

# CONDUCT COMMITTEE

FRIDAY, 4 DECEMBER 2020 - 11.30 AM



**PRESENT:** Councillor D Topgood (Chairman), Councillor S Wallwork (Vice-Chairman), Councillor M Cornwell, Councillor D Patrick, Councillor M Purser, S Webster and Councillor A Donnelly

**APOLOGIES:** C Hawden-Beal

Officers in attendance: Amy Brown (Chief Solicitor and Deputy Monitoring Officer) and Carol Pilson (Corporate Director and Monitoring Officer)

## **CND1/20    APPOINTMENT OF CHAIRMAN FOR THE MUNICIPAL YEAR.**

It was proposed by Councillor Purser, seconded by Councillor Wallwork and resolved that Councillor Topgood be elected Chairman of the Conduct Committee for the Municipal Year 2020/21.

## **CND2/20    APPOINTMENT OF VICE CHAIRMAN FOR THE MUNICIPAL YEAR.**

It was proposed by Councillor Topgood, seconded by Councillor Purser and resolved that Councillor Mrs Wallwork be elected Vice-Chairman of the Conduct Committee for the Municipal Year 2020/21.

## **CND3/20    PREVIOUS MINUTES.**

The minutes of the previous meeting 21 August 2019, were confirmed as a true and accurate record.

## **CND4/20    REVISIONS TO MEMBER CODE OF CONDUCT**

Carol Pilson, the Monitoring Officer for the Council, presented the report to members of the Committee.

Members asked questions, made comments and received responses as follows:

- Councillor Cornwell stated that he has not seen the comments that were circulated and questioned whether the one comment that Carol Pilson had referred to had been incorporated into the hard copy of papers that he had received, or whether there had been an updated set of papers circulated. He added that he welcomes the report as it clarifies a few issues that have caused concern for members for some time. Councillor Cornwell referred to 3.2 of the officer's report, where it states that you must not bully any person, and asked whether there is a definition of 'bully' or is it an area where the definition is dependent upon the person who is being bullied and interpreting that fact. He added that he would like clarity over the statement in the report where it refers to intimidation and a situation where a member may not actually be aware that somebody else is involved in a complaint and they inadvertently become involved in the administration of any investigation or proceedings.
- Carol Pilson referred to the consultation feedback which had been circulated separately and added that in relation to 3.2b, bully any person, the track change under d, is trying to

quantify the bullying element, in the sense that it is qualifying the comments as listed in 3.2 to confirm that you are not bullying somebody if you simply expressing, challenging, criticising or disagreeing with somebody else's views. She added that every complaint is considered on a case by case basis and on its own merits, as the evidence of both the complainant and Councillor need to be taken into consideration. She added that when assessing those type of complaints, published case law will be consulted, to see what type of precedent had been set in that area, in order to come to a conclusion and added that within the presift process the Chairman of the Conduct Committee as well as Stuart Webster, the Independent person, apply their own considerations to the decisions. Carol Pilson referred to 3.2c of the report and added that if a member was unaware that there were any proceedings taking place against them and there was an allegation that they were intimidating then that would be taken into consideration when assessing that complaint.

- Councillor Cornwell expressed the opinion that regarding the issue of bullying he feels it is still a grey area, when the aim is to provide clarity to members. He added that whilst he appreciates the changes and agrees that they are a positive step forward as they add to the guidance to members, the word bullying can be interpreted in different ways by different people and, therefore, members must be clear on how certain aspects of the Code of Conduct are clarified.
- Councillor Topgood made the point that the presift procedure is in place, where the Chairman of Conduct Committee, the Independent Person and the Monitoring Officer carry out the process and ensure everything is in order. He added that the Code of Conduct is now in transition and has been improved vastly. He expressed the opinion, that there are always going to be grey areas, but the document is welcomed, and it is an ongoing fluid document and can be changed and refined as time progresses.
- Councillor Wallwork expressed the opinion the general definition of bullying is consistent and unwanted behaviour that aims at one specific person in order to cause severe harm. She added that having sat on the presift panels she can see how issues are not taken forward and she expressed the view that it is inconsistent targeted behaviour so no one word or action can be classed as bullying.
- Councillor Purser stated that there is also the issue where a third party or bystander could view an incident and perceive it as incident of bullying, but it may just be a heated conversation and there is no actual cause for concern.
- Councillor Topgood reiterated that the presift procedure is in place to review and ensure good practice.
- Councillor Cornwell stated that he is quite content with the document and for it to be used and see how it works. He added that as it is a living document, changes can be made. He added that it is a detailed document with a great deal of explanation in it and he is just trying to seek some clarity to make some minor improvements.
- Councillor Patrick asked how you can determine when somebody is acting as a Councillor or not acting as a Councillor, as in his opinion, as a Councillor you are in that role all the time. He added that a Police Officer, even when off duty, is a Police Officer all the time and can still bring the Police Force into disrepute. Councillor Topgood responded that it is clear within the changes in the document, when it is regarded that somebody is a Councillor or talking as a Councillor and that is why changes are being made to the document. He added that people have different opinions and the report does specify when it will be classed as somebody acting in their authority as a Councillor. Carol Pilson made the point that there is case law which shows that Councillors are not Councillors all the time and they are entitled to a private life. She added that members need to be aware that when assessing conduct complaints, whether a Councillor is acting in their capacity or not, is the first test, and explained that within the draft Code there are some examples as to when it would be deemed a Councillor is acting in an official capacity, but this is not an exhaustive list. She added that under 2.1 of the report, it provides some examples, which include speaking at a Council meeting or forum, writing on an on line forum which is open to the public about Council business and when you are speaking to a member of the electorate about Council business, she added that an exhaustive list can never be provided and there will be

