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Standards Community Sub-Committee
4th October 2017

MINUTES OF A MEETING OF THE STANDARDS COMMUNITY SUB-COMMITTEE HELD AT COMMITTEE ROOM A - COUNTY HALL, LLANDRINDOD WELLS, POWYS ON WEDNESDAY, 4 OCTOBER 2017

PRESENT

Independent Member Mrs H Rhydderch-Roberts (Chair)

Independent Members: Mrs J Evans, Mr S Hays, Mrs C Jackson and Mrs S Jarman
County Councillor K M Roberts-Jones
Community Councillors Mrs M Morris, Mr H Pattrick and Mrs J Shearer

1. APOLOGIES

No apologies for absence were received.

2. MINUTES

The Chair was authorised to sign the minutes of the meeting held on the 15th February 2017 subject to the following amendments:

Present:

Independent Members Mrs J Evans and Mr S Hays

County Councillor G I S Williams

Community Councillors Ms C Evans, H Pattrick and D Pugh

Apologies:

Apologies for absence were received from Independent Members Mrs H Rhydderch-Roberts (Chair and Mrs C Jackson (Vice-Chair).

3. DECLARATIONS OF INTEREST

No declarations of interest were received.

4. REPORT OF THE SOLICITOR TO THE COUNCIL

The Committee received the report of the Solicitor to the Council (copy filed with signed minutes).

A Referral of Councillors to Public Services Ombudsman

A Town and Community Councillor referrals

The current position regarding existing matters with the Ombudsman is as follows:

1/17/TCC	Ombudsman decided not to investigate
2/17/TCC	Ombudsman decided not to investigate
3/17/TCC	Ombudsman decided not to investigate
4/17/TCC	Ombudsman decided not to investigate
5/17/TCC	Ombudsman decided not to investigate

B Dispensations

B1 Applications – County Councillors

No applications for dispensations from Town and Community Councillors had been received.

C Appointment of Independent Member

The process for appointing an Independent Member had commenced. The post had been advertised in the Brecon and Radnor and the County Times and had also been placed on the front page of the Powys County Council website. To date there have been 35 expressions of interest and 11 applications. The closing date for submitting applications is the 6th October 2017. Shortlisting will take place on the 23rd October 2017 with Interviews taking place on the 8th November 2017.

The Interview Panel will comprise of the following members:

Mrs S Thompson – High Sheriff
Mrs H Rhydderch-Roberts – Chair of Standards Committee
Mrs J Evans – Independent Member Standards Committee
Councillor S Lewis – County Councillor Member Standards Committee
Community Councillor Hugh Patrick – Community Councillor Member Standards Committee.

The appointment will be made at the meeting of Powys County Council on the 25th January 2018. The first meeting of the Standards Committee thereafter will be the 7th February 2018.

D Ombudsman's Casebook

The Ombudsman had published Code of Conduct Casebooks for the following periods:

- April 2017 – June 2017

A copy of this Casebook was attached at **Appendix A**.

E Dispensations

E1 General Dispensations

The following general dispensations were considered.

School Modernisation and School Transport Reviews.

The County Council is continuing a School Modernisation Programme which has raised a number of complex issues in relation to the Members' Code of Conduct.

The previous Standards Sub-Committee's discussion centred around the need to allow members of the public to have a voice through their elected representative on an issue of such importance to the whole community and to ensure that the democratic process was not restricted. Whilst it was confirmed that there was no problem with school governors taking part in the process it was uncommon for a Member to be solely a school governor and most members had multiple and complex interests.

The previous Sub-Committee considered that the main area of difficulty for Members arose when pecuniary interests arose which were defined as those Members who

- were employed in a school,
- who had a close personal association with someone employed in a school (spouse, parent, child)
- had a contract for school transport
- Members who have children in schools who are likely to be affected by the decision or have a close personal association with a person who has children in a school likely to be affected by the decision

Since this was last discussed by the Standards Sub-Committee the following additional interest have been identified:

- Members who have a pecuniary interest because of out of school transport costs

The previous Sub-Committee emphasised that a pecuniary interest did not go so far as to relate to a change of school for a child where the Member may choose to send their child to a school other than their designated school and thus incur travel expense.

