

**EXECUTIVE, RESOURCES AND CONTRACTS
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

Minutes of the meeting held at 7.00 pm on 27 November 2023

Present:

Councillor Simon Fawthrop (Chairman)

Councillors Jeremy Adams, Felicity Bainbridge, Mark Brock,
David Cartwright QFSM, Adam Jude Grant, Julie Ireland,
Simon Jeal, Tony Owen, Shaun Slator, Mark Smith,
Melanie Stevens, Ryan Thomson, Michael Tickner and
Pauline Tunnicliffe

Also Present:

Councillor Christopher Marlow, Portfolio Holder for Resources,
Commissioning and Contracts Management

58 POLICY DEVELOPMENT AND OTHER ITEMS

**E REVIEW OF THE COUNCIL'S MEASURES ON FREEDOM OF
SPEECH FOR EMPLOYEES
Report CSD22020**

The Chairman of ERC PDS committee had requested a report to review the Council's process, policy and procedure to protect and defend freedom of speech for Council staff and for those who work for the Council's contactors. The report looked at the process, policy, and procedure to protect and defend freedom of speech for Council staff and considers the measures available to staff who work for the Council's contractors.

The Committee noted the following amendments (in italics) to the recommendation and report had been proposed by the Chairman:

Paragraph 2.1 (recommendation): Members are asked to note the following:

- 2.1.1 *the fundamental importance of the right to freedom of speech to the Council's activities, and the narrow scope for interfering with political expression; and*
- 2.1.2 *the potential liabilities faced by the council if it fails to protect that right, either in relation to Councillors or Council employees.*

2.2 Officers are asked to take the following actions in support of the recommendations under paragraph 2.1 **Error! Reference source not found.** above:

2.2.1 to review the Council's policies, procedures and Constitution with a view to ensuring that they reflect the fundamental importance of the right to freedom of speech; and

2.2.2 to report to the Executive and Constitutional Working Party on progress with the review recommended at paragraph 2.2.1 above.

2.3 GP&L and the Constitutional Improvement Working Party is recommended to note this report and update the code of conduct for Officers and Members, and inform members of the Standards Committee to reflect the above recommendations.

2.4 Note the additional text added to the body of the report.

Body of the report

4.6 Doing so risks discrimination unless an employer has also considered whether the action is both a necessary and proportionate *interference with the right to freedom of expression*. Any objective justification of a restriction is always dependent on context and is employment-specific.

4.9 ... Freedom of expression and the protection of these individual characteristics have been tested in the employment tribunal due to the potential conflict that arises between competing rights, *particularly as damages for discrimination are uncapped*.

5.2 ... A public interest disclosure must be made to certain people (e.g. the employer) in order to attract statutory protection. *An employee complaining about suppression of certain beliefs is also likely to have whistleblower protection under the Employment Rights Act and the Equality Act.*

Members sought clarification around whether the report author had agreed to the changes made to the body of the report and the Assistant Director for Legal Services (the report) confirmed that the changes were the Chairman's. A Member highlighted that during his five years serving on the Council he had never seen the body of an Officer report amended in this way. In response the Assistant Director of Legal Services confirmed that it was unusual for any Member to amend an officer report in this way and the changes has been neither approved nor disapproved by the report author.

Seeking a clarification regarding the Chairman's intention in proposing the amendment to paragraph 5.2, a Member queried whether the Chairman was expressing a desire which could be phrased as "*where possible, an employee complaining about suppression of certain beliefs should receive whistleblower protection under the Employment Rights Act...etc.*"

Paraphrasing Voltaire, the Chairman explained that the right to respectfully dissent from other points of view and give voice to that via free speech formed the basis of

an enlightened society. As such, the basis of the report was to strengthen the fundamental human right to free speech within the Council, the Chairman highlighted that within the 1948 Declaration of human Rights Freedom of Speech was a right under Article 19 yet there was no right to equality. The right set out in Article 19 established that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Much of the declaration was enshrined in UK law under Article 10 of the Human rights Act, which established that ““The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society...” The Chairman highlighted the importance of recognising as a Council, through processes and procedures, that everyone needed to be protected from excessive restrictions or attempts to infringe freedoms, either through incorrectly applied “Groupthink” or societal bullying against reasonably held beliefs. The Chairman highlighted that there was no right to not be offended, because being offended was a choice an individual made. Freedom of speech was not democratic but was at the core of upholding fundamental democratic values. It was also understood that freedom of speech was necessarily constrained by the law however, in the free speech case of *Redmond-Bate v Director of Public Prosecutions* [1999] Lord Justice Sedley set out that this freedom encompassed "the irritating, the contentious, the eccentric, the heretical, the unwelcome and provocative". Invoking the classical Greek philosopher Socrates, he warned against state attempts to control unofficial ideas by saying "Freedom only to speak inoffensively is not worth having."

The amendments set out above were proposed by the Chairman and seconded by Councillor Slator. Upon being put to the vote 12 were in favour, 3 were against. The amendments were therefore CARRIED.

(In voting against the motion, Councillor Jeal and the Labour Members on the Committee clarified that there were not opposed to free speech but were fundamentally opposed to the principle of editing a report written by a Legal Officer.)

RESOLVED: That

- 1. The fundamental importance of the right to freedom of speech to the Council’s activities, and the narrow scope for interfering with political expression be noted;**
- 2. The potential liabilities faced by the council if it fails to protect that right, either in relation to Councillors or Council employees be noted;**
- 3. Officers are asked to take the following actions in support of the resolutions (1) and (2) above:**
 - (a) to review the Council’s policies, procedures and Constitution with a view to ensuring that they reflect the fundamental importance of the right to freedom of speech; and**

(b) to report to the Executive and Constitutional Working Party on progress with the review recommended at paragraph 3 (a) above.

- 4. GP&L and the Constitutional Improvement Working Party be recommended to note this report and update the Code of Conduct for Officers and Members and inform members of the Standards Committee to reflect the above recommendations.**
- 5. Note the additional text added to the body of the report.**