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STANDARDS PANEL

Tuesday, 9 October 2018

Present: Councillor P Gilchrist (Chairman)

Councillors C Blakeley
M McLaughlin

Independent
Person: Professor
RS Jones

Observer - Mr G Kerr (Independent
Person)

6 ELECTION OF CHAIR

RESOLVED:

That Councillor Phil Gilchrist be elected Chair for this meeting of the Panel.

7 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Councillor Moira McLaughlin informed that she was in attendance at the Children and Families Overview and Scrutiny Committee meeting on 14 November 2017 which was the meeting where it was alleged that the subject Member, Councillor Paul Hayes had failed to comply with the Members' Code of Conduct.

Councillor Phil Gilchrist informed that he had been present at a 'Task Force Working Party' convened on the matter but he had no recollection of its proceedings.

8 ARTICLE 9 OF THE COUNCIL'S CONSTITUTION, THE MEMBERS' CODE OF CONDUCT AND PROTOCOL

The Panel considered a copy of Article 9 of the Council's Constitution along with copies of The Members' Code of Conduct and the Protocol which detailed the arrangements for Investigating and Making Decisions in relation to allegations made under The Members' Code of Conduct.

Reference was made to Paragraph 10.1 of the Protocol that set out the arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct and it was noted that the

Investigator should make arrangements to hold interviews with relevant persons within ten working days of being appointed. Councillor Chris Blakeley asked when the Investigator had been appointed and if he had met the timescales detailed above. The Investigator informed that he had been appointed on 9 January 2018, had made some appointments by 17 January 2018 but had not been able to meet the timescale in respect of all the interviewees because one had not been available. He confirmed that he had made contact very quickly with the individuals concerned but not all had been able to meet him within the timescale.

Reference was made to Paragraph 16.1 of the Protocol that stated that where a Standards Complaint has been referred for investigation and a finding of a breach had been found by the Investigator, the Standards Panel should be convened within 20 working days of the Monitoring Officer receiving the Investigator's final report. Councillor Chris Blakeley made the point that the Monitoring Officer had received the report on 19 June 2018 and 20 working days from that date was 16 July 2018. Therefore, this timescale had not been adhered to.

Also, Councillor Chris Blakeley informed that Paragraph 8.5 of the Protocol stated that the investigation would be carried out having regard to any guidance provided by the Standards Committee and/or Monitoring Officer; and should normally be completed (i.e. a final report produced) within twelve weeks from the date the decision was made that the Standards Complaint should be investigated. However, the Investigator informed the Panel that some investigations could be concluded quickly but sometimes this was not the case. He drew attention to the word 'normally' and emphasised that this did not mean every time. The Investigator confirmed that Investigations should be concluded as quickly as possible and stated that he was able to provide the reasons for not meeting the timescales but would only do so in the absence of the press and public.

Councillor Moira McLaughlin reported that she had met with officers, in the summer, to try to identify a date for the Standards Panel Hearing. A date had initially been identified but unfortunately had proved to be unsuitable later on due to unforeseen circumstances.

It was also noted that the subject Member's name had been included, in error, as an attendee on the Council's website and by a process of elimination he had been identified as such by a member of the public. Councillor Chris Blakeley considered that publicly naming the Member had tainted and damaged the process for dealing with complaints against Members and had prejudiced the subject Member's chance of a fair hearing.

Councillor Chris Blakeley raised concerns over the breaches of the Protocol, on this occasion, and the failure to meet the timescales laid down on previous occasions as well and he considered that a special meeting of the Standards

and Constitutional Oversight Committee may be requested shortly by Members to discuss the Council's failure to follow the Code of Conduct Protocol which had resulted in unacceptable delays to the Standards process.

