

STANDARDS COMMITTEE

Minutes of the meeting held at 7.00 pm on 31 October 2019

Present:

Councillor Will Harmer (Chairman)
Councillor Vanessa Allen (Vice-Chairman)
Dr Simon Davey, Councillor Melanie Stevens, Councillor
Michael Tickner and Councillor Stephen Wells

20 APOLOGIES FOR ABSENCE

There were no apologies for absence.

21 DECLARATIONS OF INTEREST

There were no additional declarations of interest.

22 QUESTIONS

The following question for oral response had been received from Mr Ben McGowan:

Are councillors expected to uphold, support and comply with Bromley Council's Equal Opportunity Policy Statement when carrying out their duties including during council meetings?

Reply:

Yes, Councillors do have to have regard for the Council's equalities duties. In saying that, Councillors are also afforded considerable flexibility to exercise their right to freedom of political speech and judges recognise this as one of the most protected rights. Councillors also, in part, have a duty to represent the varied and diverse views of their residents.

Supplementary Question:

Does the Chair therefore believe that Cllr Tickner's comments at the October Full Council meeting, describing being LGBT+ as a "lifestyle" and "trend", and suggesting that LGBT+ inclusive RSE is encouraging children to become LGBT, are aligned with the Council's equal opportunity statement, due to the homophobia in his comments?

Reply:

As Chairman of the Standards Committee it would not be appropriate for me to comment in case this matter comes more formally to this Committee.

However, it is worth noting that in considering their judgments, judges have sought to protect freedom of political speech.

23 MINUTES OF THE MEETING HELD ON 9TH JULY 2019

In relation to Minute 17(F), a Member noted that the Committee had not unanimously accepted the reasons provided by the Monitoring Officer concerning why substitution was not allowed on the Committee. It was agreed that the minutes should be amended to reflect this.

The minutes of the meeting held on 9th July 2019, were agreed and signed as an accurate record, subject to the amendment above.

24 DISCUSSION WITH THE CHIEF EXECUTIVE

The Chief Executive, Ade Adetosoye, addressed the Committee, noting that the Council's Constitution outlined a requirement for the Chief Executive, as statutory Head of Paid Service, to have overall responsibility for all staffing matters. This necessitated that a good working relationship was developed with the Standards Committee to ensure a high standard of conduct and governance across the organisation through the scrutiny, challenge and support provided by the Standards Committee.

The Chief Executive emphasised that high ethical standards were a cornerstone of good governance in local government, helping to enhance the external reputation of the Council and strengthen its relationships with residents, service users, partners and the voluntary and community sector. High ethical standards supported Members and Officers alike in building trust and confidence and in discharging their duties in a safe, fair and transparent manner. At a staffing level, they had a positive impact on organisational culture, productivity and employee satisfaction.

In terms of the mechanisms in place for ensuring that there were high ethical standards in place for governance arrangements, the Chief Executive pointed towards the checks and balances that had been built into the decision making process: the Council's Constitution, Scheme of Delegation and legislative provisions. In addition the vast majority of Executive decisions received pre-decision scrutiny and there was the added safeguard of the right of non-executive members to 'call-in' executive decisions once they had been taken. In addition to the checks and balances within the decision making process, further assurances should be provided by: the Annual Governance Statement; the CIPFA Code of Corporate Guidance which had been adopted by the Council; Regular monitoring of the Corporate Risk Register and corporate audit activity by the Corporate Leadership Team (CLT); Quarterly departmental performance monitoring and benchmarking by CLT; Quarterly monitoring of complaints and compliments by CLT; and Regulatory inspections and sector led improvement and peer challenge.

The Chief Executive emphasised that it was important to ensure that Members and officers understood the high standards of conduct expected

within the Council and reflected the required behaviours and values in their working relationships with each other, with service users and residents, as well as partners and the wider voluntary and community sector. The Chief Executive reported that he had been reassured by the high standards of behaviour and professional conduct, challenge and support between Officers and Members that he had seen since his appointment in December 2018. In addition a comprehensive Member induction training offer was provided to members; there was also a Member/Officer protocol in place which outlined key principles to enable Members and officers to work well together and show respect for each other's respective roles and responsibilities. The Members' Code of Conduct would be revised to reflect the best practice recommendations outlined in the Local Government Ethical Standards Report with the Standards Committee being asked to make a recommendation to Council.

In concluding his presentation, the Chief Executive outlined the two key challenges going forward:

1. Considering the support that Officers could provide to Members to enable a clear level of transparency in decision making and enable residents to better understand key decision making processes and thus reduce the number of complaints made against elected members.
2. The remit of the Standards Committee allowed it to "monitor the maintenance of high standards of conduct in all the "council's activities". Further consideration would need to be given to this in light of increased service integration and partnership working. There was a delicate balance to be maintained in influencing the ethical standards of other organisations (i.e. the Council's partners and contractors) where there was no specific mandate to influence.

