

Corporate Governance and Standards Committee

Hearings Sub-Committee

Report of the Deputy Monitoring Officer

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Allegations regarding the conduct of a Borough Councillor

Executive Summary

The behaviour of councillors is regulated by the Council's adopted Code of Conduct¹. Any allegations received regarding a failure by a councillor to comply with the Code of Conduct must be dealt with under the Council's adopted Arrangements for dealing with allegations of misconduct by Councillors (see Appendix 1).

Two allegations have been made about the conduct of Councillor David Reeve ("the Subject Member") under the Localism Act 2011 ("the Act") and fall to be determined by this Sub-Committee under Part 1 Chapter 7 of the Act and the arrangements that this Council has put in place for making decisions in respect of such allegations under Section 28(6) of the Act.

The allegations, which have been made by Councillor Paul Spooner and Councillor Caroline Reeves ("the complainants"), concern the release of a report written by the Subject Member which is based, it is alleged by the complainants, on information provided to him on a confidential basis as an elected Councillor (see Appendix 2 of the Investigator's Report at Appendix 2).

The allegations were assessed by the then Monitoring Officer and the Independent Person was consulted. The then Monitoring Officer considered the views of the Independent Person and decided that the matter should be referred for an independent investigation.

In September 2016, the then Monitoring Officer instructed Olwen Dutton, Partner for Anthony Collins Solicitors LLP, to investigate the complaints in accordance with the Council's Arrangements for dealing with allegations of misconduct by Councillors.

In January 2017, the investigator's draft report was received and circulated to the Subject Member and the complainants for comment. The report attached a number of appendices, which include interviews with the complainants, an officer of the Council and the Subject Member.

¹ a copy of which can be found at Appendix 1 to the Investigator's Report, which is attached as Appendix 2 to this report

In March 2017, following consideration of comments, the final report was submitted to the then Monitoring Officer (see Appendix 2). The conclusions reached in the final report are that the Subject Member has breached the Code of Conduct through:

- (a) failure to treat others with respect (para 2 (1) of the Code)
- (b) the disclosure of confidential information (para 3 (a) of the Code)
- (c) conducting himself in a manner which could reasonably be regarded as bringing the office of councillor or the Council into disrepute (para 4 of the Code)

Olwen Dutton states in her report that she believes that each of these grounds stands out on their own and suggests that even if the Sub-Committee does not find that the Subject Member has breached the Code of Conduct by the disclosure of confidential information, the other two findings referred to in (a) and (c) above stand.

Upon receipt of the final report and in consultation with the Council's Independent Person, the then Monitoring Officer sought to achieve a local resolution. Meetings were held between the Independent Person, the then Monitoring Officer, the complainants and the Subject Member but unfortunately a local resolution was not agreed between the parties².

In such circumstances, the Council's Arrangements for dealing with allegations of misconduct by Councillors provides that if the Monitoring Officer considers that a local resolution is not appropriate, or the Subject Member concerned is not prepared to undertake any proposed remedial action, then the Monitoring Officer will take the Investigating Officer's report to the Hearings Sub-Committee.

After hearing all the evidence, the Sub-Committee must consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct and, if so, what sanctions, if any, should be applied to the Subject Member.

If the Sub-Committee decides that the Subject Member has not failed to comply with the Code of Conduct, no further action will be taken.

The Sub-Committee must give reasons for any decision it takes.

1. Purpose of Report

- 1.1 The purpose of this report is to determine whether the Subject Member has failed to comply with the Council's Code of Conduct and if so, what sanctions, if any, should be applied to the Subject Member.

² During the process for seeking a local resolution, the appointed Independent Person (Bernard Quoroll) played an active role in trying to mediate a way forward for all parties, which ultimately proved to be unsuccessful. Given the level of Mr Quoroll's detailed involvement with the parties at that time, the then Monitoring Officer agreed with him that this effectively precluded his continuing involvement as Independent Person at the hearing. Consequently, one of the Council's other Independent Persons was approached, Vivienne Cameron, who has kindly agreed to attend the hearing

2. Strategic Framework

- 2.1 Promoting and maintaining high standards of conduct by councillors is one of the key terms of reference of the Corporate Governance and Standards Committee – the parent committee of this sub-committee.
- 2.2 Part 5, Page 5-1 of the Council's Constitution sets out the Councillors' Code of Conduct which has been adopted by the Council.
- 2.3 Part 5, Page 5-36 of the Council's Constitution sets out the Arrangements for dealing with allegations of misconduct by Councillors.
- 2.4 Part 5, Page 5-55 of the Council's Constitution sets out the hearing process for dealing with local determination of complaints about Councillors.

