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| Title of Report | ALLEGATIONS OF A FAILURE TO OBSERVE THE CODE OF CONDUCT | |
| Presented by | Elizabeth Warhurst, Head of Legal and Commercial Services and Monitoring Officer elizabeth.warhurst@nwleicestershire.gov.uk | |
| Background Papers | NWLDC Members' Code of Conduct | Public Report: No |
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| Purpose of Report | <p>1. To consider the report of the Head of Legal and Commercial Services and Monitoring Officer.</p> <p>2. To request that the Assessment Sub-committee determine what action should be taken.</p> | |
| Recommendations | THAT THE ASSESSMENT SUB-COMMITTEE MAKES A FINDING ON THE COMPLAINT AS SET OUT AT PARAGRAPH 5 OF THE REPORT | |

1. COMPLAINT

- 1.1 On 8 September 2020 the Monitoring Officer received a complaint from Councillor Johnson regarding Councillor Smith, both members of North West Leicestershire District Council.
- 1.2 In summary, the complaint related to comments that Cllr Smith made at meeting of Council on 8 September 2020 in the debate on a motion regarding the economy. Cllr Johnson's complaint was that Cllr Smith's statement inferred that Labour members of the Planning Committee had been whipped in relation to an application regarding Land at M42, Junction 11, Stretton-en-le-Field, Leicestershire, DE12 8AA which had been considered at the Planning Committee meeting on 3 September 2019. Cllr Johnson considered that this conduct breached paragraph 3 of the Members' Code of Conduct:

“3. Respect

3.1 You must treat others with respect.

It is the collective responsibility of all Members to create a fair, safe and enjoyable environment for Members, Officers and Residents which is free from discrimination, intimidation and abuse.”

- 1.3 A copy of the motion considered by Council at the meeting on 8 September and the minutes of that meeting are attached at Appendices A and B respectively. A recording of the meeting is available on the Council's website via the MS Teams Live Event. It can be accessed by following the link below:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmYxZjEyMzEtZDI0NS00Yjg5LTk4NGYtODY3ZTlzMjdhODdm%40thead.v2/0?context=%7b%22Tid%22%3a%22ee70a64e-9df9-43f5-806b-751f09c3cd88%22%2c%22Oid%22%3a%22094390c9-a254-4399-b3a4-c8c71b9aaf05%22%2c%22IsBroadcastMeeting%22%3a%22true%7d

- 1.4 A transcript of the statement made by Cllr Smith at the meeting is attached at Appendix C.

2. INFORMAL RESOLUTION PROCESS

- 2.1 Under the arrangements for dealing with complaints about councillors adopted by the Council in 2012, the Monitoring Officer has the opportunity, in the early stages of a complaint, to work with parties to see whether it is possible to resolve the matter informally. The process does not involve deciding whether the Code has been breached or not. It is about identifying an issue of concern and looking for ways to resolve it to the satisfaction of both parties. Although informal resolution is generally very successful, there are some cases where it is not possible to resolve the complaint in this way. The Monitoring Officer will make a judgement on a case by case basis about whether and how far the informal route should be pursued before referring a matter to the Sub-committee for consideration.
- 2.2 In this case both Cllrs Smith and Johnson agreed to engage in the informal resolution process and the Monitoring Officer thanks both members for their time and co-operation. The Monitoring Officer corresponded and held a number of virtual meetings and telephone calls with both members to try and identify a mutually acceptable outcome.
- 2.3 Cllr Johnson requested, by way of outcome, that a statement was made by Cllr Smith at the Council meeting on 17 November 2020 to clarify his clarify his previous comment and apologise for any inference that the Labour Members of Planning Committee had been whipped.
- 2.4 Cllr Smith said that it he had not intended to infer that the Labour Group had been whipped and that was not a view that he held. He had intended to express his surprise that the members who were in support of the motion in front of Council had voted against a planning application which promised to bring more jobs to an area much in need of new employment opportunities. He confirmed that he was prepared to make a statement at the Council meeting on 17 November to clarify the position when the minutes of the previous meeting were discussed. The Monitoring Officer offered some advice to Cllr Smith on how that statement could be worded, based on her understanding of Cllr Johnson's concerns. Cllr Smith confirmed that he would consider the advice was able to draft the statement without further assistance.
- 2.5 At the meeting of Council on 17 November 2020, Cllr Smith made a statement under the item - Minutes of the Meeting Held on 8 September 2020. A copy of the draft minutes of the meeting and a transcript of Cllr Smith's statement are attached Appendices D and E respectively.
- 2.6 A recording of the meeting is available on the Council's website via the MS Teams Live Event. It can be accessed by following the link below.
- https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2FI%2Fmeetup-join%2F19%3Ameeting_NWM1ZWU1NDAtYjhlZS00NDViLWlwZTQtYmJkYmNiMDAzNTFk%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522ee70a64e-9df9-43f5-806b-751f09c3cd88%2522%252c%2522Oid%2522%253a%2522094390c9-a254-4399-b3a4-c8c71b9aaf05%2522%252c%2522IsBroadcastMeeting%2522%253a%2522true%2527d%26anon%3Dtrue&type=meetup-join&deeplinkId=a1b6716e-e16c-4099-a585-c83e8b6f2bf9&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true
- 2.7 Following the meeting, Cllr Johnson has confirmed that the statement made by Cllr Smith did not fully address his complaint as, whilst it sought to clarify the statement made on 8 September, it did not include an apology for any offence which may have been caused. Cllr Johnson confirmed that he wishes to pursue his complaint.
- 2.8 Cllr Smith has been advised that Cllr Johnson does not consider that his complaint has been fully addressed.

