

Addendum for Council 21 August 2013

Item 3 Notice of Motion

A revised motion has been received from Councillor Mrs Knight that reads as follows:

" That Warwick District Council is extremely concerned about the proposed cuts of £2.3 million to the Warwickshire County Council Children's Centre budgets for the year 2013-14 and agrees to send the following letter to Warwickshire County Council in response to their current consultation (which ends on August 27th 2013):

'To Warwickshire County Council

REVIEW OF EARLY YEARS PROVISION WARWICKSHIRE CHILDREN CENTRES

Warwick District Council has considered the proposals set out in the WCC Consultation paper on Children's Centres and its response is as follows:-

- (i) The Council recognises the vital role of Children's Centres in supporting the personal, social and emotional development of children. Given the uncertainty of the Warwickshire County Council Budget 2014 – 18 and the recommendations for increased investment in Children's Centres in the recent All Party Parliamentary Report of July 2013, THE COUNCIL RECOMMENDS THAT THE CURRENT CONSULTATION BE PUT ON HOLD, to allow for more long term strategic planning and review involving all partners including South Warwickshire NHS Foundation Trust.
- (ii) The Council endorses the recommendations of the All Party Parliamentary Sure Start Group to use pooled budgets between local authority and health services to allow for the commissioning of a range of Perinatal and Children's Centre services.
- (iii) The Council opposes the closure of any operating Children's Centre, including the site at Dale Street, Milverton, Leamington, as increased travel time and costs for families resulting from any closure would inevitably reduce access to services
- (iv) According to an OFSTED lead inspector the cluster working in Leamington and Warwick West is the best he has seen nationally. For this reason the Council recommends that Westgate and Newburgh Children's Centre remains within the Leamington and Warwick West cluster and continues to work collaboratively with Warwick Nursery and Children's Centre.
- (v) The Council wishes to emphasise the importance of a genuinely universal service to the success of Children's Centres. 'Targeting' of some neighbourhoods and families leading to possible stigmatisation of service users threaten the important vital for everyone at the formative time of life."

Item 4 – Code of Conduct Complaint

For the sake of consistency these questions and answers are brought to Council for information. They arise from the questions received by officers from five Warwick District Councillors, two Parish and Town Council representatives of the Standards Committee, of one of the Council's Independent Persons, and a member of the public, following publication of the agenda.

1. Under what authority can Council deal with a complaint under the Code of Conduct when it has delegated authority for such matters to a Standards Committee?

Any delegation of non-executive or local choice functions by the Council in its Constitution does not prevent the Council from exercising those functions itself where it is deemed appropriate.

(Section 101(4) of the Local Government Act 1974 provides that "Any arrangement made by a local authority [...] for the discharge of any functions by a Committee, sub-committee (officer or local authority) shall not prevent the authority or committee by whom the arrangements are made from exercising those functions.)

It is acknowledged that the Chairman of the Standards Committee, or in his absence, the Vice Chairman should have been made aware of this matter going straight to Council rather than to a Hearing Panel (Sub-Committee). An apology has been made and accepted.

2. The Constitution of Council Article 19 says Articles of the Constitution cannot be suspended, is the Council not doing this by taking on the role of the Standards Committee as defined in Article 9?

No. The authority for the Standards Committee is delegated down from Council, as set out above.

3. Why has the Councillor not been given 14 days to respond to the matter

The 14 days referred to constitutes guidance only in this context - it is not a policy requirement. The Monitoring Officer and in his absence Deputy Monitoring Officer had delegated authority to produce the guidance timescales in consultation with the Independent Person and the Chair of Standards Committee. In this case, consultation with the Independent Person confirmed that there was no justification for a formal investigation, and bearing in mind that the relevant documentation for consideration consists only of a single email sent by Andrew Jones on 12 July in response to the Councillor's own email of 10 July, it is the view of the Deputy Monitoring Officer and relevant members that 7 days' notice of the report is more than sufficient time for Councillor Dhillon to prepare for tonight's meeting.

The Councillor is responding to 14 words spoken in a public meeting on 9 July, which were heard by others present and which he acknowledges he said. A Council meeting had already been scheduled for 21 August and in view of the seriousness of the matter, it was considered reasonable and proportionate for the matter to be dealt with there, sooner rather than later.

