

Corporate Governance & Standards Committee Report

Ward(s) affected: All

Report of the: Monitoring Officer

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Review of Arrangements for dealing with allegations that a councillor has breached the councillor Code of Conduct – Finalisation of work arising

Executive Summary

The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted councillors. The new provisions came into force on 1 July 2012. The Council adopted a new Code of Conduct and put in place Arrangements for dealing with Code of Conduct complaints regarding councillors.

After three years of operation the Council decided to review its processes in light of local experiences of handling cases in practice. In carrying out the review the Council commissioned Hoey Ainscroft Limited to carry out an independent review of the Council's Arrangements.

Following consideration by the Corporate Governance and Standards Committee and a Working Group established for the purpose on 12 April full Council approved the review and delegated to the Corporate Governance and Standards Committee (acting through the working Group) authority to finalise and implement the following work:

- 1) The redrafting of the Council's Arrangements for dealing with allegations of misconduct by councillors and co-opted member ;
- 2) Consideration as to whether such re-drafting might usefully include a separate version of the Arrangements containing only those elements relevant to allegations of misconduct by parish councillors;
- 3) Guidelines and policy for communications; together with guides for the complainant and councillor against whom a complaint is made;
- 4) A protocol with the Police where a complainant alleges criminal behaviour;
- 5) Revision of the Protocol for Independent Persons adopted by Full Council on 7

- October 2015 and an associated briefing document;
- 6) Assistance as regards any statements relating to standards and the private capacity of councillors;

Recommendations

That the Corporate Governance and Standards Committee agree:

- (1) the implementation of the redrafted Arrangements together with accompanying documents drafted as annexes to the Arrangements;
- (2) the promotion of the Briefing Note for Members on private capacity; and
- (3) adoption of the Police Protocol in line with the model attached with authority for the Monitoring Officer in consultation with the Chairman of the committee to agree any necessary revisions.

Reason(s) for Recommendation:

To comply with the request for a review; and

To ensure that the Council's Arrangements remain fit for purpose and in accordance with best practice.

1. Purpose of Report

- 1.1 The purpose of the report is to update the Committee as to the work of the Working Group and to seek approval from the Committee to the redrafted Arrangements and supporting documentation.

2. Strategic Priorities

- 2.1 Improving the Constitution (of which the Arrangements form part), learning from best practice and keeping it up to date is an important element of the Council's Governance.

3. Background

- 3.1 The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted councillors. The new provisions came into force on 1 July 2012. Following the full Council meeting on 5 July Council agreed:

- To establish a new committee called the Corporate Governance and Standards Committee with responsibility for a range of matters to include responsibility for promoting and maintaining high standards of conduct and its membership;
- The adoption of a new Code of Members' Conduct;

- The appointment of 3 Independent Persons;
- The Arrangements and procedures for dealing with misconduct complaints in relation to both district and parish councillors;
- Changes to the Register of Interests to reflect the new disclosable pecuniary interest created within the Localism Act and regulations made thereunder; and
- All necessary changes to the Constitution.

3.2 After some three years of operation the Council decided to review its processes in light of local experiences of handling cases in practice. In carrying out the review the Council was keen to benchmark its Arrangements against emerging best practice to ensure that it was the best possible Arrangements achievable under the legislation.

3.3 Hoey Ainscroft Limited was commissioned to carry out the review as independent national experts. A report was prepared (the Hoey report). Their report is dated 13 November 2015.

3.4 At its meeting on 26 November 2015 the Corporate Governance and Standards Committee considered the outcome of the Hoey report. The committee established a Working Group to examine the detail of the recommendations contained in the Hoey report. The Working Group met on:

- 15 December 2015
- 14 January 2016
- 18 February 2016 and
- 9 March 2016.

3.5 The outcome of the review was then considered by the Corporate Governance and Standards Committee on 31 March 2016. The recommendations of the Corporate Governance and Standards Committee were considered by full Council on 12 April 2016.

3.6 Full Council agreed that the Corporate Governance and Standards Committee (acting through the Working Group) would carry out, finalise and implement the remaining work namely:

- 1) The re-drafting of the Council's Arrangements for dealing with allegations of misconduct by councillors and co-opted members;
- 2) Consideration as to whether such re-drafting might usefully include a separate version of the Arrangements containing only those elements relevant to allegations of misconduct by parish councillors;
- 3) Guidelines and policy for communications; together with guides for the complainant and councillor against whom a complaint is made;
- 4) A protocol with the Police where a complainant alleges criminal behaviour;

- 5) Revision of the Protocol for Independent Persons adopted by full Council on 7 October 2015 and an associated briefing document;
- 6) Assistance as regards any statements relating to standards and the private capacity of councillors.

On 9 November 2016 the working Group met to finalise their comments on the draft documentation.