3. Background

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

4. Conduct of the hearing

- 4.1 After the preliminary matters have been dealt with³, the hearing will be conducted as follows:
 - (i) **Presentation of the complaints by the Investigating Officer**, who will present her report (see Appendix 2) and call any witnesses (the Investigating Officer has indicated that she does not intend to call any witnesses). The Subject Member and the Sub-Committee may ask any questions regarding the evidence submitted.
 - (ii) **Presentation of the Subject Member's case**, who will refer to the information contained in Appendix 3 and call any witnesses (the Subject Member has indicated that he does not intend to call any witnesses). The Investigating Officer and the Sub-Committee may ask any questions regarding the evidence submitted.
 - (iii) **Summing up** first by the Investigating Officer and then by the Subject Member
 - (iv) **Views/Submissions of the Independent Person** on whether they consider that, on the facts presented to the Sub-Committee, there has been a breach, or no breach, of the Code of Conduct
 - (v) **Deliberations of the Sub-Committee**. The Sub-Committee will adjourn the hearing and deliberate in private⁴ to determine whether, on the facts found, the Subject Member has failed to comply with the Council's Code of Conduct. The Sub-Committee must make its decision on the balance of probability, based on the evidence before it during the hearing. The Sub-Committee will reconvene the hearing in public and the Chairman will

³ Namely, the election of chairman, apologies for absence, declarations of interest, introductions by the chairman, determining whether any part of the hearing should be dealt with in private or any documents (or parts thereof) should be withheld from the public/press after receiving any representations on such matters

⁴ Meeting Room 3 (Sheepleas)

announce that, on the facts presented, the Sub-Committee considers either that there has been a breach of the Code of Conduct, or no breach.

- 4.2 If the Sub-Committee considers that there has been no breach of the Code of Conduct, the Sub-Committee must set out its principal reasons for the decision.
- 4.3 If the Sub-Committee decides that there has been a breach of the Code of Conduct, the Chairman of the Sub-Committee will invite representations from the Investigating Officer and the Subject Member as to whether any sanction(s) or recommendation(s) should be applied and what form any sanction(s) or recommendation(s) should take.
- 4.4 Having heard the views, including those of the Independent Person, the Sub-Committee will determine:
 - (a) whether any sanctions are to be applied;
 - (b) whether any recommendations will be made to the Council or the Monitoring Officer.

Range of possible sanctions

- 4.5 The Corporate Governance and Standards Committee has delegated to the Sub-Committee such of its powers to take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct. Accordingly, the Sub-Committee may:
 - (1) Publish and report its findings in respect of the Subject Member's conduct to a meeting of full Council;
 - (2) Recommend to Council that the Subject Member be requested to apologise;
 - (3) Recommend to the Subject Member's political group leader that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
 - (4) Recommend to the Leader of the Council, in the case of an Executive Subject Member, that the Subject Member be removed from the Executive or removed from that particular portfolio responsibilities (this is not applicable to the Subject Member);
 - (5) Recommend to Council that the Subject Member be requested to participate in appropriate training or participation in conciliation or mediation;
 - (6) Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council for a specified period (this is not applicable to the Subject Member);
 - (7) Withdraw facilities to the Subject Member by the Council, such as a computer, website and/ or email and internet access for a specified period;
 - (8) Exclude the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee Meetings;

- (9) Issue a formal letter to the Subject Member;
- (10) Issue a formal reprimand to the Subject Member.

- 4.6 The Sub-Committee cannot suspend the Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.
- 4.7 When determining whether to apply one or more sanctions, the Sub-Committee will need to ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor.

5. Financial Implications

- 5.1 As stated in paragraph 4.6 above, 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 hearing before this 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).
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 Councillor has failed to

comply with the Code of Conduct, no statutory sanctions currently exist under the Localism Act 2011. 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.

7. Human Resource Implications

7.1 There are no human resource implications.

8. Conclusion

8.1 The Sub-Committee is required to consider whether the Subject Member has breached the Council's Code of Conduct and, if so, what, if any, action should be applied to the Subject Member.

9. Appendices

- Appendix 1: Arrangements for dealing with Allegations of Misconduct by Councillors
- Appendix 2: Investigation Report of Olwen Dutton, Partner Anthony Collins Solicitors LLP
- Appendix 3: Information submitted to the Deputy Monitoring Officer by the Subject Member to be relied upon at the hearing.