

Hoey Ainscough Associates Ltd

REVIEW OF GUILDFORD BOROUGH COUNCIL'S PROCEDURES FOR HANDLING COMPLAINTS THAT MEMBERS MAY HAVE BREACHED THE CODE OF CONDUCT

Introduction

1. The Localism Act 2011 introduced new arrangements from July 2012 for handling complaints that members of a local authority may have breached the local Code of Conduct. This moved away from a central statutory framework but allowed councils to develop their own framework within certain statutory parameters.
2. Guildford Borough Council decided to review their processes after some three years of operation in light of local experiences of handling cases in practice. In carrying out the review, they wanted to benchmark their arrangements against emerging best local practice elsewhere to ensure that it was the best possible arrangements achievable under the legislation, bearing in mind local context.
3. Hoey Ainscough Associates Ltd was therefore commissioned to carry out the review as independent national experts. Hoey Ainscough Associates Ltd was set up in April 2012 to support local authorities in managing their arrangements for handling councillor conduct issues. The company was co-founded by Paul Hoey, who had been director of strategy at Standards for England from 2001 until its closure in 2012, and Natalie Ainscough who had worked as his deputy. We have now worked with over 250 authorities in one form or another through provision of training, investigative support and wider governance advice and were therefore uniquely placed to bring that national perspective.
4. In carrying out our review, we laid down four criteria for a successful standards process:
 - a) it should enhance the reputation of the council through demonstrating that there is a culture of high standards and that any lapse from high standards in individual cases will be dealt with fairly, effectively and efficiently;
 - b) it should ensure that the process is transparent and accountable, so that the public can see that misconduct has been dealt with, and members are able to demonstrate, where appropriate, that their name has been fairly cleared;

- c) it should have independent rigour and be free from party political interference; and
 - d) it should comply with any legal requirements and ensure that members have the right to a fair hearing
5. During the course of the review, we spoke to a number of individuals to understand their perceptions of the current arrangements, how the council dealt with complaints in practice and where they felt the key areas for improvement could be. These were selected senior members and officers of the Council, together with members of the public who had been involved in a recent case and the editor of the local online newspaper. A full list of those interviewed is attached at Appendix A.
 6. While all those interviewed had different perspectives, common themes emerged from these discussions. These were in particular concerns about management of (real or perceived) conflicts of interest; a perceived lack of transparency and failure to communicate what was happening or had happened; how the interface with other investigations, particularly by the police, were managed; and concerns that the process could be dealt with (or be perceived to be used) politically and therefore needed to be seen as more independent from the council.
 7. While some of these concerns cannot be fully addressed because of constraints in the legislation – for example it is no longer possible to have independent lay members of a standards committee with voting rights – we have concentrated on making recommendations on matters which Guildford is able to address in reviewing the process, as well as dealing with some more minor ‘technical’ angles and pointing out some of the legislative constraints.
 8. There was also a recognition that a balance needs to be struck so that any process can handle more minor cases expediently and proportionately whilst ensuring that cases of differing severity, complexity or sensitivity could all be handled appropriately, proportionately and transparently.
 9. In the time allowed for the review, we have not attempted a detailed re-write of the process but are making a number of recommendations of areas where improvements could be made for consideration by the council. The process

itself is of course only one aspect of effective arrangements. It also relies on effective implementation and support of the process.

10. It should be stressed that the 'high-level' process is broadly in line with processes we see elsewhere, so most of our comments relate to guidance on implementation and communication of the process rather than on the process itself. We also wish to say that our overall impression was that all we spoke to were fully committed to the review and we would like to add that the officers we spoke to were a very experienced set of officers with wide experience, at Guildford and elsewhere, of dealing with standards issues so we are confident that they will be able to take our recommendations forward.

Recommendations

11. We recommend that Guildford Borough Council consider, and where appropriate, approve the recommendations attached as **Appendix B** to this paper. These recommendations are explained in further detail in the following section of the paper.

Key issues – case-handling process

12. There are three key stages to the case-handling process. These are:
 - a) upon receipt of a complaint, deciding whether or not any further action is appropriate;
 - b) where further action is appropriate, carrying out an investigation or some other action; and
 - c) where an investigation has been carried out, reaching a finding and taking any appropriate action.
13. We will deal with each of those three stages in turn, followed by comments on more general themes.