In posing questions to the Chief Executive, the Committee considered the Member/Officer Protocol which had been in place for approximately 13 years. Members noted that in that time the nature of the way in which the Council conducted its business had changed with a greater focus on commissioning services. Members questioned whether the Member/Officer protocol should be reviewed. In response, the Monitoring Officer explained that the Protocol was an internal document and as such could not be imposed on third parties. However, going forward there was a clear need to maintain democratic accountability and integrity and the development of protocols with partners would be important. Members agreed that whilst the Member/Officer Protocol had stood the test of time, given the remit of the Standards Committee to ensure ethical standards across the Council, it would be helpful to review the Protocol at the next meeting. The Chief Executive commented that as new relationships with partners and contractors developed it would be helpful for the Protocol to reflect expectations around the need for partners to comply with the Protocol and any Codes of Conduct.

The Committee discussed whether there was any scope in broadening its remit to include consideration of allegations made against staff by service

users. Members noted that there were specific regulatory bodies that heard allegations against certain professionals such as social workers and that the Ombudsman also dealt with service complaints. A Member emphasised that the Appeals Sub-Committee was recognised as the final stage of the Council's internal appeal process for staff in relation to grievance and disciplinary matters.

Turning to the issue of transparency in decision making, a Member noted that there had been an increase in the amount of information presented to Committees in Part 2. Recognising that the Council had developed more commercially orientated commissioning processes, Members sought assurances from the Chief Executive that Officers would avoid placing information in Part 2 unless absolutely necessary and that any information that was deemed exempt from publication was published and made publically available as soon as possible in the interest of transparency. The Chief Executive provided assurances that the Monitoring Officer had raised this issue with managers recently. It had been agreed that there would be further education for report authors and managers and guidance had been issued. The situation would be kept under review. If there were no improvements in the unnecessary Part 2 classification of report consideration would be given to whether the Monitoring Officer would have to give agreement to every report that was classified as exempt from publication. The Monitoring Officer confirmed that as a Local Authority, the presumption was that business was open and transparent. The Monitoring Officer reported that he and his staff did challenge when they felt that reports were incorrectly exempt from publication. A number of years ago advice had been issued to staff setting out that as much information as possible should be included in Part 1 with exempt information (i.e. information that was commercially, financially or legally sensitive) included in Part 2 appendices.

The Chairman suggested that consideration should be given to processes around declassifying information once it was no longer sensitive (e.g. following the sale of land, once new ownership was registered at the Land Registry). The Monitoring Officer also highlighted that consideration needed to be given to both the impact of declassifying certain information (e.g. legal advice) as the public interest test would need to be met and balancing the staff resources that would be required to regularly review Part 2 information and identify what information could be declassified.

In response to a question from the Independent Person concerning the visibility of ethical standards to Borough residents, the Chief Executive noted that the Council's website included pages on ethical standards. The Member/Officer Protocol was covered in the Member Indication process however, whilst Officers could provide training there was no mandate to compel Members to attend training.

In response to comments around ethical standards for Members and appropriate mechanisms to measure behavioural change, the Monitoring Officer reported that following the 2011 Act accountability for ethical standards had been given to the electorate who were expected to hold their elected

representatives to account at the ballot box. The Standards Committee now had regular scheduled meetings and received a summary of complaints against councillors made by residents. The Monitoring Officer confirmed that he was comfortable with the number of complaints against councillors that were received as either too many or too few complaints could be indicative of issues. The complaints that were received were well structured, well written and clearly informed by the Code of Conduct.

The Committee considered issues around Member training, noting that candidates at elections should be made aware of the Code of Conduct and refresher training provided to elected Councillors where necessary. The Chairman suggested that alternative, more flexible, options for the delivery of training, such as online training, should also be considered. In response to a question, the Monitoring Officer confirmed that councillors elected at By-elections were also provided with induction and training.

In response to a question from the Independent Person, the Chief Executive confirmed that he was comfortable with the Monitoring Officer completing the first stage 'screening' of complaints to identify whether there had been a breach of the Code of Conduct. Delegated responsibility for this process sat with the Monitoring Officer and the professional views of the Monitoring Officer should be seen as being objective. The Committee also noted that that there was a statutory duty to consult the Independent Person before referring complaints to the Standards Committee for investigation. Members noted that it was important to judge complaints against the public interest test.

**25 CODE OF CONDUCT: CONSIDERATION OF BEST PRACTICE
FROM COMMITTEE ON STANDARDS IN PUBLIC LIFE
Report CDS19160**

The Committee considered an update on the work that had been carried out to review the Council's Code of Conduct since publication of the report of the Committee on Standards in Public Life.

