

STANDARDS AND ETHICS COMMITTEE

Venue: Town Hall, Moorgate
Street, Rotherham. S60
2TH

Date: Thursday, 13 December
2018


Time: 2.00 p.m.

A G E N D A

1. Apologies for Absence.
2. Declarations of Interest
3. To consider whether the press and public should be excluded from the meeting during consideration of any part of the agenda.
4. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
5. Minutes of the previous meeting (Pages 1 - 4)
6. The Appointment of Parish Council and Independent Members of the Standards and Ethics Committee (Pages 5 - 10)
7. Consideration of Complaints (Pages 11 - 16)
8. Review of Concerns raised pursuant to the Whistleblowing Policy (Pages 17 - 22)
9. Outcome of Standards and Ethics Sub-Committee Hearing re Alleged Breach of the Code of Conduct (Pages 23 - 35)
10. Exclusion of the Press and Public
Resolved:- That under Section 100(A) 4 of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12(A) of such Act indicated, as now amended by the Local Government (Access to Information) (Variation) Order 2006 (information relates to finance and business affairs).

11. Internal Audit Reports (Pages 36 - 40)

12. Date and Time of Next Meeting

A handwritten signature in black ink, reading "S. Kemp." with a period at the end. The script is cursive and fluid.

S. KEMP,
Chief Executive.

STANDARDS AND ETHICS COMMITTEE
13th September, 2018

Present:- Councillor McNeely (in the Chair); Councillors Clark, Fenwick-Green, and Simpson, along with Parish Council Representatives Messrs. D. Bates, D. Rowley and R. Swann and also Mr. P. Edler and Mrs. J. Porter, Independent Co-optees.

Also in attendance was Mr. P. Beavers, Independent Person.

Apologies for absence were received from Councillors Brookes, Ireland and Vjestica and Mr. D. Roper-Newman, Independent Person.

11. DECLARATIONS OF INTEREST

There were no Declarations of Interest to report.

12. EXCLUSION OF THE PRESS AND PUBLIC

Resolved:- That under Section 100(A) 4 of the Local Government Act 1972, the public be excluded from the meeting for the appendices for Minute Nos. 15 and 16 and Minute No. 17 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12(A) of such Act indicated, as now amended by the Local Government (Access to Information) (Variation) Order 2006.

13. MINUTES OF THE PREVIOUS MEETING HELD ON 14TH JUNE, 2018

Consideration was given to the minutes of the previous meeting held on 14th June, 2018.

Reference was made to Minute No. 3 (Minutes of 1st May, 2018) in terms of the appointment of the Town and Parish Council representatives and the agreement that their membership continued until the 2020 elections. Whilst this had been agreed in principle it was suggested that this be confirmed in writing in consultation with the Cabinet Member with responsibility.

It was also suggested that clarification be sought on the nomination/voting mechanism to be used for the appointment of the Town and Parish Council representatives in the future.

With regards to Minute No. 3 and the response to the consultation (Review into Ethical Standards in Local Government) this had been circulated to all members of the Standards and Ethics Committee.

It was also noted that with regards to Minute No. 4 (Training Plan) liaison was taking place with the Yorkshire Local Councils Association via the Parish Liaison Officer to ascertain their training programme for the year to

STANDARDS AND ETHICS COMMITTEE - 13/09/18

avoid any duplication. The Committee emphasised the need for training on social media and urged officers to take this forward.

In terms of the Review of the Whistleblowing Policy (Minute No. 9) the Deputy Monitoring Officer confirmed that any additional information that could be incorporated for the Committee's consideration would be included and updated accordingly for the next meeting.

Resolved:- That the minutes of the meeting of the Standards and Ethics Committee held on 14th June, 2018 be approved as a true and accurate record of proceedings.

14. THE WHISTLEBLOWING POLICY AND MODERN SLAVERY

Consideration was given to the report which provided a briefing following the Motion adopted by Council at its meeting on 25th July, 2018 in relation to modern slavery and recommended an amendment to the Whistleblowing Policy so that it made explicit reference to modern slavery.

The Motion committed the Council to ensuring that the whistleblowing system for staff to blow the whistle on any suspected examples of modern slavery be publicised. The current wording of the Whistleblowing Policy covered criminal activity and anyone could use the whistleblowing procedures to raise concerns about modern slavery, but the Policy did not specifically identify modern slavery as a matter which could be raised via whistleblowing procedures. Given the Council's commitments in relation to modern slavery it was, therefore, proposed that the wording of the Policy be amended to make explicit reference to modern slavery.

The Committee welcomed the amendment and highlighted the need for this to be widely publicised and for all citizens to be vigilant about slavery practices taking place in the borough.