RESOLVED: That

- (1) the contents of the documents provided be noted;**
- (2) the Panel will be guided by the documents provided during the course of its decision making in respect of the complaint to be considered; and**
- (3) under section 100 (A) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the next item of business only, on the grounds that it involves the likely disclosure of exempt information as defined by paragraphs 1 and 5 of Part I of Schedule 12A (as amended) to that Act in that it contains information relating to an individual and of which a claim to legal professional privilege could be maintained in legal proceedings. The Public Interest test has been applied and favours exclusion.**

9 CONSIDERATION GIVEN TO THE BREACH OF THE MEMBERS' CODE OF CONDUCT PROTOCOL

The Panel considered whether the subject Member would be able to have a fair hearing in view of the fact that the Protocol had been breached. It noted that it was the Independent Person's view that the breaches had been unfortunate but that this would not prejudice the Panel's decision.

The Deputy Monitoring Officer gave legal advice to the Panel.

RESOLVED: (2:1 with Councillor Chris Blakeley voting against)

- (1) the Panel considers that whilst the procedure has been breached by the subject Member being named, the disclosure would not have a material impact on the fairness of the procedure and the Panel will continue to hear the complaint and make a determination on it having heard the explanations offered; and**
- (2) the Investigator, press and public be invited back into the meeting.**

10 **CONSIDERATION OF WHETHER TO HOLD THE HEARING IN EXEMPT SESSION**

The Investigator, the press and the public returned to the meeting and were joined by the subject Member, Councillor Paul Hayes.

Councillor Phil Gilchrist informed that the following proposal had been moved, seconded and agreed:

‘That the Panel considers that whilst the procedure has been breached by the subject Member being named, the disclosure would not have a material impact on the fairness of the procedure and the Panel will continue to hear the complaint and make a determination on it having heard the explanations offered.’

Councillor Chris Blakeley informed that the Council had not followed its own Protocol. The subject Member should have been afforded some protection but had in fact been named. Consequently, he was of the view that this case should now be dismissed. However, this motion had not been seconded. Councillor Moira McLaughlin informed that she believed that the subject Member would still be able to have a fair hearing.

The Panel then gave consideration to whether its proceedings should be held in the presence or in the absence of the press and public. The Deputy Monitoring Officer advised that the report contained information about other individuals that had not been redacted. She had spoken to the individuals named and none of them had any objections to the report being made public.

Councillor Paul Hayes confirmed that he had indicated that he did not object to the hearing being held in public.

Members were unanimous in their view that the hearing should be held in the presence of the press and public.

RESOLVED:

That the press and public be not excluded from the meeting during the consideration of the following item of business and copies of the Investigator’s report be made available at the meeting and put into the public domain as soon as possible after the meeting.

11 **CONSIDERATION OF A STANDARDS COMPLAINT**

The Panel had regard to the findings that were set out by the Investigator and to the representations made by the subject Member. Members asked a number of questions of both parties which were answered accordingly.

12 **EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED:

That under section 100 (A) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the next item of business only, on the grounds that it involves the likely disclosure of exempt information as defined by paragraphs 1 and 5 of Part I of Schedule 12A (as amended) to that Act in that it contains information relating to an individual and of which a claim to legal professional privilege could be maintained in legal proceedings. The Public Interest test has been applied and favours exclusion.

13 **PANEL DELIBERATIONS**

The Panel deliberated in private before informing of its decision in the presence of both the Investigator and the subject Member and the press and public. The details are contained in the attached Decision Notice.

Decision Notice

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STANDARDS PANEL

9 October 2018

Complaint against Councillor Paul Hayes

Standards Complaint Ref 2017/28

DECISION NOTICE

Panel Membership: Councillors C Blakeley, P Gilchrist (Chair) and M McLaughlin

Independent Person: Prof R Jones (Mr G Kerr also in attendance as an observer)

Deputy Monitoring Officer: Miss V Shaw

Subject Member: Councillor P Hayes

Complainant: Dr M Atkinson

Independent Investigator: Mr S Goacher

Background

On 7 December 2017 the Complainant submitted a complaint to the Council's Monitoring Officer concerning the conduct of Cllr Paul Hayes. The Deputy Monitoring Officer undertook an initial assessment of the complaint in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Code of Conduct for Members. She concluded (having consulted with one of the Council's Independent Persons) that the complaint should be investigated.