- 3.7 The following documents have now been prepared for consideration by the Committee in response to the Council delegation:
- 1) Revised Arrangements setting out clear assessment criteria
 - 2) Communications Strategy including flow chart
 - 3) Procedure for local investigation of complaints
 - 4) Procedure for local determination of complaints
 - 5) Draft Police Protocol
 - 6) Briefing Note for Members and Co-opted Members acting in their private capacity

4. Arrangements for Dealing with Allegations of Misconduct by Councillors and Co-opted Members'

- 4.1 The redrafted document entitled 'Arrangements for Dealing with Allegations of Misconduct by Councillors and Co-opted Members' (the arrangements document) is attached as Appendix 1 to this report. The arrangements document is the broad over-arching document, amended by way of track changes shown in red, to reflect the amendments advocated by the Hoey Report and accepted by the Working Group.
- 4.2 The Arrangements have been redrafted to take account of slight differences in relation to allegations involving parish councillors. If there is a Parish Council complaint the views of the Parish Member of the Corporate Governance and Standards Committee will be sought. In addition, there is a need to keep the Parish Council clerk informed, in relation to the different stages of a complaint has been included.
- 4.3 The Working Group when considering the use of informal discussion and resolutions felt that wherever possible the Monitoring Officer should consider dealing with a matter informally. In the case of parish councillor allegation this would be dealt with by referring the complaint to the relevant Parish Council for action.
- 4.4 There are various Appendices to the Arrangements document that contain stand-alone documents that contribute to the changes advocated by the Hoey Report. These are set out separately in this report as follows:
- 4.4.1 Appendix 2 entitled "Communications strategy in relation to Member Complaints". The Hoey Report recommended that there should be clear guidelines as to what communications will be made during any ongoing case. These covers both public statements to the media and communications with the relevant parties (Subject Member and Complainant).

- 4.4.2 Appendix 3 entitled “Procedure for Local Investigation of Assessed Complaint”. This document sets out how an Investigating Officer will be appointed and the investigation process.
- 4.4.3 Appendix 4 entitled “Local Determination of Complaints about Members” provides a step by step procedure for the Conduct of the Hearings Sub-Committee when hearing a case following an investigation. It is similar to the Licensing Hearings Procedure in that cross-examination, is not permitted, although questions can be raised through the Chair.

5 Police Protocol

- 5.1 Appendix 5 of this report exhibits a draft Police Protocol to be agreed with the Police.
- 5.2 The Hoey Report recommended the drawing up of a protocol between the police and the Council, and the draft now produced is a first step towards agreeing such a Protocol.

6 Protocol for Independent Persons

- 6.1 A Protocol for Independent Persons was approved by the Council on the 7 October 2015, and was drawn up in conjunction with other Surrey district and borough councils, namely, Mole Valley District Council, Spelthorne Borough Council and Waverley Borough Council.
- 6.2 The Protocol appears to be working well with no complaints received from the other participating Councils.
- 6.3 The Hoey Report recommended that, as well as the statutory right for the Subject Member to seek views of an Independent Person, the Complainant should also have some access to the Independent Person. It is important to note that there is no provision for a Complainant to seek the views of an Independent Person under the Localism Act 2011.
- 6.4 Local government derives its power from statute, often referred to as, local government being ‘a creature of statute’, it is difficult to see how giving this enhanced right for the Complainant could be constitutionally sound.
- 6.5 The Hoey Report appears to justify this, lack of legal power, on the basis that “rather than being an absolute right, the Independent Person is usually allowed some discretion in these circumstances as to whether speaking with the Complainant would be of assistance to the Independent Person in carrying out their statutory role. Of course it is important that the complainant can also raise concerns if they believe the process may be lacking independence it is considered that any such concern could be raised with the Monitoring Officer. The Working Group raised concerns regarding this enhanced right and do not consider this additional right to be necessary or to make any revisions to the Independent Person Protocol.

7 Assistance in relation to Private Capacity

- 7.1 The Hoey Report brought attention to the importance of setting out the law on 'private capacity'. In addition, it was felt there was a need for a Council to have a clear process on how matters are to be dealt with and how the Council will act in response to matters that legally fall outside the Members' Code of Conduct but which may be perceived as damaging the reputation of their office or council. The Working Group considered how the Council should respond in such circumstances which is set out in the Working Group minutes and which is reflected in a Briefing Note exhibited at Appendix 6 to this report.

8. Equality and Diversity Implications

- 8.1 There are no significant implications. However, the equality and diversity attributes of the Complainant and the Subject Member should be taken into account in the membership of the Hearings Sub-Committee and or assistance provided to the Complainant or Subject Member.

9. Financial Implications

- 9.1 There are no financial implications

10. Legal Implications

- 10.1 None other than those implicit within the Report and its appendices

11. Human Resource Implications

- 11.1 None

12. Conclusion

The Committee is asked to receive the Report and to endorse the contents of the redrafted Arrangements.

13. Background Papers

The minutes of the Working Group
The report of Hoey Ainscough Associates Ltd.
Draft Kent Police Protocol
Horsham District Council Procedures on Member Misconduct
Sevenoaks District Council Procedures on Member Misconduct

Kent County Council Procedures on Member Misconduct

14. Appendices

Appendix 1: Redrafted “Arrangements for Dealing with Allegations of Misconduct by Councillors and Co-opted Members” with changes shown by way of Track Changes.

Appendix 2: Communications Strategy in relation to Member Complaints

Appendix 3: Procedure for Local Investigation of Assessed Complaints – A Guide for Members

Appendix 4: Local Determination of Complaints about Members

Appendix 5: Police Protocol

Appendix 6: Briefing Note for Members and Co-opted Members on Private Capacity