

## MINUTES

of the meeting of the

### GOVERNANCE COMMITTEE

on 23 January 2019 at 7 p.m.

Present:

Councillor R.J. Poulter (Chairman)

Councillors R.H. Ambor, S.D. Fowell, I.S. Grundy, P.V. Hughes, F.B. Mountain and G.I. Smith

Parish Councillors –

Councillor P.S. Jackson (Great Waltham Parish Council) and Councillor J. Saltmarsh  
(Woodham Ferrers and Bicknacre Parish Council)

Also in Attendance –

Designated Independent Persons:

Mr. S. Anthony and Mrs. C. Gosling

1. **Apologies for Absence and Substitutions**

Apologies for absence were received from Parish Councillor Brown. No substitutions were made.

2. **Minutes**

The minutes of the meeting on 17 October 2018 were signed as a correct record by the Chairman.

3. **Public Question Time**

The Chairman informed those present that public questions would be considered ahead of the relevant item on the agenda unless they were questions not related to items on the agenda.

A question was asked by a member of the public regarding a code of conduct complaint which had been considered back in June 2016. The member of the public stated that the Committee had instructed that an apology be made at the time but that the apology had since been retracted. The Committee was asked what powers they had in this matter. A further member of the public also made a statement on the same issue. The Monitoring Officer confirmed he would look into the case and send a written response to the member of the public.

4. **Declarations of Interest**

All members were reminded to declare any Disclosable Pecuniary Interests or other registerable interests where appropriate in any of the items of business on the meeting's agenda.

The Chairman suggested to the Committee that as they all know the Councillors concerned under Item 11 that they declare an interest stating so. The Committee agreed

with this approach and confirmed that they had considered their position. They stated that they could still make a fair and informed decision despite knowing and working with the Councillors concerned. Councillor Grundy made a further declaration as the County Councillor for the ward in which the two Councillors concerned stand.

5. **Chairman's Announcements**

No announcements were made.

6. **Monitoring Officer Report**

The Monitoring Officer provided an update on the complaints that had been received. It was noted that two complaints were outstanding pending receipt of an independent investigator's reports.

The Monitoring Officer also reported that no new RIPA authorisations had been sought since the last Committee.

**RESOLVED** that;

1. the current statistical information as to complaints made be noted and be published on the Council's website as set out in Appendix 1 before the Committee; and
2. the remainder of the report be noted.

*(7.06 p.m. to 7.07 p.m.)*

7. **Annual Governance Statement Objectives Update**

The Committee considered a report which provided them with an update on how the Annual Governance Statement Objectives were being monitored across the Council. It was noted that this was in relation to a request by a member at a previous meeting.

The Committee was informed that officers had discussed how the targets were being monitored and that it was felt that they were already being monitored adequately outside of the Governance Committee. The Committee heard that the targets were routinely reviewed each year when compiling the next AGS and that information is provided then as to what took place during the year to ensure the targets had been met. It was also noted that regular reports were being considered at various project boards and reports on the targets have been and continue to be considered by the Audit Committee.

A member of the Committee suggested that instead of the Governance Committee considering duplicate reports that Committee members be sent copies of the reports being considered by other bodies so they were aware of progress and any issues. The Committee agreed this was a sensible approach and that copies of any relevant reports be sent to them in the future.

**RESOLVED** that;

1. the report be noted; and
2. that copies of relevant reports to other bodies be sent to members of the Governance Committee.

*(7.08 p.m. to 7.11 p.m.)*

## 8. Appointment of Independent Persons

The Committee received a report asking them to make a recommendation to Full Council regarding the extension of the Independent Persons' terms of office until May 2023. The Committee were informed that under the Localism Act of 2011 the Council was required to appoint Independent Persons and that their appointment had to be agreed formally by Full Council.

The Committee stated they were happy for the two current Independent Persons to continue in their roles and thanked them for their hard work. The Chairman stated that the assistance of the Independent Persons had been invaluable and that he was pleased they wished to continue in their roles.

