

STANDARDS & ETHICS COMMITTEE

28 SEPTEMBER 2010 -

**Minute 13 Resolution was amended at the Meeting on 23 November 2010 the amendment is indicated in bold italics.**

Present: Independent Members: Akmal Hanuk (Chairperson),  
Anne Morgan (Deputy Chairperson), Maureen  
Hedley-Clarke, Deirdre Jones, Paul Stockton.

County Councillors: Delme Bowen, Tim Davies and  
Simon Wakefield

Community Councillor John Hughes

Apologies: Deirdre Jones (Independent Member)

S11 : MINUTES

The Minutes of the meeting of the Standards and Ethics Committees held on 27 July 2010 were approved as a correct record and signed by the Chairperson.

S12 : DECLARATIONS OF INTEREST

The Chairperson reminded Members of their responsibilities under Part III of the Members' Code of Conduct, to declare any interests in general terms and complete "personal interest" forms at the start of the meeting and then, prior to the commencement of the discussion of the item in question, specify whether it is a personal or prejudicial interest. If the interest is prejudicial, Members would be asked to leave the meeting, and if the interest is personal, but not prejudicial, Members would be invited to stay, speak and vote.

S13 : PROPOSED PROCEDURE FOR DEALING WITH  
ALLEGATIONS MADE AGAINST COUNCILLORS AND REFERRED  
TO THE STANDARDS AND ETHICS COMMITTEE

(a) Proposed Procedure for Dealing with Hearings

The Standards and Ethics Committee needs to have in place effective and

efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor or Community Councillor in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority. All such allegations must in the first instance be made to the Public Services Ombudsman for Wales, who will decide whether or not to investigate the matter.

The Committee at its meeting on 27 July 2010 requested the Monitoring Officer to prepare, having regard to best practice, a procedure for dealing with any Hearings that would be undertaken by the Committee in future.

The Committee was advised that at this meeting Members were being asked to consider and if approved adopt the proposed procedure (set out in the schedule to the report) for dealing with allegations made against Councillors and referred to the Standards and Ethics Committee for determination as a result of either:-

- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer. The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standards and Ethics Committee;
- (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer, for reporting to the Standards and Ethics Committee.

Attention was drawn to an e-mail from a member of the public that had been circulated at the meeting, which requested that the Committee adopt an additional option to those set out in paragraph 9.3 of the proposed procedure such that when determining whether a Councillor had breached the Code, consideration should also be given as to whether the Code itself was fit for purpose. The Legal Officer clarified that the Local Government Act 2000 and the Regulations made there under specifically set out the functions of the Standards committee and prescribed what determinations the Committee could make when considering a report from the Ombudsman in respect of an alleged breach of the code by a Member, which determinations did not include commenting upon the fitness of the code. That said, the Committee was advised that agreeing to a procedure for dealing with allegations of breach of the code would not preclude the Committee considering and recommending amendments to the Code at future meetings, should Members feel that was appropriate.

In response to a query the Legal Officer clarified that if at the end of any Hearing the Committee had any general observations it wished to raise with the Ombudsman, then the Chairperson could be asked to write to the Ombudsman on behalf of the Committee, if that was the Committee's wish.

The Chairperson reiterated that the Committee were being asked to make a decision on whether they wished to adopt the proposed procedure for dealing with Hearings that would be undertaken by the Committee. The Committee unanimously approved the procedure set out in Appendix A of the Monitoring Officer's report.

(b) Initial hearing into an allegation of a breach of the code of conduct made against Councillor John Dixon

The Monitoring Officer advised the Committee that its role at this meeting was to make an initial determination.

The Legal Officer explained to the Committee that they were being asked to make an initial determination either:-

- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned and to notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Local Commissioner in Wales accordingly; or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.

