

Corporate Governance and Standards Committee

Hearings Sub-Committee

Report of the Monitoring Officer

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Allegation regarding the conduct of a Councillor

Executive Summary

The Council has a duty to promote and maintain high standards of conduct. The Council has adopted a Code of Conduct for councillors to support this duty (Appendix 1). Any allegation of failure by a councillor to comply with the Code of Conduct is dealt with under the Council's Arrangements for dealing with Code of Conduct complaints (Appendix 2).

The Monitoring Officer has received three complaints (Appendix 3) regarding the conduct of a Councillor ("the Subject Member"). The Subject Member has provided a response to the complaints received (Appendix 4). The complaints were assessed (Appendix 5) and the Independent Person was also consulted (Appendix 6). The (then) Monitoring Officer considered the assessment report and the views of the Independent Person and decided that the matter should be referred for an investigation (Appendix 7).

Paragraph 8.1 of the Council's current Arrangements for dealing with complaints regarding councillors provides that when the Monitoring Officer receives an investigator's report which indicates a breach of the code he will review the report and either send the matter for a local hearing or, after consulting the Independent Person, seek a local resolution.

The Monitoring Officer has been seeking a local resolution of this matter. The Subject Member has now provided a resolution to the three complainants (Appendix 8). The Independent Person is of the view that a local resolution is a fair resolution to the matter (Appendix 9). A response has been received from the complainants indicating that they do not accept the local resolution (Appendix 10).

Paragraph 8.2 of the Council's Arrangements that applied at the time the complaints were received provides that if a complainant does not accept the local resolution the Monitoring Officer will refer the matter to the Hearings Sub-Committee.

If the Sub-Committee considers the proposed local resolution to be a fair and reasonable resolution to the matter and do not consider there would be any useful purpose in requiring the matter to be considered at a full hearing this would be a departure from paragraph 8.2 of the Arrangements.

Paragraph 13 of the Arrangements however, provides that the Hearings Sub-Committee can depart from the Arrangements if they consider it expedient to do so in order to secure the effective and fair consideration of the matter.

The Sub-Committee must decide what action to take in this matter.

The Sub-Committee must decide whether:

- (a) (i) They consider the proposed local resolution provided by the Subject Member to the Complainants to be a fair resolution to the matter; and if so
(ii) agree a departure from paragraph 8.2 of the Arrangements in accordance with the provisions of paragraph 13;

or

- (b) To refer the matter for determination before the Hearings Sub-Committee.

The Committee must give reasons for its decision.

1. Purpose of Report

- 1.1 The purpose of the report is to determine a preliminary issue arising from a proposed local resolution provided in response to three complaints received regarding the conduct of the Subject Member. The Sub-Committee is required to determine whether they consider the proposed local resolution to be a fair and reasonable one and, if so, to agree a departure from the Council's Arrangements for dealing with allegations of misconduct by Councillors¹ under paragraph 13 if they consider it expedient to do so. Alternatively, if not, to refer the matter to a full hearing before the Sub-Committee.

2. Strategic Framework

- 2.2 The Council's Constitution sets out in Part 5 a copy of the Code of Conduct for Councillors which has been adopted by the Council. Arrangements for dealing with allegations of misconduct by Councillors is also set out in the Constitution. A copy of the Code of Conduct can be found at Appendix 1 to this report. A copy of the Arrangements for dealing with Code of Conduct complaints can be found at Appendix 2 to this report.

3. Background

- 3.1 The background is as set out in the Executive summary.

¹ These are the Arrangements that were in place at the time the complaints were received

- 3.2 **Decision to be made by the Sub-Committee.** The Sub-Committee is therefore required to consider whether they agree that this is a fair resolution of the matter or whether they believe the matter should now proceed to a hearing. If they consider that the resolution proposed is a fair one they will need to agree a departure from the Council's Arrangements in accordance with paragraph 13. The Committee must provide reasons for its decision.

4. Consultations

- 4.1 The Independent Person has been consulted and supports a local resolution of this matter.

