

North Yorkshire County Council

Standards Committee

Minutes of the meeting held on 29 October 2012 at 10.30 am at County Hall, Northallerton.

Present:

County Councillors David Jeffels, Brian Marshall, Caroline Patmore, Peter Sowray and Geoff Webber.

Independent Person: Mrs Hilary Gilbertson MBE.

Apology for Absence:

An apology for absence was received from Louise Holroyd (Independent Person).

Copies of all documents considered are in the Minute Book

1. Appointment of Chairman

Resolved –

That County Councillor Caroline Patmore be elected Chairman of the Committee.

County Councillor Caroline Patmore in the Chair

2. Minutes

Resolved –

That the Minutes of the meeting held on 23 April 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

3. Appointment of Vice-Chairman

Resolved –

That County Councillor Geoff Webber be elected Vice-Chairman of the Committee.

4. Public Questions or Statements

There were no questions or statements from members of the public.

5. Local Ethical Framework Developments

Considered –

The report of the Monitoring Officer regarding work undertaken in relation to the development of the new ethical framework required in accordance with the Localism Act 2011 and seeking the Committee's views on further appropriate arrangements for

the Authority's new local standards framework. The report referred to various issues, including the following:- a draft Complaint Form proforma for complainants to complete in order for their complaints to be assessed; a draft framework for a Protocol for dealing with persistent and/or vexatious complainants; proposals to amend the ethical statements; the Members' Code of Conduct adopted by the County Council on 18 July 2012 which included the requirement for Members with a disclosable pecuniary interest to withdraw from the meeting room; the registration of Members' Interests; the new simplified Complaint Handling Procedure which had now been used and was considered to be successful; the appointment of Mrs Hilary Gilbertson MBE and Ms Louise Holroyd as Independent Persons; and the delegation of power to grant dispensations.

The Monitoring Officer introduced the report.

Members discussed the report. Their comments included the following:-

- The draft Complaint Form proforma was very sensible and would assist in focussing complainants' attention on providing the information which was required in order that complaints could be dealt with properly.
- Arrangements should be made for a future Members' Seminar to provide guidance about the implications for Members of the Freedom of Information Acts and the Members' Code of Conduct. The Seminar on 14 November 2012 would provide advice concerning the Members' Code of Conduct and could be repeated, to include the implications of the Freedom of Information Acts, following the County Council elections in May 2013.
- All complaints must be looked at seriously. However, a Protocol was required for dealing with persistent and/or vexatious complainants because, on occasion, some individuals seemed to become obsessed with specific issues, including issues which were frivolous, and it was taking considerable amounts of public resources for responses to be provided under current arrangements. It was suggested that the Protocol should require that the local Member must be kept informed.

Resolved –

- (a) That the contents of the report be noted.
- (b) That the draft Complaint Form proforma, as set out at Appendix 1 to the report, be approved.
- (c) That the draft framework for a Protocol for dealing with persistent and/or vexatious complainants in relation to the standards regime, as set out at Appendix 2 to the report, be approved and that more detailed proposals, to include the requirement for the local Member to be kept informed, be submitted to the Committee's next meeting for consideration.
- (d) That arrangements be made to provide guidance, concerning the implications for Members of the Freedom of Information Acts and the Members' Code of Conduct, at a Members' Seminar following the County Council elections in May 2013.
- (e) That no revision be made to the Council's general statement re standards and statement re the role of senior managers in the ethical framework and these continue to be used in their current form.
- (f) That, subject to consultation with the Leader and Chief Executive regarding their joint ethical statement, the Chief Executive Officer and Leader general

ethics statement be updated as drafted in paragraph 5.8 of the report and that the revised Authority statement re stakeholders, as set out in paragraph 5.8 of the report, be recommended to full Council for adoption.

- (g) That, subject to consultation with the Leader and Chief Executive, the Protocol re the roles of the Leader and Chief Executive Officer in relation to the ethical framework be updated as set out in Appendix 3 to the report and be recommended to full Council for approval.

6. Standards Committee Hearings Panel

Considered –

The report of the Monitoring Officer seeking the Committee's views on the most appropriate status for the Committee's new Hearings Panel.

The Senior Lawyer (Governance) introduced the report, explained the proposals, and advised that the Panel would have the following role in relation to complaint handling:

- If local resolution of a complaint was not appropriate, or the complainant or subject Member were not satisfied with the proposed resolution, or the subject Member was not prepared to undertake any proposed remedial action, the investigation report would be reported to the Panel for the complaint to be determined.
- The Panel would meet to decide whether the Member had failed to comply with the Code of Conduct and, if so, whether to take any action.
- The Independent Person would attend all Panel meetings and would be consulted by the Panel in making its decision about whether there had been a breach of the Code and any action to be taken. The Panel would be advised by the Monitoring Officer.

