

Hearings Sub-Committee Report

Ward(s) affected: N/A

Report of Deputy Monitoring Officer

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Allegations regarding the conduct of two Borough Councillors

Executive Summary

The behaviour of councillors is regulated by the Council's adopted Code of Conduct (see exhibit SG2 to Appendix 1). 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 exhibit SG1 to Appendix 1).

A complaint has been received against two Borough Councillors (the Subject Members) and following attempts to resolve the complaint by way of informal resolution an Independent Investigator was appointed. The Independent Investigator concluded that the Subject Members have failed to comply with the Code of Conduct and their final report and supporting evidence is contained in Appendix 1 to this report.

Recommendation to Committee

That the Sub-Committee determines whether either or both the Subject Members have breached the Council's Code of Conduct and, if so, whether any sanction should be applied and the nature of that sanction.

Reason for Recommendation:

To determine the complaints in accordance with the Council's adopted Arrangements.

Is the report (or part of it) exempt from publication? (delete as appropriate)

No

1. Purpose of Report

- 1.1 The purpose of this report is to set out the information relating to a complaint by way of allegation made by Mr Martin Giles (the 'Complainant') on 29 June 2021 against Cllr Paul Spooner and Cllr Graham Eyre (the 'Subject Members'). The Sub-Committee must consider whether, on the facts found, either or both Subject

Members have failed to comply with the Code of Conduct for Councillors and Co-opted Members (the 'Code of Conduct').

- 1.2 If the Sub-Committee decides that either or both Subject Members have not failed to comply with the Code of Conduct no further action will be taken. If the Sub-Committee decides that either or both Subject Members have failed to comply with the Code then they must determine what sanctions, if any, should be applied to the Subject Member(s). The Sub-Committee must give reasons for any decision it takes.

2. Strategic Priorities

- 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

3. Background

- 3.1 A complaint was received from the Complainant on 29 June 2021 against the Subject Members (see exhibit SG7 of Appendix 1). The complaint was allocated to the Deputy Monitoring Officer who assessed the complaint on 28 September 2021 in accordance with chapter 7 of the Localism Act 2011 (the 'Act') and the adopted arrangements for dealing with allegations of misconduct by Councillors (the 'Arrangements') which the Council has put in place for such assessment under s.28(6) of the Act.
- 3.2 The Deputy Monitoring Officer considered that there may be potential breaches of the Code of Conduct by both Subject Members and following consultation with the Independent Person concluded that the complaint could be resolved by informal resolution.
- 3.3 The Subject Members did not agree with the proposed informal resolution and negotiations then took place to see if there were any alternative ways in which to resolve the complaint. It was not possible to identify a resolution to the complaint that satisfied both the Complainant and the Subject Members. On 19 January 2022 the Complainant confirmed that having considered the potential cost to the public purse they still felt that they had no option but to pursue the complaint.
- 3.4 The Deputy Monitoring Officer considered the further views of the Independent Person and, given that no informal resolution could be agreed, decided that the matter should be referred for independent investigation. An Independent Investigator Simon Goacher, Partner at Weightmans LLP, was identified and instructions were sent to him in January 2022. It was later discovered that due to internal email security processes the instructions had not reached the Independent Investigator and there was therefore some delay.
- 3.5 The final report of the Independent Investigator (Appendix 1) was received on 7 June 2022, the draft having been circulated for comment to both the Subject Members and the Complainant. The report contains a number of exhibits including the relevant Council codes and interviews with the Complainant and the Subject Members.

- 3.6 The conclusions reached in the final report are that the Subject Members have both failed to comply with paragraphs 2(1) (treating others with respect) and 4 (bringing your office or the Council into disrepute or acting in a manner contrary to the Council's duty to promote high standards of conduct) of the Code of Conduct.
- 3.7 The report was shared with both Subject Members on 28 July 2022 and their views sought in accordance with the Arrangements to:
- a. identify those paragraphs in the report which you agree with and those which you do not, setting out your reasons for disagreeing;
 - b. identify any further documentary evidence upon which you would like to rely at the hearing;
 - c. confirm whether you are going to attend the hearing and if so whether you will represent yourself or you intend to instruct someone to represent you – if you intend on being represented then please could you provide their details as soon as possible;
 - d. give any reasons why you consider the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Hearings Sub-Committee should be withheld from the public.
- 3.8 Both Subject Members confirmed that they did not have anything further to add to the information contained in the Independent Investigator's final report and gave no reasons as to why the hearing should be held in private. Cllr Eyre indicated that he did not intend on attending the hearing.

4. Consultations

- 4.1 The Independent Person has been consulted at each stage of the process and has recommended that this matter would be suitable for informal resolution but given that this has not been successful the matter should be referred to the Sub-Committee for determination.

5. Financial Implications

- 5.1 The 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

- 6.1 The Council is under a duty in accordance with s.27(1) of the Act to promote and maintain high standards of conduct by Members and in discharging this duty the Council is required to adopt a code dealing with the conduct that is expected by Members. The Council must secure that its code of conduct is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.
- 6.2 In accordance with s.28(4) of the Act any failure to comply with the Code of Conduct is to be dealt with in accordance with arrangements which it is required

to adopt. Such arrangements must provide 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.

- 6.3 Part 5 of the Council's Constitution sets out the Codes and Protocols which have been adopted by the Council. The Council's Code of Conduct is at page 5-1, the Arrangements for dealing with allegations of misconduct by Councillors is at page 5-69 and the procedure and powers of the Corporate Governance and Standards Committee, and Hearings Sub-Committee at page 5-87.

Conduct of the Hearing

- 6.4 The procedure for the hearing is set out in the Arrangements and accordingly, once the initial formalities are concluded, the hearing shall proceed as follows:
- (a) Presentation of the Complaint by the Investigating Officer including the opportunity for the Subject Members to ask questions for the purpose of clarification through the Chair.
 - (b) Presentation of Subject Members' cases including the opportunity for the Investigating Officer to ask questions through the Chair.
 - (c) Summing up by the Independent Investigator and the Subject Members
 - (d) Deliberations and the Sub-Committee will announce whether or not it considers there has been a breach of the Code of Conduct and the reasons.
 - (e) If the Sub-Committee considers that there has been a breach the Chair will then invite both the Independent Investigator and the Subject Members to make representations as to whether any sanctions or recommendations should be applied and in what form. The Sub-Committee will then adjourn for further deliberations before announcing their decision.

7. Human Resource Implications

- 7.1 There are no human resource implications.

8. Equality and Diversity Implications

- 8.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

9. Climate Change/Sustainability Implications

- 9.1 This duty has been considered in the context of this report and it has been concluded that there are no climate change/sustainability implications arising directly from this report.

10. Summary of Options

- 10.1 The Sub-Committee should determine whether or not either or both Subject Members have breached the Code of Conduct.
- 10.2 If the Sub-Committee concludes that either or both Subject Members have breached the Code of Conduct then the Sub-Committee should take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct in accordance with paragraph 28 of the Arrangements.
- 10.3 The Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation, or make an award of costs.

11. Background Papers

None

12. Appendices

Appendix 1: Investigation Report of Simon Goucher, Partner, Weightmans