Resolved:- That the detail of the Motion adopted by Council at its meeting on 25th July, 2018 be noted and the Whistleblowing Policy be amended to make explicit reference to modern slavery as set out at Paragraph 3.3 of the report, and that the Whistleblowing Policy be publicised as stated in the Council Motion.

15. A REVIEW OF CONCERNS RAISED PURSUANT TO THE WHISTLEBLOWING POLICY

Consideration was given to the report and appendix presented by the Deputy Monitoring Officer, which provided an overview of the Whistleblowing cases which have been received over the past year.

The appendix to the report set out clearly the description of the concerns received and action.

The Committee considered the reported matters in detail which would identify if there were any particular trends or issues. However, the Committee asked if more information could be provided on an activity log for timescales and whether or not a target date for completion would assist in preventing any unnecessary delays.

The Deputy Monitoring Officer agreed to check what was and not viable to assist the Committee in their consideration of trends moving forward.

Resolved:- That the Whistleblowing concerns raised over the previous year and the actions taken to address these matters be noted.

16. STANDARDS AND ETHICS COMMITTEE - CONSIDERATION OF COMPLAINTS

Consideration was given to the report presented by the Deputy Monitoring Officer, detailing the progress with the handling of complaints relating to breaches of the Council's Code of Conduct for Members and Town and Parish Councillors. The report listed the current cases of complaint and the action being taken in respect of each one and an updated complaint schedule was circulated.

Details of each related case and recommended outcome were highlighted.

Reference was made to Ref. No. 21/17 where the Committee was happy to proceed on the basis suggested to give the complainant seven days to provide his agreement to the documents being considered by the Monitoring Officer at Wakefield, failing which the complaint would be considered as concluded.

In respect of Ref. No. 03/18 it was confirmed that this complaint had now been concluded and that no further action would be taken.

The Committee also sought an update on the Committee on Standards in Public Life Review of Local Government Ethical Standards and whether there was anything further to report. The Deputy Monitoring Officer had nothing further to add at this stage, but confirmed that authorities had put forward their views as part of the consultation and these would be taken into account when the Committee on Standards in Public Life concluded its review which was due towards the end of the year.

Resolved:- (1) That the report be received and the contents noted.

(2) That the progress in respect of each case be noted pursuant to the Standards and Ethics Committee Complaints Procedure.

17. OUTCOME OF A STANDARDS AND ETHICS SUB-COMMITTEE HEARING REGARDING AN ALLEGED BREACH OF THE CODE OF CONDUCT

Consideration was given to the report presented by the Deputy Monitoring Officer which set out clearly the outcome of a Standards and Ethics Sub-Committee Hearing which took place on 11th July, 2018 in relation to an alleged breach of the Code of Conduct for Members by a town or parish councillor. The Sub-Committee, in light of their findings, recommended the complaint be not upheld.

Resolved:- That the outcome of the Standards and Ethics Sub-Committee Hearing be noted.

18. DATE AND TIME OF NEXT MEETING

Resolved:- That the next meeting of the Standards and Ethics Committee take place on Thursday, 13th December, 2018 at 2.00 p.m.

Summary Sheet

Standards and Ethics Committee Report

Standards and Ethics Committee Meeting 13th December 2018

Title : The Appointment of Parish Council and Independent Members of the Standards and Ethics Committee

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

N/A

Report Author(s)

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Ward(s) Affected

All

Executive Summary

This report makes recommendations in respect of the Parish Council members of the Standards and Ethics Committee and request that two candidates for the role of Independent member be recommended to Council for appointment to the Standards and Ethics Committee.

Recommendations

That the Committee:

- i) Recommend to the Council that the Parish Council members of the Standards and Ethics Committee continue as members of the Committee until the end of the 2019/20 Municipal year or until further nominations are made after the Parish Council elections in 2020, whichever is the later.
- ii) Recommend that the Council confirms that Mags Evers and Adela Bingham be appointed as Independent Members of the Standards and Ethics Committee for a period of 4 years.

List of Appendices

N/A

Background Papers

Previous reports to Standards and Ethics Committee and full Council Minutes

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Title : The Appointment of Parish Council and Independent Members of the Standards and Ethics Committee

1. Recommendations

That the Committee:

- i) Recommend to the Council that the Parish Council members of the Standards and Ethics Committee continue as members of the Committee until the end of the 2019/20 Municipal year or until further nominations are made after the Parish Council elections in 2020, whichever is the later.
- ii) Recommend that the Council confirms that Mags Evers and Adela Bingham be appointed as Independent Members of the Standards and Ethics Committee for a period of 4 years.