Initial assessment of a complaint

14. Under Guildford's current arrangements, when a complaint about member misconduct is received the decision is delegated to the Monitoring Officer (MO) to decide what action to take. The MO will reach one of three conclusions – that the matter should be further investigated, that the matter does not need any further action taken, or some form of resolution short of an

investigation – for example, seeking an apology – be attempted. In reaching a decision on how the allegation should be dealt with the MO will consult with the Council’s Independent Person (IP) as appointed under s28 of the Localism Act. However, it is the MO’s decision as to how, if at all, the complaint should be further pursued.

15. This is in line with practice in nearly all authorities we have worked with, where this initial decision is delegated to the MO. It allows for swift decision-making and is particularly appropriate for ensuring that more ‘minor’ matters are dealt with proportionately and effectively. Most councils, as Guildford does, will seek the IP’s views at this stage of the process. A few councils still have a process in which all complaints are referred to a panel of members, but in our experience this, if done as routine, slows down the process unnecessarily and seldom in any case leads to different decisions being taken than occur elsewhere for similar matters.
16. **We therefore believe it is appropriate and in line with existing good practice that delegation of decision-making at this stage rests with the MO.**
17. However, we do have two recommendations about this stage of the process which we would suggest Guildford take up, both of which are in line with good practice elsewhere.
18. Firstly, while we did not look at how decisions had been taken at this stage nor if those decisions had been taken consistently, most councils will have published criteria which set out factors the MO will consider when considering the best way of dealing with an allegation. We are not aware that Guildford has any such criteria written down anywhere so **we recommend that they adopt some criteria and publish these on their website so that people are clear what has been considered in reaching a particular decision.**
19. Generally, a two-stage set of criteria is used. The first stage, which is often called a legal or jurisdictional test, simply assesses whether the complaint is covered by the statutory framework – for example, is it a complaint about a member rather than, say, an officer and does it relate to matters covered by the Code of Conduct?

20. The second stage would then seek to balance a range of factors to consider whether the matter should be investigated or dealt with in some other way. These would clearly consider the seriousness of the alleged conduct but may also include for example whether the matter highlighted a pattern of behaviour either by a particular individual or among members generally, whether the matter had been resolved in some different way already etc.
21. Having such criteria helps the MO to demonstrate why a particular decision was reached and also allows a more general assessment to be made, for example by a standards committee, as to whether matters are being dealt with consistently or the line is being drawn in the right place.
22. Our second recommendation relates to allegations where there is a (perceived or actual) conflict of interest or where matters involve a high-profile figure in the council as either subject member or complainant.
23. Most councils have a reserve power which allows the MO to refer matters to a committee of members to take the decision if the allegation meets a particular threshold. In addition, some councils also allow the MO to 'delegate sideways' and ask an MO of a neighbouring authority or an independent outsider to make the initial assessment decision.
24. **We recommend that Guildford, while continuing to delegate the initial assessment decision to the MO, introduce a reserve power which will allow the MO to pass the matter elsewhere for decision if certain criteria are met.**
25. These criteria may include, for example, that the complaint is made by or is about the leader, a member of the executive or another group leader, or has been made by the MO himself or the Council's Managing Director. This is not meant to be an exhaustive list but designed to be the basis for further consideration by the Council.
26. **We therefore recommend that the initial decision on whether to take any action continue to be delegated to the MO and that he should continue to consult with the IP before reaching his decision. However, this assessment should be made against agreed published criteria and there should be a reserve power for the MO to recuse himself from taking decisions in certain agreed matters.**

27. We will comment below in a separate section about how such decisions are communicated.

Investigation

28. Where the MO (or other decision-maker) concludes that a formal investigation is needed, the Guildford process, in line with usual practice elsewhere, allows the MO to conduct the investigation himself or else delegate it to another officer or to an outside appointment.

29. This is wholly reasonable and we would expect the bulk of cases to be handled 'in house'. However, there will inevitably be times when, because of the sensitivities or complexities of the issues involved or because of other calls on officer time, it would be more appropriate for an investigation to be outsourced. We should declare that our company carries out outsourced investigations for a number of authorities. We should stress therefore that our comments reflect our experience of best practice elsewhere and we are not making any presumption that investigations should be outsourced as a matter of course.

30. We were unable to find any detail as to how decisions whether or not to outsource were made nor how cases were managed by the Council as the 'commissioning client' so our recommendations relate specifically to outsourced investigations but, where appropriate, apply equally to any in-house investigations.

