

MINUTES of the meeting of Audit and Governance Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford, HR1 1SH on Wednesday 5 December 2012 at 10.00 am

Present: Councillor J Stone (Chairman)

Councillors: EMK Chave, PGH Cutter, AJ Hempton-Smith, TM James, Brig P Jones CBE and PJ McCaull

In attendance: Councillors GA Powell, AJW Powers and A Seldon
J Bharier, Independent Person, Standards Panel

36. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors CNH Attwood and JW Millar.

37. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes.

38. DECLARATIONS OF INTEREST

Councillor GA Powell declared a non-disclosable pecuniary interest in agenda item 6 [Standards Panel Report, 22 November 2012, minute 41 below], and remained in the meeting for the duration of the item.

39. MINUTES

The Chair commented that the Library at the Shire Hall, where the previous meeting had been held, was a suitable alternative venue for meetings of the Committee as the need arose.

Referring to minute 30 [Work Programme 2012/13], a Committee Member commented that some potential items of business identified at previous meetings for future consideration were still outstanding and requested that these be expedited.

RESOLVED: That the minutes of the meeting held on 12 November 2012 be approved and signed as correct record by the Chairman.

[Note: Agenda item 6 (minute 41) was considered before item 5 (minute 40) but the agenda order has been retained below for ease of reference.]

40. NOTICES OF MOTION

The Assistant Director Law, Governance and Resilience reported that issues with the process for amending notices of motion had been highlighted at Council in September 2012. Consequently, the amendment of the Council's Procedure Rules was recommended, alongside a related protocol. This would allow Members to retain priority by lodging a notice of motion (or a description of the subject matter) and then to refine the wording, in consultation with the Monitoring Officer, to ensure proper formulation prior to the publication of the relevant agenda.

The Chairman welcomed the report and noted the need for the deadline on submission to ensure that sufficient notice could be given of the subject matter to be debated.

In response to a question, the Assistant Director Law, Governance and Resilience confirmed that the existing Procedure Rules limited the number of notices to a maximum of three notices on each agenda [paragraph 4.1.16.2 refers].

The Committee endorsed the recommendations to Council.

RESOLVED: That the following be recommended to Council:

(a) Procedure Rule 4.1.16 be amended as indicated in the protocol appended to the report; and

(b) the protocol appended to the report be adopted.

41. STANDARDS PANEL REPORT, 22 NOVEMBER 2012

The Assistant Director Law, Governance and Resilience submitted a report on the recommendations of the Independent Person in relation to a breach of the Code of Conduct by Councillor GA Powell.

The Chairman commented that this was the second report from the Standards Panel since the introduction of the new standards system in July 2012. It was noted that a report from the Committee regarding breaches of the Members' Code of Conduct by Councillor MAF Hubbard [minute 34 of 2012/13 refers] had been submitted to Council in November 2012 but, due to unforeseen circumstances, the item had been held over until an extraordinary meeting of Council on 4 January 2013.

The Chairman explained the procedure that would be followed. He emphasised that the investigation into the complaint had been completed and considered by the Standards Panel. Therefore, unless new evidence was presented or issues were identified with the process, the Committee was not expected to reopen the whole case but to move forward by considering the recommendations.

The Chairman noted that the complaint had been made in 2010 and the length of time taken to reach this position was likely to have had an impact on the wellbeing of Councillor Powell. He added that this highlighted the need for cases to be dealt with as efficiently and as speedily as possible.

The Assistant Director Law, Governance and Resilience reported that the Assessment Sub-Committee of the Standards Committee had considered the complaint in December 2010 and referred the allegation for investigation but there had been delays subsequently, in part due to the abolition of the regime under the Localism Act 2011 and the implementation of a new system. As a complaint for final determination under the old regime but not concluded by the Standards Committee, this case fell to be considered by the newly constituted Standards Panel.