5. Financial Implications

- 5.1 To date a total sum of £2,810 has been paid for initial assessment and external investigation of this matter. An additional fee would be payable to the Investigating Officer for presenting his case to the Hearings Sub-Committee. Whilst there is no specific budget for the investigation, the costs can be covered within the overall budget of the Council and no additional funding has been requested.
- 5.2 The Hearings Sub-Committee cannot make any order as to costs. A Subject Member is required to meet their own costs of any representation at a Hearings Sub-Committee.

6. Legal Implications

The Localism Act Part 1 Chapter 7 sections 26-37.

- 6.1 Section 27(1) sets out a duty upon the Council to promote and maintain high standards of conduct among its Members. In discharging this duty, the Council is required to adopt a Code dealing with the conduct that is expected of members and co-opted members of the Council under section 27(2). Section 28(1) provides that the Council must secure that its code of conduct is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Section 28(4) provides that any failure to comply with the Council's Code of Conduct is to be dealt with in accordance with Arrangements which it is required to adopt under sub-section (6). Such Arrangements must provide for the Council to appoint at least one Independent Person whose views (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated; (b) may be sought by the Council at any other stage, and (c) may be sought by a councillor or co-opted member against whom an allegation has been made.
- 6.2 Section 28(11) provides that if a Council finds that a member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under Arrangements put in place under subsection (6)) it may have regard to the failure in deciding:
- (a) whether to take action in relation to the member; and
 - (b) what action to take.

6.3 Whilst Section 28(11) provides that the Council can decide whether to take action and what action to take in response to a finding that a member has failed to comply with the code of conduct, no statutory sanctions currently exist under the Localism Act. All statutory sanctions e.g. to suspend a councillor which previously existed under the Local Government Act 2000 have been repealed. Sanctions are now limited to that which can be imposed under common law or by agreement with the member concerned. Accordingly, sanctions are now largely by way of recommendation or request only. The Hearings Sub-Committee may:

- (a) publish and report its findings to full Council;
- (b) recommend to Council that the Subject Member be requested to apologise;
- (c) recommend to the Subject Member's political group leader that the Subject Member be removed from all committees or sub-committees for a specified period;
- (d) recommend to the Leader of the Council that the Subject Member be removed from the Executive (if they are an Executive Member);
- (e) recommend to Council that the Subject Member be requested to participate in training, conciliation or mediation;
- (f) recommend to Council that the Subject Member be removed from outside appointments;
- (g) withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access for a specified period;
- (h) exclude the Subject Member from the Council's offices except for meeting rooms as necessary for attending Council, Committee or Sub-Committees;
- (i) issue a formal letter;
- (j) issue a formal reprimand to the Subject Member.

7. Human Resource Implications

7.1 There are no human resource implications.

8. Conclusion

8.1 The Sub-Committee is required to consider what action should now be taken in response to the allegations regarding the Subject Member. The Arrangements adopted by the Council for dealing with such matters provide that either (a) the matter is referred for local determination before the Hearings Sub-Committee or, after consulting the Independent Person, the matter proceed to a local resolution.

8.2 Where the complainant does not accept the proposed local resolution the matter must proceed to the Hearing Sub-Committee. The Sub-Committee must now decide whether or not they consider the proposed local resolution a fair and reasonable one. The Sub-Committee is therefore asked to consider a preliminary issue as to whether:

- (a) It considers the resolution proposed to be a fair and reasonable one and, if so, to agree a departure from its current Arrangements as permitted under paragraph 13; or
- (b) To refer the matter for a full hearing.

9. Background Papers

Appendix 1: Code of Conduct for Councillors

Appendix 2: Arrangements for dealing with Allegations of Misconduct by Councillors

Exempt under paragraph 1 of part 1 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure:

Appendix 3: Complaint letters

Appendix 4: Subject Member response

Appendix 5: Assessment report

Appendix 6: Independent Person's response

Appendix 7: Investigating Officers report

Appendix 8: Proposed local resolution by Subject Member

Appendix 9: Independent Person's view on the proposed local resolution

Appendix 10: Complainant responses to the proposed local resolution