

Birmingham City Council

Standards Committee

25 October 2021



Subject: Lessons to Learn and Future Role of Standards Committee

Report Author: Robert Connelly

1. Introduction

- 1.1 Following the conclusion of the waste management dispute in 2017, Birmingham City Council instigated an independent review into whether appropriate and lawful processes were followed in reaching and approving an agreement to end the industrial action, purportedly made on 15 August 2017.
- 1.2 As part of the review, the Council sought advice on what key learning could be identified and how it could manage or mitigate against any similar circumstances arising in the future.
- 1.3 As part of the review it was asked to consider a series of specific issues , one of which was whether the then Leader of the Council, Councillor John Clancy had potentially breached the Councillors' Code of Conduct.

2. Purpose of this report

- 2.1 To consider the lessons learnt from the Waste Management Governance Review ("WMGR") which was published in December 2018 and what further steps the Standards Committee can play in helping the Council to improve both its governance and member development.

3 Background

- 3.1 In early 2017 the Waste Management Service (the Service) was part of the Place Directorate within Birmingham City Council (BCC). The Service proposed to redesign its Refuse Collection Service and Street Cleansing Service which, in broad terms, included proposals to delete the Grade 3 leading hand role and extend the working week. The trade union, UNITE, were in dispute with the Service during the consultation period which resulted in a trade dispute and industrial action.
- 3.2 The industrial action by UNITE had a significant impact on the citizens of Birmingham.

- 3.3 On 15th August the then Leader of the Council, Cllr John Clancy, went to ACAS and purported to reach an agreement with UNITE, subsequently set out in an ACAS press release, which included that Cabinet members had agreed in principle that the grade 3 leading hand posts in the Refuse Collection Service would be maintained and that consequently there were no redundancy steps in place. In addition, the agreement provided that a suspended shop steward should be re-instated.
- 3.4 When BCC officers became aware of the draft ACAS press release setting out the terms of the agreement that the Leader had purported to reach, BCC's then Monitoring Officer spoke to ACAS to make them aware of Cllr Clancy's lack of authority to enter into such an agreement and made it clear that the press release should not be issued. ACAS, however, issued the press release.
- 3.5 Cllr Clancy sought the agreement of his Cabinet colleagues informally to his actions. Following on from this he represented that the agreement he had reached with UNITE had Cabinet backing and authority. His interpretation of the ability of the Cabinet / Leader to make such decisions was subsequently challenged by BCC's then Monitoring officer, supported by the QC instructed by BCC. Cllr Clancy sought his own legal advice which initially supported him, but, with the benefit of a fuller understanding of the issues, Cllr Clancy's legal advisers then agreed with the legal advice from BCC's then Monitoring Officer and QC.
- 3.6 The agreement that Cllr Clancy purported to reach with UNITE at ACAS led to the suspension of the industrial action.
- 3.7 Subsequently BCC issued notices of redundancy to the grade 3 leading hands in the Refuse Collection Service.
- 3.8 UNITE brought an application in the High Court for an injunction to compel BCC to observe the terms of the agreement, which UNITE argued was a collective agreement incorporated into the contracts of employment of the employees.
- 3.9 On receipt of the relevant undertakings from UNITE, on 18th September 2017 the High Court granted an interim injunction to restrain BCC from dismissing the leading hands pending a speedy trial. The proceedings were then compromised without proceeding to trial.
- 3.10 The financial implications of the industrial action together with costs associated with the High Court injunction were significant.
- 3.11 BCC commissioned a Waste Management Governance Review ("WMGR") which was published in December 2018. This can be read here:
https://www.birmingham.gov.uk/news/article/346/findings_of_independent_review_into_2017_waste_management_dispute
- 3.12 In parallel, BCC had received a Councillor Code of Conduct complaint against Councillor Clancy relating to his involvement in the waste dispute and the 'in principle' agreement reached on 15th August 2017 by informal Cabinet.
- 3.13 The WMGR was asked to answer a number of questions set by BCC including: -
"Question 9: Do you believe that there might be any breaches of the Councillor Code of Conduct including a breach of the Nolan Principles?"
- 3.14 In answering this question, the WMGR stated: -

“We believe that there may have been breaches of the Code of Conduct including the Nolan Principles. As a consequence, we believe that the due process should now be followed.”