It was reported that the Standards Panel had met on 22 November 2012 to consider the complaint, originating from an email from the subject member on 21 July 2010 about certain matters relating to the Northolme Community Centre Association [NCCA]; detailed notes of the Panel meeting were appended to the report. The Panel found that: it was reasonable to perceive the subject member as acting in her capacity as a councillor when she sent the email; the allegations in the subject member's email were unsubstantiated; and the subject member had failed to comply with the Code of Conduct. Attention was drawn to the recommendations of the Independent Person, as follows:

- the Audit and Governance Committee be asked to present a report on the consideration of the investigation of the complaint to the next full council meeting;
- the Audit and Governance Committee be asked to recommend to Council to consider whether it was appropriate for the member to be appointed or nominated by the authority as a representative to external bodies; and
- training should be arranged for the subject member to ensure that she is fully aware of the provisions of the Members' Code of Conduct.

The Assistant Director Law, Governance and Resilience advised that any recommendation regarding external bodies could only be determined by Council as the appointing / nominating body. The Committee was also advised that Councillor Powell last attended Code of Conduct training in October 2008. It was noted that a decision regarding another complaint made by a representative of the NCCA about the subject member had been subsumed as part of the Panel's deliberations and recommendations.

In response to questions, the Assistant Director Law, Governance and Resilience provided clarification about the purpose of the second recommendation and the options available to Council, such as restricting future appointments / nominations to external bodies or to terminate any current arrangement involving the subject member. A Committee Member questioned the relevance of this recommendation, as vacancies might arise with no links to the circumstances of this specific case. The Assistant Director Law, Governance and Resilience said that it was his understanding that the Independent Person and the Panel had misgivings about the disjointed relationship that had developed between the subject member and the NCCA and considered that this, alongside the lack of training undertaken, should be borne in mind when considering any appointments / nominations.

A Committee Member expressed concern about the legal position for an external body if an appointment was withdrawn by the Council and sought clarification about the application and consistency of sanctions under the new standards system. The Assistant Director Law, Governance and Resilience advised that the legal position would depend on the nature of the external body concerned and the Complaints Process agreed by Council [minute 31 of 2012/13 refers] included the following examples of possible action '*Reporting its findings to Council for information*' and '*Recommending to Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority*'. The Committee Member expressed concern that it would not be appropriate for Council to become engaged in a debate about the relative merits of any individual. Another Committee Member added that no criteria had been identified to enable an assessment to be undertaken of suitability to serve on particular external bodies.

The Chairman reminded the Committee of its responsibilities under the new standards system and said that the subject member would be invited to address the Committee and the Independent Person, Mr. Bharier, would be given an opportunity to respond.

Councillor Powell addressed the committee, the principal points included:

- i. The Council had nominated her to serve on the South Wye Regeneration Partnership, due to thirteen year's previous experience, but she could sit on the board in her own right in any case.
- ii. The issues were more extensive than the email dated 21 July 2010 and she provided background to the case, including:
 - Issues since the start of the Northolme Community Centre and concerns that had arisen about the accounts;

- Council officer advice to Councillor Powell, her withdrawal from the NCCA and information passed to other directors;
 - questions raised by other directors and their release from the NCCA;
 - incidents during and following a meeting held on 25 June 2010; and
 - the circumstances that prompted the email on 21 July 2010 from her private email address and not as 'Councillor Powell'.
- iii. Councillor Powell said that, on reflection, perhaps she should not have referred to the group running the centre as a 'clique' but wanted to convey the concerns she had at the time about procedures and access to meetings.
 - iv. The amount of evidence that she could present was limited by her annual practice of deleting emails from the previous year.
 - v. Councillor Powell said that others had commented on her approachability and she disputed any suggestion that she had been disrespectful.

The Chairman thanked Councillor Powell for her contribution and said that the Committee would have the opportunity to ask questions. In response to a question from the Chairman, Councillor Powell maintained that the Charity Commission had been involved with the NCCA. Councillor Powell re-iterated the concerns she had about the accounts.

Councillor Powell presented a folder highlighting paperwork that might not have been considered by the Standards Panel. The Independent Person confirmed that he had spent considerable time at the Council offices reading through the documentation submitted by various parties in relation to the complaint.

A Committee Member said that many associations had, by definition, a narrow focus and tensions about management and finances were not uncommon. However, it was acknowledged that it was not the business of this meeting to scrutinise the NCCA.

