

NEWRY, MOURNE & DOWN DISTRICT COUNCIL

Ref: NMD/GC/4

**Minutes of the Meeting of Newry, Mourne and Down District Council
Governance Committee held on Tuesday 9 September 2014 at 6.00 pm in the
Mourne Room, Downshire Civic Centre, Downpatrick**

In attendance: (Councillors)

Councillor T Andrews
Councillor N Bailie
Councillor R Burgess
Councillor S Burns
Councillor M Carr (Chairperson)
Councillor C Casey
Councillor P Clarke
Councillor L Devlin
Councillor G Donnelly
Councillor S Ennis
Councillor G Fitzpatrick
Councillor V Harte
Councillor H Harvey
Councillor D Hyland
Councillor K McAteer
Councillor H McKee
Councillor R Mulgrew
Councillor M Murnin
Councillor P Ó'Gribín
Councillor B O'Muirí
Councillor B Quinn
Councillor H Reilly
Councillor M Ruane
Councillor G Stokes
Councillor JJ Tinnelly
Councillor W Walker

(Officials)

Mr L Hannaway, Chief Executive Designate
Mr J McBride, Change Manager
Mr R Dowey, Head of Finance and ICT
Mrs C Miskelly, Head of Human Resources
Mrs D Starkey, Committee Administrator

Mr M Lipsett, Director of Recreation and Community Services
Mr G McGivern, Director of District Development
Mr C O'Rourke, Director of Environmental Services
Mrs M Ward, Group Chief Building Control Officer
Mr G McBride, Assistant Director (Customer Relations)

Also in attendance:

Dr T Frawley, Northern Ireland Commissioner for Complaints

Mrs M Anderson, Deputy Northern Ireland Commissioner for Complaints

Mrs G Coey, Senior Investigating Officer

GC/37/2014: APOLOGIES

Apologies were received from Councillors W Clarke, Craig, Doran, Enright, Kimmins and McGrath and Mr E Curtis, Chief Executive (Newry and Mourne District Council).

GC/38/2014: PRESENTATION FROM NORTHERN IRELAND OMBUDSMAN: COUNCILLORS CODE OF CONDUCT

NOTED: Presentation delivered by Dr Tom Frawley, Northern Ireland Commissioner for Complaints (NI Ombudsman). (Attached at appendix 1).

NOTED: A question and answer session ensued during which the Commissioner and Deputy Commissioner for Complaints responded to a number of queries regarding the Code of Conduct.

During discussion the following key points were highlighted:

- Members conduct during a meeting should be managed by the Chair. Conduct by an individual or group of Members during meetings would be a matter for the Commissioner if behaviour over time obstructed the work of Council.
- Reference was made to the Heesom (High Court) Case concerning acceptable standards of debate between Members.
- The first stage of the investigation process undertaken by the Commissioner would be inquisitorial in nature. Members are entitled to be accompanied by another person at this stage (including someone with a legal background), however legal representation is only

permitted at the adjudication stage (should the complaint proceed).

- Any appeals against decisions of the Commissioner can be referred to the High Court.
- It is a matter for each Council to determine whether it wishes to consider indemnifying Members against the costs of any proceedings / appeals to the High Court.
- Any person wishing to actively participate in Council business (including lay members) must sign up to the Code of Conduct. Likewise any Councillor who is a Member of a Board or Trust outside Council should sign up to their Code, and in the absence of one, the Northern Ireland Local Government Code of Conduct would apply.
- Draft Guidance on the Code of Conduct for Councillors will be issued in the Autumn for consultation. The Guide will then be launched April 2015 to assist with new Planning responsibilities.
- The Environment Minister, Mr Mark H Durkan MLA has agreed to review the Code of Conduct once Planning Guidance is issued by the Department. This will provide an opportunity for Members to seek clarity on any issues within the Code of Conduct.
- A complaint deemed to be malicious may result in the complainant (if an Elected Member) being in breach of the Code of Conduct. There is also protection for malicious complaints from members of the public.

AGREED: A copy of presentation to be circulated to all Elected Members for their records.

The meeting did then adjourn with Committee Business resuming at 7.00pm

COMMITTEE BUSINESS

In attendance: (Councillors)

Councillor N Bailie	Councillor S Burns
Councillor M Carr (Chairperson)	Councillor P Clarke
Councillor L Devlin	Councillor G Donnelly
Councillor S Ennis	Councillor G Fitzpatrick
Councillor V Harte	Councillor H Harvey
Councillor K McAteer	Councillor H McKee
Councillor B O'Muirí	Councillor H Reilly
Councillor M Ruane	Councillor G Stokes
Councillor JJ Tinnelly	

Also in attendance:

Councillor T Andrews
Councillor P Ó'Gribín
Councillor W Walker

(Officials)

Mr L Hannaway, Chief Executive Designate
Mr J McBride, Change Manager
Mrs D Starkey, Committee Administrator

Mr M Lipsett, Director of Recreation and Community Services
Mr C O'Rourke, Director of Environmental Services
Mrs M Ward, Group Chief Building Control Officer
Mr G McBride, Assistant Director (Customer Relations)
Mr G McGivern, Director of District Development

GC/37/2014: DECLARATIONS OF INTEREST

There were no declarations of interest.