An Independent Investigator was appointed by the Deputy Monitoring Officer to conduct the investigation. Following his investigation, the Investigator issued a report, dated 19 July 2018, in which he concluded that there had been a breach of the Code by Cllr Hayes.

Having considered the Investigators report the Deputy Monitoring Officer referred the matter for hearing by the Standards Panel in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Code of Conduct for Members

The initial complaint which was made also related to the conduct of two other elected members who were found, following investigation, not to have breached the Code of Conduct for Members. Those two members who were found not to be in breach were content for their details not to be redacted from the report of the Independent Investigator and for their names to be disclosed.

Summary of the Complaint

1. A complaint was made by Dr Maggie Atkinson, the Chair of the Wirral Safeguarding Children Board ("WSCB"). The complaint was in relation to alleged conduct of Cllrs Tom Anderson, Paul Hayes and Ian Lewis.
2. The complaint alleges that Cllrs Anderson and Hayes failed to comply with the Members code of conduct in the way in which they behaved at a meeting of the Children and Families Overview and Scrutiny Committee ("OSC") of the Council on 14 November 2017. The actions of the councillors which gave rise to the complaint relate to a decision by WSCB not to publish a Serious

Case Review ("SCR") which related to a case involving child sexual abuse. The complainant alleged that;

- i. Cllrs Anderson and Hayes were disingenuous in that they asked questions at the OSC meeting on 14 November 2017 to which they already knew the answers;
- ii. That Cllr Lewis by default failed to comply with Code as group leader as a result of the actions of Cllrs Anderson and Hayes;
- iii. Cllrs Anderson and Hayes "hijacked" the OSC meeting and attacked Dr Atkinson in a belligerent, heated and aggressive fashion;
- iv. Cllrs Anderson, Hayes and Lewis approaches to the media about the SCR amounted to a failure to comply with the Code; and
- v. That Cllr Lewis publicly stated that Dr Atkinson had made a complaint about him at a meeting of the Health and Wellbeing Board on 14 March 2018 (this was raised some time after the original complaint was made but the Council's Monitoring Officer agreed that this should be added to my investigation).

Relevant Legislation and provisions of the Code of Conduct

Under the Localism Act 2011 the Council:

- a. is under a duty to promote and maintain high standards of conduct;
- b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;

The Council adopted a new Code of Conduct ("the Code") with effect from 1 August 2014. The Council also adopted arrangements for dealing with allegations that a member had failed to comply with the Code.

So far as material, the Code provides as follows:

... General Obligations

1. When acting in your role as a member of the Council

1.1 DO treat others with respect.

1.2 DO NOT conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3 DO NOT disclose information given to you in confidence by anyone, or information acquired by you, or ought reasonably to be aware is confidential in nature, except where-

- (i) You have the consent of the person authorised to give it;
 - (ii) You are required by law to do so;
 - (iii) The disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person;
 - (iv) The disclosure is:
 - a. Reasonable and in the public interest;
 - b. Made in good faith and in compliance with the reasonable requirements of the authority;
- and

- c. Agreed with the Monitoring Officer prior to its release.

Consideration of issue of data breach

The Panel considered as a preliminary issue whether or not the hearing should continue in light of the fact there had been a disclosure prior to the hearing of Cllr Hayes name on the Council's website in the list of members attending the Panel meeting in contravention of Wirral Borough Council practices in Standards matters.

Decision

In deciding whether or not to proceed, the Standards Panel considered whether or not Cllr Hayes could still receive a fair hearing and the Panel concluded that, although Cllr Hayes had a legitimate expectation of privacy, the disclosure would not have a material impact on the fairness of the procedure and the Standards Panel should continue to hear the complaint against Cllr Hayes.

Consideration of issue of the Complainants non-attendance at the hearing

The Deputy Monitoring Officer explained that the Complainant Dr Atkinson had been informed of the date of the Panel and invited to attend but had advised that she considered it was now an internal matter for the Council and she would not be attending the panel.

