

STANDARDS COMMITTEE

15th February 2016 at 6.00 p.m.

PRESENT: Mr J. Jones (Independent Member – Chair)
Councillors Dolling, Hussain, Petts, Moles, and
Worlding, Ms. P. Brennan, Ms. M. Briggs, and Mr.
J. Hearnshaw (Vice Chair)(Independent Members)

1 APOLOGY FOR ABSENCE (REF: 3)

An apology for absence was received on behalf of Councillor Dolling Ms M Williams.

2 MINUTES (REF: 2.1)

Resolved: That subject to Ms. P. Brennan being removed from the list of those present, the Minutes of the meeting of the Committee held on 21st December 2015 be taken as read, approved as a correct record and the Chair be authorised to sign them.

3 COMPLAINTS AGAINST MEMBERS (REF: 6)

The Service Director, Human Resources and Monitoring Officer informed Members that an Adjudication Panel had been set for the end of February for Ex Councillor K. Malik's hearing.

Members were also advised that a complaint had been received against a Councillor for not communicating properly with a member of the public, although this was contested by the Councillor concerned.

Resolved: That the Report (Ref: 6) be noted.

4 REVIEW OF MEMBERS CODE OF CONDUCT (REF: 7)

The Service Director, Human Resources and Monitoring Officer invited Members to review the existing Members Code of Conduct and comment on the proposed changes. The Committee were advised that under the Localism Act 2011, Council's were required to adopt a code dealing with the conduct that was expected of members and co-opted members of the authority when they were acting in that capacity. The Localism Act required that a Member Code of Conduct must, "when viewed as a whole" be "consistent with the following principles":

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty;
- leadership.

She added that in addition, the Localism Act required that a Member Code of Conduct must include “the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of – pecuniary interests; and interests other than pecuniary interests.”

Members were informed that the existing Members Code of Conduct had been approved by Full Council on the 20th February 2013 and not been reviewed since. She added that the Group Leaders had already consulted and were keen to make it specific in the policy when an elected member was operating in the capacity as an elected member, and when in a personal capacity.

The Acting Principle Solicitor discussed with Members the extent of the effect to which the Code might bind Members. It was anticipated that the current revision of the Members Code of Conduct would clarify the extent to which it may regulate the activities of Members, and whether it applied to not only whilst conducting Council business, but also in Members private lives. He added that the Council were required to adopt the Code under Chapter 7 of Part 1 of the Localism Act 2011, which set out the conduct that was expected of Members and co-opted members of the authority when they are acting in that capacity. This had to be:

- Based on the seven principles of public life; and
- Registration and disclosure of pecuniary interests and other interests.

He went on to say that other than being based on those principles, the Council was free to determine the content of its Code, so long as it was reasonable. There must also be a system for:

- a. Investigating alleged breaches of the Code; and
- b. Making decisions on allegations of such breaches.

The current standards regime replaced the old system under the Local Government Act 2000. Under that regime local authorities had to:

- a. adopt a Code within six months of the issue of a model Code by the Government; and,
- b. If they failed to do so, they would be bound by the relevant model Code until such time as they did adopt their own Code.

The Code was to set out the conduct which is expected of members and co-opted members of relevant authorities. Again, any Code which was adopted under that system had to comply with principles set out in an Order issued by the Government, based on ten general principles. The content of the model Code, which would apply by default to any authority which failed to adopt its own Code, expressly stated:

- a. An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity;
- b. **4.** A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute; and
- c. **5.** A member – (a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage.

The Acting Principal Solicitor commented that this plainly indicated that under the old regime, a Code could regulate certain aspects of a member's life beyond his or her official duties. Also, under that regime, a member had to sign a declaration within 2 months of election that in performing his functions he would observe the authority's code of conduct for the time being, failing which they automatically cease to be a member at the end of that time. Members were informed that the High Court was required to give a ruling on the effect of a Code under the old regime in a case involving Ken Livingstone when he was mayor of London and where he had been found guilty of breaches by a case tribunal. Mr Livingstone was alleged to have breached the Code by comparing a reporter to a guard in a Nazi concentration camp, this being prohibited by the Code adopted by the GLA, specifically paragraph 2 which provided that 'a member should treat others with respect'; and paragraph 4 which provided that 'a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonable be regarded as bringing his office or authority into disrespect'.

The allegation under paragraph 2 was not proven at the tribunal as his comments were not found to be within his official capacity and,

accordingly, the High Court did not consider this aspect further. In respect of the alleged breach of paragraph 4, the High Court found that the wording *in performing his functions* may extend further than the literal meaning and not necessarily cover the same conduct as *in his official capacity*. If the words *in performing his functions* were interpreted literally then conduct such as misuse of his position to confer an advantage on a friend (which is outside his official role) would not be covered by the Code. Such an interpretation would emasculate the system set up by Parliament. It followed that conduct which was outside the member's official capacity could be covered. The use of the words *or any other circumstance* in the GLA Code did not make it unlawful however, that phrase must be narrowly construed so as only to cover conduct which is properly to be regarded as falling within the phrase *in performing his functions* and a link with his membership of the authority is needed;

The same applied to the regime under which Luton Borough Council operated. The question therefore arises as to how far conduct outside the member's official duties may be covered. Unfortunately the High Court did not give any definitive answer although it made the following observations:

- a. Unlawful conduct is not necessarily covered, meaning a councillor who shoplifts or drink drives would not be caught if the offences had nothing to do with his position as a councillor; and
- d. There is an existing regime in the Local Government Act 1972 providing for disqualification if members are convicted of offences resulting in 3 months or more imprisonment and Parliament chose not to extend that regime.

The Acting Principal Solicitor concluded that accordingly, in its revision of the Code Luton Borough Council may not go as far as to provide that it applies to every aspect of a member's life both public and private.

Councillor Dolling commented that Members conduct, unless criminal was not a breach of the code until a complaint had been made against a Member and had been confirmed by the Adjudication Panel.

Councillor Moles commented that when a Member is elected they are urged to sign the Code of Conduct and enquired what would happen if a Member refused to sign and a complaint were made against them.

The Acting Principle Solicitor replied that even if a Member refused to sign the Code of Conduct they would still be bound to it.

Councillor Dolling commented that more clarification was required in regards to gifts of hospitality with an estimated value of at least £100 from a person from whom he/she in the previous twelve months. He added that this could be interpreted as several gifts within that time period i.e. twelve separate gifts of £99, or gifts in the total of £100 for the same period. Ms. P. Brennan added that £100 was high, and that the limit for HMRC was £75.

Members commented that there were several typos and grammatical errors throughout the document and requested that these be corrected. Members also commented that several paragraphs did not flow correctly. It was also suggested that more clarity was required around the Register of Interests and that the Membership needed updating.

Resolved: (i) that the comments and suggestions listed above be incorporated into the draft Members Code of Conduct.

(ii) That a further Report be submitted to the next meeting of the Standards Committee in regards to the Members Code of Conduct.

(iii) That a limit of £75 be made for gifts of hospitality.

5 WORK PROGRAMME (REF: 8)

Members of the Committee considered the Committee's work programme and agreed that the following items are reported at future meeting of the Committee:

- Finalised Members Code of Conduct.

Resolved: That the Committee's work programme be noted and the items listed above be included in the Committee's work programme for reporting at future meeting.

(Note: The meeting ended at 7.20p.m.)