GC/38/2014: ACTION SHEET ARISING FROM GOVERNANCE COMMITTEE MEETING HELD ON 19 AUGUST 2014

Read: Action Sheet arising from Governance Committee Meeting held on 19 August 2014. **(Copy circulated)**

NOTED: In response to a query from the Chairperson, Mr O'Rourke confirmed a detailed examination would be taking place on 11 September 2014 to resolve issues with the Minute Pad system and WiFi/Broadband.

NOTED: The Chief Executive confirmed that all actions had been progressed and it was agreed to mark the action sheet 'noted'.

GC/39/2014: BI-LINGUALISM POLICY

Read: Report from Mr McGivern on the draft Newry, Mourne and Down District Council Bi-lingualism Policy. **(Copy circulated).**

NOTED: The Chief Executive clarified the Bi-lingualism Policy refers to the European Charter for Regional or Minority Languages which includes Article 12. The issue would be considered as part of the development of other Council policies concerning the use and implementation of bi-lingualism.

AGREED: It was **AGREED** on the **PROPOSAL** of Councillor O'Muiri, **SECONDED** by Councillor Stokes to approve the **Bi-lingualism Policy**.

NOTED: Councillors Reilly and McKee requested their opposition to the policy be recorded.

GC/40/2014: COMPLAINTS, COMMENTS AND COMPLIMENTS POLICY

Read: Report from Mr G McBride on Complaints, Comments and Compliments Policy. **(Copy circulated)**

AGREED: It was **AGREED** on the **PROPOSAL** of Councillor Devlin, **SECONDED** by Councillor P.Clarke to approve the **Complaints, Comments and Compliments Policy**.

GC/41/2014: LOCAL CHANGE PROGRAMME – PROGRESS REPORT

Read: Report from Mr J McBride on Local Programme, Progress Report. **(Copy circulated)**

NOTED: Mr J McBride reported all work was progressing as planned, with no areas of significant concern with the local programme at this stage.

AGREED: It was **AGREED** to mark the report 'noted'.

GC/42/2014: **DOE PROGRAMME MANAGEMENT REPORT – NEWRY, MOURNE AND DOWN**

Read: Report from Mr J McBride on DoE Programme Management reporting framework for Newry, Mourne and Down District Council. **(Copy circulated)**

NOTED: Mr J McBride confirmed this would be a standing item on Governance Committee agendas as Council was required to submit progress reports to DoE.

AGREED: It was **AGREED** to mark the report ‘noted’.

IN-COMMITTEE

GC/43/2014: **CORPORATE PLAN AND ORGANISATIONAL DESIGN TENDER**

AGREED: It was **AGREED** on the **PROPOSAL** of Councillor Ruane, **SECONDED** by Councillor Donnelly to discuss this item ‘In-Committee’ due to contractual issues.

Read: Report from Mr J McBride on invitation to quote to facilitate in the preparation of the Council Corporate Plan 2015-2019. **(Copy circulated at the meeting)**

AGREED: It was **AGREED** on the **PROPOSAL** of Councillor Devlin, **SECONDED** by Councillor Fitzpatrick to come ‘Out of Committee’.

AGREED: The Chairperson reported it was **AGREED** on the **PROPOSAL** of Councillor P.Clarke, **SECONDED** by Councillor Harvey to award Supplier A as the facilitator to assist in the preparation of the new Council Corporate Plan 2015-2019.

The Chief Executive reminded Members a Planning Workshop (session one) was taking place in Craigavon Civic and Conference Centre on 10 September 2014 for those who had agreed to attend.

The Chief Executive also asked Members to note a Capital Programme Workshop was scheduled for Tuesday 16 September 2014 at 3.00pm in the Boardroom, Newry (prior to the Finance and Resources Committee Meeting taking place on the same date at 6.00pm).

There being no further business the Meeting ended at **7.35pm**.

For consideration at the Shadow Council Meeting to be held on Tuesday 7 October 2014.