The previous Sub-Committee agreed broadly with the view taken by the Sub-Committee in 2010 of the need to allow members of the public to have a voice through their elected representatives on an issue of such importance to the whole community and to ensure that the democratic process was not unduly restricted subject to a limitation in respect of prejudicial interests which were pecuniary arising from employment at a school, but since then we have identified additional interests identified in 4.1.4 above.

The previous Sub-Committee agreed that a general dispensation should be granted to all councillors in this connection and that it should extend to issues involving school transport which were also the subject of a current review and were intrinsically linked to the school modernisation programme. It was further decided that in relation to school transport review matters the dispensation should not apply in respect of a

pecuniary prejudicial interest arising from an involvement with the provision of such transport.

The previous Sub-Committee also reaffirmed that the dispensation should apply only to matters arising directly under and linked to the actual school modernisation programme/ school transport review. In other words, the dispensation should not apply in circumstances where the issue involved an individual school, pupil or transport issue unrelated to such programme/review.

PROPOSED RESOLUTION	REASON FOR DECISION
<p>That a general dispensation (the dispensation) in relation to school modernisation and any school transport issue be granted to all Town and Community councillors in accordance with and, subject to, the following provisions of this resolution:-</p> <p>(a) the dispensation shall relate to all prejudicial interests under the Members Code of Conduct PROVIDED ALWAYS that the dispensation shall not apply where the councillor (irrespective of whether or not he/she is a member of the Cabinet or Scrutiny Committee) has a pecuniary prejudicial interest other than one that relates to out of school transport costs;</p> <p>(b) “school modernisation” means any modernisation proposal being undertaken by or for the Powys County Council Cabinet in relation to both primary, secondary and special schools but does not include non-modernisation issues (e.g. the budget, inspection, employment matters, ICT, catering, cleaning, refurbishment, repair or property items);</p> <p>(c) “school transport issue” means any issue relating to the planning, commissioning and procurement of transport for pupils attending primary, secondary and special schools both in and outside of Powys where Powys County Council has a duty to provide such transport but does not include interests which are specific to a particular school, route or pupil unrelated to such review;</p> <p>(d) “pecuniary prejudicial interest” means a prejudicial interest under the Members Code of Conduct which results in financial gain, or financial loss, either immediately, or in the foreseeable future, arising (in the case of school modernisation) from employment as a teacher or otherwise at a school or, (in the case of the school transport) from Powys County Council’s provision of school transport, to:-</p>	<p>To enable members to represent their constituents in matters of great significance for Powys where they do not have a conflict of interest which is pecuniary; the sub-committee being of the view that the grant of this general dispensation will not damage public confidence in the conduct of the Council’s business.</p>

