

London Borough of Islington

Standards Committee – 13th June 2011

Minutes of the meeting of the Standards Committee held at the Town Hall, Upper Street, N1 2UD on 13th June 2011.

PRESENT: Diana Gibbs, Jane McNeill and Godfrey Stadlen

Councillors George Allan and Kate Groucutt

Godfrey Stadlen in the Chair

63. APOLOGIES FOR ABSENCE (Item 1)

Apologies for absence were received from Arvinda Gohill and Alison Vydulinska.

64. DECLARATION OF SUBSTITUTE MEMBERS (Item 2)

None.

65. DECLARATIONS OF INTEREST (Item 3)

None.

66. MINUTES OF THE PREVIOUS MEETING (Item 4)

RESOLVED:

That the minutes of the previous meeting held on 11th May 2011 be confirmed as a correct record and the Chair be authorised to sign them subject to the correction of Diana's name in Minute 58.

67. ANY URGENT BUSINESS (Item 5)

None.

68. EXCLUSION OF THE PRESS AND PUBLIC (Item 6)

RESOLVED:

That the press and public be excluded from the following item on the agenda as it would disclose exempt or confidential information within the terms of the Access to Information Procedure Notes set out under paragraph 7a + c of Appendix 5 of the Constitution.

69. REPORT OF AN INVESTIGATION UNDER SECTION 59 OF THE LOCAL GOVERNMENT ACT 2000 INTO AN ALLEGATION CONCERNING COUNCILLOR URSULA WOOLLEY (Item 7)

The Committee considered the Monitoring Officer's report and discussed the main sections of the alleged breaches of the Code of Conduct.

RESOLVED:

1. That the Investigating Officer's findings that there had been no breach of the Code of Conduct by Councillor Woolley be accepted. In the case of the allegation that Councillor Woolley had used council resources for improper political purposes, contrary to Section 6 of the Code of Conduct, the finding of no breach was accepted by a majority vote of 3 to 2 by the Committee.

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2. That the following recommendations of the Investigating Officer also be accepted:

(i) The law relating to the distribution of information to residents was becoming increasingly complex and therefore all members should undergo further training on data protection and related issues.

(ii) The party group offices work with officers in Democratic Services to ensure that the processes used by all Councillors (including their use of IT) were fully compliant with the law and best practice.

(iii) That the publicity protocol be reviewed to ascertain whether it was necessary to include specific provision about the production of ward newsletters (provision whether electronically or otherwise) and that consideration be given to requiring an 'opt in' approach to such communication.

REASONS FOR THE DECISION

Paragraph 4 of the Code (Treatment of Confidential Information)

Having considered both the guidance and the law, the Investigating Officer did not consider that the complainant's name and e-mail details amounted to confidential information.

In this case there was no underlying relationship of confidentiality between the complainant and Councillor Woolley and as it had not been possible to determine how Councillor Woolley came to be in possession of the information, it was not possible to assess whether it was divulged to her in a manner which would lead the complainant to expect it would be kept confidential. Further, the information itself neither had the 'quality' of confidence nor was it of a nature which people would normally expect to be kept confidential. No detriment would appear to have flowed from its disclosure. Accordingly the Investigating Officer concluded that there had been no disclosure of confidential information and therefore no breach of paragraph 4 of the Code of Conduct.

Paragraph 5 of the Code (Conduct likely to bring the office of Councillor or the Authority into Disrepute)

It seemed clear that by her failure to use the blind copy function when using the email, Councillor Woolley was in breach of the first data protection principle, namely the obligation not to process personal data, unless one of a number of conditions were met. 'Processing' for these purposes included disclosure. The Investigating Officer examined the conditions set out in schedule 2 to the Data Protection Act and could find none that would seem to apply to these circumstances and therefore concluded there was a breach of the Data Protection Act.

However, having made that finding it was necessary to go on to consider whether it followed that there had been a breach of paragraph 5 of the Code. The Investigating Officer concluded that it did not. In forming this conclusion, she took into account the fact that Councillor Woolley's failure to use the blind copy function was a genuine oversight on a single occasion and that she took immediate steps to remedy the situation.

