

# CONSTITUTION WORKING PARTY

Minutes of a remote meeting of the Constitution Working Party held on Tuesday 13 April at 14.00 pm

**Committee** Ms V Gay (Chairman) Mr T FitzPatrick  
**Members Present:** Mr A Varley Mrs P Grove-Jones

**Officers in Attendance:** The Monitoring Officer (Assistant Director for Finance, Assets & Legal, and the Democratic Services Manager

## 1 APOLOGIES FOR ABSENCE

None received.

## 2 MINUTES

The minutes of the meeting held on 4<sup>th</sup> February 2021 were approved as a correct record and signed by the Chairman.

## 3 ITEMS OF URGENT BUSINESS

None.

## 4 DECLARATIONS OF INTEREST

None received.

## 5 REVIEW OF PROTOCOL ON MEMBER / OFFICER RELATIONS

The Chairman said that she had read through the revised document and although it was considerably longer than the previous version, it could be used as an induction tool for both officers and members on their different roles and how to work effectively together. She said that although the protocol had been revisited in October 2017, this was in relation to a specific issue and that the whole document had not been reviewed for many years.

She invited Members to comment.

Cllr P Grove-Jones said that it was lengthy document but that she was happy with it overall. Cllr T FitzPatrick said that he agreed that it was lengthy but that it was important to set things out clearly, particularly regarding matters that were unlawful and financially improper. This meant it that it was transparent and clear to the public that Members embodied the Nolan Principles and that the way Members and Officers worked together was clearly set out. He said that section 2.16 was very important and he welcomed its inclusion. Cllr Grove-Jones agreed, saying that it was important to have a section outlining what officers could do if they felt they had been treated improperly by a member.

Cllr Grove-Jones commented on section 4.8 which referred to members expressing political values and aspirations. She sought clarification on whether this referred to specific circumstances. The Democratic Services Manager replied that it applied generally. Members were elected to represent a political group and this should be acknowledged and accepted. Cllr Grove-Jones said that there were some committees which were explicitly non-political and she wondered whether this should be clarified. The Democratic Services Manager said that for Development Committee, members should also observe the Planning Protocol and this was referenced at section 4.7 in the Protocol on Member/Officer relations. For other committees, such as Overview and Scrutiny, references to a non-political approach were outlined in the terms of reference.

Cllr Grove-Jones then referred to Section 5.1 and the last point which mentioned limitations on some officers' involvement in political activities. She said that she thought that officers could not be involved in political issues or activities at all. The Democratic Services Manager replied that this referred to posts that were politically restricted. These were senior management posts and for officers working closely with elected members. Cllr FitzPatrick added that officers in non-politically restricted roles could be involved in political activities if they wished and could in fact stand for election at another local authority.

Cllr A Varley said that he felt the revised Protocol was coherent and concise and set out clearly what was expected of each role. He referred to section 16.9 and said that he was supportive of including a reference to correspondence and information between the Council and town and parish councils and ensuring local members were kept 'in the loop'. The Chairman replied that the issue of members not being fully informed was probably the one matter that came before the Working Party more than any other. It wasn't clear what the problem was but it did seem particularly hard to resolve. The Democratic Services Manager agreed, saying that this was one of the hardest issues to get across to officers and she raised it whenever possible to try and embed the importance of keeping members informed of matters in their wards. Cllr FitzPatrick proposed that that this section was amended:

'In dealing with town and parish councils, officers should endeavour to copy ward members into correspondence'

The Chairman seconded the proposal.

The Chairman said that when she had reviewed the initial draft of the document, she felt that it should begin by setting out clearly the different roles of members and officers and this would then lead onto the expectations – including respect and trust. This was now reflected in the draft version before members and she welcomed that. She added that the revised document could be used for member and officer induction now as it was set out clearly and concisely.

The Chairman went onto say that she was pleased to see the inclusion of section 2.8 which referred to the impartiality of officer advice. She said that respecting impartiality and not compromising it did not imply obedience to that advice. Members were obliged to weigh the advice and give it careful consideration but they were not obliged to follow it in all circumstances.