2. Background

- 2.1 The current Standards and Ethics Committee was established in 2012 following the implementation of the Localism Act 2011. Article 11 of the Council's Constitution makes the following provision for the membership of the Committee:

11 The Council's Standards Committee Membership

(1) The Council's Standards Committee will be composed of –

- *eight Councillors other than the Mayor and Leader;*
- *three members of a town or parish councils within the Borough (parish members) to be appointed by the town and parish councils that have delegated their powers under Chapter 7 of the Localism Act 2011 to the Council; and*
- *five persons who are not councillors or officers of the Council (independent members).*

Independent members

(2) Independent members are not entitled to vote at meetings of the Council's Standards Committee.

Parish members

(3) Town and parish council members are entitled to vote at meetings of the Standards Committees.

Chairing the Committee

(4) The chair and vice-chair of the Committee shall be borough councillors.

2.2 **Parish Council Members of the Standards and Ethics Committee**

Members will recall the report to the Standards and Ethics Committee in respect of the Parish Council membership of the Standards and Ethics Committee on 1st May 2018. The Committee made resolutions as set out below:

(1) That the Council be asked to confirm the appointment of the current Town and Parish Council representatives until further nominations were received.

(2) That the Town and Parish Councils in the Borough be invited to nominate three representatives who were members of a Town or Parish Council to be members of the Committee until May, 2020.

At the Council meeting on 23rd May 2018 the following resolutions were made by the Council:

Resolved:- (1) That the appointment of the current Town and Parish Council representatives be confirmed until further nominations are received from the Town and Parish Councils.

(2) That the appointment of the current Independent Members of the Committee be confirmed until the end of the 2018/19 municipal year.

Following these resolutions, there has been liaison with the Parish Council Liaison Group in respect of the Parish Council membership of the Standards and Ethics Committee. The Parish Council liaison group has resolved that it would wish for the current Parish Council members of the Committee to continue as members until the 2020 elections.

Members are therefore asked to recommend to Council that the current Parish Council members of the Standards and Ethics Committee, continue in these roles until the end of the 2019/2020 municipal year or until further nominations are made to these roles following the Parish Council elections in May 2020, whichever is the later.

2.3 **Independent Members of the Standards and Ethics Committee**

Members will also be aware that pursuant to the Terms of Reference for the Standards and Ethics Committee, there should be five Independent Members. The number of Independent Members of the Standards and Ethics Committee has recently reduced to two, following the resignation of two Independent Members in May 2018, at which time there were four Independent Members.

As such a recruitment process has recently been undertaken to try to fill the three Independent Member vacancies. Two applications were received and following an interview process involving the Chair, Monitoring officer and one of the Independent Persons, both of the candidates were felt to be appropriate person to undertake the role of Independent Member. The two candidates are Mags Evers and Adela Bingham.

The two candidates will be in attendance at the forthcoming Standards and Ethics Committee meeting on 13th December, and members are asked to recommend to Council that these appointments be confirmed.

It is a matter for the Committee as to whether a further recruitment is undertaken in respect of the remaining Independent Member vacancy on the Committee.

3. Key Issues

- 3.1 It is necessary for the Independent members to be appointed, as there are three vacancies which has meant that it can be difficult to list Standards and Ethics hearing due to the requirement for two Independent members to sit on the Panel.

4. Options considered and recommended proposal

- 4.1 The recommendations are set out above.

5. Consultation

- 5.1 N/A

6. Timetable and Accountability for Implementing this Decision

- 6.1 Any appointments made by Council will take effect immediately.

7. Financial and Procurement Implications

- 7.1 None

8. Legal Implications

- 8.1 The Council and the Standards and Ethics Committee have a statutory duty to maintain and promote ethical standards. Pursuant to the Localism Act 2011, the Council is required to adopt an appropriate Code of Conduct and arrangements for the investigation of allegations of breach of the Code of Conduct. The Standards and Ethics Committee forms an integral part of those arrangements and therefore it is essential that the Committee is properly constituted.

9. Human Resources Implications

- 9.1 None

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 None

11. Equalities and Human Rights Implications

- 11.1 None

12. Implications for Partners and Other Directorates

12.1 None

13. Risks and Mitigation

13.1 None

14. Accountable Officer(s)

Dermot Pearson, Assistant Director, Legal Services

Summary Sheet

Standards and Ethics Committee Report

Standards and Ethics Committee Meeting – 13th December, 2018

Title

Standards and Ethics Committee - Consideration of Complaints

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

N/A

Report Author(s)

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Ward(s) Affected

All

Executive Summary

A report updating the Committee on the Complaints received against Members of the Council, and Town and Parish Councillors alleging a breach of the Code of Conduct.

Recommendations

That the Committee notes the Complaints received, and the actions taken to deal with those complaints, pursuant to the Standards and Ethics Committee Complaints Procedure.

List of Appendices Included

Appendix 1 – Schedule of Complaints and actions taken

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

The Appendix to this report will be considered in the absence of the press and public as being exempt under Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended March 2006) (information relates to an individual).