- 2.9 On the basis of the above, the Monitoring Officer has concluded that the informal resolution process has not been successful.
- 2.10 The Monitoring Officer is therefore requesting that the Assessment Sub-committee consider the matter and determine whether any further action should be taken by taking into account the criteria and public interest test set out for assessment of complaints. A copy of the criteria for assessment of complaints is attached at Appendix F.
- 2.11 The Monitoring Officer, subject member and complainant can seek guidance from the Independent Person (IP) at any point in the informal resolution process. The Monitoring Officer has briefed the IP and he has been invited to attend the meeting of this Sub-committee for the purpose of offering his perspective on the complaint.

3. INITIAL TESTS

- 3.1 In order for the Members' Code of Conduct and associated complaints process to be engaged, 3 initial tests need to be met:
1. Does the complaint relate to a member within the NWLDC area, in office at the time of the conduct complained of?

Cllr Smith is a current serving member of NWLDC.
 2. Was the member acting in their capacity as a councillor at the time of the conduct complained of?

Cllr Smith was acting in the capacity as Councillor at the time of the conduct complained of as the situation arose during a formal council meeting.
 3. The complaint, if proven, would be a breach of the Code under which the member operates?

The complaint, if proven, could amount to a breach of the Code.

4. INFORMATION FROM THE COMPLAINANT AND SUBJECT MEMBER

- 4.1 In accordance with the Council's adopted arrangements the complainant and subject members are not party to the Assessment Sub-committee. However, should any further information be provided by either Cllrs Smith or Johnson, it will be reported to the Sub-committee.

5. ASSESSMENT OUTCOMES

- 5.1 The following outcomes are available to the Sub-committee under the Arrangements adopted by Council:
- 5.1.1 Refer the complaint to the Monitoring officer to take other action.
 - 5.1.2 Request further information from the parties.
 - 5.1.3 Refer the complaint to the Monitoring Officer for investigation.
 - 5.1.4 No action to be taken in respect of the complaint.

6. PUBLIC INTEREST TEST

- 6.1 In considering whether or not to take any further action in respect of the complaint (including requesting an investigation), members are referred to the criteria for the assessment of complaints at Appendix F.

6.2 There is no widely accepted definition of the public interest but has been described as “*something which is of serious concern and benefit to the public*”. In this context, the public interest test requires a public authority to weigh the harm that would be caused by not investigating a complaint against the public interest served by carrying out an investigation. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

6.3 Examples of factors which would tend to indicate there is not a public interest in investigating a complaint are:

- If the complaint is vexatious;
- Repetitive complaints; and
- Complaints about trivial matters.

6.4 Factors which would tend to indicate there is a public interest in proceeding with an investigation are:

- The complaint relates to a matter which affects a significant part of the district; and
- Complaints about serious misconduct.

6.5 These criteria in Appendix F are not exhaustive and not all are relevant in each case.

7. CONSIDERATION AS TO WHETHER THE HEARING SHOULD BE HELD IN PRIVATE

7.1 The Sub-committee will need to decide whether the meeting should be held in public or private. The Sub-committee will need to consider the public interest test. Is the public interest in holding the hearing in public outweighed or not by the public interest in excluding the press and public? The Sub-committee will need to make this decision at the start of the meeting. The agenda and report for this meeting have been exempt from publication to the press and public under paragraph 1 of Schedule 12A Local Government Act 1972 - information relating to any individual.

7.2 Under the Council’s Arrangements there is a presumption in favour of the hearing being held in public unless it is considered appropriate for it to be held in private.

7.3 In considering this aspect of the hearing the Sub-committee needs to consider what information is being presented before them.

7.4 The substance of the complaint is a statement made in a public Council meeting which was minuted and available on the MS Teams Live Event and therefore already in the public domain. As was the subsequent statement made at the Council meeting on 17 November.

8. REVIEW OF THE DECISION OF THE ASSESSMENT SUB COMMITTEE

8.1 The Assessment Sub-committee has the authority to allow or not a right of review of their decision to take no further action taking into consideration the views of the Independent Person as referred to in 2.4 above.

8.2 However, the complainant should be advised that no review will be granted unless further / additional evidence is submitted to the Monitoring Officer. It will be the decision of the Monitoring Officer as to whether such additional evidence warrants another assessment.

8.3 This is to ensure a fair process and to avoid frivolous / vexatious appeals.

- 8.4 A request for review can be made at the time the Sub-committee makes its determination or within 30 days of the decision.

| Policies and other considerations, as appropriate | |
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| Council Priorities: | Not applicable |
| Policy Considerations: | Constitution and Relevant authority's Members' Code of Conduct |
| Safeguarding: | Not applicable |
| Equalities/Diversity: | Not applicable |
| Customer Impact: | Not applicable |
| Economic and Social Impact: | Not applicable |
| Environment and Climate Change: | Not applicable |
| Consultation/Community Engagement: | Not applicable |
| Risks: | Not applicable |
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