31. **Firstly, in line with our recommendations above, there should be agreed criteria as to when a case is to be outsourced.** These would be along the lines of those where the MO may delegate the assessment decision but other factors may include the complexity or breadth of the investigation (for example if there are a large number of allegations or a large number of members involved) or the need for a particular skillset not available in-house. The decision whether or not to outsource and who should be contracted to do the work is generally taken in other authorities by the MO in consultation with the IP against such criteria.

32. Where we have been asked to do an external investigation, we are invariably asked to tender for the case so that the methodology and likely costs and time can be agreed up front and the council is happy it is achieving value for money. We recognise that, in any investigation, time is of the essence as it can

be a stressful time for all concerned and 'justice delayed is justice denied', so we would not expect an elaborate tender process. But, for example, we are usually called about availability and then asked to submit a quote, as one of a number of firms, within say 3 working days. **We recommend that Guildford adopt such an approach to tender for external investigations.**

33. There may be an agreement that, should the bid prove successful and the work be carried out to a high quality that company may be 'preferred provider' for future cases so as to avoid time delays in future and the need to re-familiarise a company with the local Code and arrangements but again we would expect this to be reflected in the tender process.
34. We should stress that we did not look at investigation files as part of our review so our comments are based on good practice and may or may not reflect current Guildford practice.
35. Any investigation needs to balance three things – thoroughness so that a robust conclusion is reached, timeliness so that it is not unnecessarily dragged out, and proportionality – public money is being spent so the time and resources committed must be commensurate with the relative seriousness and/or complexity of the allegation. These three aims will inevitably at times be in conflict so the key to a successful investigation is the way it is managed to ensure an appropriate balance.
36. When commissioning an investigation, whether internally or externally, **the parameters and methodology of that investigation should therefore be clearly defined and agreed in advance** – for example what is the actual allegation to be investigated, will any interviews be conducted face-to-face or over the telephone, what process is to be followed if further matters come to light etc. – and an indicative timeline agreed.
37. We would generally expect most investigations to work to a rigorous timeframe which we would expect to be set at, say, three months from start to satisfactory completion. While not all cases will be completed in that timescale - for example further more serious issues may emerge which may need additional investigation - it is our experience both from our time at Standards for England and through our current work with local authorities that the vast majority of cases can be completed within this timescale if the process is rigorously managed. It should therefore only be an exception, and with appropriate agreement, that cases extend beyond this.

38. A three month investigation means broadly that the investigator has a month to six weeks to gather relevant facts and evidence, up to the end of the second month to produce a draft report and a final month to take on board any comments and finish the report. Where investigations are contracted out, there will need to be clear expectations set out in the contract as a 'Service Level Agreement' about how the case will be managed. In particular, we believe these timelines need to be written into any investigations contract. Where an investigation is being outsourced, estimated completion times should be required to be included in any tender made for the work.
39. One of the key factors in causing delay has often been difficulty in arranging interviews with key individuals, and it has been our experience in many places that there can sometimes be deliberate attempts to avoid being interviewed. While reasonable attempts should be made to interview key people, if these reasonable attempts are rebuffed – through refusal to agree dates, respond to emails etc. – this should be reflected in the report and drawn, where appropriate, to the hearing panel's attention. In line with good practice, there should be a clear emphasis in Guildford that investigations should be taken seriously and that timeliness is a key factor.
40. **On a technical point Guildford may also want to write into their process a power for the MO to cease an investigation before its conclusion, though only in exceptional circumstances** – for example the death or serious long-term illness of a member or where a member loses his or her seat following an election and it is deemed no longer in the public interest to pursue the matter further. This is usual practice elsewhere but again should be done against a set of clear, agreed criteria.

Hearing

41. Where cases are referred to a hearing, under the Guildford process the matter would be referred to a Hearings Sub-Committee, which is a sub-committee of the Council's Corporate Governance and Standards Committee. This is in line with usual practice elsewhere.
42. However, there was no clarity as to who would be asked to sit on any sub-committee nor what the political composition of such a sub-committee should be. Given that matters which come to a hearing will invariably be serious matters and are likely to attract considerable interest, the Council needs to

set out clearer arrangements as to who will sit on the Sub-Committee and how any conflicts of interest would be managed. **We recommend in the first instance that the Group Leaders on the Council be asked to agree a process for selecting membership for any future sub-committee.**

43. While the existing process sets out how the hearing would work, and is in line with usual accepted practice, **we believe the process should also stress that the hearing should be held in public unless there is an overwhelming requirement for certain parts of it to be in private** (for example, where information might relate to a minor or vulnerable adult). This would mean that all interested parties, including the complainant, would be able to reassure themselves that the process was fair and justice was seen to be done.