4 Code of Conduct Investigation

- 4.1 Following the publication of the WMGR in December 2018, an external firm of solicitors with expertise in Code of Conduct matters were instructed to investigate the complaint against Cllr Clancy.
- 4.2 However, prior to the investigation being concluded, Cllr Clancy resigned from the Council on 25th February 2020.
- 4.3 In terms of the Code of Conduct matter, the law is clear on what happens next in such cases. In short, the Localism Act 2011 provides that the regime relates to current members and not ex-members. Therefore, a member who leaves the authority during the process is no longer subject to the Code of Conduct regime.
- 4.4 Any suggestion that someone who is no longer a councillor could be subject to the full, an amended or alternative parallel process will in all likelihood fail.
- 4.5 This position is reflected by a number of local authorities who expressly state in their arrangements that a Code of Conduct complaint will not be progressed if a member leaves during the course of an investigation/proceedings. At the time the BCC process did not explicitly state this, but the Code of Conduct has since been amended to provide “..... *and continue to apply to you until you cease to be a Councillor or co-opted member*”.
- 4.6 When considering this report, the Committee must therefore be mindful that:
 - any attempt to run a determination / hearing process now purportedly on the basis of the Localism Act 2011 Code of Conduct regime in relation to ex Cllr Clancy would be ultra vires;
 - to purport to run the equivalent of a determination hearing, but outside the regime, would also be ultra vires.
 - this report and the recommendations should not be held out or perceived as a hearing in any way;
 - the consideration of this report should not be held out or perceived as making a determination / finding against ex Cllr Clancy in any way;
- 4.7 The Committee should also be mindful that, if the Code of Conduct process had been followed to a conclusion, the next step would have involved a hearing and all parties would have had the right to submit evidence for consideration by the Committee. Furthermore, Cllr Clancy would have had the right to challenge evidence from others including any conclusions reached by the external investigators as to whether, in their view, he had breached the Code of Conduct.

- 4.8 As this has not happened, it would be wrong to imply or confer any culpability as a result of what is an unfinished and now terminated process although the Committee can still consider the matters raised in the WMGR as referred to in paragraph 3.11 above.
- 4.9 As such this report does not seek to make any determination or conclusions in relation to the potential breaches of the code of Conduct as identified in the WMGR.
- 4.10 In addition the Committee must remember that:
- i. The process has ended and there is no determination to be made.
 - ii. There has been nor can there now be a finding of culpability against Cllr Clancy.
 - iii. Any recommendations regarding the Council's governance arrangements are made without any assumption of any findings and are done so purely in the context of ensuring that the Council's governance arrangements are constantly reviewed.

5. Lessons to be Learnt

- 5.1 As the WMGR stated, the failure to follow the law rendered a key decision unlawful. The law sets out a process for decision making which seeks to ensure, amongst other things, that decision makers receive the correct advice and information, to take into account that which they should and also disregard that which is irrelevant, and that all decisions are made transparently and are available for public and political scrutiny.
- 5.2 The legal process is essential to sound decision making by public bodies. The process is not simply a "tick the box" exercise but lies at the core of good governance. Those entrusted with making decisions on behalf of the public are required to follow the legal obligations embodied in BCC's constitution. Doing so ensures that BCC follows the key requirements of openness accountability and transparency. The process is prescriptive and not optional.
- 5.3 Specifically, there are questions and concerns with the process by which the then Leader assumed authority for the decision to negotiate with UNITE and the subsequent purported ratification of the 'agreement' by the then Cabinet.
- 5.4 The WMGR considered that the following were contrary to good practice;
- *The Leader attending ACAS without officer support or awareness and negotiating an agreement in the name of and on behalf of the Council was described as outside the "norms" of governance and remarkable.*
 - *The Cabinet not, on being informed of the actions of the Leader in going to ACAS, and being asked to subsequently agree his actions, challenging him collectively over his decision and actions.*
 - *The Leader getting directly involved in employee cases which were the responsibility of the Chief Executive (and Head of paid Service),*

attempting to work around her to get the employee re-instated, resulting in the Leader ringing up relatively junior staff and giving them instructions that the suspended employee should be re-instated

