

Email correspondence May 07 between Stephen Taylor (Swindon) and Paul Hoey (Standards Board) re attendance of Cabinet members at Scrutiny Committee

From: Stephen Taylor [mailto:STaylor@swindon.gov.uk]
Sent: 21 May 2007 23:22
To: Paul Hoey; Kimberley Connell
Cc: meicsg@aol.com; STovey@testvalley.gov.uk; Mirza Ahmad
Subject: Attendance of Cabinet Members at Scrutiny Committee

Dear Paul

As you will know, there is a lively debate going on at the moment over the attendance of Cabinet Members at Scrutiny Committee to answer questions or make representations in relation to matters discussed at Cabinet. The basic position appears to be that following the adoption of the new Code, Cabinet Members will have a prejudicial interest in such matters and will not be able to make representations or answer questions unless members of the public have a similar right for the same purpose (which they cannot as they are not Cabinet Members). Cabinet Members will, therefore, have to leave the room and the Scrutiny Committee will not be able to hold them to account as currently. If I have misunderstood the position, then I would be only too happy to be corrected.

My own Council has adopted the new Code and our first Cabinet meeting following that adoption is on 6th June and our first Scrutiny Committee is on 11th June so there is an element of urgency on me to resolve this issue so far as our own processes are concerned.

At present, I am inclined to advise that on this issue, paras 11 and 12(2) of the new Code are contrary to section 21(13) of the Local Government Act 2000 and therefore are of no effect - which is the same reasoning used in the Livingstone Judgment. Before taking that step, has the Standards Board any views on this that should be taken into account?

I have copied this to Meic Sullivan-Gould, President of ACSeS, and to Mirza Ahmad and Susan Tovey who are leading on various aspects of ethical governance for ACSeS. I understand that the Center for Public Scrutiny are also to contact you on this issue. Please ring me if you want to discuss.

Best wishes

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and Monitoring Officer
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Dear Stephen

Thank you for your email of 21 May about the overview and scrutiny provisions in the revised Code of Conduct (the Code).

I confirm that under paragraph 11 of the Code, members will have a prejudicial interest in any business before an overview and scrutiny committee of their authority where the business relates to a cabinet or executive decision or action taken and the member was involved in that decision or action. Therefore, under paragraph 12(2) of the Code, members with a prejudicial interest in the business before the overview and scrutiny committee will not be able to attend the meeting to give evidence or answer questions on the matter unless members of the public are allowed to attend the overview and scrutiny committee for the same purpose.

However, the Code is overridden by section 21(13) of the Local Government Act 2000 which provides as follows:

An overview and scrutiny committee of a local authority or a subcommittee of such a committee-

- (a) may require members of the executive, and officers of the authority, to attend before it to answer questions, and
- (b) may invite other persons to attend meetings of the committee.

Section 21(13)(a) obliges an executive member to attend an overview and scrutiny meeting to answer questions so this over-rides any code provision which might prevent that happening.

Section 21 (13)(b) also allows an overview and scrutiny committee to invite any person to attend to answer questions. Where such a committee extend such an invitation to a member who is on a committee and was involved in making a decision which is being scrutinised, and that member is asked to attend a private session to answer questions about that decision, the Board is not likely to be interested in any complaint made about that member having a prejudicial interest by so doing. If the member concerned sought to sit on the overview and scrutiny committee considering the decision they had been involved in making that would be a different matter and the Board would be likely to investigate in that situation.

I hope that is helpful - I am copying widely as you did.

Kind regards

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