Other recommendations/considerations

Role of the Corporate Governance and Standards Committee

44. Under the Localism Act, councils are placed under a duty 'to promote and maintain high standards of conduct'. There is no longer a legal requirement as there was in the past to have a stand-alone standards committee. However, in practice all councils have given responsibility for standards issues either to a dedicated committee as previously, or else as part of the remit of another committee, such as combined with its audit committee as Guildford has done.
45. We believe either approach is acceptable good practice, although our experience tends to be that, where there is a 'combined' committee, inevitably less time is dedicated to standards issues. This is not a particular problem but often these combined committees have a heavy workload and greater attention must in such instances be paid to ensure the council does not lose sight of proactive work on promoting high standards.
46. **We therefore think that the Corporate Governance and Standards Committee should put in place an appropriate work programme to ensure promotion of high standards is at the core of the Council's values and work.** This might include a regular review – say on a six-monthly basis – of allegations received, whether investigated or not. These could be suitably anonymised as the review would not be about looking at specific judgements in cases but to review the pattern of complaints overall – are matters being dealt with appropriately, or are there any patterns which may mean specific areas of behaviour need to be looked at, for example? **We would also expect**

the Committee to be consulted on member training programmes to ensure that the importance of the Principles of Public Life (the ‘Nolan principles’) is at the heart of the Council’s work and good practice usually means that there is an annual report, whether from the chair of the Committee or the Independent Person or jointly, to the Council on ‘the state of standards in the Council’.

Independent Persons

47. The Localism Act removed the powers for independent representatives to have a vote on the standards committee because the Government wished to move to self-regulation and therefore pass decisions about member misconduct back to elected members themselves to be the arbiters. Instead a new category of ‘Independent Person’ was introduced by the legislation. They are there not to take decisions on standards matters but to ‘give views’ and act as a guarantor that a case has been handled fairly and without political interference. They are different from any lay members which a council may appoint to a standards committee as it is not a statutory requirement to have lay members.
48. Under the Localism Act, councils must appoint at least one independent person—
- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
 - (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the authority if that person’s behaviour is the subject of an allegation, and
 - (iii) by a member, or co-opted member, of a parish council if that person’s behaviour is the subject of an allegation and the authority is the parish council’s principal authority.
49. This sets out the minimum duty of IPs. Some councils have kept the role of the IP at this minimum (giving views to the council on a case under investigation and being consulted by the subject member). Many more, however, have extended the role to other parts of the process. This has been the case in Guildford and is also reflected in our proposals.
50. Above all, an IP is there to give those involved in a case a reassurance that the matter is being handled fairly and appropriately. We therefore believe it is

important that checks from the IP are built into the process at various stages – for example, the MO consulting the IP before reaching an initial decision.

51. Under the statutory framework, there is a right for the member who is the subject of the complaint to seek the views of the IP during the case. While the intention behind this part of the statute is not entirely clear, it seems to be a safeguard built in for the member to be able to raise concerns if, for example, they believe the process is being used against them ‘politically’ or they are concerned about inordinate delay in resolving the case. The law granted no such statutory right to a complainant but we think Guildford should consider whether this is built into the process as an aid to reassuring the complainant in the same way should they have concerns that matters are being ‘swept under the carpet’ or allowed to drift. This has been introduced in some (though by no means all) authorities and has been useful in helping complainants both feel their concerns are being treated seriously and helped the IP in forming an overall view of the case.

52. **We therefore recommend that, as well as the statutory right for the subject member to seek views of an IP, the complainant should also have some access to the IP.** Rather than being an absolute right, the IP is usually allowed some discretion in these circumstances as to whether speaking with the complainant would be of assistance to the IP in carrying out their statutory role. While any such policy is different from the right guaranteed by law to the subject member, we do nevertheless think it is important that a complainant can also raise concerns if they believe the process may be lacking independence.

53. The IP is not there to explain the process (which can be done by an officer), nor are they there to advocate for one or other of the parties or give legal advice. They are there to act as a guarantor. A member, who is subject to a complaint, risks reputational damage if found to be in breach of the Code, so has been guaranteed a right by the Government to have somebody with whom they can raise concerns. The complainant has a slightly different role, as their public reputation will not be damaged by the outcome of a complaint. Nevertheless they too need some guarantee of fairness, so we think it is right that the IP has the power to engage with them if the complainant has some legitimate concerns about the way the case is being dealt with.