- 5.5 All these conclusions suggest that there were potential, and significant, weaknesses in the governance arrangements and with the subsequent compliance with those arrangements. It is also evident that the constitutional mechanisms in place at the time were not able to prevent these events taking place, suggesting that those mechanisms needed strengthening.
- 5.6 However, it may not be that straight forward and the Committee needs to understand the events (as set above and in the WMGR) surrounding the decision making at the time of the waste dispute. At one extreme it could be as simple as a lack of understanding of the legal requirements in how decisions are made and on the limits of executive authority. At the other extreme a member may wilfully, and deliberately, ignore the legal framework; in which case that Member could be guilty of misfeasance and/or misconduct of public office, both of which carry significant criminal and civil penalties.
- 5.7 That said, the conclusions from the WMGR suggest that the constitution at the time contained all the necessary terms and requirements and that the issues which arose were a matter of culture (both Officer and Member) and that merely adding words or redrafting the constitution was not the answer¹. In addition at paragraph 11.6 of the WMGR it was highlighted that any number of extra rules, protocols, or guidance would not or be unlikely to have prevented what occurred here.
- 5.8 This strongly suggests that the way forward is more around corporate culture, awareness and training as well as continued development for Members. This is something that was also recently highlighted in a best value inspection report in Liverpool City Council:
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/976197/Liverpool_Best_Value_inspection_report.pdf
- 5.9 The Council has already taken steps to start address training and awareness which includes the establishment of a Member Development Group made up of elected Members, which is currently chaired by the Deputy Leader of the Council. As it is Member-led, it does have the advantage of producing a development programme that is suited to the needs of **all** Members.
- 5.10 The purpose of that Member Development Group is to:
- “Inspire ownership and direction of member training, learning, development and support; and to promote the importance of this work in improving the overall effectiveness of the City Council; ensuring that Councillors are given and encouraged to undertake opportunities to develop their skills and knowledge to fulfil their various roles”.*
- 5.11 Whilst the group is only advisory in status, it does have a wide-ranging scope as follows:

¹ See section 13 of the WMGR – page 41

- *To provide cross-party strategic leadership to member training, learning, development and support;*
- *To ensure all members have the requisite skills, knowledge and attributes to be able to meet their varied duties and responsibilities;*
- *To actively promote, encourage and oversee member training, culture, development and support;*
- *To drive continuous improvement in member training, culture, development and support within political groups.*

5.12 The Chair of the Standards Committee has asked that the following statement be incorporated into this report, along with a corresponding recommendation.

“It is vital that Member development is effectively resourced and seen as crucial in preventing issues regarding member conduct, if the impact of the other recommendations of this report are to be fully effective. The Council has an ideal opportunity with the all-out elections in 2022 to have in place a clear development programme for all members both new and old. It would also be sensible if HR and Organisational Development played a bigger and more central role in this, as back in 2018 responsibility was passed to Member Services, without any corresponding increase in resources, either financial or otherwise. As such, progress of the development programme has not been at the pace and depth essential to the effective cultural and behavioural change within the Council.”

5.13 Longer term, 2022 and beyond, the Council is seeking to implement a joint programme with the University of Birmingham and the LGA, as part of a ‘kitemark’ project regarding 21st Century Public Servant framework.

5.14 At a meeting where the Chair of the Committee met the Independent Improvement Panel (‘IIP’) it was emphasised that the Standards Committee should not be simply viewed as playing a peripheral role in the Council, dealing primarily with complaints. In its view the Committee should be playing a central role in the Council in ensuring that members were aware of their obligations under the Nolan principles. Further, that this could only be achieved ‘from the top’ with there being regular contact with the chair, group leaders and senior officers. In this way the problems highlighted in this report and The Waste Management Review maybe avoided. For a variety of reasons, not least but not exclusively due to the pandemic, it has not been possible to make any progress on this although steps have been taken to progress this.

5.15 The recognition that the Committee could and should do more linked with the important work of the Member Development Group, provides the opportunity to meet the concerns voiced not only by the IIP but held by many others including many members.

5.16 Under current arrangements the Development Group reports back to the Group Leaders on a quarterly basis, but there is a strong argument that it would be better for it to report back to the Committee, comprising as it does a strong lay membership, whose responsibility it will then be to monitor and review conduct

issues on a much broader basis and make recommendations to the Council. Active engagement between the two Committees would help to ensure that members' interests and concerns and those of the public could be reconciled and harmonised. This could only enhance of repairing some of the reputational damage experienced by the Council in recent years.