<p>(i) the councillor in question; or</p> <p>(ii) someone with whom the councillor lives or has a close personal association e.g. close friends, close relatives, colleagues with whom the councillor has particularly strong connections, business associates and someone with whom the councillor has been in dispute with (NB1 Councillors should note however that “close personal association” does not include casual acquaintances, distant relatives or people you simply come into contact with through your role as member or your work in the local community) (NB2 Pecuniary Prejudicial Interest does not include the additional out of school transport costs incurred by a parent, grandparent, guardian, carer or person having parental responsibility);</p> <p>(e) the dispensation extends to:-</p> <p>(i) attending any meeting formal or informal (as defined in the Members Code of Conduct) including meetings of the Town or Community Council, or other Committee;</p> <p>(ii) speaking and voting at such meetings; and</p> <p>(iii) making oral or written representations and generally playing a full role in representing constituents;</p> <p>(f) the dispensation is subject to compliance with:-</p> <p>(i) any legislative requirement;</p> <p>(ii) any common law rule including bias/predetermination;</p> <p>(iii) the Town or Community Council’s constitution;</p> <p>(g) the dispensation shall continue in force until the first meeting of the Standards Sub-Committee after the next ordinary council elections in 2022 unless before those elections the Standards Sub-Committee revokes, amends or alters the dispensation;</p> <p>(h) for the avoidance of all doubt:-</p> <p>(i) the dispensation applies to all members including those who are Decision Makers;</p>	
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| <p>(ii) other than where a specific pecuniary prejudicial interest exists, as detailed above, the dispensation applies to all other types of prejudicial interests such as those arising from being a school governor or being the parent, grandparent, guardian, carer or person having parental responsibility for a child at a school;</p> <p>(iii) the dispensation does not apply where directly or through someone with whom the member lives or has a close personal association a pecuniary prejudicial interest exists as defined above;</p> <p>(iv) it is always a matter for the individual member to decide whether the interest is prejudicial;</p> <p>(v) a member who takes advantage of the dispensation must continue to comply with the Members Code of Conduct including the requirements in relation to:-</p> <p>(a) the disclosure of his/her personal and prejudicial interest at meetings and in discussions indicating the nature of such interest and confirming that he/she is participating with the benefit of the dispensation; and</p> <p>(b) the giving of the requisite written notification in connection with these disclosure requirements;</p> <p>(vi) the dispensation, whilst it does not apply to any member (irrespective of whether or not he/she is a member of the Powys County Council Cabinet) with a pecuniary prejudicial interest, does not affect the right (under the Members Code of Conduct) of a member who has a pecuniary prejudicial interest to speak and then withdraw from a meeting where the public are accorded the right to speak at such meeting;</p> | |
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Renewable Energy.

This issue commenced with a proposal in Montgomeryshire relating to proposed large windfarms as well as an electricity sub-station and electricity pylons.

Given the extent to which these proposals affected a large part of Montgomeryshire and Northern Radnorshire, and the position in which very many Town and Community Councillors for the area found themselves, the previous Sub-Committee was asked to consider the desirability of granting Councillors (in their various roles) a general dispensation or dispensations to speak or speak and vote at meetings (including both formal meetings and meetings under the Members' Code involving another Member and/or officer); to make representations in writing and orally and generally to play a full role (subject to compliance with the general law and the County Council's Constitution – e.g. Planning Protocol – for County Councillors who are members of Town and Community Councils / attend Town and Community Council meetings) in representing their constituents in relation to this matter.

It was further noted that some County Councillors were also Town or Community Councillors. In addition most County Councillors attend meetings of their Town and Community Councils. Town and Community Councils affected by any such renewable energy proposals would be consultees in the planning process.

In their deliberations the previous Sub-Committee took note of the following:

- It had generated a considerable amount of local interest much of which opposed the development;
- It was perceived that constituents would wish their local Town or Community Councillor to be free to put forward the views of the local communities in relation to this development and to clearly articulate and make public their own view irrespective of any personal and prejudicial interest a member may have under the Members Code of Conduct;
- The likelihood was, given the wide spread impact of this development, that many Members would be directly and indirectly affected whether adversely or possibly beneficially resulting in them having personal and prejudicial interests under the Members' Code of Conduct;
- Those County Council Members in areas affected who wish to act as Decision Makers on either the Cabinet or Planning Committee (who were also Town and Community Councillors or who attended TCC meetings) would find difficulty in playing any significant "constituency role" in their elected division due to the difficulties caused by the likely perception that as a consequence of their role locally they had formed a "closed mind" and were "predetermined"; and
- The different types of personal and prejudicial interests that could arise appeared to be diverse and it would be difficult, if not impossible, to categorise all such interests in terms of those which ought to be the subject of dispensations and those which should not.

In relation to County Councillors, the Standards Committee has at its meeting on 28th June, 2017 already considered and granted a general

dispensation to County Councillors in respect of renewable energy proposals, and County Councillors who are members of Town and Community Councils or who attend Town and Community Council meetings in their area will need to abide by the terms of that general dispensation in any consideration of a renewable energy proposal at a Town or Community Council meeting.

