

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held on Thursday 28 August 2014 at 6.00pm

Present:

Councillors: R M Deed (Chairman), R J Chesterton, Mrs F J Colthorpe, R Evans, Mrs L J Holloway, Mrs J Roach (substituting for Cllr Mrs N Woollatt), C Slade, P F Williams, and R Wright

Apologies: Mrs N Woollatt

Also Present:

Councillors: N V Davey and R L Stanley

Officers

Present: K Finan (Chief Executive), J Ayres (Principal Solicitor) and S Gabriel (Principal Member Services Officer).

24. PUBLIC QUESTION TIME

There were no members of the public present.

25. MINUTES OF THE PREVIOUS MEETING (00-2-04)

The Minutes of the previous meeting on 30 July were approved as a true record and signed by the Chairman.

26. CHAIRMAN'S ANNOUNCEMENTS (00-3-07)

The Chairman had no announcements to make.

27. MOTION 480 (17 FEBRUARY 2014) CLLR MRS J ROACH (0-03-13)

Following discussions at the previous meeting, the Chairman outlined the outcome of the previous meeting and reiterated the resolution of the Committee and the email sent by the Chief Executive to Members the following day regarding his reconsideration of the resolution that the restriction of certain Members to the staff areas of the Council Offices would remain in place. The Chief Executive was asked whether he had sought legal advice between the meeting and the sending of the email the following morning, the answer to this was no; however he had asked the Principal Solicitor to attend the meeting and to explain the legal position.

The Principal Solicitor stated that she had identified two issues in respect of this matter.

1. Did the Chief Executive have the authority to exclude a Councillor from those parts of Phoenix House that were not open to the public?
2. Was the Chief Executive justified in excluding the two Councillors from the office?

She explained that with regard to issue 1 there raised 2 further questions

a) Was there such a power to exclude?

b) On the assumption that the answer to that was yes, who could exercise that power?

a) Power to exclude

Functions which were the responsibility of the Executive were determined in accordance with Section 13 of the Local Government Act 2000 and the following subsection was relevant:

13(2) Subject to any provision made by this Act or by any enactment which is passed or made the day on which the Act is passed, any function of a local authority which is not specified in regulation under subsection (13) (Arrangements made by the Secretary of State) is to be the responsibility of an executive of the authority under executive arrangements.

No regulations have been made in respect of who had the discretion to decide who can enter the Council Offices. Ownership and management of land and property includes the right to exclude and so the power to exclude was an executive responsibility.

b) Exercise of that power

Section 15 of the Act addresses the discharge of functions where there is a Leader and Cabinet Executive:

1) Subject to any provision made under section 18, 19 or 20 (area committees, other local authorities, joint committees) any functions which, under executive arrangements, are the responsibility of a leader and cabinet executive are to be discharged in accordance with this section

2) The executive arrangements may make provision with respect to the allocation of any functions which are the responsibility of the executive among the following persons –

- (a) The executive,
- (b) Any member of the executive,
- (c) Any committees of the executive, and
- (d) Any officers of the authority.

3) If the executive arrangements make such provision as is mentioned in subsection (2), any person to whom a function is allocated in accordance with that provision may discharge the function.

Article 11 of the Constitution provides that the Chief Executive has overall operational responsibility (including overall management responsibility for all officers) delegated to him.

Therefore the Chief Executive has authority in accordance with the Constitution to decide who can enter or be removed from the Council's offices. The workings of the Local Authority are a business, as a manager of that business the Chief Executive Officer of the Council is responsible for ensuring that the Council functions properly and legally, and therefore must take action accordingly.

This power has been used to exclude two Councillors. It has not been used to punish the Councillors, but according to the Chief Executive has been used to alleviate a risk posed by the two Councillors. It exists independently of the sanctions available for a breach of the Code of Conduct that can be imposed by the Standards Committee.

The Chairman expressed concern regarding the lateness of this information.

Members felt that the Chief Executive's justification should not be discussed.

The Chairman requested that a discussion take place regarding why the Chief Executive ignored a resolution of the Committee.

Consideration was given to the following issues:

- Actions against Members should be highlighted within the Constitution
- Whether the Full Council should consider the issue
- The need for a clear policy
- How the situation had been handled
- Possible officer bias with regard to the situation
- Possible external legal advice to be sought
- The fact that the Officers Code of Conduct was being updated
- Whether the Committee had powers over operational issues
- Clarification that the committee did not have the authority to make their last resolution
- The need to address the original wording of the motion which asked ... "under what circumstances such action can be taken"
- Consideration of an amendment to the Constitution
- Whether the Chief Executive had consulted Cabinet Members with regard to his initial decision to exclude 2 Members from the staff areas of the Council Offices
- Delegated authority to the Chief Executive
- Procedural clarification

It was therefore

RESOLVED to ask officers to draft a constitutional amendment for the Audit Committee which clarifies who can take action against Councillors, under what circumstances and to establish a right of appeal.

(Proposed by Cllr Mrs J Roach and seconded by Cllr Mrs L J Holloway)

Note: Cllr Mrs F J Colthorpe requested that her abstention from voting be recorded.

(The meeting terminated at 7.50pm)

CHAIRMAN