

## CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 24 September 2019 at 3.00 pm in Council Chamber, Cecil Street, Margate, Kent.

**Present:** Dr Jonathan Sexton (Chairman); Councillors Ashbee, Hopkinson, S Piper and Stevens

**In Attendance:** Councillor Bailey

### 114. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Tomlinson, substituted by Councillor Ashbee.

### 115. DECLARATIONS OF INTEREST

Mr Tim Howes, Director of Corporate Governance and Monitoring Officer declared an interest as the subject under discussion in agenda item 3 as the item was about employment conditions for council employees.

### 116. MINUTES OF PREVIOUS MEETING

Councillor Stevens proposed, Councillor Hopkinson seconded and Members agreed the minutes as a correct record of the Constitutional Review Working Party meeting that was held on 21 June 2019.

### 117. STANDING ORDERS RELATING TO STAFF

Dr Sexton, Chairman of the working party gave a brief background to the subject for discussion and said that the issue had been considered by the Constitutional Review Working Party who made recommendations to the Standards Committee, who in turn recommended the proposed standing orders relating to staff to Council for decision.

Mr Tim Howes explained to Members that the item had been referred back to the Constitutional Review Working Party because of some concerns about some aspects of the proposed standing orders. The major concerns were with regards to the filter mechanism to reviewing cases.

The officer advice was that the filter should be managed by the CEx in cases involving the Monitoring Officer and the Monitoring Officer in cases involving the CEx. Mr Howes advised that using the General Purposes Committee to manage the filter mechanism would be an approach outside the JNC practice guidance.

If the working party were to adopt the approach where the GPC were to manage the filter mechanism, there would be operational challenges of how such a protocol could be fairly managed. The Committee would find the following operational issues a challenge to manage:

- Right of reply;
- Providing evidence;
- Right of appeal;
- Predetermination.

Mr Howes indicated that the middle of the ground approach could be that the CEx and Monitoring Officer could manage the filter process in consultation with GPC Chairman.

The JNC model protects staff from political accusations. The practice guidance encourages informal resolutions first before engaging the formal process.

Contributing to discussion, Members raised the following points:

- A committee of elected Members should look at staff issues brought before the committee to determine whether the issues were a valid grievance, disciplinary issue or frivolous;
- It would be helpful if the following wording in the model was removed from the process, "The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are 'disciplinary matters' as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination."
- Screening should not be done by statutory officers;
- It was unlikely that three or four political group representatives on the committee could use political motivation to push through a frivolous issue;
- The solution for filtering out impropriety through involvement of statutory officers would be to involve the three political party group leaders;
- Political bias should not come into this process because committee members have been trained and understand the role of this committee;
- There is a need to ensure that there was complete robustness and faith in the process being proposed, so that issues were not illegitimately filtered out;
- There was a perception problem of involving statutory officers in the filtering process;
- Political bias can be filtered out through the involvement of the independent investigator;
- There will be instances where some cases were dealt with by council departments and other occasions where some matters would be referred to the General Purposes Committee;
- In the main councillors through the committee should filter cases and not statutory officers;
- Could the GPC be split into two so they consider cases at different stages of the process;
- There could be an argument that Statutory Officers might be motivated by their own positions when considering cases;
- Council should not adopt a policy for rare occurrences. Instead the policy should be designed to cater for the routine occurrences;
- The overwhelming view was that there were now over 18 members who have been trained. The GPC membership could be increased to 15 members. This would enable the committee to split into 5 member panel roles that would determine validity of cases (filtering role), Investigations role and appeals role;
- Council should have put in place a legally compliant process a year ago;
- Can a standards committee meeting be arranged before 10 October to consider any recommendations from the working party?
- Paragraph 5.1 in the original report that went to the 11 July 2019 Council should be deleted in the updated report for the October council meeting. If the issue regarding that section of the report was not resolved the new policy proposals might not move forward;
- There was also a need to seek guidance that was specific to the CEx on what the measures for filtering complaints against the CEx were. Examples of good practice could also be sought from other local councils. The working party would then meet again to consider the advice;
- Could officers confirm that the draft process in the council report was the default position?

Members agreed the following:

1. That the wording at the start of the proposed flow chart of the model in Annex 4, page 35 of the agenda that reads, "The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are 'disciplinary matters' as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination" be deleted;
2. That the wording in paragraph 2.4, on page 9 of the agenda that reads, "It could be, for example, that in the case of allegations against the chief executive, the monitoring officer and the Chair of the IDC would oversee referrals to that Committee," be deleted.

Responding to Member comments and questions, Mr Howes made the following points:

- Officers would have no objections to the removal of the provision in the model that reads: "The Chief Executive will determine whether the allegations against the Chief Financial Officer or Monitoring Officer are 'disciplinary matters' as defined in the 1993 regulation. In respect of allegations against the Chief Executive, the Monitoring Officer will make that determination."
- Officers would not agree to an approach where the three political group leaders were involved in the filtering of cases;
- Political bias is acknowledged in the legislation. That is why the JNC model was designed to filter out such biases;
- The officer role in filtering is only to ascertain if the cases required further action or not. This meant determining whether there was a case to answer or not;
- At some stage in the process, officers would be required to produce a report to explain the course of action taken and the reasons for making that decision;
- The General Purposes Committee cannot be involved in filtering cases as they would no longer be able to get involved in subsequent stages that include investigation, as they may be viewed as having pre-determined the case;
- The involvement of councillors at the early stages would be open to legal challenge;
- It was advisable to start this process with the informal stage, where officers would consult the Chairman of the GPC;
- Before the working party took a firm position on the recommendations to make Council, it was advisable to approach the JNC for guidance and research on arrangements adopted by other local councils;
- The recommendations from the working party would be forwarded to Standards Committee and then Council;
- The process did appear long because the Council had to get it right;
- Whilst the proposals were going through the decision making process, the Council would continue to use the JNC model as it was a lawful process.

Summarising discussion the Chairman acknowledged that the process of coming up with appropriate standing orders appeared to be a frustrating long drawn out process. However it was important and necessary to get it right. Dr Sexton summed up the way forward that Members had agreed on as follows:

1. The proposal was that the filtering of complaints be made by a panel of elected Members subject to advice from the JNC;
2. The Monitoring Officer would seek guidance from the JNC;
3. Another meeting of the Constitutional Review Working Party would be convened to consider the advice from the JNC and agree recommendations to forward to Standards Committee and Council.

Meeting concluded: 4.45 pm