During debate, and in response to a Member's question, the Monitoring Officer confirmed that, if the Panel was meeting on the same day as the Standards Committee, all five Members of the Committee would sit on the Panel on that occasion. The Monitoring Officer also confirmed that there was no mechanism to appeal against a decision of the Panel.

Resolved –

- (a) That the new Standards Committee Hearings Panel be appointed as a formal sub-committee of the Standards Committee with the Terms of Reference as set out in Appendix 1 to the report and duplicated below:-

"To undertake all functions of the Standards Committee, in consultation with the Independent Person for standards, in relation to the consideration of complaint investigation reports and the holding of complaint determination hearings regarding matters referred by the Monitoring Officer, including (but not limited to) the making of findings and the imposition of sanctions (if appropriate) in respect of complaints that Members have breached the Authority's Code of Conduct for Members, as set out in the Localism Act 2011 as amended and associated legislation."

- (b) That all Members of the Committee be appointed to the sub-committee and that the Sub-Committee have a quorum of three Members.
- (c) That the Chair of the Panel be determined at each Panel meeting.

7. Standards Bulletin

Considered –

The report of the Monitoring Officer presenting a draft Standards Bulletin for the Committee's consideration.

A Member suggested that future Standards Bulletins might be issued jointly with other local authorities. The Monitoring Officer advised that that could be explored at the forthcoming meeting of Monitoring Officers.

In response to a Member's question, Members were advised that the intention was to publish a Standards Bulletin twice a year, ie after each ordinary meeting of the Standards Committee.

Resolved –

That the Bulletin be updated as necessary following today's meeting and subsequently be circulated to Members of the Authority.

8. Initial Determination of Complaint NYCC/SC/15-24

Note: County Councillor David Jeffels had left the meeting room at the end of the previous item of business on the Agenda because he believed it would be inappropriate for him to remain in the meeting for the item "Initial Determination of Complaint NYCC/SC/15-24"

The Monitoring Officer advised that the Senior Lawyer (Governance) would advise the Committee for this item of business.

The four County Councillors present highlighted that they each had previously served, or were currently serving, simultaneously on both the County Council and a District Council and had been/were in receipt of the basic allowances paid by both authorities. The Monitoring Officer advised that this particular complaint was specific to the circumstances relating to dual hatted members from a particular district, and that different circumstances applied for each local authority, and it was in order for the four County Councillors present to participate in considering this complaint.

Considered -

- (a) The report of the Monitoring Officer referring to the Standards Committee a report on the investigation into a complaint about alleged breaches of the Members' Code of Conduct.
- (b) A copy of an email from the complainant to the Monitoring Officer dated 25 October 2012 with part of the text, which was not relevant to this complaint, redacted.
- (c) A copy of a series of emails between the complainant and the Data Management Support Assistant, North Yorkshire County Council.

The documents at (b) and (c) above were circulated at the meeting. The Chairman allowed time for Members to read through these documents before the report was introduced.

The Senior Lawyer (Governance) introduced the report, referring to the process through which the complaint was being investigated and considered. She highlighted, in particular, the document at Appendix 5, which was the report of the Deputy Monitoring Officer who had been appointed to undertake an investigation on

the Monitoring Officer's behalf. The report had been copied to the complainant and to the ten subject Members and that the complainant had subsequently sent the e mail referred to at "(b)" above.

The Deputy Monitoring Officer introduced his report. He advised that the complaint which he had been asked to investigate was set out in paragraph 2 of his report. Although he had considered a number of e-mails sent by the complainant to the County Council, before and since the Sub-Committee referred the complaint for investigation, he had come to the view that the issues raised in those e-mails were either addressed directly by his investigation of the complaint, as referred, or were on other issues which did not bear on or were not sufficiently related to the complaint. He had not, therefore, investigated those matters. The Deputy Monitoring Officer advised that the facts about the receipt of allowances by the ten Members named in the complaint were not, he believed, in dispute and had not been challenged in the responses made by those Members to his enquiry. Each of those Members had received the basic allowance from the County Council and had received some allowance from Scarborough Borough Council in respect of broadband. The central issue was whether any, or all, of the Members named did anything wrong, by action or omission, in receiving those allowances. The presumption in the complaint was that accepting the allowances from both Councils for the provision of broadband facilities was wrong. The complainant specifically referred to the County Council basic allowance including an integral payment for broadband connection fees and that the payments from the Borough Council were to cover the same broadband connection fees. The complainant had concluded his complaint by implying that there had been double claiming of expenses. The Deputy Monitoring Officer advised that there were a number of separate, but related, issues in the complaint and he had sought to address them by looking in detail at the terms of the approved allowances schemes, year by year, and the guidance given by Central Government. He apologised for the repetitive nature of paragraphs 14 to 30 of his report, but advised that he thought it was important to be clear about the terms of the Members' allowances schemes in force for each of the years in question. In respect of the separate issues raised in the complaint, The Deputy Monitoring Officer advised that he had concluded:

