

STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee held in Conference Room 1b, County Hall, Wynnstay Road, Ruthin LL15 1YN on Friday, 25 October 2013 at 10.00 am.

PRESENT

Independent Members – Ms. Margaret Medley, Reverend Wayne Roberts, Mr. Ian Trigger (Chair) and Mrs. Paula White together with County Councillor Bill Cowie and Community Councillor David Jones

ALSO PRESENT

Monitoring Officer and Head of Legal and Democratic Services (GW) and Committee Administrator (KEJ)

Ms. Annie Ginwalla, Investigating Officer – Public Services Ombudsman for Wales was in attendance for item 4.

1 APOLOGIES

Councillor Colin Hughes

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest were raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters were raised.

4 CONSIDERATION OF REPRESENTATIONS AND FINAL DETERMINATION OF A REPORT PREPARED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES UNDER SECTION 71(2)(C) THE LOCAL GOVERNMENT ACT 2000 (REF 2871/201002627)

The Chair extended a warm welcome to Ms. Annie Ginwalla, Investigating Officer – Public Services Ombudsman for Wales who was in attendance for this item. All present were introduced and the manner and order of proceedings was explained. Members confirmed that they had previously received copies of the Ombudsman's Investigation Report and the opportunity to study the documentation in advance.

The Committee was asked to consider the findings of the Ombudsman's Investigation Report regarding an allegation that former County Councillor Allan Pennington had failed to comply with the Council's Code of Conduct together with any representations made by former Councillor Pennington in respect of those findings, and to make a final determination in relation to the matter. Mr. Pennington was not in attendance at the meeting and had failed to respond to correspondence from the Council or provide any written representations in response to the

Ombudsman's findings. The Monitoring Officer advised that in preparation for the hearing Mr. Pennington had been written to on two occasions – the second letter had been sent via recorded delivery and signed for on receipt although the signatory had not been clear. On that basis the Committee was satisfied that in all probability Mr. Pennington had received notice of the hearing and all the necessary documentation. Consequently the Committee agreed to proceed with the hearing in Mr. Pennington's absence.

Ms. Annie Ginwalla, Investigating Officer presented the Ombudsman's report on the investigation. She detailed the allegations, legal background and relevant legislation, and provided an analysis of the evidence obtained during the investigation including disputed facts together with conclusions made.

In summary the Committee was advised of the following –

- a complaint had been received that former Councillor Pennington had failed to observe the Code of Conduct for members of Denbighshire County Council on 8 December 2010, when he attended a meeting of the Licensing Committee. It was alleged that the former Councillor should have declared a personal interest at this meeting as a consequence of his employment as a taxi driver when a matter concerning the Private Hire vehicle testing regime was discussed and voted upon
- the former Councillor denied that he had an interest and that he participated in the voting on the items concerned. Evidence received from members and staff present at the meeting confirmed that the former Councillor did not declare an interest; he was involved in the discussions and was included in the voting on a number of proposals concerning the taxi trade
- the investigation concluded that the business conducted at the meeting related to or was likely to affect former Councillor Pennington's employers and had the potential to affect his employment also, thereby giving rise to a personal and prejudicial interest. The investigation also identified that former Councillor Pennington failed to update his statutory register within 28 days of commencing his employment as a taxi driver in July 2008
- on the basis of the evidence obtained during the investigation, the Ombudsman was satisfied that former Councillor Pennington's conduct may have breached paragraphs 10(1), 11(1), 14(1)(a) and 15(2) of the Code. Consequently the report had been referred to the Monitoring Officer for consideration by the Council's Standards Committee.

The Ombudsman's concern regarding allegations made by former Councillor Pennington against council officers during the investigation was also highlighted. Those claims had been perceived as malicious and an attempt to undermine officers and their evidence. It was a matter for the Committee to determine whether the former Councillor had breached paragraph 6(1)(a) of the Code by having brought the office of member into disrepute by his conduct during the investigation.

In response to questions Ms. Ginwalla confirmed it was appropriate for the Committee to consider any further potential breaches of the Code identified during the investigation process. She also confirmed that former Councillor Pennington had been made aware of the potential breach of paragraph 6(1)(a).

The Committee retired to deliberate in private on the representations as to matters of fact and whether former Councillor Pennington had failed to comply with the Code of Conduct. After a discussion of all the issues raised, in particular the disputed facts as detailed in paragraph 52 of the Investigation Report, the Monitoring Officer announced their unanimous findings of fact that former Councillor Pennington –

- had participated in the voting on the matters decided at the meeting
- had a personal interest in items 3, 4 & 5 of the meeting
- should have been aware of that interest and declared it during the meeting
- did have a prejudicial interest in items 3, 4 & 5 of the meeting
- should not have remained at the meeting
- failed to update his statutory register of members' interests in accordance with his obligations under paragraph 15(2) of the Code.