54. The key role of the IP is to ensure that the case has been handled fairly throughout. The council must take account of their views and the IP must be

of sufficient standing that they can legitimately raise concerns and be listened to if there are issues that need addressing.

55. Councils must appoint at least one IP. The post must be externally advertised and the appointment must be ratified by the full council. Guildford has appointed two IPs. This is typical of most councils. We think it is important, however, that for any particular case, the responsibility for discharging duties rests with one IP. Although there is a risk that the IP may be perceived as arbiter, which is not the role of the IP, this would allow the IP to take an over-arching view of the process for an individual case, and minimises the risk of IPs taking on the role of advocate for particular sides rather than having an holistic view.
56. **We therefore recommend that Guildford continues to have two IPs but is clear who is the designated IP for each case and communicates that to all parties in a case, together with an explanation of their role and what they can and cannot express views on.** A simple document explaining what an IP is and what they are expected to do should be produced. **Guildford should also consider putting in place an IP protocol** which sets out what their role does and does not cover, how an IP's views are to be recorded and also addresses issues such as what access they have to council resources or officer time, how their views are to be made public etc. We have found in other places having such a Protocol in place helps all concerned understand the nature of the role.

Communication issues

57. Common themes to emerge from the review, as stated above, were transparency and communication. Some of these concerns arose because the MO was seen as having too many responsibilities in a case, and was understandably unable always to dedicate time to managing a case effectively because of other pressures. All those we spoke to felt more could be done to communicate how a case was progressing and give greater clarity as to what could and could not be said during and after any case.
58. **We recommend as part of its process, Guildford sets out clear guidelines as to what communications will be made during any ongoing case.** These would cover both public statements to the media and communication with the relevant parties (subject member and complainant) which would inevitably be more frequent and comprehensive.
59. Turning to public communications firstly, the Council needs to be clear what can and cannot be said publicly at each stage of the process. We would suggest typical good practice as follows for consideration, though the key issue is that matters are treated consistently.

60. At the first stage of the process (when a complaint is being initially assessed) it is not usual proactively to make any public statement about a case. Inevitably, however, some matters may be in the public domain at an early stage. Where the council is asked to comment on an allegation at this stage which has not been assessed, it would be common practice simply to confirm (or where appropriate deny, as it is our experience that allegations are sometime reported as having been made which never formally materialise) that an allegation has been received and is being assessed.
61. **Once a decision has been made whether or not to take any further action, the Council needs to agree a policy as to what is communicated.** As with the above, it is our experience that councils tend not proactively to communicate matters where no further action is being taken – either, for example, because there is no supporting evidence to the allegation or it does not fall within the statutory framework. Members often worry, on the ‘no smoke without fire’ principle, that drawing public attention to an allegation which is not being pursued can nevertheless lead to some unfair reputational damage. However, where public statements are made the reasons why no further action is being pursued should be made clear.
62. Where some further action is being taken, either that the matter is being investigated more formally or some other resolution has occurred, the Council should consider a more proactive strategy. For example, where a case is being investigated it is common practice to make a short statement available that an investigation is now underway, what the process is and that no further comments will be made until the conclusion of the case. Councillors should also be reminded not to make any comments one way or the other while an investigation is ongoing.
63. **Where some other resolution has been reached – for example, the member has accepted quickly that they acted wrongly and has made a full apology, the Council should consider whether this information is made public as well.** Ministers have made heavy emphasis that the ultimate arbiter for standards cases has to be the ballot box. If the public are therefore to make informed decisions as Ministers intend they need to have the facts presented to them where a member has been found to be in breach of the Code of Conduct or has voluntarily admitted that they may have acted inappropriately.
64. Once an investigation has been completed and either gone to a hearing or else has been found not to have amounted to a breach of the Code, good practice again says that the process should be transparent about the outcome. Some councillors, where an investigation has found them not to be in breach, may not wish the investigation to be disclosed, again on the ‘no

smoke without fire' principle. However, as we have seen in the recent Parliamentary case involving two former Foreign Secretaries, making the findings publicly available helps to bring resolution to matters and aids transparency.

