

Standards Committee

Monday, 3rd February, 2020
1.00 - 2.00 pm

Attendees	
Borough Councillors:	Max Wilkinson (Chair), Karl Hopley, Martin Horwood, John Payne and Klara Sudbury
Independent Members:	Mr Duncan Chittenden and Mr Martin Jauch
Also in attendance:	Sara Freckleton (Borough Solicitor & Monitoring Officer)

Minutes

1. APOLOGIES

Councillors Savage and Stafford had given their apologies.

2. DECLARATIONS OF INTEREST

No interests were declared.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting had been circulated with the agenda and the minutes of the meeting held on the 16 April 2018, which had yet to be agreed and signed, were also circulated.

Upon a vote it was unanimously

RESOLVED that the minutes of the meeting(s) held on the 16 April 2018 and 10 July 2019 be agreed and signed as an accurate record.

4. CODE OF MEMBERS' CONDUCT - "OTHER INTERESTS"- RESTRICTION ON PARTICIPATION IN DECISIONS

The Chairman advised that this was an issue that had been raised by the Constitution Working Group (CWG) and the Committee was asked to consider amending the Code of Conduct to remove the requirement for Members who are nominated to Companies and Trusts to leave a meeting (Council / Committee etc) when an item which may affect the financial position of that Company / Trust was discussed.

The Borough Solicitor and Monitoring Officer summarised the position. The Council had nomination rights to certain bodies and upon their appointment to those Trusts or Companies, Councillors were required to act in the best interest of those bodies. There was a misconception that Members were appointed to these bodies to "keep an eye on it from a Council perspective"; as with all Directors/Trustees, those nominated by the Council had a duty to act in the best interest of the company. The Code of Conduct was clear that a member had an "other interest" if they held a position of control or management on any body to which they have been appointed or nominated by the Council and required that a member with any such interest be precluded from participating in any debate

or decision relating to any business which affected the financial position of the body. The requirement for the Member, in those circumstances, not to speak or vote was not an area of contention, but the Code also required that the member withdraw from a meeting, including the public area/gallery during the discussion / decision on the item. It was in relation to the latter requirement that the Standards Committee was being asked to consider an amendment which would allow a member with such an interest in an item, to remain in the meeting whilst the item is discussed and determined.

The Monitoring Officer explained that prior to the Localism Act 2011, case law established that it was not sufficient for members with a Code of Conduct interest to simply retire to the back of the room or public gallery, giving the rationale that remaining in a meeting at which colleagues were debating and deciding a matter, could create the perception that they were seeking improperly to influence the decision. Though the Localism Act did not require that those members with an “other interest” to withdraw from the meeting, when CBC adopted its Code of Conduct, this requirement was included, and it was noted that this was also true for 5 of the 6 District Councils in Gloucestershire. Whilst it was not mandatory to retain this provision, the Monitoring Officer’s advice was that there were risks in removing the requirement, as well as there being no apparent purpose to be served by the Member remaining in the meeting. It was also noted that it would not be appropriate for a Director/Trustee of a body to be privy to confidential financial or legal advice in respect of a company/trust, nor would it appear transparent when an item was taken in exempt session, from which public were excluded and which was not webcast. Her recommendation was that the Code remain unchanged at this stage and instead be reviewed by the Standards Committee, in its entirety, when the model code was published, anticipated in July (2020) and, if deemed necessary, any changes be recommended to the Council.

A member, who had been involved in the discussion at the CWG acknowledged that this was a difficult area, particularly given the argument that any member with an “other interest” could tune into the webcast and improperly influence the debate or vote through the use of email. He was however, in favour of delaying any decision until after the Model Code had been published, so as to take account of a more universal view.

Another member disputed the advice that had been given in relation to the remit of members appointed as Directors/Trustees, asserting that Councillors were appointed to these bodies for the sole purpose of linking the two, and he suggested that this view was one shared by the Charity Commission. He was also aware that in the past, there had been occasions when the Cheltenham Trust had required Councillors to withdraw from certain discussions and other members of the committee concurred that it was ludicrous that members could be excluded by both organisations. He highlighted that prior to this meeting, he was not fully aware of the process for applications for dispensation.