The Committee then considered whether, based on the facts it had found, former Councillor Pennington had failed to comply with the Code of Conduct. In applying the findings of fact the Committee found breaches of paragraphs 10(1), 11(1), 14(1)(a) and 15(2) of the Code of Conduct.

The Committee also considered whether there had been a breach of paragraph 6(1)(a) and had been particularly concerned in respect of this allegation. Based on former Councillor Pennington's conduct during the investigation as described within the report and detailed within the appendices to the report the Committee unanimously agreed that his conduct did amount to a breach of paragraph 6(1)(a).

The reasons for the Committee's decision had been based on the Ombudsman's representations detailed within the Investigation Report and the Committee had concurred with those submissions. In terms of the unfounded allegations made by the former Councillor against council officers the Committee was also keen to express their confidence in those officers.

At this point Ms. Ginwalla, Investigation Officer was invited to make representations as to whether or not the Committee should apply a sanction and what form any sanction should take. She advised that the Ombudsman felt it would be appropriate to impose a censure in the circumstances to reflect the serious nature of the breaches and serve as a reminder to the former Councillor and other councillors the importance of the Code and the responsibility the Code places upon them. As Mr. Pennington was no longer a councillor sanctions were limited otherwise a more severe sanction would have been sought. The Chair sought clarification regarding the application of a sanction to particular breaches and the Monitoring Officer advised the Committee to consider the conduct in totality as opposed to individual breaches. He detailed the process to be followed if a sanction was to be imposed and publication of the Committee's decision.

The Committee retired to deliberate in private on the representations that former Councillor Pennington should be censured. In view of the nature of the breaches, particularly with regard to the breach of paragraph 6(1)(a) of the Code the Committee unanimously concluded that there should be a public censure of former

Councillor Allan Pennington. The Committee was keen to highlight that they would have imposed a more severe sanction if that option had been available to them.

RESOLVED that former Councillor Allan Pennington be publicly censured.

The reasons for the decision were that the Committee had unanimously agreed with the reasons detailed in the Ombudsman's Investigation Report for both the findings of fact and breaches of the Code of Conduct.

The Chair thanked Ms. Ginwalla for her comprehensive report and presentation.

At this juncture (11.30 a.m.) the meeting adjourned for a refreshment break.

5 MINUTES OF THE LAST MEETING

The minutes of Standards Committee held on 7 June 2013 were submitted.

Accuracy –

Page No. 23 – Item No. 9 Attendance at Meetings – Councillor Bill Cowie asked that reference to 'W.E. Cowie' be amended to 'W.L. Cowie'. Councillor David Jones also asked that 'The Community Council had expressed their confidence in their Clerk...' be amended to 'The Community Council clearly had confidence in their Clerk...'

RESOLVED that, subject to the above, the minutes of the meeting held on 7 June 2013 be received and approved as a correct record.

6 PUBLIC SERVICES OMBUDSMAN FOR WALES' ANNUAL REPORT 2012/13

The Monitoring Officer (MO) submitted a report (previously circulated) informing members of the Annual Report of the Public Services Ombudsman for Wales for the year 2012/13. The Ombudsman's Report had been included as an appendix.

Members' attention was drawn to the following headline messages –

- complaints about the conduct of members received during 2012/13 fell by 29% compared to the previous year which had been largely attributed to 2011/12 being an election year; inappropriate use of the complaints system and the success of local resolution
- complaints relating to unitary authorities having reduced from 178 in 2011/12 to 150 in 2012/13 and in City, Town and Community Councils from 205 in 2011/12 to 140 in 2012/13 (the reduction in complaints about Prestatyn Town Councillors in 2012/13 could account for that decrease)
- the majority of complaints received during 2012/13 related to – equality and respect (35%), accountability and openness (19%), disclosure and registration of interests (18%) and integrity (18%)
- 371 complaints closed in 2012/13 with 283 closed after initial consideration, 18 in which the investigation was discontinued, 23 where there was no evidence of a breach and 15 where no action was deemed necessary – only

20 cases were referred for a hearing, 15 to Standards Committees and 5 to the Adjudication Panel for Wales

- the statistical breakdown of outcomes by local authorities with 4 complaints having been closed in respect of Denbighshire Members after initial consideration with no matters resulting in an investigation.

Other matters of interest included changes to working practices and changes to guidance arising from the High Court decision relating to Councillor Calver of Manorbier which the Committee had discussed previously. The Ombudsman's support for a voluntary cap on the level of indemnities provided to members in standards cases had also been referenced within the report together with the use of legislation to impose a cap if voluntary agreement was not secured.

The Committee noted the contents of the report and the Chair thanked the Monitoring Officer for extracting the relevant matters for members' consideration.

RESOLVED that the contents of the Ombudsman's revised guidance be noted.

7 CAP ON MEMBER INDEMNITIES FOR CODE OF CONDUCT COMPLAINTS

The Monitoring Officer (MO) submitted a report (previously circulated) seeking a recommendation to Council that the indemnities available to members involved in Code of Conduct hearings be capped at a maximum figure of £20,000.