The Committee suggested that each paragraph within the revised Code of Conduct should be numbered and that technical terms and abbreviations should be defined. It was agreed that the second substantive paragraph should be amended to read – "You must act solely in the public interest and *must* never improperly confer an advantage or disadvantage..."

In respect of the definition of bullying and harassment, the Committee suggested that the following change be made to paragraph 1.2 – "Harassment, bullying...are unacceptable and *will* not be tolerated." A Member also suggested that in considering complaints of bullying and harassment great weight should be placed on the impact of conduct on others and how the subject of the alleged bullying and harassment perceived the behaviour.

In respect of the additional requirements around confidentiality, a Member suggested that there should be additional guidance around GDPR and the

safeguarding and secure disposal of confidential papers received by Members. The need for Members to fully understand their duties around GDPR compliant storage and disposal of sensitive data was highlighted. It was agreed that the Head of Information Management should be invited to the next meeting to discuss key issues around information governance with the Committee. The Chairman also requested that an update on Members' responsibility to ensure the security of any data held on portable electronic devices was also provided at the next meeting.

The Monitoring Officer confirmed that following the appointment of another Independent Person, in the interests of transparency, the outcome of the first stage of complaints would be sent to the Independent Person for review. Members noted that, in the event of disagreement between the Monitoring Officer and the Independent Person, the final decision would sit with the Monitoring Officer. It was noted that the Monitoring Officer was required to consult with the Independent Person before referring a complaint to the Standards Committee. A Member suggested that for clarity references in the Code of Conduct to "formal standards investigations" should be removed.

RESOLVED: That

- 1. The report be noted;**
- 2. Full Council be recommended to approve the updated Code of Conduct, subject to the amendments outlined above and standards committee members consulting with group colleagues; and**
- 3. The Public Interest Test be endorsed.**

26 MONITORING OFFICER'S GENERAL REPORT
Report CDS19158

The Committee received a report from the Monitoring Officer setting out a number of issues for consideration.

(A) Standards Commission for Scotland Case

The Committee noted that the Sheriff Principal in Scotland had recently found in favour of the Standards Commission for Scotland in a case providing that when acting in a quasi-judicial capacity the enhanced protection afforded politicians to make political comment, under the European Convention on Human Rights (ECHR), is less likely to be engaged. Whilst not binding on the English legal system the case may influence the approach taken in England. The message to be taken from this case was that there was arguably a difference between freedom to make political comment in a Council debate and what could be said when sitting in a quasi-judicial capacity.

(B) Committee for Standards in Public Life – Intimidation in Public Office

The Committee noted the report published by the Committee for Standards in Public Life concerning Intimidation in Public Life.

(C) Dispensations Granted

The Committee noted that no dispensations had been granted since the last meeting on 9th July 2019.

(D) Gifts and Hospitality Register

The report set out declarations of gifts and hospitality received since the last meeting (Appendix 2 to the report).

(E) Register of Interests

The Register of Interest was available for inspection.

(F) Code of Governance 2018/19

The final Code of Corporate Governance 2018/19 was noted by the Committee (Appendix 4 to the report).

(G) Work Programme and Matters Outstanding from Previous Meetings

The Committee considered its work programme for future meetings.

(H) Independent Persons

Two applications were received and were considered in Part 2 of the Agenda. It was agreed that an interview panel comprising the Chairman, Vice-Chairman and the current Independent Person and supported by the Monitoring Officer be established to interview the candidates and make a recommendation to the next Full Council meeting on the appointment of one or more Independent Persons for a suggested term of five years. It was agreed that, if suitable, both candidates could be appointed.

The Committee agreed that the term of office of the current Independent Person should be extended to 2022. This would enable the current Independent Person to mentor and guide any newly appointed Independent Person.

(I) Complaints

The Committee received a summary of recent complaints made against councillors.

RESOLVED: That the report be noted.

**27 LOCAL GOVERNMENT ACT 1972 AS SUBSEQUENTLY
AMENDED**

RESOLVED that the Press and public be excluded during consideration of the items of business referred to below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**The following summaries
refer to matters involving exempt information**

**28 EXEMPT MINUTES OF THE MEETING HELD ON 9TH JULY
2019**

The exempt minutes from the meeting held on 9th July 2019, were agreed and signed as a correct record.

**29 MONITORING OFFICER'S GENERAL REPORT - PART 2
APPENDICES**

The Committee considered part 2 appendices containing details of the applications for the position of Independent Person and complaints received against individual councillors since the last meeting on 9th July 2019.

The Meeting ended at 9.00 pm

Chairman