65. **We therefore recommend that the Council as part of its process makes clear that the outcome of an investigation where a breach of the Code has been found will be made accessible to the public, for example through a case summary on the website and any relevant press statement, and considers how it wishes to deal with cases where the investigation has found there is no case to answer.**
66. We also find in councils we work with a lack of clarity among members about what the arrangements actually are at present, regardless of whether they had attended training in the past, what was possible under the legislation, and what the role of the various players involved were. This is not surprising as it is only when one is involved in a case that inevitably the process gets one's attention, unless training happened coincidentally to have been attended very recently.
67. **While there is information on the council website, and as we understand it further information is sent out to the parties involved once a complaint is being processed, we would recommend that this information is reviewed, including how easy it can be found in practice.** Clearly, if any new procedures are adopted, the basic documentation would anyway need to change so I think that opportunity should be taken to look at how it can be most effectively communicated. In particular, while a process consists of a 'set of rules' to be followed it will also need to be translated into a more digestible form such as a simple flowchart explaining the decision-making process. This seems particularly necessary for any 'induction pack' provided to parties at the start of the process as there is generally lack of clarity about the process and expectations from those who are involved in a case. However, I stress we did not formally review this material.
68. **With regard to the parties to a case (complainant or subject member) any review of communication should have particular emphasis on how they are communicated to.** For example, if a time limit has been set for an investigation all parties should be aware of this. If that timetable slips for whatever reason people should be told and given a reason why, and where an investigation is long and complex some form of regular updating should be considered. It is our experience that the parties involved, even if they may disagree with an outcome at the end of the process, tend to have higher satisfaction ratings that the matter has been dealt with fairly if they have been kept informed through the process.

Private capacity

69. We felt it important to make some comment on the issue of 'private capacity' and how cases which relate to private capacity should be handled in the process, as we find throughout the country confusion about the law and handling of cases on this issue.
70. Following the case of *Livingstone v Adjudication Panel for England* [2006] the Courts and the law held that the Code of Conduct could only apply to a member when they were carrying out their role as a councillor or purporting to be a councillor. The Localism Act narrowed this definition still further by dropping the reference to 'purporting'. So Code of Conduct matters can only now be dealt with when the allegation is about something that a Councillor did in their role as a Councillor, and the Localism Act similarly applies the 'Nolan Principles' only to a Councillor when acting in official capacity.
71. Nevertheless, there are clearly times when a councillor does something in their private life which may be perceived as damaging the reputation of their office or council. Examples we have come across recently which have caused disquiet, for example, have been councillors convicted of benefit fraud or racially-aggravated assault.
72. **Councils need to have clear within their process how such matters are to be dealt with and how the Council will act in response to such matters.** There are two approaches – one is simply to have a blanket policy that all private matters, no matter how serious, are not a matter for the Council; the other is to say that, regardless of whether the matter legally falls within the Code of Conduct, the council will take steps to protect its reputation and remind councillors of the expectations that high standards should be maintained at all times. Whichever approach is adopted, the council needs to apply it consistently. It is our experience that councils best protect their reputation and promote high standards by being seen to make clear their disapproval of any proven lapse from expected norms of behaviour.
73. This is inevitably a complex area. There may be cases where a matter is clearly a private issue and therefore falls outside the framework so will not be investigated and hence no facts can be established one way or the other. A typical example may be a dispute between two neighbours, one of whom is a councillor. A complaint is made that the councillor swore at their neighbour, but there is no third party verification and nothing has been reported to the police. In such a case, this would be outside the scope of the Code so would not be able to be investigated by the Council. In such a case the council could not find one way or the other as to whether the incident happened as alleged and therefore it would be improper to comment on the matter (although

general consideration may be given to remind all councillors of the importance of high standards at all times).

74. In other cases, while a 'private' matter, it may have a more clear outcome. For example, in the example cited above where a councillor has admitted benefit fraud there has been a clear finding of fault. **We would expect in such circumstances that the Council be quite clear that, while it has no power to take any further action (except through political groups) it is behaviour which quite clearly affects the reputation of the council and falls far below the standards the public would expect from its elected officials.** Similarly, there may be cases which have been investigated because the capacity issue was in some doubt. On balance the investigation has concluded that the incident did occur but was not on official duty – for example, there are cases where there has been an altercation between a councillor and another individual immediately following a council meeting. Again, **where there has been a finding on the balance of probabilities that the councillor acted inappropriately, even though the Code was not technically engaged, councils best protect their reputation by making clear such behaviour is not what is expected.** In such cases we have seen public statements made by, for example, the Leader, the Chief Executive or the Chairman of the Standards Committee reiterating the importance of maintaining high standards at all times as a public servant. **We would recommend Guildford consider adopting a similar approach – it is our experience that it is better to have an agreed process in place which is clear and accepted by all rather than having to react to events, as these cases can often be high-profile, emerge from nowhere and attract intense media scrutiny and the Council needs to have a policy in place as to how it would react.**

Overlapping jurisdictions

75. A related point to the 'private capacity' issue arises where a complaint may be made, or relate to the work of, more than one body. This most usually occurs where a complaint is made to a council which alleges criminal activity, but it can also relate to a complaint which would also be a breach of the rules of another regulator.
76. There is a need for clarity as to how such cases should be dealt with. Where a matter has also been referred to the police in parallel by the complainant, or comes to the attention of the council because the police have received a complaint, the general presumption is that any police investigation will take precedence. There may, however, be allegations made to the Council which could be of a criminal nature but which have not been referred in parallel to the police – for example, a failure to declare a Disclosable Pecuniary Interest at a meeting.