The Legal Officer stressed that the purpose of the initial hearing was accordingly to consider whether or not there was, 'no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned'. At this meeting, members were not being asked to form a view as to whether or not there had been a breach of the code. The Legal Officer stated that, in order to consider matters, the Committee had the benefit of a copy of the Ombudsman's report, which sets out, inter alia, the allegation, the legal background, the undisputed facts together with the disputed facts and outlined the relevant sections of the Code that had allegedly been

breached.

The Committee were offered the opportunity of confidential legal advice in closed session if they felt that was required and both the Monitoring Officer and Legal Officer stressed the importance that any decision made by the Committee must be justifiable with the reasons for the decision reached being transparent.

The Committee declined the opportunity to take legal advice in closed session as it was the consensus that the matter should be dealt with openly. The Monitoring Officer confirmed that the determination would be held in open session.

The Committee discussed the matter and put forward the following observations:-

- It needs to be established in which capacity John Dixon made the comments complained about. Were the comments made (a) privately, or (b) in an official capacity;

There was much discussion on this point, with particular reference to John Dixons' Twitter account print out, the time of the tweet and the location from which it was made.

- The language in the Ombudsman's report is not definite and indicates that Councillor Dixon's conduct "may" amount to a breach of the Code. This statement should be more specific as this appears to be a grey area in the report;
- The Ombudsman should define when a Councillor is acting in a 'private' capacity and it should be established what in his view constitutes 'private capacity';
- With regard to the issue of disrespect, the Committee would wish to consider whether the tweet was made in a serious way that could constitute disrespect or whether it was made in a light hearted humorous way;

The Chairperson suggested that consideration should be given to the sections of the Code that had been reported as being breached namely 4 (a) and (b) and Section (6) as this would assist in making the determination; This was done and both the Monitoring Officer and the Legal Officer

provided advice in respect of this.

- After some discussion members indicated that they were minded to say that there was no case to answer on the basis that John Dixon was acting in his private capacity and not as a Councillor. There was discussion as to why the members of the Committee were of this view;

Both the Monitoring Officer and the Legal Officer provided the Committee with detailed advice as to the purpose of the initial hearing, stressed that this was an initial hearing only so that the Committee could make an initial determination as set out in section 7 of the regulations and that at this meeting Members were not being asked to form a view as to whether or not there had been a breach of the Code. The officers confirmed that the purpose of today's meeting was to establish whether there was a prima facie case, further questions could be asked if Committee determined to proceed to Stage 2 of the process when all parties would be invited to be present to make representation and answer specific questions that the Committee may have.

The Monitoring Officer gave further advice in which she referred the Committee to paragraph 32 of the Ombudsman's report; the Monitoring Officer noted the preliminary views of the Committee which appeared to be premised on the basis that there was no case to answer because Councillor Dixon had stated he was acting in a 'private' capacity. She referred to paragraphs 32 and 33 of the report, which sets out the view of what might be considered to be 'private' capacity as opposed to 'official' capacity and it also sets out the Ombudsman's view that it would have been clear to those viewing the 'posts' in question that Councillor Dixon was a Member in light of the identity he had used. The Monitoring Officer advised the Committee they must have regard to this and, as reference had been made to the Guidance, the Committee must also give due regard to the Guidance when making a determination. In terms of the legal advice, the Code and the Guidance makes it clear that if you are holding yourself out as being a Councillor then you will be deemed to be acting in an official capacity. It was highlighted to the Committee that in this situation Councillor Dixon signed off the tweet as Councillor John Dixon and not just John Dixon.

The Monitoring Officer iterated that Members of the Committee must state the reasons why they formed the view that John Dixon was acting in his private capacity, if such was their view. The Monitoring Officer brought to the committees attention that one of the matters brought before the

Committee was the argument that Councillor Dixon brought the office of Councillor into disrepute under 6 (1) (a) of the Code. It was pointed out that the issue of whether a Member was acting in a personal or official capacity was not relevant to this issue. The Committee was advised that there was nothing to prevent them making which ever determination they thought appropriate, but the reason behind the decision must be articulated and for the record the Committee must be able to justify and, if necessary, defend the decision it makes.