The previous Standards Sub-Committee concluded that given all of the circumstances outlined above it was appropriate and would not damage public confidence in the conduct of the Council's business to grant a general dispensation to Councillors with personal and prejudicial interests under the Members' Code of Conduct arising out of such a development to enable them to play a non-decision making role. Such a dispensation would apply to all Councillors who are not Members or the Cabinet or Planning Committee or, if they were, had decided to step aside as decision makers as solely play the role of Local Member in relation to this matter.

Other Interests relevant to Town and Community Council Members.

The types of interests highlighted by Members included:

- Financial/land interests
- family interests
- being a Governor of a school on the potential path of pylons
- being a member of a trust dispensing community benefits
- business under contract with a wind farm developer
- conflict between the members electoral division role and their role on behalf of the Council
- being a trustee of a charity which could be affected.

The previous Standards Sub-Committee decided that a general dispensation should be granted to all councillors including decision makers provided that no dispensation would apply where, in relation to a specific planning application or a site specific matter, a member had a prejudicial interest which was pecuniary.

PROPOSED RESOLUTION	REASON FOR DECISION
<p>That a general dispensation (the dispensation) in relation to renewable energy issues be granted to all Town and Community councillors in accordance with and, subject to, the following provisions of this resolution:-</p> <p>(a) the dispensation shall relate to all prejudicial interests under the Members Code of Conduct PROVIDED ALWAYS that the dispensation shall not apply in respect of a specific planning application or site specific matter where the councillor has a pecuniary prejudicial interest;</p> <p>(b) "renewable energy issues" means any question, motion, report, notification, communication, discussion,</p>	<p>To enable members to represent their constituents in matters of great significance for Powys where they do not have a conflict of interest</p>

<p>consultation, proposal, application, appeal, process or proceedings, development or works, involving, related to, concerning, or connected with, a renewable energy development including any associated :-</p> <ul style="list-style-type: none">(i) Turbines, solar panels, hydro schemes, substations, pylons, overhead or underground cables or wires or any other infrastructure;(ii) Infrastructure transport, highway, tourism and regeneration issues:(iii) community benefits; and(iv) national or local policy, plan or guidance, white or green paper; <p>(c) “pecuniary prejudicial interest” means a prejudicial interest under the Members Code of Conduct which results in financial gain or financial loss either immediately or in the foreseeable future to:-</p> <ul style="list-style-type: none">(i) the councillor in question; or(ii) someone with whom the councillor lives or has a close personal association e.g. close friends, close relatives, colleagues with whom the councillor has particularly strong connections, business associates and someone with whom the councillor has been in dispute with (NB Councillors should note however that “close personal association” does not include casual acquaintances, distant relatives or people you simply come into contact with through your role as member or your work in the local community); <p>(d) the dispensation extends to:-</p> <ul style="list-style-type: none">(i) attending any meeting, formal or informal (as defined in the Members Code of Conduct), including meetings of the Council, or other Committee;(ii) speaking and voting at such meetings; and(iii) making oral or written representations and generally playing a full role in representing constituents; <p>(e) the dispensation is subject to compliance with:-</p> <ul style="list-style-type: none">(i) any legislative requirement;	<p>which is pecuniary; the sub-committee being of the view that the grant of this general dispensation will not damage public confidence in the conduct of the Council’s business.</p>
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- (ii) any common law rule including bias / predetermination;**
 - (iii) the general dispensation granted to County Councillors (where County Councillors are members of the Town or Community Council or attend Town and Community Council meetings);**
- (f) the dispensation shall continue in force until the first meeting of the Standards Sub-Committee after the next ordinary council elections in 2022 unless before those elections the Standards Sub-Committee revokes, amends or alters the dispensation;**
- (g) for the avoidance of all doubt:-**
- (i) the dispensation applies to all members including those who are Decision Makers;**
 - (ii) the dispensation does NOT apply where directly, or, through someone with whom the member lives or has a close personal association, a pecuniary prejudicial interest exists;**
 - (iii) other than where a specific PECUNIARY prejudicial interest exists, as detailed above, the dispensation applies in the case of all other types of prejudicial interests ;**
 - (iv) it is always a matter for the individual member to decide whether the interest is prejudicial;**
 - (v) a member who takes advantage of the dispensation must continue to comply with the Members Code of Conduct including the requirements in relation to:-**
 - (1) the disclosure of his/her personal and prejudicial interest at meetings and in discussions indicating the nature of such interest and confirming that he/she is participating with the benefit of the dispensation; and**
 - (2) the giving of the requisite written notification in connection with these disclosure requirements;**
 - (vi) the dispensation, whilst it does not apply to any member with a pecuniary prejudicial interest, does not affect the right (under the Members Code of Conduct) of a member who has a pecuniary prejudicial interest to speak and then withdraw from a meeting where the public are accorded the right to speak at such meeting .**

