

DONCASTER METROPOLITAN BOROUGH COUNCIL

ELECTIONS AND DEMOCRATIC STRUCTURES COMMITTEE

22ND JANUARY, 2008

A MEETING of the ELECTIONS AND DEMOCRATIC STRUCTURES COMMITTEE was held at the MANSION HOUSE, DONCASTER on TUESDAY 22ND JANUARY, 2008 at 10.00 a.m.

PRESENT:

Chair – Councillor Moira Hood
Vice-Chair – Councillor Ken Knight

Councillors Kevin Abell, Ray Bartlett, Elsie Butler, Cliff Hampson, Karen Hampson and David Hughes, J.P.

APOLOGIES

Apologies for absence were received from Councillors Tony Brown, Maureen Edgar, John Mounsey, Beryl Roberts, Dianne Williams and Martin Williams.

13. DECLARATIONS OF PERSONAL AND PREJUDICIAL INTEREST

There were no declarations made at the meeting.

14. MINUTES OF THE ELECTIONS AND DEMOCRATIC STRUCTURES COMMITTEE MEETINGS HELD ON 6TH AND 27TH NOVEMBER, 2007

RESOLVED that the Minutes of the Elections and Democratic Structures Committee meetings held on 6th and 27th November, 2007 be approved as a correct record and signed by the Chair.

15. REVISIONS TO THE COUNCIL'S CONSTITUTION

Members considered a report which gave details of minor revisions made to the Council's Constitution which had arisen due to the need to update specific information arising from recent legislation set out in Functions and Responsibilities Orders. These were presented for information purposes in accordance with the Council's delegated authority given to the Managing Director/Monitoring Officer (Minute No. 68 – 7th November, 2005) to carry out such revisions to the Constitution.

RESOLVED to note the revisions made by the Managing Director/Monitoring Officer under delegated authority as described in paragraph 8 of the report, which were similarly to be reported to the next meeting of the Standards Committee and Full Council on 25th February, 2008 for information.

16. REVISIONS TO THE COUNCIL'S FINANCIAL PROCEDURE RULES

Members considered a report which outlined minor revisions proposed to the Council's Financial Procedure Rules which were considered to be appropriate in response to recent changes to best practice guidance and to meet the recommendations of the Council's External Auditor.

It was reported that the first proposed change was in response to the recommendations of the Council's External Auditor to clarify responsibilities in respect of keeping internal audit informed over possible or actual irregularities that are identified by Managers, employees or members within the Council. Members noted that, in his last review of the Council's internal audit function, the External Auditor had made the following recommendations: -

- a) *Responsibility for informing the head of internal audit of all suspected or detected fraud, corruption or impropriety should be clarified and included in updated Financial Procedure Rules.*
- b) *Arrangements should be strengthened by placing responsibility on the Managing Director and Strategic Directors for ensuring that Internal Audit is promptly notified of all suspected and detected frauds and irregularities.*

The second change accorded with the requirement to now produce an Annual Governance Statement instead of an Annual Statement of Internal Control, as reported to the last meeting of the Audit Committee.

After the Strategic Director of Policy, Partnerships and Governance had clarified how the new Annual Governance Statement would differ in style and content from the existing Annual Statement of Internal Control, it was

RESOLVED to endorse the amendment of the Council's Financial Procedure Rules as set out in Appendix 1 to the report, the details of which were to be subsequently reported to the next meeting of the Standards Committee and Full Council on 25th February, 2008 for their consideration.

17. PROTOCOL FOR DISCLOSURE OF CONFIDENTIAL OR EXEMPT INFORMATION BY MEMBERS

The Committee considered a report which sought Members' endorsement of a proposal to incorporate a protocol for the disclosure of confidential or exempt information by Members into the Council's Constitution. It was reported that paragraph 4(a) of the revised Code of Conduct for Members prohibited the disclosure by councillors of confidential information, or information believed to be of a confidential nature, except in specific circumstances, one of which was that the disclosure was in the public interest. However, such a disclosure was only justified in limited circumstances, when all of the following four requirements were met:

- i) the disclosure must be reasonable

- ii) the disclosure must be in the public interest
- iii) the disclosure must be made in good faith
- iv) the disclosure must be made in compliance with any reasonable requirements of the authority.