The Committee was advised that they must consider the perception of the public rather than the perception of the Councillor (in respect of what capacity he thought he was acting in).

A Committee Member made the observation that this communication was made a considerable distance away from the Council and therefore did not consider that Councillor Dixon would have been acting in an official capacity when he made the comment.

The Committee was advised that they must consider the principles and the facts of this case, an example was given that if a person makes a comment that is offensive to someone else, then justifies the comment by saying the comment had just been a joke, this does not take away the fact that it was said and it was offensive, the Committee are asked to make a view on the principles.

Members raised the following points:-

- Concern was expressed whether the Code allows for full freedom of expression for members when acting in a private capacity. Councillor Dixon has stated that he made the statement in his private capacity but there is no definition as to 'private' capacity;
- It was suggested that the question that the Ombudsman should answer is whether a Councillor is considered to be a Councillor the whole time;
- The Chairperson advised that he wanted to determine whether the tweet was made in the private capacity of Councillor John Dixon, if the Committee were minded to dismiss the case then all the information should be weighed up before a decision is reached;

The Monitoring Officer gave further legal advice to assist the Committee reminding them that the decision must be based on the evidence available,

namely the Ombudsman's report, with reference to the point about Official capacity, the Committee appear to be relying on Councillor Dixon's comments that he was not acting in an official capacity (paragraphs 33 and 35 of the Ombudsman's report) however it should be noted that it was the Ombudsman's view that John Dixon was a Member in light of the name he used to sign off the tweet.

The Committee was reminded that they had not heard any representation in respect of this matter from any of the parties and that this was an initial hearing only, their judgement should be based on evidence and the Committee needs to be very clear about the basis on which they make their judgement.

- The view was expressed that Councillor Dixon was not acting in any Council function or role when he made the comment.

The Legal Officer advised the Committee to consider whether in their view they had sufficient information before them to make a decision as to whether the Councillor was acting in a private capacity or not, or would they need a hearing so they could hear further representation and receive further information to answer that question.

- The Committee fully discussed whether in their view the comments were made in an official capacity or private capacity;
- Concern was expressed that the legal advice given appeared to be leading the Committee. The Committee was assured by the Legal Officer that this was not the intention and the initial determination was of course a matter for them. It was, however, important that the Committee received full legal advice.
- Reference was made to the series of other tweets attached to the report for information. It was the view of Members that it was clear that these tweets were not made by Councillor Dixon in his official role of Councillor;
- The Committee expressed the view that Councillors should also be allowed to pursue private lives;
- It was suggested that the use of social media was relatively new and was a matter of education, it appeared that a mistake had been made by

signing off the tweet as Councillor when making private comments and more care should be taken when making personal remarks not to use the title Councillor when signing off; the implications of what was said in a few minutes could be reverberated worldwide;

- It was noted that Councillor Dixon had signed up to the Code and had not disputed the fact that the tweet went out with his title of Councillor, however from the information received it was quite clear that the comment was made in recreational time and in a personal capacity;
- The forum of where the comment was expressed is important, if it was said in a meeting it would be a different matter, from the information received it was evident that Councillor Dixon was acting in a private capacity.

Having discussed the matter fully the majority of 7:1 agreed that Option (a) was the appropriate option to apply in this case, namely “that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned’.

The Chairperson conceded to the majority decision but asked for his opinion to be recorded that there needed to be more evidence to form this view and he would have liked the opportunity to explore at a full hearing the question as to when a member is acting in a private capacity and when acting in an official capacity . The Chair stressed the fact that it was the principles that were important and he would have liked to go to a Hearing to gain the full facts of the case, including hearing the representations from all parties, before a decision was made.