occasions where a Councillor is deemed to be acting in their official capacity which fall outside of those examples. Carol Pilson added that it is whether you are acting in your role as a Councillor or could be perceived as acting in an official capacity which will often relay as to whether you are dealing with Council business.

- Councillor Patrick added that he is still confused as to when he is acting in his role as a Councillor.
- Councillor Wallwork appreciated the views of Councillor Patrick but there may be scenarios when a Councillor is acting as an individual, which should not be brought into a members political life and vice versa and going forward she would hope that the draft Code will allow for that definition of when you are acting as a councillor or as an individual in their personal role.
- Councillor Topgood reiterated that it is a living fluid document and can be changed over time.
- Councillor Patrick stated that he will not make any further comment, but added that there are many improvements that need to be made. He expressed the view that if you are having an argument as a Councillor then the whole argument should be in the capacity of a Councillor.
- Stuart Webster stated that he welcomes the additions to the document and over the last 18 months with some of the conduct complaints that he has overseen and reviewed, he feels that the document will not only help the members themselves have a better understanding of the boundaries, but will also assist members of the public to have a better understanding of how a complaint is dealt with. He added that there does appear to be a grey area when dealing with private forums and stated that a member could leave themselves open to a complaint when saying or doing something within a private group and wondered whether it was something the committee would still need to look at. Stuart Webster expressed the view that the wording within the feedback amendments let him initially think that councillors maybe let to believe that they are in a secure area and would not leave them open to a complaint going forward, which he thinks may need to be reworded. He queried whether that part should be omitted from the document and added that even in the main document it refers to open public forums where a member could be subject to a complaint because it is an open forum and it might lead people to believe that a private area is not looked at and it could be looked at. Councillor Topgood stated that it is an area which can be revisited and the clarification of when and when you are not acting as a Councillor needs to be brought up to date.
- Councillor Cornwell added that a private group is private and all the political groups that members are involved in are governed by their own rules and there has to be the ability for those people to discuss, debate, disagree and agree in those groups which are not open to the public. He stated an open forum is totally different and there the Council's conduct rules cannot stop the freedom of speech that takes place, which the Code of Conduct does acknowledge. Councillor Cornwell stated that anything that takes place in a private group is not subject to Freedom of Information requests and he added that acting in the capacity as a Councillor and where statements and comments are made as a Councillor is not the same as being in a private group in his opinion. Councillor Topgood expressed the opinion that he agrees with the comments made by Councillor Cornwell and added that as Carol Pilson has stated, a Councillor has the right to speak and act as an individual.
- Councillor Donnelly stated that in any capacity either as a member of the public or a Councillor there should not be any form of abuse whatsoever.
- Councillor Patrick stated that he appreciates the comments made by Councillor Cornwell regarding private groups and added that there is a group called Fenland Political Scene which has in excess of 100 members and although it is a private group anybody can access it. Councillor Topgood stated that a private group can be in existence, but only the comments can be made if you are a member of the private group.
- Councillor Wallwork expressed the opinion and probably for case law as well, anything on a social media forum is not a private group and anything on a social media platform that can be shared, copied or in the cloud is not a private group. She added that in her view a private

group is a Whats App group, or an email and she does not want anyone to feel that they can post something on a closed social media forum and feel that it is not going to be seen.

- Councillor Topgood added that by posting something on social media you need think about what you are posting before it is added.
- Councillor Purser stated that he agrees with Councillor Wallworks comments and thinks that much of what can be posted on Facebook can be misinterpreted in many ways.

**Members AGREED to make the following recommendations to Full Council for approval:**

**To adopt the proposed changes and amendments as part of the consultation feedback, to the Code of Conduct for Members.**

**To authorise the Monitoring Officer to make the amended Code of Conduct available to all Town and Parish Councils in the Fenland District with a view to those councils adopting it for consistency.**

**CND5/20    ITEMS OF TOPICAL INTEREST.**

There were no items of topical interest.

12.13 pm

Chairman