School Governors.

The Members' Code of Conduct provides that councillors either elected by their Council or appointed by other means as school governors have a personal interest when matters relating to education or the school where they are a governor are considered.

The Code in addition grants an exemption to Councillors who have been appointed by their Council as school governors to take a full part in discussions excluding regulatory type matters e.g. planning. It is also arguable that another exemption applies i.e. the one relating to "another public authority or body exercising functions of a public nature in which you hold a position of general control or management" as it would be difficult to argue that governing bodies are not public bodies.

This exemption, however, does not apply for those Councillors not appointed by their Council. In effect this means that they are not allowed to speak on matters relating to the school where they are a governor in the same way as those Councillors appointed by their Council. They are therefore restricted to speaking about general school policy matters only, and when that general policy matter is applied specifically to the school where they are a governor, the Code says that this is a prejudicial interest, and the Councillor must withdraw from the meeting.

A complaint was received from the Chair of a Community Council in Powys in 2012 that democracy in his opinion was being hindered by the current wording of the Code in relation to voluntary organisations and the ability of Councillors to support / raise issues relating to those organisations in the Council due to the restrictive wording in the Code. A specific example is given relating to a school governor not appointed by the Council.

As officers advising on the Code of Conduct it is difficult to argue the case for governors appointed or not appointed by their Council being treated differently by the Code of Conduct as they are currently, and it was suggested that they should all be treated equally, irrespective of how they are appointed.

The previous Sub-Committee in 2012 was considering issues in relation to charities at its meeting on 5th December, 2012. As school governing bodies are clearly public bodies, it seemed appropriate that this "type" of organisation should, in addition to charities, be considered for a general dispensation by the previous Standards Sub-Committee to remove the current restriction. It was further suggested that because of the type of organisation i.e. a public body, the same argument as for charities applies i.e. that granting a general dispensation would not damage public confidence if Councillors were fully involved in matters relating to schools. The only exception that should be considered is that used for previous general dispensations i.e. where the councillor has a pecuniary prejudicial interest.

The previous Sub-Committee was therefore requested to consider the following:

- (i) granting a general dispensation to all councillors who are school governors appointed by their Council to take part in regulatory type matters (i.e. speak and vote);
- (ii) granting a general dispensation to all councillors who are school governors not appointed by their Council to take part in all matters relating to their school (including regulatory matters) (i.e. speak and vote)
- (iii) that the general dispensation does not apply where the Councillor has a pecuniary prejudicial interest. **(NB Pecuniary Prejudicial Interest does not include the additional out of school transport costs incurred by a parent, grandparent, guardian, carer or person having parental responsibility)**

The previous Sub-Committee considered that it would assist council business and not damage public confidence to grant a general dispensation to put all councillors who were school governors (irrespective of how they were appointed) on the same footing in respect of prejudicial interests relating to their role as school governors. Accordingly the previous Sub-Committee decided that councillors who were school governors otherwise than by way of appointment or nomination by their council should be granted a general dispensation to participate, speak and vote in respect of council business relating particularly to the schools where they are governors.