**RESOLVED** that the Council be recommended to extend the appointment of Mr Steven Anthony and Mrs Clarissa Gosling as the designated Independent Persons for a term expiring at the annual meeting in May 2023.

*(7.12 p.m. to 7.14 p.m.)*

## 9. Gifts and Hospitality Report

The Committee received a report which set out the offers of gifts and hospitality to Councillors for the period January to December 2018 and the number of offers received and accepted by Council officers and in general terms, the instance when offers in excess of £50 were received.

The Chairman stated that the amount of declarations by members seemed modest and that he may raise this at a future Council meeting to ensure that members understood the process.

**RESOLVED** that the report be noted.

*(7.15 p.m. to 7.16 p.m.)*

## 10. Work Programme

The Committee received a report setting out the Committee dates and the work programme.

A member of the Committee suggested that due to the new General Data Protection Rules having now been in force for a while, that an update on GDPR be added to the work programme. The Committee agreed this would be beneficial.

**RESOLVED** that;

1. the report be noted and;
2. an update on GDPR be provided at a future meeting.

*(7.17 p.m. to 7.18 p.m.)*

## 11. Standards Complaints

The Committee considered a report asking them to determine the complaints made against Councillors Millane and Ride by way of a hearing pursuant to the procedure detailed at Part 5.1.2 Annex 5 of the Council Constitution. The Committee was informed that Councillor Ride was in hospital following surgery earlier in the day and that Councillor Millane would be representing both of them at the hearing. The Committee passed on their best wishes to Councillor Ride.

The Chairman stated that the complainant had been allowed the opportunity to prepare a written statement for the Committee which was passed round to them. The Committee were asked by the Chairman to ignore two sections of the statement. Firstly, a section referring to some aspects of the Code of Conduct which the complainant considered to be prevailing at all times which the Chairman had been advised was not correct. The second section of the statement to be ignored referred to a separate incident which had not been mentioned in the initial complaint. The Chairman confirmed that this incident was separate and therefore could not be considered as part of the hearing process. In response to a question from a member of the public it was confirmed that this could be raised as a separate complaint under the normal procedures if someone wished to do so. A further statement was made by a member of the public who said that the incident which led to the complaint being made, could have incited civil unrest and was a gross misuse of a personal email.

The Chairman explained the processes under the hearing procedure at Part 5.1.2 Annex 5 of the constitution. He stated that after hearing the necessary information the Committee would retire with the Independent Persons and the Council's Principal Solicitor, to decide whether any breaches of the code had been made. It was noted that the Monitoring Officer would not be involved in this part of the meeting. At this point in the meeting Councillor Millane was invited to briefly outline his and Councillor Ride's position. He stated that they denied any breach of the code and that he would be reading from a statement later in the hearing.

The Monitoring Officer was invited to present his report. The Committee was informed that in August 2018 a data breach was reported whilst he was acting as the Data Protection Officer and that this was detailed at appendix 3 of the report. In summary an email was sent by a member of the public to the Leader of the Council which was then passed onto ward Councillors Millane and Ride. The ward members were informed that the email was not confidential and at a meeting of Runwell Parish Council raised the email and its contents and identified its author. The acting Data Protection Officer confirmed in response to the complaint that this was a breach but as it was a minor breach it did not require formal reporting to the Information Commissioner's Office. The complainant then reported the matter to the ICO who also agreed that it was a minor breach and did not warrant further investigation. In his statement the complainant stated that he had appealed the ICO decision, though the Monitoring Officer had heard nothing further.

The Monitoring Officer informed the Committee that the complaints against each Councillor related to the same paragraphs of the Code of Conduct and detailed his view on each paragraph. It was noted that these were as follows, Paragraph 5.1.1.2.1.2 'Respect others ...', 5.1.1.2.1.5 'respect the confidentiality of information which you receive as a Councillor by (i) not disclosing confidential information to third parties unless required by law and only then after receiving confirmation from the Monitoring Officer to do so'. Paragraph 5.1.1.2.1.6 'Not conduct yourself in a manner which is likely to bring the Council into disrepute'.