The scale of indemnities provided by local authorities to members had been the subject of much debate with concerns expressed by the WLGA, the Ombudsman and the Chair of the Adjudication Panel for Wales in that regard. The view of the WLGA and the Ombudsman had been detailed within the report for further consideration. The Committee had informally discussed the issue of indemnities previously and had supported a cap and now considered the merits of the formal recommendation as detailed within the report, noting the proposed amendment to the form of indemnity as attached in the appendix to the report. During the ensuing debate the MO responded to members' questions confirming that the figure of £20,000 was a cap and not a target figure and that if it was found that a member had breached the Code of Conduct they must repay the money – the indemnity was intended for those maliciously or wrongly accused. In terms of procedure it would be the responsibility of the Corporate Governance Committee to determine applications for a cost indemnity and the amount of that indemnity.

Members supported the recommendations detailed within the report and it was –

RESOLVED that it be recommended to Corporate Governance Committee and Council –

- (a) that the Corporate Governance Committee considers, on a case by case basis, each application for a costs indemnity in order to decide whether an indemnity should be given at all;
- (b) that if, in any individual case, an indemnity is to be given in respect of matters relating to a breach of the Members' Code of Conduct, the Corporate

Governance Committee should decide on the amount of that indemnity up to a maximum of £20,000, and

- (c) *that the Council's Constitution and form of indemnity be amended as necessary to reflect these decisions.*

8 ATTENDANCE AT MEETINGS

Members of the Standards Committee reported upon their attendance at meetings of the County, Town and Community Councils as follows –

Reverend Wayne Roberts routinely attended meetings of the County Council as the Chairman's Chaplain and reported upon the meeting held on 10 September 2013 when the Investigator's Report on the floods at Glasdir, Ruthin had been considered. A good debate had taken place and Reverend Roberts congratulated the Chair on his control of the meeting and reported that the general behaviour had been excellent.

Councillor Bill Cowie reported upon excellent, well run meetings of St. Asaph City Council with no issues of concern.

The Chair reported upon his attendance at Llanarmon yn Ial Community Council on 3 July 2013 at which there was a friendly atmosphere. There were nine Community Councillors present and despite a member of the public exceeding the time allocated for his address at the meeting, the Chair handled the meeting well in a firm and friendly manner. The only issue was some discussion about a matter which was unrelated to the agenda. The Chair advised he had been given the opportunity to impress upon the Community Council the importance of training and whilst the Council had appeared keen there were some concerns about cost. He had advised that Code of Conduct training was provided free of charge with future sessions being held in the Summer and invitations sent out in the Spring. The Monitoring Officer advised that training sessions for Chairs and Vice Chairs would also be held soon after the Annual General Meetings but a small charge would be made as an external training provider would be used. He also advised members that Denbigh Town Council had contacted him seeking specific training on declarations of interest.

Reverend Wayne Roberts stated his intention to attend a meeting at Denbigh Town Council and Councillor David Jones hoped to attend the Llanbedr DC Community Council meeting on 5 November 2013.

RESOLVED *that the verbal reports from members attending meetings be received and noted.*

9 DATE OF NEXT MEETING

The Standards Committee's next meeting had been scheduled for 10.00 a.m. on Friday 22 November 2013 in Conference Room 1B, County Hall, Ruthin.

The Monitoring Officer advised there were no formal items for consideration at that meeting but issues available for discussion related to (1) Amendments to the Member/Officer Protocol, and (2) Update from the Welsh Government on Joint Standards Committees. The item on Social Media Guidance would not be ready in time for that meeting. In the absence of any pressing matters the Committee agreed to defer consideration of those two issues to their January meeting and cancel the meeting scheduled for 22 November. If any urgent issues arose during the interim a special meeting of the Committee would be arranged.

RESOLVED that the next meeting of the Standards Committee scheduled for 22 November 2013 be cancelled.

EXCLUSION OF PRESS AND PUBLIC

RESOLVED that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.

10 CODE OF CONDUCT - PART 3 LOCAL GOVERNMENT ACT 2000

A confidential report by the Monitoring Officer (MO) was submitted (previously circulated) providing an overview of complaints against members lodged with the Public Services Ombudsman for Wales since 1 April 2012.

Members noted the outcome of those complaints recently completed and considered the status of ongoing complaints. The MO advised that two of the ongoing complaints were to be discontinued and the third had been dealt with by the Committee earlier on the agenda. The Chair commented on the lengthy time taken to complete the complaints process in particular cases and the benefits of a swift resolution.

RESOLVED that report be received and noted.

Prior to the close of the meeting and at the request of Councillor David Jones, the Monitoring Officer clarified the distinction between predetermination and predisposition and provided a number of examples to illustrate the difference. Councillors had been advised to speak with the Monitoring Officer if they had any doubt in this regard.

The Chair thanked members for their contribution to the meeting and also thanked the Monitoring Officer for his assistance.

The meeting concluded at 12.20 p.m.