4. Why could the matter not wait and go to Standards Committee?

The nature of the comments made, the direct impact on the health and wellbeing of the officer involved, the Council's duty of care as an employer and the potential reputational damage caused by this to the Council constituted good reason for the matter to be considered at the earliest opportunity.

It has been suggested that the Council meeting has been called especially for this reason. That is totally untrue. The Council was already due to meet to discuss other business and the Group Leaders took the opportunity to include this item as one that required a swift response.

The alternative would have been to arrange a Hearing Panel which would have delayed matters until mid-September.

5. How does the procedure fall within the Council Procedure Rules?

The Chairman will propose the procedure for this item from the Chair on 21 August thereby suspending the procedure rules for considering motions in favour of those outlined in appendix 4 of the report.

6. Paragraph 3.0 appears to suggest the complainant is Greta Needham

The complainant is Chris Elliott, Chief Executive of Warwick District Council, as line manager for Andrew Jones (Monitoring Officer for the Council), not Greta Needham.

7. Predetermination by the Conservative Group

"There is a concern that if a decision is taken by the Conservative Group on Monday 19 August 2013, whatever that may be, about the conduct of Councillor Dhillon, this could be seen as being predetermined when the matter is later considered at Council."

A decision by the Group only shows predisposition because there will be a wider debate at Council involving Councillors from other Groups, the views of the Independent Person, advice from the Council's Legal Advisor and of course Councillor Dhillon. The full range of these various contributions will need to be taken into account by the Council before it reaches a decision.

8. Councillor Dhillon and his ability to vote at the meeting

Under the adopted Code of Conduct for the Council, it is reasonable to conclude that Councillor Dhillon has a personal interest in this item because it might reasonably be regarded as affecting his well-being to a greater extent than the majority of other Council tax payers in the ward.

Councillor Dhillon has been advised that his interest is one that a member of the public with the knowledge of the relevant facts would consider so significant that it is likely to prejudice his judgement of the public interest. Whilst the Code does not require him not to vote or leave the room, he is advised that he would not be acting in the public interest if he does so and therefore would be a breach of the general obligations of the Code of Conduct.

I have therefore advised Councillor Dhillon that he should leave the room as soon as he has responded to any questions the Council may have until after a decision is taken as to whether or not there is a breach of the Code of Conduct. If required, he should also leave the room after he has made his representations about potential sanctions until Council has made a decision on that point.

9. What should the Council do if Councillor Dhillon does not attend the meeting?

The Council could consider deferring the matter for a reasonable period (of say 14 days) if it feels that there is good reason for Councillor Dhillon's absence, or it could consider the matter in his absence.

The Council's decision on this point will need to be based on the evidence available at the time.

10. Has Councillor Dhillon approached the Deputy Monitoring Officer about this matter?

Councillor Dhillon has been aware that the Deputy Monitoring Officer has been leading on this matter since July but he has not contacted him.

Councillor Dhillon has raised one concern with Greta Needham to which she has responded. His concern is addressed in paragraph 3 of this document.

11. Could the Council refer the matter back to Standards Committee and/or what decisions could Council take?

The range of decisions available to the Council are set out in the report.

If there is sufficient justification, the Council could defer the matter for further information and /or refer it back to Standards Committee for determination. This would delay consideration of the matter until late September, and Council will need to decide whether this is reasonable in the circumstances.

12. Could Council defer the matter if requested by Councillor Dhillon?

The Council could do this if it was persuaded that the reasons put forward by Councillor Dhillon justified a delay.

13. Could the Council provide the draft reasons of the decision for the final wording to be agreed by the Deputy Monitoring Officer and Legal Advisor in consultation with the Chairman and Independent Person?

Yes.

14. The full facts of the case have not been reported to Council for consideration

This is an inaccurate statement. The facts for consideration are clearly set out in Appendices 3 and 4 to the report and summarised below:-

- (i) The Monitoring Officer wrote to Councillor Dhillon, asking for a retraction of and apology for two sentences spoken by Councillor Dhillon at a public meeting.

