

STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 12 JUNE 2019 AT WEST WILTSHIRE ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Allison Bucknell, Cllr Bob Jones MBE, Miss Pam Turner (non-voting) and Cllr Gordon King (Chairman)

Also Present:

Malcolm Reeves (Complainant), Paul Barnett (Legal), Caroline Baynes (Independent Person), Paul Barnett (Legal)

37 Election of Chairman

Resolved:

To elect Councillor Gordon King as Chairman for this meeting only.

38 Declarations of Interest

There were no declarations.

39 Meeting Procedure

The procedure and assessment criteria for the meeting were noted.

40 Exclusion of the Public

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Agenda Item Number 4 onwards because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

41 **Review of Assessment Decisions: References WC-ENQ00247, WC-ENQ00249, WC-ENQ00250, WC-ENQ00251**

Preamble

The complaints had been submitted on 8 May 2018 and received an initial assessment by the Deputy Monitoring Officer on 21 June 2018. The complainant had requested a review of those decisions, and a Review Sub-Committee upheld the decision of the Deputy Monitoring Officer on 25 July 2018. The complainant then referred the matter to the Local Government and Social Care Ombudsman. Following an investigation, the Ombudsman concluded that the council's consideration of the complaints had been flawed, and instructed the council to issue the complainant with a formal written apology, and to 'reinvestigate'(sic) the complaint.

A Review Sub-Committee with different membership to that of 25 July 2018 was therefore convened to carry out afresh a review of the decision notices of 21 June 2018, having regard to the Ombudsman's comments and associated documentation.

Following election of a Chairman for the meeting, an opportunity for declarations, explanation of the meeting procedure and a resolution to exclude any press or public, a statement was received from the complainant. The complainant then withdrew from the meeting.

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaint related to the conduct of a member of a relevant council, that the member was a member at the time of the incident and remains a member of the relevant council. It was noted that a Code of Conduct was in place and had been provided with the complaint.

The Sub-Committee then had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt it would be a breach, was it still appropriate under the assessment criteria to refer the matter for investigation.

Evidence

In reaching its decision, the Sub-Committee took into account the papers in the agenda, as follows:

- The covering report;

- The complaint and supporting documentation;
- The response of the Subject Member;
- The initial assessment decision notice of the Deputy Monitoring Officer to take no further action
- The Complainant's request for a review;
- The decision notice of the Review Sub-Committee held on 25 July 2018;
- The decision of Local Government and Social Care Ombudsman that the Council's consideration of the complaint had been flawed;
- A pre-action protocol letter from the Council to the Ombudsman;
- The response of the solicitor for the Ombudsman;
- Additional correspondence between the Council and the solicitor for the Ombudsman; and,
- The local assessment criteria itself.

Additionally, the complainant had provided by email additional representations in response to the Monitoring Officer's new report. The procedure rules for reviews of initial assessment decisions state under paragraph 5.3 that no new documentation should be introduced without agreement of the sub-committee. However, the Sub-Committee decided to accept this representation under paragraph 5.4 of the procedure, to take account of written representations made since the publication of the agenda, as it was considered this would assist the review.

In the interests of fairness, the Subject Members had been contacted to offer the same opportunity but no response was received.

The Sub-Committee also considered the verbal representation made at the Review by the complainant.

The Subject Members were not in attendance and no additional statement had been provided.

The Sub-Committee noted the findings of the Ombudsman in relation to previous consideration of the complaints. These findings stated that the Council had adopted an overly technical approach and had failed to demonstrate that there had been any attempt, on a practical level, to consider the allegations against the individual members. The Ombudsman therefore recommended that the council make arrangements to "reinvestigate" the complaint.

However, the Sub-Committee began by noting that it was not within their remit to undertake an "investigation" into the complaint. Rather, its purpose was to carry out a further review of the initial assessment decision and, on the basis of the evidence provided, determine whether the assessment criteria were met. If so satisfied, they should then consider whether the complaint should proceed to an investigation or whether any other suitable action was appropriate. To undertake investigatory elements prior to an initial assessment had been concluded would itself be contrary to the procedure.

Consideration

The complaint related to a meeting of Stanton St Quintin Parish Council on 27 February 2018. Comments made at the meeting had resulted in the minutes stating that the complainant had, as part of a planning application to the principal authority, included documents containing ‘...a factual inaccuracy, a deliberate attempt to mislead...’.

The papers for the review hearing contained a significant amount of background information regarding the dispute between the complainant and the parish council, dealing with the complainant’s property, ownership and access rights to various pieces of land and the actions of various parties, all of which were not listed as part of the complaint proper.

However, the central incident for the Sub-Committee to consider was the meeting listed above; what was allegedly stated at that meeting, how the minutes recorded what was allegedly stated, and the confirmation by the subject members, and the others listed in the complaint, of those minutes being a true and accurate record.