Title

Standards and Ethics Committee - Consideration of Complaints

1. Recommendations

That the Committee notes the Complaints received, and the actions taken to deal with those complaints, pursuant to the Standards and Ethics Committee Complaints Procedure.

2. Background

2.1 A Schedule of complaints received and actions taken in respect of those complaints is at Appendix 1.

2.2 As the schedule includes unproven allegations, it is anonymised in order to prevent identification of the relevant subject member.

3. Key Issues

3.1 The nature of each complaint is set out in the Schedule at Appendix 1. Any common themes arising from the Committee's overview of complaints should be identified. Further the members of the Committee may make suggestions in relation to means of addressing common issues which arise in the complaints.

4. Options considered and recommended proposal

4.1 Options for dealing with the complaints are set out in the Complaints procedure and the action taken in respect of each complaint is set out in the Schedule.

5. Consultation

5.1 One of the Standards and Ethics Committee Independent Persons is consulted in respect of each complaint.

6. Timetable and Accountability for Implementing this Decision

6.1 N/A

7. Financial and Procurement Implications

7.1 The officer time in dealing with these complaints is met within existing Legal Services resources.

8. Legal Implications

8.1 The Council and the Standards and Ethics Committee have a statutory duty to maintain and promote ethical standards. Pursuant to the Localism Act 2011, the Council is required to adopt an appropriate Code of Conduct and

arrangements for the investigation of allegations of breach of the Code of Conduct.

9. Human Resources Implications

9.1 None

10. Implications for Children and Young People and Vulnerable Adults

10.1 None

11. Equalities and Human Rights Implications

11.1 None

12. Implications for Partners and Other Directorates

12.1 None

13. Risks and Mitigation

13.1 None

14. Accountable Officer(s)

Dermot Pearson, Assistant Director, Legal Services

Appendix 1

Schedule of Complaints

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

Summary Sheet

Standards and Ethics Committee Report

Standards and Ethics Committee - 13th December 2018

Title

A Review of Concerns raised pursuant to the Whistleblowing Policy

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

N/A

Report Author(s)

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Dermot Pearson, Assistant Director Legal Services, Riverside House, Main Street,
Rotherham S60 1AE

Ward(s) Affected

All

Executive Summary

A report regarding concerns raised pursuant to the Whistleblowing Policy and the actions taken to address these matters.

Recommendations

- i) That the Committee notes the Whistleblowing concerns raised over the previous year and the actions taken to address these matters.

List of Appendices Included

Appendix 1 – Schedule of Whistleblowing Concerns

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

The Appendix to this report will be considered in the absence of the press and public as being exempt under Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended March 2006) (information relating to an individual).

Title

A Review of Concerns raised pursuant to the Whistleblowing Policy

1. Recommendations

- 1.1 That the Committee notes the Whistleblowing concerns raised over the previous year and the actions taken to address these matters.

2. Background

- 2.1 This report provides an overview of the Whistleblowing cases which have been received over the past year.
- 2.2 A description of the concerns received over the past year, along with the relevant action to address these matters is at Appendix 1. This is appropriately anonymized in order not to identify the whistleblower, pursuant to the policy in respect of confidentiality.

3. Key Issues

- 3.1 Matters reported are described within Appendix 1. It is important for there to be oversight of matters being reported pursuant to the Whistleblowing Policy.

4. Options considered and recommended proposal

- 4.1 Recommendations have been referred to above.

5. Consultation

- 5.1 N/A

6. Timetable and Accountability for Implementing this Decision

- 6.1 N/A

7. Financial and Procurement Implications

- 7.1 Any work undertaken by Legal Services in dealing with these matters is within the budget for Legal Services.

8. Legal Implications

- 8.1 The Council has a statutory duty to provide an appropriate Whistleblowing Policy and arrangements for dealing with concerns raised through the policy.

9.0 Human Resources Implications

- 9.1 None

10.0 Implications for Children and Young People and Vulnerable Adults

10.1 None

11.0 Equalities and Human Rights Implications

11.1 The Whistleblowing Policy is available to all employees, workers and contractors of the Council.

12. Implications for Partners and Other Directorates

12.1 None

13.0 Risks and Mitigation

13.1 There is a risk that if serious misconduct is not reported pursuant to the Whistleblowing Policy, serious issues will not be appropriately investigated and addressed.

14. Accountable Officer(s)

Dermot Pearson, Assistant Director, Legal Services

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Summary Sheet

Standards and Ethics Committee Report

Standards and Ethics Committee Meeting - 13th December 2018

Title

Outcome of Standards and Ethics Sub-Committee Hearing re Alleged Breach of the Code of Conduct

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

N/A

Report Author(s)

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Ward(s) Affected

All

Executive Summary

This report sets out the outcome of a Standards and Ethics Sub Committee Hearing which took place on 14 September 2018 in relation to an alleged breach of the Code of Conduct by Councillor Brian Cutts and the subsequent decision of Council, at its meeting on 31 October 2018, to remove Councillor Cutts from the South Yorkshire Police and Crime Panel.