77. The Guildford procedure currently says that, when an initial allegation is made which identifies criminal conduct the MO should refer it to the police. However, it cannot always be straightforward to identify criminal behaviour and in certain cases we are aware of the police are content for the matter to be dealt with more appropriately by the Council as, in policing terms, it would be a relatively minor matter.
78. **We therefore recommend that Guildford discuss this issue with its local police force with a view to drawing up a protocol between the police and the Council as to when the MO should refer matters on to the police and when the police would wish the Council to proceed with dealing with a matter in the first instance.**
79. Where an allegation relates to issues which could fall within the remit of another regulatory body, it would be impractical to draw up protocols with each potential regulatory body but **we recommend that the Council adopts as part of its procedure that the MO should discuss the matter on a case-by-case basis with any relevant body how an allegation could be best proceeded with and which body should take the lead if necessary in carrying out a further investigation.**

Training

80. Another question which was raised with us through the course of our work was whether the existing training provided was adequate and covered the right areas. We looked at the schedule of training for members which seemed to be comprehensive and typical of what we see in other authorities, covering both the Code of Conduct and the arrangements for case handling, though we have recommended that the Corporate Governance and Standards Committee take a greater role in looking at training provision, particularly where issues emerge from cases.
81. However, there are three issues which are common to most authorities we work with which we did not probe with Guildford but which they may wish to consider as appropriate:
- a) Attendance at training. It is our experience that not all members attend standards training. While training cannot be mandated we have worked with some authorities where group leaders make specific efforts to 'require' their members to attend, and the training will be re-run to ensure everybody does, and people's appointments to relevant roles will be dependent on them having undergone training on the Code and Principles of Public Life. If Guildford has similar issues, they may want to consider taking a more proactive approach politically to ensuring

councillors attend training and understand the system if they do not do so already;

- b) Case involvement. Even where a councillor has attended training, there is still a feeling that, once they are party to a case, they need to be refreshed about how the arrangements work. While information is provided, there may be better scope for somebody to sit down with a member at the start of a case and talk the steps and likely timescale through; and
- c) The public as complainants. Inevitably members of the public who make a complaint will not have received training in understanding the Code or process. Again, while they are given information once a case has been submitted, there may be greater scope as at b) above for an officer to explain the steps and likely timescale face-to-face.

We stress that we did not review practice in this area so the above comments are not meant to suggest that Guildford does not do this in practice; our comments are merely designed to point to good practice for consideration.

Conclusions

- 82. We believe the process Guildford currently has in place is typical of the Localism Act arrangements we see and already contains some elements of good practice whilst reflecting some of the constraints imposed by the legislation. We therefore do not believe major overhaul in the mechanical steps of the process are needed, though we have made some significant recommendations. We do however believe that more detail is needed to support the top-line process to ensure it is sufficiently transparent and applied consistently. This should not mean that all cases, no matter their significance, have to go through long and bureaucratic processes before being concluded but rather that, whenever a decision-making point is reached in the process people are clear of the basis on which that decision has been made and there are clear guidelines as to how it will be communicated, with the Corporate Governance and Standards Committee taking a proactive overarching view of how the arrangements are working in practice and what lessons can be learnt.
- 83. The concerns expressed about the system at Guildford from all we spoke to are in line with concerns we hear elsewhere about timeliness, independence and transparency/communication. In some ways, these concerns will always be around to a greater or lesser extent in any complaints-handling system as people will always want matters resolved more quickly than can sometimes

be the case and will always have concerns about whether any in-house arrangement can be truly independent. However, there are ways in which these concerns can be mitigated. Effective and rigorous case management, coupled with a proactive approach to keeping the parties informed, is vital to help all sides feel they have had a fair hearing and that their case has been dealt with effectively and efficiently.