1. that it was clear from guidelines issued by Central Government that the basic allowance agreed by each Council must be paid to every Member in full;
2. that whilst calculation of the amount of the basic allowance for the County Council's scheme, for some years, did include an amount reflecting provision of internet access and, latterly, broadband provision, that sum was only a notional sum and its payment as part of the basic allowance was never dependent on each Member providing such facilities and was not intended as a reimbursement of actual costs incurred in doing so. Central guidance indicated that such reimbursement would not have been permissible as the payment in question formed part of the basic allowance, which must be paid at the same amount to every Member;
3. that the calculation of the basic allowance for the County Council's schemes from 2009 onwards did not include any element for the provision of ICT, so it could be said that Councillors Chatt, Cockerill, Jefferson, Marsden, Plant and Popple never received basic allowance from the County Council which included an integral calculation of the costs of broadband connection fees when the allowance was quantified by the Independent Panel;
4. that the amount of the allowances received from Scarborough Borough Council in respect of broadband facilities was dependent only on whether the broadband connection and associated cost was met directly by the Borough Council, or not, and therefore were not intended to reimburse Members for

actual costs incurred, since there was no mechanism for knowing what those were;

5. that none of the Members named in the complaint had claimed for the reimbursement of any expenses in respect of IT/broadband costs, from either Council, during any of the years 2004 to date, as all payments made were allowances approved for payment to all Members of each Council, not the reimbursement of actual costs incurred.

The Deputy Monitoring Officer advised that it was his view, therefore, that none of the Members named in the complaint had done anything wrong in receiving the allowances they were entitled to under the annual allowances schemes approved by the County Council and the Borough Council and that there had, therefore, been no breach of the Code of Conduct by these Members in respect of the matters which were the subject of the complaint. He advised that he believed that the complaint was underpinned, however, by the belief of the complainant, and perhaps other members of the public, that it was not appropriate for Councillors who were Members of more than one Council, or comparable public body, to receive allowances from each of those bodies, since there might be some perceived "overlap" in the costs and inconveniences that these allowances were meant to offset. The County Council's allowances scheme was explicit when dealing with expenses claimed by "double-hatted" Members, but made no reference to allowances paid to such Members. If Members of this Committee thought it would be appropriate and helpful to do so, they could ask that the Independent Members' Remuneration Panel consider whether there was any merit in giving explicit guidance in the schemes for future years in the implications for the payment of allowances to Members who served on more than one Council, or comparable public body. In raising this, however, it was important to reiterate that the guidance from Central Government continued to make clear that the basic allowance must be paid in full to every Member of the Council.

Members questioned the Deputy Monitoring Officer and debated the report. During the debate, Members highlighted the following issues and expressed the following views:-

- The amount Members received for IT/broadband was part of the basic allowance and was a notional sum. It was not a reimbursement of actual costs.
- There was a distinction between a claim and an allowance. Claims required positive action by the Member, ie completion of a claim form seeking reimbursement of actual costs, whereas allowances did not require such action. A further distinction was that the basic allowance was regarded as a taxable emolument whereas claims were not taxed.
- The ten subject Members were perfectly within their rights to receive the basic allowance and had done nothing wrong.
- Different Councils had different allowances schemes.

Mrs Hilary Gilbertson MBE (Independent Person) advised that the report had clarified for her that there had been no breach of the Members' Code of Conduct.

The Committee debated whether they wished any issues to be drawn to the attention of the County Council's Independent Remuneration Panel. All Members present stated that this was not necessary because the situation was already clear.

Members thanked the Deputy Monitoring Officer for his very detailed report, for the care in which he had put that report together, and for the diligent way in which he had carried out the investigation.

Resolved –

- (a) That the report on the investigation, as set out at Appendix 5 to the report, be received.
- (b) That, in relation to each of the ten subject Members, the finding of the Investigating Officer, namely, that there has been no breach of the Members' Code of Conduct, be accepted.
- (c) That, arising from consideration of this complaint, no issues be drawn to the attention of the County Council's Independent Remuneration Panel.

The meeting concluded at 11.25 am.

RAG/ALJ