RESOLVED – The Committee considered all the information before it and determined that:-

- (1) There was no evidence of any failure to comply with the Members’ Code of Conduct for Cardiff Council for the following reason:-
  - ***The Committee found*** that Councillor Dixon was ***not*** acting in his official capacity at the time the comment was made;
- (2) As prescribed in the legislation governing this matter, the City and County Solicitor be instructed to notify all required parties of the Committee’s decision.

## S14 : PLANNING PROCESSES

The Committee at its meeting in May 2007 considered a report on the Planning Code of Good Practice and agreed to receive further reports on the matter at future meetings.

The Committee noted that the Planning Committee procedure rules and updated Planning Code of Good Practice had been approved at Council.

The Committee had included planning processes on its work programme in order that they could be updated on the new planning processes and how the process had been conducted.

As part of the work programme Members of the Standards and Ethics Committee had agreed to attend a planning committee to observe the process following which the Chair and the Chief Officer would be invited to attend a subsequent meeting of the Standards and Ethics Committee to update Members on the operation of the new process and to advise of any issues that might need to be addressed following implementation.

The Committee discussed the matter and made the following observations:-

With reference to the procedure, the Committee was advised that Community Councils having carried out a considerable amount of work to allow them to make observations on particular planning applications on the schedule, feel that the observations are then ignored, sometimes not even an acknowledgement of the complaint or report is received.

With reference to Conservation Groups, Community Councils are not satisfied with the process for commenting on matters relating to planning applications in their respective areas and suggested that the procedures could be tightened up, particularly as Community Councils put a lot of work into commenting on applications coming forward, i.e. consulting with neighbours and interested parties, Community Councils feel there should be more recommendations as to what has gone on in the planning process.

Community Councillor John Hughes stated that he was representing all Community Councils on this matter.

The Committee agreed to invite the Chair of Planning and Sean Hannaby to the next meeting on 23 November 2010.

Concern was expressed that although the Planning meetings are always well attended by the public, the process does not appear to be citizen focussed and inclusive.

It was suggested that there should be an evaluation by the Planning Committee themselves about the conduct at the meeting, and whether they feel that it is citizen friendly.

RESOLVED – That the Chairperson of the Planning Committee and the Chief Planning Officer be invited to attend the Standards and Ethics Committee and to discuss any issues raised.

#### S15 : MONITORING OFFICER'S VERBAL UPDATE

(i) Standards Conference 2010 – Update

A briefing had taken place in respect of the final arrangements for the conference, the Monitoring Officer asked Members of the Committee to indicate whether they would be prepared to Chair a workshop. Bookings were gradually coming in however the numbers at the current time were less than last year;

(ii) Community Council Charter

The Committee were advised that the Charter was still out to consultation with Community Councils, some have responded positively, it is anticipated that the Charter will be reported to the Executive in November/December 2010. Area Working would be reported to the Executive in due course following consultation;

(iii) Member Development – Feedback on Code of Conduct Training

The Monitoring Officer advised that training on the Code of Conduct was ongoing, three sessions had taken place and were well attended. Discussions at the training had been positive and based on relevant issues such as self regulation v regulation. It was noted that all Members were required to attend the training;

(iv) Independent Member Re-Appointments

The Committee noted that Anne Morgan (Vice-Chairperson) had indicated her intention to retire from the Committee at the end of 2011. It was

suggested that a mechanism for the re-appointment process should be scheduled into the Committee's work programme. Advertisements for a replacement will be placed in local media and capital times at the appropriate time inviting applications from people that met the specified criteria and were resident in Cardiff.

#### S16 : WORK PROGRAMME

The Committee's current work programme for 2010/11 was developed following a forum of the Committee on 17 November 2010 within the Committee's terms of reference.

**RESOLVED** – That subject to amendments to the timing of a number of items, the work programme was agreed. Subject to availability it was agreed to invite the new Chief Executive together with the Chairperson and the Chief Officer of Planning to the next meeting of the Committee.