PROPOSED RESOLUTION	REASON FOR DECISION
<p>(i) That a general dispensation be granted to councillors who are school governors appointed otherwise than by the Council to participate, speak and vote in connection with council business relating particularly to the schools where they are governors (unless that business relates to the determination of any approval, consent, licence, permission or registration).</p> <p>(ii) That this general dispensation only relates to a prejudicial interest arising from the Councillors role as a school governor and does not confer a dispensation in respect of any other type of prejudicial interest. (A Pecuniary Prejudicial Interest does not include the additional out of school transport costs incurred</p>	<p>(i) To place all councillors who are school governors on an equal footing with regard to prejudicial interests so as to facilitate the democratic process and assist council business; the Sub-Committee being of the view that to do so will not damage public confidence in the conduct of the council's business.</p> <p>ii), iii) and iv) To define the dispensation and its duration.</p>

<p>by a parent, grandparent, guardian, carer or person having parental responsibility)</p> <p>(iii) That this dispensation is subject to the existing general dispensation granted by the Committee in respect of school modernisation and school transport</p> <p>(iv) the dispensation shall continue in force until the first meeting of the Standards Sub-Committee after the next ordinary council elections in 2022 unless before those elections the Standards Sub-Committee revokes, amends or alters the dispensation</p>	
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Membership of Voluntary Organisations.

In December 2012 the previous Standards Sub-Committee decided to grant a general dispensation to town and community councillors who had membership (often not through appointment by their councils) of 'voluntary Organisations' such as non-profit making clubs, associations, societies, groups and organisations such as football, cricket, tennis clubs, allotment associations, history or drama groups, local festivals etc in respect of prejudicial interests which arose from their role as a trustee or member of voluntary organisation where they had not been elected, appointed or nominated to that position of trustee by their Council.

The previous Standards Sub-Committee considered that this general dispensation should be extended to County Councillors who are Members of such Voluntary Organisations where they had been appointed other than by the County Council.

PROPOSED RESOLUTION	REASON FOR DECISION
<p>1. That a general dispensation be granted to all Town and Community Councillors who are elected, appointed or nominated otherwise than by their Council as :</p> <p>(a) trustees of registered charities (including where they are directors of limited companies running the charities); and</p>	<p>1 To place all councillors who are trustees of registered charities or members (of whatever level) of Voluntary Organisations (howsoever elected, appointed or nominated) on an equal footing with regard to prejudicial interests so as to facilitate the democratic process and assist council</p>

(b) members (at whatever level) of Voluntary Organisations to participate, speak and vote in connection with council business relating to the charity of which the councillor is a trustee or the Voluntary Organisation of which the councillor is a member (at whatever level) including

(i) regulatory matters concerning the registered charity of which the councillor is a trustee or the Voluntary Organisation of which the councillor is a member; and

(ii) the grant, loan or other form of financial assistance of more than £500 to the registered charity of which the councillor is a trustee or the Voluntary Organisation of which the councillor is a member

but subject to the following:-

(1) that the registered charity or Voluntary Organisation must be non-profit making and the Councillor (or a close personal associate) must not be in receipt of any financial reward or remuneration from the registered charity or Voluntary Organisation

(2) that this general dispensation only relates to a prejudicial interest arising from the Councillor's role as a trustee of the registered charity or member or as a member of the Voluntary Organisation and does not confer a dispensation in

business; the Standards Sub-Committee being of the view that to do so will not damage public confidence in the conduct of the council's business and therefore the Standards Sub-Committee is satisfied that the grounds in Paragraph (d) of Regulation 2 of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 are met.

<p>respect of any other type of prejudicial interest such as a pecuniary prejudicial interest.</p> <p>(3) the dispensation shall continue in force until the first meeting of the Standards Sub-Committee after the next ordinary council elections in 2022 unless before those elections the Standards Sub-Committee revokes, amends or alters the dispensation</p>	
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F. Meeting Dates

To note dates of future meetings as follows:

Wednesday 7th February 2018

Wednesday 27th June 2018

Wednesday 3rd October 2018

Mrs H Rhydderch-Roberts (Chair)

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