

Minutes of a meeting of the
Joint Governance Sub-Committee
31 March 2021
at 6.30 pm

Councillor Kevin Boram (Chairman)

Adur District Council:

*Councillor Ann Bridges
Councillor Debs Stainforth

Worthing Borough Council:

Councillor Roy Barraclough
*Councillor Beccy Cooper
Councillor Steve Wills

*Absent

Simon Norris-Jones attended the meeting as the Independent Person.

JGCSC/11/20-21 Election of a Chairman

Councillor Roy Barraclough proposed that Councillor Kevin Boram chair the meeting. The proposal was seconded by Councillor Andy McGregor.

Resolved,

That the Joint Governance Sub-Committee appointed Councillor Kevin Boram to be Chairman for the meeting.

JGCSC/12/20-21 Substitute Members

The following substitutions were noted:

1. Councillor Andy McGregor substituted for Councillor Ann Bridges.
2. Councillor Mike Barrett substituted for Councillor Rebecca Cooper.

JGCSC/13/20-21 Declarations of Interest

There were no Declarations of Interest.

JGCSC/14/20-21 Exclusion of Press and Public

Councillor McGregor sought advice about whether he could propose a motion at his stage of the meeting.

The Legal Advisor (LA) informed the Sub-Committee that a decision was required beforehand in relation to whether the hearing would be held in Part A (open to the press and public) or Part B (closed to the press and public)

The Subject Member's Representative (SMR) advised the Committee that Councillor Crouch (SM) supported the meeting being held in open session.

Resolved,

That the Joint Governance Sub-Committee unanimously agreed to hold the meeting in Part A, open to the Press and Public.

JGCSC/15/20-21 Procedure for the Meeting

The Sub-Committee were asked to approve the procedure for the meeting, a copy of which is attached to the signed copy of the minutes as item 3.

Councillor Andy McGregor proposed a motion to dismiss the complaint on the basis that the Code had not been engaged as Councillor Crouch had not been acting in his capacity as a Councillor but as a Media Officer for the Local Conservative Association. Therefore the matter was political and not a Council matter. In addition, Article 10 of the European Convention on Human Rights provided that anyone has a right to freedom of expression and the comments were in the bounds of acceptable debate and made reference to the Investigator's report..

Members raised a number of points seeking clarity about when a Councillor was acting in their capacity, referring to the Independent Investigator's Report, which recommended that the Code of Conduct was engaged and there was a breach of the Code.

The LA advised that there was no definition of 'capacity' within the legislation however, there were a number of test cases of relevance:-

1. The Case of Laverick looked at capacity in relation to a Councillor writing a blog. In that case it was said that it was perfectly reasonable to write in a private capacity even if they described themselves as Councillors. Was the Councillor writing in their official capacity as a Councillor or were the contents of the blog sufficiently connected to Council business for the Code of Conduct to be engaged. That was the test to be applied.
2. The Case of Milton Keynes which said the councillor should be engaged in the business directly related to the Council or the constituents and there had to be a link between the Councillors Office and the conduct.

The LA advised that the case was about whether the post related to Council business and was the Councillor acting in his capacity as a Councillor.

A Member questioned how it could be argued that it was anything but Council business, as the comment related directly to a video clip from a Council meeting.

Another Member highlighted that the Independent Investigator (II) and the MO had been satisfied that the SM was acting in his capacity as a Councillor.

The LA proposed that the Sub-Committee follow the Procedure for the Meeting, as set out as Agenda Item 3, rather than delve into the case in response to the proposed motion. It was important that Members considered all of the information before them prior to reaching a decision.

Councillor Steve Wills seconded the motion proposed by Councillor Andy McGregor. The motion was then to be debated.

The LA advised the Sub-Committee that the MO had the power to amend the order of the procedure put forward for the meeting and that Members needed to consider the capacity issue first. The Sub-Committee was advised by the LA to hear from the II (the Independent Investigator) and that it could also refer to the Independent Person present.

The II commented that Councillors were asking good questions but should hear the evidence before making a determination. The motion proposed sought to dismiss before hearing the facts of the case.

The II advised that on page 56 of the report the issue of capacity was considered. It was noted that the code did not apply 24/7 to Councillor Conduct. It did however apply when they were conducting the business of their authority. This meant that unfortunately the language wasn't particularly clear and the Committee of Standards in Public Life was trying to clarify it by having a new code in place that says any public announcements would be within capacity.

The II had suggested in his report that making comments publicly about what has happened in the Council Chamber amounts to a Councillor acting within their Councillor capacity. This was because one of the Councillors' roles was to engage with their constituents and talk to them about what had been going on at the Council and what had been going on in Council meetings.

The comments made by Councillor Crouch had been made on a Conservative Association Twitter account and not a Twitter account that identified him or his position as a Councillor. However, these were not the key considerations when tribunals had been considering such matters. The key considerations for tribunals had always been around content. It was not about the identity on the profile but what the person was writing about. Was it related to Council business or wasn't it. The II believed that the tweet written by Councillor Crouch did relate to Council business, the connection to Council business was sufficient to say that it was about Council business. It was not disputed that Councillor Crouch wrote the tweet. Therefore, it was a fairly straight forward jump to go yes Councillor Crouch wrote it, yes it was about Council business and therefore it came within the confines of the Code. For the II to consider otherwise, would allow Councillors to anonymously say whatever they liked about Council Officers, about each other and about Council business without fear of ever being found in breach of the Code of Conduct. It would make a mockery of the Code to view it any other way.

The Independent Person agreed with the comments of the II.

Having had a motion proposed and seconded to dismiss the case and having heard from the II and Independent Person, the Chairman called for a vote.

Vote:- In Favour 4 (the Chairman used a casting vote), Against 3, Abstentions 0

Resolved,

The Joint Governance Sub-Committee concluded that there was no finding of a breach of the Code of Conduct as Councillor Crouch had not been acting in his capacity as Councillor.

The meeting was declared closed by the Chairman at 7.46pm, having commenced at 6.30pm.

Chairman