A Trustee of the Cheltenham Trust clarified that he had not been excluded from any meetings of The Trust in the last year. He did however suggest that he would be inclined to watch webcasts of any council debates or votes where he had been required to withdraw from the meeting, so as to get a sense of how colleagues felt about a particular issue.

The Monitoring Officer gave the following responses to comments and questions raised by Members:

- It was correct that councillors were nominated and appointed to these companies/trusts on the basis of their experience as community representatives. However, by law, once appointed they were required to act in the best interest of the company/trust, whereas in their capacity as a councillor, they were expected to act in the public interest. Whilst the objectives and aims of these Companies / Trusts and those of the Council were, for the most part aligned, there was potential for conflict of interests where decisions affecting the financial position of those bodies were taken by the Council.
- Members were reminded that the requirement to withdraw from a meeting only applied where these interests existed and where the decision being taken by the council would have a financial impact (positive or negative) on the body/organisation.
- Where such an interest did exist, it was possible for those members to apply for dispensation to speak and vote and the decision to grant dispensation would lie with the Standards Committee. The Committee would, when making decisions on applications for dispensation, consider the facts and circumstances of the individual application, the grounds upon which dispensation may be granted (set out in paragraph 3.2 of the report) together with any advice from the Monitoring Officer.
- Members could, of course, withdraw from the meeting and watch proceedings via the webcast, the rules existed not to prevent the Member from being aware of views of their colleague Councillors but rather to avoid creating the perception that the member(s) sought to influence the decision.
- The Monitoring Officer was not aware that Council appointed Directors or Trustees were routinely asked to leave meetings of any of the bodies to which they were nominated or appointed, and the report to the Committee had been prepared on the basis that they were entitled to participate at Board / Trust level. She would need to look into this further and would report back on this issue in due course.

The Chairman invited the Independent Members to share their thoughts on the issue. One of the Independent Persons felt that the proposed amendment would do little other than to cause concern to the public and urged the committee to think carefully about making this amendment. The other Independent Person accepted the point made by a member that their presence would allow them to gauge how other members felt about the body; he agreed with his fellow Independent Member, that remaining in the meeting could be perceived as an effort to influence a decision. He was comfortable that the ability of members to apply for dispensation recognised the potential for issues and felt that the current rules were completely workable and that they had the effect of protecting members against any question of doubt. He suggested that given earlier comments, it would be prudent to remind all members about the dispensation procedure.

In closing, the Chairman confirmed that the Committee would not make a decision at this time, instead waiting for the publication of the 'model code' and that a summary of this debate would be sent to the CWG. In the meantime, the Monitoring Officer would draft a note for members which

reiterated the protection that the Code and dispensations offered members. The Chairman would check and approve this on behalf of the committee.

Upon a vote it was unanimously

RESOLVED that:

1. **The Cheltenham Borough Council Code of Members' Conduct be reviewed in July 2020, after the 'Model Code' has been published.**
2. **The Borough Solicitor & Monitoring Officer considers the matter of whether or not Members of the Council who are appointed by the Council to serve on Companies / Trusts are precluded, by virtue of their Office as Councillor, from participating as a Director / Trustee in any business considered / decisions taken by the Company / Trust.**
3. **The Monitoring Officer draft a note for members which reiterates the protection that the Code and dispensations offer members and that this be approved by the Chairman on behalf of the committee.**

5. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

Upon a vote it was unanimously

RESOLVED that in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraphs 1 and 2, Part 1, Schedule 12A (as amended) Local Government Act 1972, namely:

Paragraph 1; Information relating to any individual

Paragraph 2; Information which is likely to reveal the identity of an individual

6. REPORT OF DECISIONS TAKEN BY THE MONITORING OFFICER

The Monitoring Officer reminded members that in accordance with current arrangements, in consultation with the Independent Persons, she was able to resolve complaints much more easily and informally than before. Details of the complaints that had been received since the last meeting of the Standards Committee had been circulated with the agenda and the committee considered where there was a need for action or training, arising from the complaints.

7. ANY OTHER BUSINESS

There was no other business.

8. DATE OF NEXT MEETING

The next meeting was scheduled for the 8 July 2020.

Max Wilkinson
Chairman