- 5.17 By engaging in this way, the Committee can have input into the nature and quality of the training (especially if any training is deemed mandatory) as one of the biggest issues that needs to be overcome is ensuring that training is relevant and beneficial for members. It must be more than just a "tick box exercise".
- 5.18 Another potential is for the Standards Committee to receive a report at each meeting on Standards cases reported elsewhere and for that to be shared with all Council members once the Standards Committee has formulated any learning points from the reports. This can be done a number of ways either by regular updates to the Council (potentially through CBM) via its annual report.
- 5.19 As highlighted in the best value inspection of Liverpool City Council, the importance of training (and of the role to be played by the Standards committee) was emphasised and it recognised that training for Members was essential to enable them to fulfil their various roles properly and effectively.
- 5.20 It goes on to say that the precise training required by any individual Member will depend on whether they are or have an aspiration to be a Cabinet Member, a Chair of a Committee, a member of a regulatory committee or to be involved in scrutiny. This links back to the Member Development Group already established in Birmingham and the work they are doing,
- 5.21 In addition, it states that all Members should have the opportunity to receive training on how to be an effective ward councillor, the perils and opportunities of social media and their obligations when handling confidential or sensitive information. Certainly, in respect of how to be an effective ward councillor this is something that can be done in conjunction with the political groups.
- 5.22 The importance of this has already been recognised in Birmingham and the recently appointed City Solicitor/Monitoring Officer has introduced an initial programme of sessions covering the following:
 - Code of conduct
 - Social Media guidance
 - Declarations of interest

These sessions were online but it is hoped that in due course these can also be done face to face. It is recommended, therefore, that a report be brought back to the next Committee meeting on the effectiveness of that training including member feedback. Looking further forward regular reports can be considered by the Committee and may include information about which members attended and, more importantly, who did not attend. Such a report should then be made available to the public.

5.23 There are other areas where the Committee can help address the issues around behaviour and culture as identified in the WMGR, including (but not limited to) the following:

i. Declarations of Interest

A recent innovation (following an internal Audit report) is that at the beginning of each municipal year members are asked to review and submit a new Declaration of Interest form, even where no changes have occurred.

As part of this Member Services will undertake checks with Companies House to ensure that there are no undeclared interests and, if any are identified, those members will be reminded that they should consider whether these need to be declared².

Currently, any issues are reported to the Assistant Director for Governance, but in future it is recommended that a report be brought to this Committee, detailing, for example, how many declarations were returned within the specified time limit, how many are outstanding and how many updated forms were submitted during the year. The report can also highlight any reoccurring themes.

This can be a standing agenda item at the start of the municipal year (which looks back at the previous 12 months) with an interim report to follow 6 months later in regard to the current municipal year.

ii. Member /officer relations

The WMGR made a number of recommendations that fall outside the remit of the Committee but, nevertheless, there may still be some scope for the Committee to influence the member/officer protocols and ensuring that element of trust between officers and members.

This could be done, for example, by the Chair of the Committee, attending the senior officer management team (CLT) on a bi-annual basis to report back on the work of the committee and to highlight particular themes that are potentially covered by the protocol. This would also enable CLT to feed back on areas of concern about member behaviour which the Committee can then look at.

iii. Chief Executive/Leader

Of particular concern in the WMGR was the importance of the Chief Executive/Leader relationship, which, in their view, had quite clearly broken down. Again, whilst the Committee's role in this respect is limited, it

² It is important to remember that the obligation to declare an interest is that of the member. Failure to do so may potentially be a criminal offence

may be considered sensible if the Chair of Standards (with other lay members) met regularly with both together to discuss any areas of concern regarding behaviours. This could also be extended to the Chair meeting the other Group Leaders separately or as a group of all Group Leaders. Members of the Committee will recall that this was strongly encouraged by the Improvement Panel as being a way of embedding standards from the top downwards.

6. Recommendations

6.1 It is clear that the issues around governance are relevant matters for the Standards Committee to consider and, therefore, it is recommended that:

- The governance aspects of members' induction training and on-going training for members is reviewed and enhanced
- There is an urgent review of the resources (finance and people) allocated to Member development, with a view to an appropriate increase to enable early and robust development and delivery of the Member training programme (this is currently in progress and it is envisaged a report can be brought back to the next Committee meeting).
- This training plan is submitted to the Committee for endorsement
- A quarterly plan is prepared for the committee setting out what has been delivered for members and who has, and has not, attended. This to be a public document.
- The suggestions set out in 5.23 above, regarding Declarations of Interest, Member/Officer relations and Chief Executive/Leader, be endorsed for implementation.

6.2 In the light of the lessons learnt from this matter, the following areas of training and development should be included for all members:

- Executive and non-executive decision making, roles and responsibilities
- Confidentiality and decision making
- particular requirements of being a Cabinet Member

6.3 Thought will need to be given as to what training (if any) is mandatory and if so how would that would be enforced. Any requirements, for example, for training to be undertaken prior to a Member taking up a role either in the Executive or on a Committee would lack legal enforceability and would, therefore, require the support of the political groups.