Recommendations:

It is recommended that the Standards and Ethics Committee:

- (i) Note the outcome of the Standards and Ethics Sub-Committee Hearing on 14 September 2018.
- (ii) Note the decision of Council at its meeting on 31 October 2018 to accept the recommendation of the Standards and Ethics Sub-Committee and to remove Councillor Brian Cutts from the South Yorkshire Police and Crime Panel
- (iii) Consider any issues arising from the decisions of the Standards and Ethics Sub-Committee and of the Council.

List of Appendices Included

Decision Record for the hearing on 14 September 2018

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Standards & Ethics Sub-Committee – 14 September 2018

Council - 31 October 2018

Council Approval Required

No

Exempt from the Press and Public

No

Title:

Outcome of Standards and Ethics Sub Committee Hearing re Alleged Breach of the Code of Conduct

1. Recommendations

It is recommended that the Standards and Ethics Committee:

- 1.1 Note the outcome of the Standards and Ethics Sub-Committee Hearing on 14 September 2018.
- 1.2 Note the decision of Council at its meeting on 31 October 2018 to accept the recommendation of the Standards and Ethics Sub-Committee that Councillor Brian Cutts be removed from all outside appointments to which he has been appointed or nominated by the Council and to remove Councillor Brian Cutts from the South Yorkshire Police and Crime Panel; and
- 1.3 Consider any issues arising from the decisions of the Standards and Ethics Sub-Committee and of the Council.

2. Background

- 2.1 A hearing of the Standards and Ethics Committee Sub-Committee took place on 14 September 2018. The Decision Record in respect of the hearing is at Appendix 1.
- 2.2 As set out in the Decision Record, the Sub-Committee found that Councillor Brian Cutts' conduct was in breach of the Code of Conduct in that he had failed to treat others with respect. They found that the two of the comments he had made were homophobic, being indicative of a dislike or prejudice towards LGBT people and that in making those comments he had failed to treat others with respect, namely the LGBT community and in particular same sex couples who foster or adopt children or who wish to do so.
- 2.3 The Sub-Committee also found that by making the comments Councillor Brian Cutts was also in breach of the Code of Conduct in that he had done something which may cause the Council to breach any of the equality duties and had conducted himself in a manner which could reasonably be regarded as bringing his office of councillor or the Council into disrepute.
- 2.4 The Sub-Committee decided that the following sanctions should be applied to the Subject Member:
 - 2.4.1 The member shall be censured
 - 2.4.2 The formal decision notice setting out the findings of the Sub-Committee shall be published on agenda of the next meeting of the Standards & Ethics Committee ;

2.4.3 The Sub-Committee shall recommend to the Councillor's Group Leader that he be removed from the Committees or Sub-Committees of the Council upon which he sits;

2.4.4 The Monitoring Officer shall be instructed to arrange equalities training for the Subject Member;

2.4.5 That the Sub-Committee shall recommend to Council that the Subject Member be removed from all outside appointments to which he has been appointed or nominated by the Council ;

2.5 This report implements the sanction at 2.4.2 and the Leader of Councillor Cutts' political group has declined to remove him from his role on the Improving Places Select Commission. The equalities training for Councillor Cutts took place on 30 October 2018 and Council considered the Sub-Committee's recommendation regarding outside bodies at its meeting on 31 October 2018 and removed Councillor Brian Cutts from the South Yorkshire Police and Crime Panel.

2.6 Members are asked to consider the Decision Notice and raise and discuss any issues arising from Decision notice or the hearing itself (in respect of those members who were in attendance).

3. Key Issues

3.1 The key issues are set out above.

4. Options considered and recommended proposal

4.1 This report informs the Committee of the decision made by the Sub-Committee on 14 September 2018 and of the decision of Council made at its meeting on 31 October 2018 and invites the Committee to consider any issues arising from those decisions.

5. Consultation

5.1 As required by the Localism Act 2011, one of the Committee's Independent Persons was consulted by the Sub-Committee during the hearing on 14 September 2018.

6. Timetable and Accountability for Implementing this Decision

6.1 N/A

7. Financial and Procurement Implications

7.1 The officer time in dealing with this complaint is met within existing Legal Services resources.

8. Legal Implications

- 8.1 The Council and the Standards and Ethics Committee have a statutory duty to maintain and promote ethical standards. Pursuant to the Localism Act 2011, the Council is required to adopt an appropriate Code of Conduct and arrangements for the investigation of allegations of breach of the Code of Conduct.