The principal allegation regarding each subject member was one of defamation, both verbal and written. The complainant was not present at the meeting at which any allegedly defamatory statements were made, nor was it certain from the submitted documentation precisely what may have been said or by whom. However, the Sub-Committee considered that the written summary of the meeting discussion, which had later been confirmed as an accurate record, indicated that derogatory words had been spoken by at least one of the named subject members.

The Sub-Committee noted that the minutes of the meeting were a note of a collective decision. Whilst they were not a verbatim account, which indicated which member had allegedly made defamatory remarks, they were sufficient evidence that someone had allegedly made such remarks, at least to the extent the person drafting the minutes had summarised the discussion in such a way.

The Sub-Committee considered the jurisdictional issue of whether the use of derogatory words such that could amount to defamation were a matter covered under the Code. They concluded that such comments, if proven to have been made would be sufficient to amount to a breach of the Code, noting in particular paragraph 1 of the Code. It was not their role, however, to judge whether the alleged comments were defamatory.

The Sub-Committee noted that the Subject Members had in responses to the original complaint stated they had withdrawn the objected to statements from

the minutes. They further stated that they regretted the use of the words and recognised them as inappropriate and offered the complainant an apology. The Sub-Committee of 25 July 2018 had recommended a formal resolution noting the minutes change would be needed if not already done, and that, having been offered, it would be helpful if any apology be made public.

Conclusion

Having resolved that it did consider that the matters alleged fell within the jurisdiction of the standards regime, and that on the balance of presented evidence there was sufficient justification to suggest that a breach of the Stanton St Quintin Code of Conduct may have occurred, the Sub-Committee was required to consider whether it was also in the public interest to refer the matter for formal investigation.

Paragraph 5 of the Assessment Criteria states:

A complaint will not be referred for investigation if, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.

A complaint will not normally be referred for investigation if the subject member has offered an apology, a reasonable explanation of the issues, or if the Monitoring Officer takes the view that the complaint can reasonably be addressed by other means.

Bearing in mind the public interest in the efficient use of resources, referral for investigation is generally reserved for serious complaints where alternative options for resolution are not considered by the Monitoring Officer to be appropriate.

There was no suggestion that the complaint was trivial, vexatious, malicious, politically motivated or 'tit for tat', nor that some form of alternative resolution was viable in this instance. However, as detailed above the Subject Members had each offered an apology albeit the complainant had made it clear they did not regard the wording of the apology offered as amounting to a proper apology in an appropriate manner nor that it was a suitable response to the alleged defamation.

The final consideration, therefore, was whether, in the light of the above and bearing in mind the public interest in efficient use of resources, the complaint should be referred for investigation. The Sub-Committee noted that an allegation of defamation was a serious matter. However, they were also conscious of the public interest test.

Although the Ombudsman had suggested it was within the gift of the council to undertake investigative inquiries at this stage, that there should be attempts 'on

a practical level' to consider this, it remained the case that the purpose of an initial assessment was to determine whether, if proved, the facts as submitted in the complaint would be a breach of the code that merited investigation. As such, it would not be appropriate for the Sub-Committee to enquire further as to the facts of the allegation.

The question, therefore, was whether if so decided, the undertaking of an investigation would be in the public interest.

A question considered by the committee was as whether it would be possible to establish the facts with any degree of certainty and reach a definitive conclusion. It was noted that it was now over 15 months since the committee meeting the subject of this complaint, and over a year since the complaint had been made. Whilst the Sub-Committee were aware it was not the fault of the complainant that the matter had been delayed the passage of time was material. They noted that none of the members complained of had stated they had spoken the alleged defamatory remarks and although there were multiple witnesses to the remarks at the committee it was not known if there was any list of who those attendees were in order to seek additional information. In addition to this it was noted that the written remarks had been removed and that even an investigation which found those remarks as being in breach of the Code would have no power to require the Parish Council to include further clarifying information in present minutes about the initially recorded remarks. The written remarks therefore potentially being found to be a breach, could not achieve more than already had been with the acknowledgement they were unacceptable, the amendment and the offer of an apology.

The Sub-Committee finally noted that should the matter now be concluded, this decision notice would become a public document, and record both the view that a breach may have occurred, that an apology had been offered but that the complainant was not satisfied with the extent of that apology.

Therefore, on balance, taking into account the apology offered which would be contained in a public document, the practical difficulty for any investigation to determine the facts with any degree of certainty, the public interest test, and that any outcome, breach or no breach, would not be able to provide the parties with what they considered satisfactory conclusions, as it was not within the power of the regime to require these, it was decided not to refer the matter for investigation and that No Further Action be taken.

Decision

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided to take no further action.

(Duration of meeting: 4.05 - 5.45 pm)

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