The Monitoring Officer stated that the councillors denied any breach of the code and that his comments were available to the Committee at Appendix 5 to the report. Regarding the issue of confidentiality, he stated that despite it being a data breach the Councillors concerned had been told the email was not confidential. The Monitoring Officer therefore considered that he did not feel there had been a breach of the Code of Conduct in this respect by either Councillor on the basis that if they had been told the document was not confidential there was no confidentiality for them to respect. Disclosure of the author's identity was a data breach but not necessarily a breach of confidentiality for the same reason. Regarding the issue of respect the Monitoring Officer informed the Committee that differing views had been received from the complainant and councillors. It was essentially a matter of two opposing opinions and that the Committee needed to reach its own conclusion. To assist in this the Monitoring Officer provided details of a judicial definition of 'respect'. Regarding the third matter of bringing the Council into disrepute the Monitoring

Officer stated that there was no evidence from previous cases of either Councillor bringing the Council into disrepute. It was therefore a case of whether if found to have breached the code on the two previous points, if this then brought the Council into disrepute. The Monitoring Officer stated that if the Councillors were not found to have breached the code in the first two aspects then this element would fall as a result.

At this point of the hearing Councillor Millane made a statement also on behalf of Councillor Ride. Copies of the statement were handed round to the Committee. In summary the statement said that;

- This meeting demonstrated that Chelmsford City Council always endeavour to have the highest standards of Governance.
- It was unfortunate that they did not differentiate between the comments made in a personal capacity by the complainant from that of his work as a Parish Councillor, but they had been told the email was not confidential.
- The data protection regulations were unwittingly breached by naming the author of the email at the parish meeting, but this did not lead to a breach of the Code of Conduct.
- It was not disrespectful to name the author of the email in the context of the meeting and it was felt appropriate as the comments had caused offence to us.
- This was not a legal issue and was for the Committee to weigh up two contrary views and to reach a determination.
- Previous issues raised by the complainant had been settled a long time ago, did not bring the Council into disrepute and we do not consider that the determination of this complaint is to do so either.

#### **Exclusion of the Public**

**RESOLVED** that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for part of item 11 on the grounds that it involves the likely disclosure of exempt information falling within paragraph 1 of Part 1 of Schedule 12A to the Act.

The Committee retired at 8pm along with the Independent Persons and Principal Solicitor to consider the complaints made against the two Councillors.

The Committee returned at 8.47pm and resumed the meeting in open session.

The Chairman informed those present that as they could tell by the length of time spent considering the cases that reaching decisions had not been straight forward. The Chairman confirmed that the decisions had been taken after consultation with the Independent Person.

#### **Councillor Ride**

The Chairman stated that no breach of confidentiality had been made by Councillor Ride as he was told that the email was not confidential and as a result there was no confidentiality to be breached. Regarding the second element to the complaint the Committee decided that on balance no breach had been committed by Councillor Ride in failing to respect others. The Committee felt that the incident referred to was not sufficient to amount to a breach. The Chairman stated that in light of no breaches being found in the first two elements of the complaint, the third fell and no breach of bringing the Council into disrepute was found.

#### **Councillor Millane**

The Chairman stated that no breaches of the code had been found against Councillor Millane and the reasons were the same as those provided for Councillor Ride.

The Chairman stated that the Committee wanted to make a further request in light of the complaints. It was noted that the Committee was unanimous in deciding that all Councillors should undergo further training on data protection issues and the application of the code of conduct in that respect. Officers agreed that future training sessions would be delivered on the topic.

**RESOLVED** that no breaches of the code of conduct were made by Councillor Millane and Councillor Ride.

*(7.19 p.m. to 8.50 p.m.)*

12. **Urgent Business**

There were no matters of urgent business to discuss.

The meeting closed at 8.50 p.m.

Chairman