**Signed: Councillor M Carr
(Chairperson)**

**Signed: Mr L Hannaway
(Chief Executive Designate)**

Investigating Complaints: the Northern Ireland Local Government Code of Conduct for Councillors

Northern Ireland Commissioner for
Complaints (the NI Ombudsman)

Overview

- Political casework is different
- Risk of the investigator/adjudicator becoming part of the political story
- Danger that the enforcement regime can have an opposite effect than intended: rather than promoting public confidence, the very 'playing out in the public arena' of member infractions can further lower public confidence, regardless of the end result in terms of adjudication and sanction
- Assessment process is key to ensuring that investigation is undertaken only when it is proportionate and in the public interest to do so.

Overview

- Significant Dates:
 - Northern Ireland Local Government Code of Conduct for Councillors became effective on 28 May 2014
 - The Commissioner's jurisdiction came into effect on 2 June 2014
 - Councillors have signed a declaration of their acceptance of Office, which includes a requirement to observe the Code

Overview

- The Commissioner's role in the investigation and adjudication of complaints of breaches of the Code
 - Complaints to be made in writing directly to the Commissioner's office – no 'local' complaints procedure
 - Team designated within the Commissioner's office to receive complaints and undertake investigations
 - Commissioner will undertake adjudication

What will be investigated?

- Assessment process to determine whether a complaint can, and should, be investigated – not all complaints received will be investigated
- Assessment criteria:
 - Complaint must be about the conduct of a named councillor
 - Conduct complained of must fall within the scope of the Code (including that it is conduct that occurred on or after 28 May 2014)
 - Complaint must be made not later than six months from date conduct complained of occurred (although discretion in 'special' circumstances)
 - There must be some evidence to support the alleged breach of the Code
 - The alleged breach must be such that the undertaking of an investigation is proportionate and in the public interest

How will an investigation be conducted?

- Parties to the complaint will be informed that an investigation is to be undertaken
- Councillor complained of will be informed of the nature of the alleged breach of the Code and will have an opportunity to provide written comments at the outset
- Evidence will be obtained by way of :
 - written communication
 - interviews
 - parties to complaint and any witnesses may be interviewed
 - interviewees can be accompanied to interview by someone acting in a supportive role but will not be legally represented
- Every investigation will be undertaken in private
- An investigation will be independent of, and managed separately to, any adjudication undertaken

What makes an investigation efficient and effective?

- Co-operation of the individuals involved
- Meeting timescales for response to enquiries
- Providing complete and accurate information
- Availability of councillors and witnesses
- Non-defensive attitudes
- Ongoing insight and reflection

What will an investigation decide?

The purpose of an investigation is to determine which of the following findings is appropriate:

- That there is no evidence of any failure to comply with the Code
- That no action needs to be taken in respect of the matters which are the subject of the investigation
- That the Commissioner should make an adjudication on the matters which are the subject of the investigation

Target timescales for the assessment and investigation of complaints

■ Assessment

We aim to inform complainants and councillors, within four weeks of the date on which sufficient information about the complaint is received, whether or not the complaint is to be investigated

■ Investigation

We aim to conclude the investigation of a complaint within 48 weeks of the date of our decision to investigate

Assessment and Investigation - the Welsh experience

Outcome of complaints considered by
Public Services Ombudsman for Wales (PSOW)

	2013/12	2011/12	2010/11
Complaints considered by PSOW	371	344	349
Complaints closed after initial assessment	283	280	194
Complaints investigated and no evidence of a breach	23	7	13
Complaints investigated and no action necessary	15	29	38
Complaints investigated and then referred to Standards Committee for adjudication	15	15	21
Complaints investigated and then referred to Adjudication Panel for Wales for adjudication	5	4	24

Adjudication- what will it entail?

- Undertaken by the Commissioner, with advice and support appropriate to the matter complained of
- May take the form of a public hearing
- Criteria for deciding when a public hearing is necessary and when adjudication should be undertaken in a different format
- May require the parties to the complaint and any other witnesses to give oral evidence in public

Adjudication – what will be decided?

- Has there been a breach of the Code?
- If so, what sanction, if any, is appropriate?
 - No action
 - Censure
 - Suspension or partial suspension for a period of up to one year
 - Disqualification for a period of up to five years

Adjudication – the Welsh experience

Outcome of cases heard by the Adjudication Panel
for Wales

	2012/13	2011/12	2010/11
Cases heard	7	6	12
No sanction	0	0	2
Censure	1	1	0
Partial suspension	0	0	1
Suspension	2	4	6
Disqualification	4	1	3

The Commissioner's Guidance on the Code

- An eight week consultation to be launched in late Autumn
- Guidance to be issued prior to new councils becoming fully operational in April 2015
- Content:
 - Aid in your understanding of the scope and expectations of the Code
 - Examples from other jurisdictions
- DOE will be producing guidance on the application of the Code in relation to planning

Further information

- Commissioner's website:
www.ni-ombudsman.org.uk
- Commissioner's office:
33 Wellington Place
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