She then referred to section 2.16 which outlined what steps would be taken if an officer had been treated improperly. She sought clarification on the process for members if they felt that had not been treated properly. She wasn't sure if it was

appropriate for them to write to the Chief Executive. Cllr Grove-Jones agreed that this could be an issue. The Monitoring Officer said that initially they should approach the officer's line manager initially and then escalate it upwards if there was no adequate response. Cllr FitzPatrick suggested that 'by a member' was added to section 2.16 so that it was explicit that it referred to treatment of an officer by a member. He added that he agreed with the Monitoring Officer's suggested approach regarding speaking to the relevant line manager initially, if there was an issue of an officer being treated improperly by a member.

The Democratic Services Manager suggested adding the following additional section at 2.17:

'When a member feels that they have been treated improperly by an officer, they should speak to the relevant line manager in the first instance. If the matter is not addressed, then it can be escalated upwards to the relevant Director and /or Chief Executive.'

The Chairman then referred to section 5.5 which outlined respect for a member's request for confidentiality. She said that the wording 'or in order to comply with' was confusing and she suggested that 'except to comply with'. The Democratic Services Manager agreed.

Cllr P Grove-Jones commented on section 12.2 which referred to a meeting being held on Council premises. She said that this may need to be amended to reflect the current arrangements for remote meetings. Cllr FitzPatrick said that he believed that this section reflected another part of the Constitution that required meetings between senior officers and political groups to take place on the council premises for transparency reasons. The Democratic Services Manager said that she would review this section once the situation regarding the holding of remote meetings from 7<sup>th</sup> May onwards had been clarified.

The Chairman then suggested that members considered the Media Relations section of the Protocol. This had been issued separately as it had been revised by the Communications & PR Manager.

Cllr FitzPatrick referred to section 11.4 and said that he would not want to see the seven day notification period removed. He proposed that the wording was amended to 'where lawful and practicable, unless exceptional circumstances are present, communication of such information to local members will be made seven days before external publication.'

The Chairman referred to section 11.12 and said that she welcomed the clarification about comments made by members on social media, particularly that posts remained in the public domain and could be shared and re-published without permission.

Cllr Grove-Jones said that she didn't use social media very much but she was concerned about the language and tone of some posts. She felt that training on this would be beneficial.

Cllr FitzPatrick agreed with the Chairman and suggested that section 11.12 could be strengthened to clarify the fact that once statements and comments were made via social media, they were no longer in the control of the individual who made them and could potentially remain there forever. It was also possible that they would not be interpreted as statements of private opinion but as a political stance, reflecting for

good or ill on the Council and possible the political group. The Monitoring Officer suggested the following (additional wording in bold):

‘Members should be aware that any comment made about matters pertaining to North Norfolk District Council’s work via their own personal social media channels are, in effect, statements to the media by said member and as they are in the public domain, can be lawfully re-published verbatim by the media without the poster’s permission. **Posts can potentially remain in the public domain and be re-posted without any control over their continued publication.**’

The Chairman said that she felt this was an important addition as members were under pressure to use social media more. Also, in order to further explore the separation of the public from the private, she felt that training would be very helpful. The training should focus on this problem specifically.

Cllr Varley agreed. He said that social media was a very useful platform for members to engage with constituents but he had concerns that they didn’t always understand the implications of expressing their personal views. He said that he supported training for members and suggested that it would also be beneficial to provide members with an information sheet / guide to using social media. Cllr Grove-Jones suggested this could include examples of good and bad practice.

Cllr T FitzPatrick proposed that section 11.12 was strengthened further by adding that members were encouraged to take part in training on the use of social media.

It was proposed by Cllr V Gay, seconded by Cllr T FitzPatrick and

**RESOLVED to recommend**

- 1. That Standards Committee reviews the revised Member / Officer protocol, including the amendments made by the Constitution Working Party and considers the inclusion of an additional section on expected behaviours in their upcoming review of the Member Code of Conduct.**
- 2. That, following any further amendments by Standards Committee, Council approves the revised Member /Officer Protocol.**

**6 UPDATE ON REMOTE MEETINGS LEGISLATION**

The Democratic Services Manager introduced this item. She reminded members that the legislative provision for Councils to hold remote meetings was due to end on 7<sup>th</sup> May 2021 and that, although there was a high court challenge underway aimed at allowing remote meetings to continue, it was still necessary to explore all options for holding face to face meetings in the event that this was not successful.