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She also bore in mind the fact that the data was not sensitive personal data which, in her view, reduced the impact of the disclosure on the recipients. The complainant had pointed out that the recall function on Microsoft is apparently notoriously unreliable and while it was accepted that this was by no means a failsafe mechanism, it did not change the Investigating Officers view that a one-off mistake in respect of which remedial steps were attempted, did not in this instance amount to a breach of the Code.

The Investigating Officer went on to look at another piece of legislation, the Privacy and Electronic Communications (EC Directive) Regulations 2003, specifically regulation 22 which dealt with use of electronic mail for direct marketing purposes.

She concluded that there was some doubt as to whether there had been a breach of the regulations, partly because it was unclear whether they applied to the newsletters at all and partly because, certainly in the case of petitions and subscriptions to websites, it was arguable that the necessary consent can be inferred. But for completeness the Investigating Officer considered whether if it transpired that there had been a breach of regulation 22, this would mean there would be a breach of paragraph 5 of the Code. Again she concluded that it would not.

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The law in this area was quite complex and the Investigating Officer was satisfied that Councillor Woolley reasonably believed (her group having taken advice previously) that the disclaimers she was using complied with the legal requirements relating to emails.

It was also noted that the complainant had not previously complained about earlier newsletters or taken advantage of the invitation to opt out of receiving further editions.

The evidence of Councillor Graves was accepted that when people did exercise their right to object to their names being included, those names were removed from the list.

The Committee therefore accepted the Investigating Officer's findings that a reasonable member of the public would not consider the fact that some technical aspects of the law may not have been complied with by Councillor Woolley would call into question her ability to discharge her role as a Councillor - which was the test for determining the question of whether her actions had brought her office or the authority into disrepute.

It was not possible to determine how either Councillor Graves or Councillor Woolley came to have the complainant's contact details. Some possible legitimate sources were given (pro-active email contact from the complaint, petitions and subscriptions to websites) but the complainant asserted that he had not been party to any of these and the Investigating Officer had not been able to find any independent evidence that these were the sources of the information. On the other hand, she had no evidence to suggest that other less legitimate sources had been used.

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Paragraph 6 of the Code (Use of Council Resources for Improper Political Purposes)

The Council's Communications Guide to IT for Councillors made a distinction between using equipment to prepare documents and its use in the public dissemination of that information. This was partly because the authority took the view that it was part and parcel of being an elected representative that some portion of a Councillor's work would be political in nature. So, for instance, it was legitimate for them to use Council IT facilities to produce internal group communications and agendas and minutes for group meetings. Quite apart from anything else, it was unrealistic to expect busy members to switch between equipment depending on how 'political' the content of a particular document might be.

The position was somewhat different when it came to the question of distribution of that material because of the prohibition contained in section 2 of the Local Government Act 1986 which prevented local authorities from publishing material designed to affect support for a particular political party. Accordingly, the Guide allowed Councillors to use their computers to produce electronic documents (which cost the Council nothing) but not to distribute them.

It followed that if the newsletter were interpreted as being party political, this would be contrary to the authority's requirements (paragraph 6(a)) as well as a breach of the requirement to ensure that resources were not improperly used for political purposes (paragraph 6(b)).

The Committee accepted the Investigating Officer's view it was not always possible to ascertain where the boundary lies between fair comment about events in their ward or policies of the Council (which in the case of opposition Councillors may be the policies adopted by a different political party) and objectionable (improper) party political commentary. They carefully considered whether the comments in the newsletter overstepped this line and could not agree on this point.

The matter was put to the vote and on the basis of a majority of 3 to 2 the Committee concluded that on balance, the newsletter was not party political and therefore did not breach the requirements of the authority of the Code of Recommended Practice on Local Authority Publicity (as drafted at the time of the complaint) and, accordingly, there had been no breach of paragraph 6 of the Code.

The complainant was also concerned that the resources of the authority, namely its residents' records may also have been used for improper political purposes. The Investigating Officer found no evidence to suggest that Councillor Woolley had access to other records of the council for the purpose of compiling her distribution list and her search of the secretariat's records revealed no mention of the complainant. Indeed, he himself pointed out that he had not generated any casework with members. There were no other records to which the Councillor would in the normal course of events have had access and accordingly the Committee accepted that there had been no breach of paragraph 6 of the Code in this respect.

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The Committee wished to remind Councillors to be extremely careful about what they used council resources for and the content of any communication they sent using such resources.

The meeting which started at 5.30pm finished at 6.35pm.

CHAIR

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