“What have you got to be scared of Andrew” and “How much did they pay you”.

- (ii) Councillor Dhillon responded on 12 July (Appendix 4) accepting that he said the offending words.

In response, the Council is being asked to determine (a) Was Councillor Dhillon acting as a Councillor at the time he said the words?; and (b) does his conduct constitute a breach of the Code of Conduct?

15. There are no interviews with any of the witnesses or Councillor Dhillon?

Legal advice is that interviews and/or an investigation were not necessary in the circumstances. The facts are clearly laid out in Appendices 3 and 4 of the report and are sufficient on which to base a Council decision.

16. Mrs Needham has put in her report, under paragraph 3.10, that if a breach is found then a possible sanction is to *publish its findings* in respect of the member’s conduct. Has this not surely already happened as this is a public document and we have told the press about it?

The Council papers are publicly available but the Council has not yet made a decision. The possible sanction referred to is publication of the decision in the press and/or other appropriate location.

The Council has made no comment whatsoever to the press.

17. It is unusual to include appendix 5, (the previous breach of the Code of Conduct by Councillor Dhillon) before a breach is found looks as though the report is leading members in a particular direction

The information within Appendix 5 is in the public domain and is entirely relevant to the matter under consideration.

18. Not all Warwick District Councillors have had training on Code of Conduct hearings?

Training on Code of Conduct hearings is not necessary in this particular case.

With appropriate guidance, it is a matter that Council can determine without the need for formal training. It simply requires consideration of 2 short emails and a judgement to be made.

19. It should be for the Standards Committee to determine the seriousness of the matter and not members of staff or individual Councillors

The Council's Constitution enables any Councillor to place a matter upon the Council agenda. The Group Leaders considered that the information they received was sufficiently serious for swift consideration at a Council meeting already scheduled for 21 August.

Equally, officers can determine reports for consideration at a meeting.

20. Urgency: 'the complaint was such an urgent matter that only an extra Council meeting could deal with it'. If there was time and calendar space to call an extra Council meeting, then there was exactly the same opportunity to call a Standards Committee meeting

This Council meeting was convened to discuss other business. It was not convened to consider this item. The opportunity was however taken to include this item due to the need for urgent consideration.

21. What weight should be given to the article within the Warwick Courier on Friday 16 August 2013 about this matter?

None whatsoever. It is a misleading article generated by a third party on which the Council refused to comment. It also confused the two entirely separate public roles held by Councillor Dhillon.

22. 3.10 of the report effectively publishes the findings before any have been made

No. Paragraph 3.10 sets out the potential sanctions available to the Council should a breach of the Code of Conduct be found.

23. What authority does the Deputy Monitoring Officer have to act in the absence of the Monitoring Officer?

(1) The officer scheme of delegation states

The Chief Executive, their Deputies and Chief Officers (as detailed in Article 12 of the Constitution) shall have authority, subject to the requirements of the provisions of this Constitution and within approved budgets to:

- (i) Take any necessary steps for the day to day management and routine administration of the functions or services for which they are responsible; and
- (ii) Exercise the powers delegated to them and to authorise such officers as they think appropriate to exercise on their behalf the powers delegated to them.

(2) Within the job description of the Deputy Monitoring Officer he is delegated authority to Deputise for the Monitoring Officer.

24. For clarification we confirm that the decision notice, set out at Appendix 5, states that the outcome of the hearing on 7 September 2011 was that Councillor Dhillon failed to treat officers with respect and although there were elements of bullying behaviour within that pattern they felt that his behaviour was just short of a breach of the code with regard to bullying.

25. Other matters

It is understood that Councillor Dhillon will be represented by Mr Hathaway although the Chairman has expressed his desire for Councillor Dhillon to address the meeting directly.

The complainant, the Chief Executive, has stated that he is willing to respond to questions from the Council about the impact this matter has had upon staff health and well being.

The Chairman has also agreed that were appropriate the Head of Law and Governance from Warwickshire County Council will address the meeting on points of procedure and legal advice.

Item 3 Called in items

It should be noted that recommendation 2.2 refers to Overview and Scrutiny Committee and in fact it should refer to Council.