Cllr P Grove-Jones referred to section 3.1 and the issue of equality. She said that she had concerns about attending a physical meeting in the near future and felt that many other members would feel the same. It would effectively disenfranchise a lot of people and could also impact on public engagement and attendance. She sought clarification regarding the status of ‘hybrid’ meetings going forwards, as she said she would not feel comfortable going into the Council Chamber at the moment. The Democratic Services Manager said that if the high court challenge was not successful, then only physical meetings would be allowed. The Government had opened a ‘call for evidence’ regarding Councils’ use of remote meetings and she said that she would be responding to this on behalf of NNDC.

The Chairman said that, as 7<sup>th</sup> May was fast approaching, it might be best to consider the options set out in the report and consider whether some should be discounted now rather than spending unnecessary time on them. She referred to the proposal to hold the AGM in April as an example. Deadlines for convening a meeting would be too tight now. She added that she was also aware that there were no suitable venues in the District that could hold 40 members plus officers, socially distanced. The Democratic Services Manager agreed, regarding suitable venues she said that even if there was a large enough space, the supporting technology that would be required was not available. Cllr FitzPatrick declared an interest regarding the Thursford Collection as he was a trustee. He said that it was large enough to accommodate a lot of people and it was possible that the required microphones etc would be suitable but it would take a lot of work to get it up and running as it had not been in use for several months.

The Democratic Services Manager said that it may be possible to convene the AGM in April but as there were two by-elections for District Council seats which may result in a change in the political balance, it didn't seem like a viable option.

Cllr FitzPatrick referred to option d – holding a virtual meeting, followed by a physical, quorum based meeting shortly afterwards to ratify the decisions. He queried what would happen if the quorum based panel did not support the original decision. The Democratic Services Manager replied that this could be a problem and had been an issue at another local authority which had taken this approach. Consideration would need to be given as to how to manage this, possibly by agreeing with the Group Leaders in advance who should attend the physical meeting.

Cllr Grove-Jones said that as Chairman of Development Committee she would support option e – virtual meetings with delegation to the Head of Planning – if this was possible. She said she didn't feel that it was safe for meetings to be held in the Council Chamber at this time.

Cllr FitzPatrick said that people didn't realise how 'wedded' people had become to remote meetings. When they were introduced, many parish councils had been reluctant use the format but now they realised the benefits – particularly in a rural district with an elderly demographic. Attendance had increased considerably and members of the public were joining more meetings too. In addition, it meant that district and county councillors could attend several meetings in one evening rather than having to drive long distances between them. He said that he felt that in the future, even once physical meetings were safe again, there would be a move towards holding meetings remotely.

Cllr Grove-Jones agreed, saying that from a democratic point of view, they were much more accessible than physical meetings and attendance was much higher.

The Chairman said that she also believed remote meetings would continue in the future in some form but that there were some disadvantages. It was likely that there may be some argument about the proper record of the meeting and the status of the minutes as people would be able to re-watch recordings of meetings and potentially challenge the official record of the discussion. She referred to option c – virtual meetings with delegation to Chief officers and said that Cabinet had taken this approach at the start of the pandemic but she believed it was only for a short period of time. The Democratic Services manager confirmed that this was only done for a short period of time until the remote meetings regulations came into effect. The Chairman said that felt this approach had worked well and she wasn't aware of any problems at all. She said that she had some reservations about quorum based meetings as there was no guidance in place to address a situation when the quorum based meeting may not support the views / direction agreed at the virtual meeting. This would be new territory for the Council and

some consideration may need to be given as to how to address any problems that may arise from taking this approach. She concluded by saying that she felt more comfortable with options c and e as these had been used previously and seemed to work quite well.

Cllr FitzPatrick said that he supported her viewpoint. Regarding option d, he said that it was unlikely that the public would understand what was being done and it would be seen as 'rubber stamping' and would not be very transparent.

Cllr Varley agreed. He felt comfortable with options c and e as these had worked well.

## **AGREED**

To recommend that options c and e were explored, should a return to face to face meetings be required.