Members noted that, in accordance with the fourth requirement set out above, the Standards Board had recommended that authorities ensure they have policies or protocols in place to cover the possibility of a member considering a release of information, and that they take steps to ensure that all councillors are familiar with the provisions. It was recommended, therefore, that this would be best dealt with by incorporating the protocol set out in Appendix 1 to the report into the Access to Information Procedure Rules in the Council's Constitution.

RESOLVED that, subject to the views of the Standards Committee, the Full Council be recommended to adopt the draft Protocol for the disclosure of confidential or exempt information by Members, as set out in Appendix 1 to the report, and that this be incorporated where appropriate into the Access to Information Procedure Rules in the Council's Constitution (Part 4 – Section II).

18. LOCAL ELECTIONS CANDIDATES RETURN OF ELECTION EXPENSES

The Committee considered a report which had been prepared in response to concerns raised by a Member of the Council regarding instances where candidates for election had failed to submit a return of election expenses, and which set out the current legislative position and possible changes that could be made in order to achieve greater compliance with the requirements.

In presenting the report, the Electoral and Democratic Renewal Consultant stressed that whilst the vast majority of candidates did submit their election expenses returns on time, on occasions a very small minority of candidates, usually independent or from smaller political parties, had failed to make a return of election expenses, even though action was taken to remind candidates prior to the closing date for returns. The Consultant added that at this year's elections, there were 3 cases where forms were not returned and a further 5 instances where they were not received until after the closing date. Members noted that, because the candidates who did not make returns were frequently minor candidates who had incurred little, if any, election expenditure, formal complaints were rarely made as this would result in a police investigation, placing demands on police time which could be used more effectively elsewhere. It was noted that, in the event of a complaint being made, the Police and the Crown Prosecution Service would take various issues into account in determining whether to proceed with a case, such as the public interest in pursuing the matter, the individual circumstances, including mitigating factors and the likelihood of a successful prosecution.

In answer to a question, the Electoral and Democratic Renewal Consultant confirmed that there were no powers under existing electoral law for any person or body including the Returning Officer, the Electoral Commission, or the Local Authority to take any action in relation to election expenses. This being the case, he explained that a more pragmatic means of taking action was needed, such as the possible introduction of a fixed penalty fine system, operated by either the Returning Officer or the Electoral Commission, which would offer a simplified way of dealing with cases such as these. This would leave the existing legislative provisions in place in the event of a more serious situation arising.

Discussion followed, during which several Members expressed concern over the cases being cited with regard to the non-return or late submission of election expenses and felt that more should be done to deal with these offences, such as introducing more effective enforcement provisions, otherwise candidates could be perceived as being able to ignore the requirements of the electoral legislation and this, in turn, could undermine confidence in the democratic process.

In responding to comments made, the Strategic Director of Policy, Partnerships and Governance confirmed that, where the candidate had an election agent, it was the responsibility of that agent to ensure that declarations of expenses were returned on time in order to avoid any action being taken. He added that it was a matter for the Police to make a judgement as to the seriousness of any case where a return had not been made, particularly in the event of the candidate in question being elected, whilst also recognising the need to assess whether the investigation of the majority of cases would warrant the Police devoting time and resources which could perhaps be better spent elsewhere.

During further discussion, Members suggested that a letter expressing this Committee's concerns over this issue and calling for changes in legislation to introduce provisions for fixed penalty fines should be sent to the Minister of State for Justice, in addition to the Electoral Commission.

Furthermore, Members supported a proposal that, prior to the Borough Council Elections in May 2008, a letter should be sent to all candidates reminding them of the requirement to submit returns of election expenses.

Arising from discussion on options for raising public awareness of the returns of election expenses following the Elections, the Committee were advised that a report on outcomes from the Elections incorporating detailed information on the return of election expenses could be submitted to this Committee's first meeting after the Elections, and that such a report should help to raise the profile of both the Elections and the return of expenses with the public and the media. Members supported this proposed course of action.

RESOLVED:-

- (1) that a letter be sent to the Minister of State for Justice, with a copy also to the Electoral Commission, expressing this

Committee's concerns over this issue and calling for changes in legislation to introduce provisions for fixed penalty fines for failure to make a return of election expenses, which could possibly be introduced as part of any proposed changes to the legislation covering political donations;

- (2) that, prior to the Borough Council Elections in May 2008, a letter be sent to all candidates reminding them of the requirement to submit returns of election expenses; and
- (3) that a report be submitted to the first meeting of this Committee following the Borough Council Elections in May 2008 on outcomes from the Elections, including detailed information on the returns of candidates' election expenses.