



STANDARDS COMMITTEE

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, TREDOMEN PARK ON FRIDAY 9TH MARCH 2012 AT 10.00 AM

PRESENT:

Mr. L.C. Davies - Chairman
Professor S. M. Griffiths - Vice Chairman

Councillors:

J. B. Criddle and L.R. Rees

Mrs. D. Holdroyd and Mr. P. Morgan

Community Councillor Mrs. G. Davies

Together with:

G. Williams (Deputy Monitoring Officer), H. Morgan (Senior Committee Services Officer)

1. APOLOGY

An apology for absence was received from Mrs. M. Evans.

2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3. MINUTES - 23RD NOVEMBER 2011

RESOLVED that the minutes of the meeting held on 23rd November 2011 (minute nos. 1 - 8, on page nos. 1 - 3), be approved as a correct record.

MATTER ARISING

4. Standards Committee - Annual Report (minute no. 4)

The Chair advised that the report has almost been finalised. The statistical information has been collected and is in the process of being collated in order that it can be incorporated within its content and presented to Council.

5. APPLICATIONS FOR DISPENSATION

The decision taken by the Chairman and Vice-Chairman of the Committee to grant dispensations to Councillors P.J. Bevan, M. H. Newman and M.J. Prew under ground (d) and (e) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to enable them to participate fully in the debate and vote on a report entitled 'CCBC 21st Century Schools Programme' was noted.

6. LOCALISM ACT, PRE DETERMINATION AND PRE DISPOSITION

The Deputy Monitoring Officer advised that Section 25 of the Localism Act 2011 came into force on 15th January 2012. The intention of the government in passing this section is to "make it clear that it is proper for Councillors to play an active role in local discussions and that they should not be liable to legal challenge as a result".

It was noted that Section 25(2) sets out the following:-

A decision maker is not to be taken to have had, or appeared to have had, a closed mind when making a decision just because:-

- (a) the decision maker has previously done anything that directly or indirectly indicated the view the decision maker took, or would or might take, in relation to a matter and;
- (b) the matter was relevant to the decision.

Mrs. Williams gave a broad overview of the provision and its implications and circulated a briefing paper to assist with the debate. Although there are issues of interpretation around the Section, generally it means that the risk of a successful legal challenge to a decision on this basis has been reduced. However there can be no blanket assurance that whatever members say in advance of a decision will not matter at all and, as ever, much will depend on how the courts view any challenges based on a prior expression of views. Any challenge will rely on establishing bias or pre-determination by reference to prior comment or statements and it will be necessary to prove that the decision maker had a closed mind.

With regards to Public Law Requirements in reaching a decision Members will be subject to wider legal requirements than bias and pre-determination and are required to take into account all relevant factors and disregard that which is irrelevant. Members will need to be aware of these wider legal requirements and especially so where they are a key decision maker such as an Executive member.

Mrs. Williams then referred to Paragraph 8 of the Members Model Code of Conduct which requires Members to reach decisions on the merits of the circumstances involved and in the public interest, having regard to any advice provided by Officers. The Guidance from the Ombudsman identifies pre-determination and bias as relevant evidence relating to this provision and compliance. However with regards to Section 25 because it is only relevant to situations where the validity of a decision is challenged it does not affect this requirement and it is necessary to ensure that decisions are taken in a way which complies with this paragraph.

Specific reference was made to the quasi-judicial hearings where members sit on a Committee, Sub Committee or Panel to conduct a hearing and have to independently weigh up evidence and arguments and come to a decision. It was noted that these hearings, which are subject to wider legal constraints or consequences if they do not comply with an overall fairness requirement could be affected. In most cases appeals or challenges to external tribunals will not challenge the validity of the decision in question but rather seek redress or re-determination of the issue. The legal risk to the Council of failing to hold a fair hearing,

reflected in awards of compensation, damages or costs also remains. It is unlikely in these cases that Section 25 would protect the Council where procedural fairness is an issue for a tribunal. Members participating in such decisions will be advised that they must not create an impression of bias or pre-determination for these reasons.

Mrs. Williams advised that the primary concern of Council Legal Officers in advising on bias or pre-determination or similar grounds was the management of the risk of legal challenge to the Council's decisions.

An explanation was then given on the requirement to disclose both personal and prejudicial interests and for ease of reference a number of examples were given. The Committee were reminded that if a member has both a personal and prejudicial interest he or she should declare this interest and leave the meeting when the item to which the interest relates is being discussed. Members who have a personal interest may not be required to leave and would be able to take part in the debate. The Standards Committee can consider an application for dispensation.

Mrs. Williams then responded to a number of questions raised over and above those which were considered during the course of the debate and Members thanked her for her informative and detailed presentation.

7. ATTENDANCE AT MEETINGS

It was suggested that Members may wish to attend meetings to observe proceedings to see the decision making process and how declarations of interest are made by Members at those meetings. A timetable of meetings was circulated and it was proposed that, if available, Members attend Cabinet on 3rd April or 17th April and Council on 24th April 2012. Others indicated they would wish to attend Scrutiny Committee or Planning Committee and it was agreed that if they notify the Clerk the necessary arrangements would be made.

8. UPDATE ON DISPENSATIONS

It was noted that in accordance with the constitution applications received are reported to the Standards Committee for a decision or where this is not possible due to the timing of the application they are dealt with by the Chair or the Vice Chairman of the Committee and with one other independent member under delegated powers, and subsequently reported to the Committee for information and that it had agreed that this practice should continue and should alternate on a rota basis with the appointed independent members. It was further agreed that other Members of the Committee should be invited to those meetings in order to gain experience.

Mrs. Williams advised that she could circulate a briefing note on the decision making process and it was agreed that the guide to speaking at Planning Committee should also be circulated at that time.

The meeting closed at 10.45 a.m.