9. Human Resources Implications

- 9.1 None

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 None

11. Equalities and Human Rights Implications

- 11.1 As set out in the Decision Notice the complaints related to matters of equality.

12. Implications for Partners and Other Directorates

- 12.1 Councillor Brian Cutts has been removed from the South Yorkshire Police and Crime Panel.

13. Risks and Mitigation

- 13.1 None

14. Accountable Officer(s)

Dermot Pearson, Assistant Director, Legal Services

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

STANDARDS AND ETHICS COMMITTEE

RECORD OF THE DECISION OF THE STANDARDS AND ETHICS SUB-COMMITTEE MEETING HELD ON 14 SEPTEMBER 2018

SUBJECT MEMBER Councillor Brian Cutts [Rotherham MBC] [in attendance] supported by Mr Reynolds [former Rotherham MBC councillor]

COMPLAINANTS Councillor Maggi Clark [Rotherham MBC] [in attendance]
[Rotherham MBC officer] [in attendance]

WITNESSES FOR THE COMPLAINANTS Councillor Christine Beaumont [Rotherham MBC]
Councillor Victoria Cusworth [Rotherham MBC]
Councillor Pat Jarvis Rotherham MBC]
Councillor Jayne Senior [Rotherham MBC]

THE COMPLAINTS SUB-COMMITTEE

Councillor McNeely (Rotherham MBC) (in the Chair)
Councillor Simpson (Rotherham MBC)
Councillor Rowley (Ravenfield Parish Council)
Mr P Edler (Independent Co-opted Member)
Ms J Porter (Independent Co-opted Member)

INDEPENDENT PERSON

Mr Phil Beavers

ROTHERHAM MBC OFFICERS

Dermot Pearson (Monitoring Officer)
Stuart Fletcher (Investigating Officer)
Dawn Mitchell (Senior Democratic Services Officer)

Preliminary

Councillor Cutts confirmed that he was content for complainants' witnesses to attend the whole of the hearing rather than being called in individually to give evidence.

The Complaint

The Investigating Officer presented his investigation report to the Sub-Committee.

The complainants had attended an Improving Lives Select Committee (ILSC) pre-meeting on 13 March 2018. The complainants are the Chair of the ILSC, Councillor Maggi Clark and

The Subject Member, Councillor Brian Cutts, also attended at the pre-meeting. During a discussion about the adoption of children, the Subject Member asked "*Why are we allowing lesbians and gay men to foster children?*" The Subject Member made further comments, in particular that:

- He "*knew right from wrong*"; and
- He "*knew which side of the road to drive on and which way to go – straight.*"

These comments were challenged by the Complainants and other councillors present. The Subject Member confirmed to the Sub-Committee that he had made the comments.

The Investigating Officer took the Sub-Committee through the complaint forms and the written responses from the Subject Member [attached]. The Subject Member had wished to meet the complainants to discuss his objections to children being parented by gay and lesbian couples, but the Monitoring Officer had determined that such a meeting would not be an attempt at an informal resolution of the complaint as provided for in the Council's Procedure, and the Subject Member had confirmed that he wished the complaint to be considered by the Sub-Committee.

The Investigating Officer referred the Sub-Committee to the following parts of the Code of Conduct for Members and Co-Opted members:

Scope

2. (1) *Except when you are acting as a representative of the Council when sub-paragraph (2) applies, you must comply with this Code whenever you -*

- (a) *conduct the business of the Council (which, in this Code, includes the business of the office to which you are elected or appointed); or*
- (b) *Act, claim to act, or give the impression you are acting as a representative of the Council.*

General obligations

(3) (1) *You must treat others with respect.*

(2) *You must not –*

(a) *do anything which may cause the Council to breach any of the equality duties;*

(5) *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.*

The Evidence of the Complainant

Councillor Clark went through the circumstances of the complaint and her complaint form. At a seminar for councillors held on 29 January 2018 about the OFSTED inspection the Subject Member had said he had been excluded from information

relating to the Children & Young People's Service [CYPS]. As the Chair of the Improving Lives Select Commission [ILSC] Councillor Clark had invited the Subject Member to attend ILSC meetings as a guest, as all councillors are entitled to do, to give him the opportunity to be well informed about issues which were being scrutinised.

On 13 March 2018 the Subject Member attended a pre-meeting of the ILSC but gave his apologies for the formal meeting. The meeting was attended by Councillor Clark, the councillors who were members of the ILSC, the Subject Member and the officer complainant, who was an officer from the scrutiny team. During the meeting a councillor raised a query about adoptions and the Subject Member said "*Why are we promoting fostering and adoption with lesbians and gay men*" and expressed his disagreement with the Council doing this. Committee members challenged the Subject Member, appalled by the views he was expressing. The Subject member went on to say that he "*knew right from wrong*" and that he "*knew which side of the road to drive on and which way to go – straight.*" Councillor Clark told the Subject Member his comments were completely out of order and would not be tolerated, and the officer present advised him that the comments were offensive and could warrant referral to the Standards & Ethics Committee.