84. Many of the recommendations we have made, therefore, are less about the mechanics of the process and more about how the process can be managed more efficiently. Guildford's stated aim to us at the start of this process was to have an independent benchmark to help them have arrangements which reflect best national practice. We believe the package we propose will help Guildford achieve that.

13 November 2015

PAUL HOEY

Co-Directors

HOEY AINSCOUGH ASSOCIATES LTD

NATALIE AINSCOUGH

LIST OF PEOPLE INTERVIEWED

Councillors

Cllr Stephen Mansbridge – Leader of the Council
Cllr Gordon Jackson, Chairman, Corporate Governance and Standards Committee
Cllr Nigel Manning, Deputy Leader and Executive Lead, Governance
Cllr Susan Parker, Leader of Guildford Greenbelt Group
Cllr Caroline Reeves, Leader of Liberal Democrat Group

Officers

Sue Sturgeon, Managing Director
Satish Mistry, Executive Head of Governance and Monitoring Officer
Sandra Herbert, Legal Services Manager
Martyn Brake, Executive Head of Organisational Development and Deputy Monitoring Officer

Others

Martin Giles, Editor, Guildford Dragon
Jules Cranwell, member of public
David Roberts, member of public

LIST OF RECOMMENDATIONS

Initial assessment of complaints

1. The Council should agree and publish a list of criteria to be taken into account when making an initial assessment decision (para 18)
2. The Council should introduce a reserve power which will allow the MO to pass an allegation elsewhere for an initial decision if certain criteria are met (para 24).

Investigations

3. The Council should have agreed criteria for when an investigation should be outsourced (para 31).
4. A proportionate tendering process should be put in place for outsourced investigations (para 32)
5. The parameters and methodology of an investigation should be clearly defined in advance (para 36)
6. The Council should include a power for the MO to cease an investigation before its conclusion, though only in exceptional circumstances (para 40)

Hearings

7. The Council needs to set out clearer arrangements as to who will sit on a Hearings Sub-Committee and how any conflicts of interest would be managed (para 42)
8. The process should make clear the presumption that hearings will generally be held in public (para 43)

Corporate governance and standards committee

9. The Corporate Governance and Standards Committee should put in place an appropriate work programme to ensure promotion of high standards is at the core of the Council's values and work (para 46)
10. The Committee should have an input into member training programmes to ensure that the importance of the Principles of Public Life (the 'Nolan' principles) is at the heart of the Council's work (para 46)

Role of the Independent Person

11. As well as the statutory right for the subject member to seek views of an IP, the complainant should also have some access to the IP (para 52)
12. We recommend that Guildford continues to have two IPs but is clear who is the designated IP for each case and communicates that to all parties in a case, together with an explanation of their role and what they can and cannot express views on (para 56)
13. Guildford should also consider putting in an IP protocol which sets out what their role does and does not cover and how they will carry out their role (para 56)

Communications

14. We recommend as part of its process, Guildford sets out clear guidelines as to what communications will be made during any ongoing case (para 58)
15. Once a decision has been made whether or not to take any further action, the Council needs to agree a policy as to what is communicated (para 61).
16. We recommend that the Council as part of its process makes clear that the outcome of an investigation where a breach of the Code has been found will be made accessible to the public (para 65)
17. We recommend that information on standards arrangements is reviewed, including how easy it can be found in practice (para 67)
18. With regard to the parties to a case (complainant or subject member) any review of communication should have particular emphasis on how they are communicated to (para 68)

Private capacity

19. The Council needs to have clear within its process how allegations about matters which are not within official capacity are to be dealt with and how the Council will act in response to such matters (para 72)
20. We recommend Guildford consider adopting a process which reminds councillors of the need to maintain high standards at all times even where matters are not covered by the rules on official capacity (para 74)

Overlapping jurisdiction

21. We recommend that Guildford should seek to draw up a protocol between the police and the Council as to when the MO should refer matters on to the police and when the police would wish the Council to proceed with dealing with a matter in the first instance (para 78)
22. Where an allegation relates to issues which could fall within the remit of another regulatory body we recommend that the Council adopts as part of its procedure that the MO should discuss the matter on a case-by-case basis with any relevant body how an allegation could be best proceeded with and which body should take the lead if necessary in carrying out a further investigation (para 79)

Training

23. Guildford should consider taking a more proactive approach politically to ensuring councillors attend training and understand the system if they do not do so already (para 81)
24. At the start of a case the Council should talk the steps and likely timescale through with the member concerned so that the process is clear (para 81)
25. A similar approach should be taken to explain the steps and likely timescale face-to-face to a complainant (para 81)