members were directed to the tracked changes at 2.2 of the code, this was already part of the existing code, the amendments were put in place to make this area clearer.
- There had been previous case law, outlining that members needed to leave the room when a decision needed to be made and the Councillor had declared an interest.
- When Councillors were sitting on a committee they needed to be open and give reasons for their decisions. It was therefore important to remove the wording 'be prepared too' in order to do away with any ambiguity.
- There was an issue with what a friend actually meant and was it appropriate to declare an interest whenever an issue arose that would affect a friend. It was stated that was already in the code and had merely been updated to bring it in line with legislation.
- It was discussed that the wording in section 2.1 could include making it explicit that if there were any concerns over whether a declaration needed to be made that clarification could be sought from the monitoring officer.

On a vote the Committee **RESOLVED** to keep the definition of other disclosable interests in the updated Code of Conduct. (4 in favour, 1 against, 2 abstentions).

On a vote the Committee **RESOLVED** to accept the updated definition of family and friends with the addition that Councillors could seek clarification from the Monitoring Officer be included in the wording. (6 in favour, 1 abstention).

The Constitution and Ethics Committee considered and **RESOLVED** (6 for, 1 abstention) to recommend to Full Council the approval of the updated Code of Conduct with amendments agreed by the Committee.

4. **CODE OF CONDUCT COMPLAINTS PROCESS AND CONFIDENTIALITY**

The Constitution and Ethics Committee received a report in relation to Code of Conduct complaints and confidentiality.

The Interim Director of Law and Governance introduced the report and explained that the purpose behind the report was to see if the Committee wanted to introduce a requirement that all complaints that had been breached should be dealt with on a confidential basis. This would enable the information regarding a complaint be kept confidential until such time as they would be concluded.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was difficult to envisage that all participants could behave in a confidential manner. It was difficult to see in practice how members of the public or the press could be confined to keeping the information confidential.
- The reputation of councillors was being damaged by not having any confidentiality within the complaints procedure. Due to the nature of social media and the press complaints could be broadcast before any decisions had

been made, leading to the reputation of councillors being tarnished, even though at the end of the process they had been found not to have had done anything wrong.

- The current process allowed for a number of complaints to be made and for the press to be able to ask for the number of complaints made, that the Director of Law and Governance would have to release.
- Only the most serious of cases would go through for investigation, which might lead to a hearing. This process was to cover any complaints made, not just those that were deemed more serious.
- Councillors needed to be role models for behaviour, these standards had slipped recently and it was important that the Committee looked at these issues going forward.
- The inclusion of confidentiality might lead members of the public to perceive that things were being done in secret, instead of being open and transparent.
- Many local authorities kept a form of confidentiality in place after the old standards regime was scrapped. If the complaint was found against a member this would then be reported.
- This was a useful framework for councillors to abide by and understand how they would be treated if a complaint was made against them.
- It was not possible to place a 'gag' on members of the public once they had made a complaint, even though it was anticipated that if requested they would keep information confidential it was impossible to police this.
- There was a danger that this would be legally enforceable should any complaints be made about the process.
- This was not a constitutional change, merely a process note to go alongside the complaints procedure.
- There were a number of different sanctions that could be imposed. These were set down in common law and not statute as the Localism Act did not set out any sanctions apart from those to be applied to disclosable pecuniary interests, which were a criminal offence. Possible sanctions included, training, mediation, issuing apologies or being banned from sitting on specific committees.
- Parish Councillors would be subjected to the same code of conduct and processes as City Councillors.

The Constitution and Ethics Committee considered and **RESOLVED** (5 for 1 against, 1 abstain) that:

1. All code of conduct complaints be subject to a requirement of confidentiality by all participants in the process until such time as the complaint case is concluded.
2. Where a conclusion has been reached that the code of conduct has not been breached or where the Monitoring Officer concludes, following an initial assessment of a complaint, that no further action needs to be taken that the identity of the councillor who is the subject of the complaint remains confidential unless that councillor wishes it to be made public.
3. Where a complaint has been informally resolved by agreement without the need for a formal investigation that the identity of the councillor who is the subject of the complaint and a summary of the complaint is reported back to the committee.
4. Where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to an agreed alternative resolution that the investigation report will be published when the case is reported back to the committee

5. Where a conclusion has been reached that the code of conduct has been breached and that alternative resolution is not appropriate/ possible that the investigation report will remain confidential until such time as the hearing into the complaint takes place, at which stage it will be published.

5. MEMBER OFFICER PROTOCOL - SHADOW CABINET

The Constitution and Ethics Committee received a report in relation to the Member Officer Protocol, in particular around the formation of the Shadow Cabinet.

The Interim Director of Law and Governance introduced the report and explained that the purpose behind the report was to seek the Committee's agreement over the Shadow Cabinet Protocol within the Member/Officer Protocol.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- The Member/Officer Protocol needed a comprehensive review in terms of the wording and the relationship between Councillors and Officers.
- There were queries raised over whether a third party could setup a shadow cabinet if they so wished.
- It was agreed to change the wording to 'Mirror those portfolio's of the Cabinet.'
- It was only fair that the second largest party was able to form a shadow cabinet. This would provide a useful resource and challenging tool to the administration.
- This was a good way for opposition to learn and understand how the Council worked.

The Constitution and Ethics Committee considered and **RESOLVED** (5 for, 1 against, 1 abstain) to agree the updated Member/Officer Protocol to include a Shadow Cabinet.

6. UPDATE ON ISSUES OF NATIONAL INTEREST - COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Constitution and Ethics Committee received a report in relation to updates on issues of national interest.

The Interim Director of Law and Governance introduced the report and explained that this report was brought to Committee for information on the Committee for Standards in Public Life and its recent consultation on local government standards. Once responses to the national consultation had been assessed this would be brought back to Committee later in the year.

The Constitution and Ethics Committee considered and **RESOLVED** (unanimously) to note the report.

7. DISPENSATIONS GIVEN

The Constitution and Ethics Committee considered and **RESOLVED** (unanimously) to note that there had been no dispensations given since May 2018.

8. CODE OF CONDUCT COMPLAINTS RECEIVED SINCE MAY 2018

The Constitution and Ethics Committee received a report in relation to current complaints that had been received by the Monitoring Officer since May 2018.

The Interim Director of Law and Governance introduced the report and explained that this report set out the current complaints that had been brought to the attention of the Monitoring Officer. The Committee were informed that there was a formal investigation underway relating to a city councillor. There had been no reports on complaints presented to the Audit Committee for a number of years, however this would now be a standing item on the Committee's agenda. The report outlined the number of complaints received and the current situation on all of them.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- All issues that were being looked at were reported within the document. There were no further cases at the current time.
- It was important that Ward Councillors were kept informed of any Parish Council complaints.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimously) to note the report.

9. WORK PROGRAMME, FUTURE DATES AND MEMBER ISSUES

The Constitution and Ethics Committee received a report in relation to the Committee's Work Programme for the Municipal Year 2018/19.

The Senior Democratic Services Officer introduced the report and outlined that due to the high volume of potential items that the Committee may need to consider that two additional dates be added to the Committee's calendar.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- The date in October to be re-looked into due to party conferences.
- Members were welcome to suggest items to be included on the work programme going forward.
- Accountability of Councillors on Social media needed to be looked at and ensure that all Councillors were aware of the guidance and this to be re-circulated.

The Constitution and Ethics Committee considered and **RESOLVED** (unanimously) to:

1. Note and agree the Work Programme for the municipal year 2018/19
2. Agree that two additional dates of future meetings for the municipal year 2018/19 be added.

7:00pm – 8.36pm
Chairman