Councillor Clark said the issue was about respect. The Subject Member's comments were unacceptable, unpalatable and she could not accept that behaviour in the Council or anywhere else. She had never complained about another councillor's conduct before but the Subject Member had breached the Code of Conduct and the Council's equalities duties. The behaviour was unacceptable for any member of the Council. Councillor Clark had circulated a draft of her complaint to the other councillors present at the pre-meeting before submitting it and all but one had agreed the contents, with the remaining councillor accepting that the comments had been made by the Subject Member.

When the Chair asked what outcome she wanted from the hearing, Councillor Clark said that was up to the Sub-Committee but invited the Sub-Committee to consider the Subject Member's role on outside bodies.

The Subject Member was asked if he had any questions for Councillor Clark and confirmed he did not.

In response to questions from the Sub-Committee Councillor Clark gave the following responses;

- The councillors at the pre-meeting had challenged the Subject Member's comments at the time.
- The Subject Member had not been aggressive at the pre-meeting.
- The pre-meeting was a private meeting.
- There was no link between the previous discussion about adoption and the Subject Member's comments about gay and lesbian adoption.
- The comments had been made towards the end of the meeting.

The Subject Member then asked if the meeting was over when he made his comments and Councillor Clark said she had chaired the meeting and the Subject Member had left before the meeting finished.

The officer complainant then gave evidence.

She had been supporting the ILSC to go through the agenda for a future meeting. There was nothing on the agenda about adoption or LGBT adoption. Councillor Senior had raised a query at the pre-meeting about adoption from a constituent. The Subject Member had then asked why the Council was allowing lesbians and gay men to foster, had gone on to say that children should only be brought up by a mother and a father and it was not acceptable for lesbians and gay men to parent. He had then said that he could discriminate between good and bad and made a comment about knowing which side of the road to drive on and driving "straight". These two comments were homophobic.

The Subject Member had no questions for the officer complainant.

The Sub-Committee asked about the law on adoption by same sex couples and the Monitoring Officer confirmed that the law provided for adoption by single people and couples, and that the definition of "couple" included both two people of different sexes or the same sex.

The Subject Member said that the pre-meeting had finished when he made his comments. The officer complainant replied that the discussion on the agenda for the next ILSC meeting had concluded but members were still discussing the arrangements for the meeting.

Cllr Clark said that she did not see the difference between whether the meeting had finished or not, but it had not finished.

The witnesses for the complainants, who were councillors who had attended the pre-meeting then gave evidence.

Councillor Jarvis confirmed that she had been in attendance at the ILSC pre-meeting and that she had witnessed the comments made by the Subject Member.

Councillor Cusworth said there was nothing on the agenda about adoption. She had given the pre-meeting feedback from the Corporate Parenting Panel, and would do so at pre-meetings either verbally or in writing if relevant. Councillor Senior had raised a query from a constituent about adoption and the Subject Member had then made his comments. The response has been that assessment for adoption was about the fitness of the applicants to adopt not their sexual orientation. The Subject Member's comments had got worse as he went on and she believed he knew his remarks were offensive. He had been invited because he had said he was excluded from information about CYPS. The Subject Member had left early and she was not sure why he had raised the issue of LGBT adoption. His comments were in breach of the Council's equalities duties and the Code of Conduct.

The Sub-Committee asked whether the Subject Member had been aggressive at the pre-meeting. Councillor Cusworth replied that the Subject Member's comments got stronger, saying the Council should not be allowing same sex couples to adopt, that he knew right from wrong. He was challenged by other councillors and was aware he was offending people but continued. She had not stood up at the meeting.

Councillor Senior said that when the councillors challenged the Subject Member about his comments the challenge was calm not aggressive. She found the suggestion itself offensive. The Council places children with parents who can meet their needs.

Councillor Beaumont said that she could not agree that there had been any aggression from the councillors at the pre-meeting, but the councillors had been united in their shock and horror. It had not been loud, there had been no increase in volume.

The Evidence of the Subject Member

The Investigating Officer referred to the two documents provided by the Subject Member appended to his report and invited the Subject Member to present his case.

The Subject Member said that Council officers who select parents [to adopt] go through an assessment process and do a good job. He does not understand how they can anticipate how an 8 year old will feel at 18 when they realise that they have been adopted by same sex parents. How do the officers know the child will not be bullied? He does not have issues with gay or lesbian people. Other children will have the benefit of mother and father of different sexes.

He acknowledged that he had made the comments and had been expressing his views as councillor and did not agree with private pre-meetings for scrutiny select commissions.