## **9 REVIEW OF MEMBERS ATTENDANCE AT A PRIVATE / EXEMPT MEETING**

The Democratic Services Manager explained that this issue had been raised following a recent special meeting of the Governance, Risk and Audit Committee. The report being considered at the meeting was exempt and was only shared with members who were able to demonstrate a 'need to know'. This led to a query regarding the attendance of members at the meeting who were not on the committee or who had received the report under the 'need to know' principle. She outlined the following section within the Constitution:

*Chapter 5, section 13:*

*A member who is not a member of the particular committee or sub-committee may attend all meetings of any committee or sub-committee, save that he/she shall withdraw from any part of a meeting from which the committee or sub-committee excludes press and public unless specifically invited to remain by the Chairman because of the special contribution which he/she can bring to the issue under consideration.*

The Chairman said that she had asked that the Working Party review this section and consider whether it should be retained. She said that she had never been present at a meeting where members in attendance had been asked to leave the room during private business. She added that the resolution taken at meetings to move into private business referred to the public and press. It did not refer to members. She said that all members understood the responsibilities relating to confidential material and did not feel that the above section was necessary. She agreed that disciplinary meetings such as Employment & Appeals Committee and Standards Committee may need to limit attendance by non-committee members.

Cllr Grove-Jones said that Licensing sub-committee hearings also needed to exclude non-committee members due to the sensitive nature of the discussions. She sought clarification on freedom of information requests and whether a request could be submitted for information that fell within exempt business. The Monitoring Officer said that the reasons for the exemption would be considered when such a request was submitted but that it did not ensure that the information would not be released. She added that the Constitution stated that members 'shall withdraw' but that the Chairman could use their discretion to allow them to remain. This provided some flexibility depending on the meeting being held.

Cllr FitzPatrick said that he felt it was a difficult issue. He believed that members had

the right to know what was being discussed in private business for most committee meetings. He agreed that certain meetings such as those referred to above could be an exception to this.

The Chairman agreed, she said that it didn't seem correct that a member could only stay in the meeting with the consent of the Chairman. Cllr FitzPatrick said that trust was integral to being a member and the onus was on them to ensure confidentiality.

The Chairman proposed that this item came back to the next meeting of the Working Party, with some wording suggested by the Monitoring Officer.

Members supported this approach.

## **10. DISPUTE RESOLUTION PROCESS – FULL DELEGATION TO CHIEF OFFICERS**

The Chairman explained that this item had come forward following review of Corporate Governance completed by the Council's internal auditors in January 2021. Included within the review was a recommendation regarding the use of urgent and emergency powers delegated to Chief Officers under the Constitution. It was identified that where there was a requirement that an officer consults with the relevant portfolio holder prior to engaging that power, there was no process in place to resolve any dispute where the relevant member was not in agreement. The Chairman said that she was not aware of this ever having occurred, but that it was a gap in the current process which Internal Audit felt should be addressed.

The Monitoring Officer agreed, saying that it was simply to address a gap in the current process. There was the potential that the requirement to 'consult' with an elected member could be misinterpreted and this would help address that.

Cllr FitzPatrick said that it was important to have a dispute resolution in place in case of any misunderstandings. He added that it made the process more transparent too.

Cllr FitzPatrick requested that if the Council adopted the LGA Model Councillor Code of Conduct then he would like to see the document numbered in accordance with NNDC reports and protocols. The Democratic Services Manager agreed to do this.

The Monitoring Officer said that she would take back the Working Party's supportive comments to the next meeting of county monitoring officers.

The Chairman added that it also suggested a separation of powers, of which she was supportive – to senior officers other than the Chief Executive and this provided an opportunity to address settle any issues or concerns.

It was proposed by Cllr T FitzPatrick, seconded by Cllr P Grove-Jones and

### **AGREED to recommend**

**To Full Council that the Constitution be updated to include a dispute resolution procedure in the event of any disagreement between a Chief Officer and Elected Member, following consultation about use of delegated powers.**

## **UPDATES TO THE CONSTITUTION**

The Monitoring Officer advised Members that work was ongoing regarding the amendment to job titles following the recent senior management restructure. She said that there may need to be some amendments if the remote meetings regulations were not continued as these were currently reflected in the Constitution.

The Democratic Services Manager outlined the items that were suggested for future meetings, including a review of Outside Bodies later in the year and consideration of the portfolio holder reports to Council. The latter had led to some confusion in recent months and it might be helpful to review how they were compiled and where they were placed on the Full Council agenda. Cllr FitzPatrick sought clarification that it was currently one question per member for each portfolio holder or for the whole agenda item. The Democratic Services Manager confirmed it was one question per member for the whole item. Cllr FitzPatrick said that he agreed that the portfolio holder should write their own reports and that this would ensure that they would be able to answer any questions relating to them, which was not currently the case. Cllr Grove-Jones said that she had not realised that officers were writing the reports for some portfolio holders and agreed that a review should be undertaken.

The meeting ended at 11.25am.

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Chairman