In response to a question from another Committee Member, Councillor Powell said that former directors might be able to clarify the extent of the involvement of the Charity Commission.

The Independent Person advised that he had over twenty years' experience at a senior level with charities. He said that investigations were only undertaken by the Charity Commission when major problems arose, such as serious financial irregularities or a complete breakdown of governance. Furthermore, the Charity Commission was obliged to report such investigations on its website and only four reports had been made in the last six months; as there were some 160,000 charities, this demonstrated the infrequency and significance of investigations. Although correspondence had been sent from the Charity Commission to individuals, rather than to the board of the NCCA, no evidence had been presented to suggest that this involved more than standard letters referencing existing advice notes.

The Chairman adjourned the meeting for fifteen minutes to enable the Independent Person to review the contents of the folder tabled by Councillor Powell. Upon recommencement of the meeting, the Independent Person was invited to respond and he made the following points:

1. The Localism Act 2011 required the appointment of at least one Independent Person '*whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate*' [Part 1, Chapter 7, paragraph 28 (7) refers]. The Standards Panel also included a

representative of Herefordshire Council and a representative of the town and parish councils.

2. Panel members had served on the former Standards Committee. Therefore, the panel had significant experience of the Code of Conduct, examining cases and identifying appropriate sanctions if complaints were upheld.
3. He re-iterated the extent of the documentation reviewed in relation to this case and said that he could not identify any new evidence in the folder provided by Councillor Powell.
4. There might be governance and management issues to resolve within the NCCA but, as the Independent Person, he had to focus on the conduct of the subject member and in what capacity that conduct had occurred. In view of the subject member's previous involvement, it was considered reasonable to perceive her as acting in her capacity as a Councillor.
5. Councillors needed to consider how their behaviour might be perceived by the public and it was not necessarily helpful to appear to be taking sides in such disputes.
6. The Panel had to concentrate on matters that could be substantiated and concluded that the subject member had failed to comply with the Code of Conduct.

The Chairman noted that the complainant was not present and invited a final comment from the subject member. Councillor Powell said that: documentation in the respect of the Charity Commission existed but it was not hers to submit; she did not consider that she had breached the Code of Conduct; she continued to act in the best interests of the people in her ward; public money had to be properly accounted for; and she had brought her concerns to the attention of the Council and had sought officer advice.

The Chairman recognised the experience within the Standards Panel and that it was operating on the basis of the role agreed by Council. He noted the commitment and considerable work undertaken by the Panel and thanked the Independent Person for his further contribution at this meeting.

The Chairman invited comments from the Committee about the recommendations detailed in the report. A Committee Member, although in broad agreement with the report and recommendations - particularly in relation to training, did not feel able to support the recommendation '*Members request Council to consider the recommendation of the Independent Person as to the membership of outside bodies*'. This was endorsed by the Committee.

A Committee Member suggested that the involvement of Council officers on the management boards of community organisations should be reviewed.

In view of the limited training received by the subject member to date, it was proposed that the training be provided within three months and the outcome reported back to the Committee in due course.

RESOLVED: That:

- (a) The report of the Standards Panel meeting on 22 November 2012 be **approved noted**; and
- (b) The **following** recommendations of the Independent Person be approved:

- 1) *the Audit and Governance Committee present a report on the consideration of the investigation of the complaint to Council; and*
- 2) **the Monitoring Officer be requested to arrange training for the subject member, to be undertaken by the subject member within three months of the date of this meeting.**

[Note: Amendments made on 19 February 2013]

42. DATE OF NEXT MEETING

The Committee noted that the next scheduled meeting was to be held on Friday 18 January 2013. This would be followed by a private, informal meeting with Committee Members and the Heads of Internal and External Audit, as part of established best practice.

[Note: The 18 January 2013 meeting was subsequently cancelled. Therefore, the next scheduled meeting was to be held on Tuesday 19 February 2013. The informal meeting with the auditors was postponed and was to follow the Committee meeting on Friday 15 March 2013.]

The meeting ended at 11.38 am

CHAIRMAN