Decision

The Panel considered adjourning the meeting in order that Dr Atkinson could be asked to attend to answer the questions that the Panel wished to put to her. However, after hearing representations from Cllr Hayes that he would prefer there not to be an adjournment the panel decided to proceed with hearing the matter but requested that a letter be sent to the Complainant placing on record the Panel's considerable regret that she had chosen not to attend the meeting and afford the Panel the opportunity to ask her questions.

Consideration as to whether the Code of Conduct had been breached

The Panel gave careful consideration to the Independent Investigator's Report and the submissions and representations made by Cllr Hayes.

The Panel was satisfied that a satisfactory investigation and report had been undertaken and produced in relation to the complaint.

The Panel examined in detail all matters and issues arising from the complaint during the hearing and was satisfied that all parties had been afforded a fair opportunity to clarify any specific points and ensure the Panel understood their respective positions and responses

The Panel considered the views and representations of the Independent Person. The Independent Person was satisfied that a thorough investigation was undertaken and agreed with the findings and conclusions reached as detailed within the Independent Investigator's report.

Findings of fact

1. The Standards Panel found that it is not disputed that at the OSC meeting there was an exchange between Cllrs Anderson and Hayes and Dr Atkinson.
2. There is no evidence that Cllr Anderson was aware of the responses which Dr Atkinson had already provided to Cllr Hayes regarding the SCR.
3. There is no evidence that Cllrs Anderson or Lewis were aware of the media release made by Cllr Hayes prior to it being issued.
4. There is no evidence that Cllr Lewis was aware of the actions which Cllrs Anderson and Hayes proposed to take at the OSC.

5. Cllrs Anderson and Hayes were not belligerent. Their comments did not amount to an attack and they did not hijack the meeting.
6. The Standards Panel found that Cllr Hayes did issue a press release which stated, "The decision to keep this report under lock and key will undoubtedly lead to accusations of a cover up." Cllr Hayes did not dispute that he had made this statement.
7. The Standards Panel found that it is not disputed that Cllr Lewis declared an interest at the Health and Wellbeing Board because of the complaint made by Dr Atkinson

Decision of the Standards Panel

The Standards Panel decided that Cllr Hayes' comments in the press release failed to put the matter fully in context and Councillor Hayes' remarks could have been better framed and balanced. As such they represent a minor breach of the Members' Code of Conduct in that he had failed to show respect to Dr Atkinson in breach of para 1.1 of the Member's Code of Conduct.

The Standards Panel noted that Cllrs Anderson, Hayes or Lewis had been found not to be in breach of the Code of Conduct in relation to any of the other complaints made against them.

Reasons for decision

In the comments made by Cllr Hayes to the press he is explicit in stating that he is making those comments as a councillor about council business. They are clearly made in his capacity as a councillor. He has not sought to argue that the comments were made in any other capacity.

The comments which Cllr Hayes made were political comments which benefit from enhanced protection. However, this needs to be balanced against the right of Dr Atkinson and others to be protected from unjustified public comments.

Cllr Hayes is entitled to criticise the decision not to publish the SCR and to challenge the decision not to publish the SCR. However, the use of the term "cover up" suggests an attempt to conceal evidence of wrongdoing, error or incompetence which is not justified particularly given that he knew that the decision had been subject to a review by an independent national body.

Actions

The Panel having found Cllr Hayes in breach of the Members Code of Conduct determined that the following actions be imposed (subject to any valid appeal being accepted)

- a) That the Chair of the Panel write to the Leader of the Conservative Group and request that he gives advice and guidance to his group on press releases in the future.
- b) The Panel's decision be reported to the next ordinary public meeting of the Standards and Constitutional Oversight Committee for consideration.

Right of appeal

This Decision Notice and the full Investigator's report will be published on the Council's website unless a request seeking permission to appeal is made under paragraph 18 of the Council's Arrangements for Investigating and Making decisions in relation to allegations made under the Members' Code of Conduct.

Signed



Date

18th October 2018

Cllr Phil Gilchrist

Chair of Standards Panel