The Subject Member could not understand why the Council was placing children for adoption with two men. The best situation would be a married different sex couple, then an unmarried different sex couple, then two women then two men. He did not think that his comments should have offended anyone and there had been a loud and instant reaction. It was not relevant that he had left the meeting to get back to his car. The issue is that the care of children is best when they are looked after by a man and a woman.

Cllr Cusworth commented that she found the idea that two women could not be as good parents as parents of different genders offensive.

The Subject Member felt he had been sprung on by the unanimous response from the other councillors at the pre-meeting.

In response to questions from the Sub-Committee the Subject Member gave the following responses;

- If divorce or bereavement leaves children with one parent, being united in grief will bond the family together.
- Mr Reynolds [supporting the Subject Member] said that the Subject Member's view was that a traditional family might be more robust.
- He had been a councillor for 14 years but was not aware of the law on same sex adoption. He had not gone to the pre-meeting with the intention of being controversial.
- He apologised for any offence caused and said he was only concerned about the welfare of children.

- He was aware of the Code of the Code of Conduct and had received it recently. [The Monitoring Officer confirmed to the Sub-Committee that when councillors are elected or re-elected they make a Declaration of Acceptance of Office which included an undertaking to comply with the Code of Conduct.]
- When asked about what he meant by his comment that he knew right from wrong, Mr Reynolds said that the Subject Member had only expressed his disagreement with the policy of [same sex adoption] and that he was entitled to his personal view even if it contradicted the "party line".

Cllr Cusworth said that the way the Subject Member had spoken in the meeting had repeated the distress he had caused in the pre-meeting.

Summary

The Investigating Officer summarised the matters before the Sub-Committee. In particular that the comments were admitted, the Sub-Committee had to decide whether the comments had been made during the pre-meeting or after it had finished and that the evidence of the complainants and their witnesses was of the distress and distaste caused by the Subject Member's comments at the pre-meeting.

The Subject Member confirmed he did not wish to sum up.

The Findings of the Sub-Committee

The Sub-Committee considered, in consultation with the Independent Person, whether the Code of Conduct applied to the Subject Member's conduct at the pre-meeting on 13 March 2018.

They noted that the comments were made at a private pre-meeting to which the Subject Member had been invited as a councillor and the evidence of Councillor Clark, as Chair of the pre-meeting that the Subject Member had left before she closed the meeting. They found on balance that the Subject Member had been conducting the business of his office as a councillor when he made the comments at the pre-meeting and that the Code of Conduct applied to his conduct at the pre-meeting.

The Sub-Committee then considered, in consultation with the Independent Person, whether by making the comments the Subject Member had failed to treat others with respect. They considered the comments made by the Subject Member that:

- He *"knew right from wrong"*; and
- He *"knew which side of the road to drive on and which way to go – straight."*

And found that those comments were homophobic, being indicative of a dislike or prejudice towards LGBT people.

The Sub-Committee found on balance that that the Subject Member had breached the Code of Conduct in making those comments in that he had failed to treat others with respect, namely the LGBT community and in particular same sex couples who foster or adopt children or who wish to do so.

The Sub-Committee then considered, in consultation with the Independent Person, whether by making the comments the Subject Member had done something which may cause the Council to breach any of the equality duties. They noted the Council's responsibility under the Equality Act 2010 when exercising public functions to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

And found on balance that by making the homophobic comments at a pre-meeting of the Improving Lives Select Commission the Subject Member had done so.

The Sub-Committee then considered, in consultation with the Independent Person, whether by making the comments the Subject Member had conducted himself in a manner which could reasonably be regarded as bringing his office of councillor or the Council into disrepute. They found on balance that by making the homophobic comments at a pre-meeting of the Improving Lives Select Commission the Subject Member had done so, both in respect of his office as councillor and the Council.

Given their findings that the Subject Member had breached the Code of Conduct the Sub-Committee considered what sanctions, if any, to impose upon him. They noted that the Subject Member sat on the South Yorkshire Police and Crime Panel and on the Council's Improving Places Select Commission.

The Sub-Committee decided that the following sanctions should be applied to the Subject Member:

- (1) The member shall be censured
- (2) The formal decision notice setting out the findings of the Sub-Committee shall be published on agenda of the next meeting of the Standards & Ethics Committee ;
- (3) The Sub-Committee shall recommend to the Councillor's Group Leader that he be removed from the Committees or Sub-Committees of the Council upon which he sits;
- (4) The Monitoring Officer shall be instructed to arrange equalities training for the Subject Member;
- (5) That the Sub-Committee shall recommend to Council that the Subject Member be removed from all outside appointments to which he has been appointed or nominated by the Council ;

Signed:

ON BEHALF
OF COUNCILLOR ROSE MCNEELY

[Chair of Sub-Committee]

Dated:

19th September 2018

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of the Local Government Act 1972.

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