

STANDARDS COMMITTEE

MONDAY, 21 JULY 2014

PRESENT:- Councillor Michael Bray (Vice-Chair), Councillor Fay Howard, Councillor Eric Shaw, Councillor Kevin Small, Councillor Vera Tomlinson, Councillor Joe Tray, Councillor Maureen Penny (Deputy), Keith Strickland, Mr Paul Morris, Mr Trevor Davies, Mr David Dawson, Mr Richard Hailstone and Mike Compton.

Apologies for absence were received from Councillor David Wood, Councillor Kevin Parry and Councillor Carol Shelley.

1. Declarations of Interest

The Chair reminded members of the need to declare known interests in any matters to be considered at the meeting. No declarations were made.

2. Minutes

Resolved – That the minutes of the meeting held on 24th March 2014 be confirmed and signed as a correct record.

3. Public Question Time

Carole Bent, a local resident, commented that the public engagement in the review of the Council's Standards arrangements had, in her opinion, been very successful and asked whether member's had found that engagement to be constructive and helpful. The Chair and Councillor Fay Howard responded on behalf of the Committee, advising that the input to the review received from members of the public had been both informative and very helpful.

4. Exempt Items - Exclusion of Press and Public

Resolved - That, in accordance with Section 100A(4) of the Local Government Act 1972, the public be excluded during the discussion of the matters referred to in the item listed below on the grounds that it involved the likely disclosure of exempt information as defined in the respective paragraphs of Part 1 of Schedule 12A of the Act.

<u>Item No.</u>	<u>Paragraph Nos.</u>	<u>Minute No.</u>
10	1 and 2	9

5. Standards Committee Annual Report 2013/14

The Committee was asked to consider its Draft Annual Report 2013/14, which document provided a record of the work of the Standards Committee for the period June 2013 to May 2014. In particular, the Committee's view was sought on a suggestion put forward as part of the review of the Council's standards

arrangements that a summary of Code of Conduct complaints received during the Municipal Year be made to each future meeting of the Standards Committee as part of the ethical framework update.

Resolved – (1) That the Draft Standards Committee Annual Report 2013/14 be agreed and that the Director of Law and Democratic Services be authorised to finalise the document for publication.

(2) That a summary of Code of Conduct complaints received during the Municipal Year be made to each future meeting of the Standards Committee as part of the ethical framework update.

6. Annual Work Programme

The Committee considered a report of the Director of Law and Democratic Services inviting the Committee to agree its Work Programme for 2014/2015.

Resolved – That the Committee's draft Work Programme for 2014/2015, as appended to the report, be agreed.

7. Review of the Council's Standards Arrangements

The Committee received a report of the Director of Law and Democratic Services on the review of the Council's current "Arrangements for dealing with member Code of Conduct Complaints" and inviting the Committee to review the Council's current arrangements, taking into account the discussions at previous meetings and subsequent round tables with a small group of interested residents, and to make any changes it felt would enable complaints to be dealt with more expeditiously in terms of process.

Resolved – (1) That the members of the public and representatives of stakeholder groups who had attended previous meetings of the Standards Committee, and the subsequent round tables, be thanked for their interest and for their constructive and helpful comments on the Council's existing standards arrangements.

(2) That it be noted that the reference in the covering report to "local residents" consulted as part of the review process, included two individuals who attended as representatives of Chiseldon Parish Council.

(3) That, with reference to the summary of the main issues identified at the two round tables (appended to the report), the following be agreed:

- The initial assessment of complaints continue to be determined by a Panel of councillors with an Independent Person and Lay/Parish Representatives in attendance to give their views where appropriate.
- Assessment Panel meetings continue to be convened on an ad hoc basis
- Proceedings at the initial stage of the complaint continue to remain private and confidential and that this issue be further considered as part of the Standards Committee's annual review of the process in March 2015.
- Assessment Panel meetings continue to be held in the absence of the complainant and the respondent but both to be advised at the earliest practicable opportunity of the date when the Assessment Panel will meet to consider the complaint.
- A summary of Code of Conduct complaints received during the Municipal Year be made to each future meeting of the Standards Committee as part of the ethical framework update.
- That the current practice of no appeal from Assessment Panel decisions

other than by way of judicial review be continued and that this issue be further considered as part of the scheduled review of the process in March 2015.

- Members be encouraged to continue to make themselves available to attend Assessment Panel meetings so as to enable so far as practicable the completion of the initial assessment of a complaint within a period of one calendar month from receipt of the complaint.

(4) That, with regard to the suggestion that the membership of the Standards Committee should be increased to facilitate a greater pool of members that can be drawn upon for Assessment Panel meetings, to assist in avoiding any untoward delay in this initial phase of the process, it be noted that the membership of the Standards Committee was increased at the Annual Council Meeting in June 2014 from 6 to 9 councillors.

(5) That the Council document “Arrangements for dealing with Member Code of Conduct complaints”, be amended to incorporate the textual changes agreed by the Committee (as set out in the tracked change document at Appendix 1 to these minutes).

8. Ethical Framework Update

The Committee received a report from the Director of Law and Democratic Services providing an update on matters relating to the Ethical Framework, including:

- Dispensations
- The membership of the Standards Committee
- The Annual Governance Statement (and the specific reference therein to the Council's arrangements for promoting and upholding high standards of conduct and behaviour)
- Training issues
- The completion by newly elected or re-elected members to the Council of Register of Interests declarations
- The regional workshop on the role of the Independent Persons.

Resolved – (1) That the Ethical Framework update be noted.

(2) That it be noted that no dispensations had been granted by the Monitoring Officer since the last meeting.

(3) That the two Independent Persons, together with the Director of Law and Democratic Services, attend Hoey Ainscough's workshop on the role of the Independent Person, to be held at the Civic Offices on Thursday 23rd October 2014 and that the Chair and/or Vice-Chair be invited to attend the workshop in the event that either of the Independent Persons is unable to attend the workshop.

9. Ethical Compliance Report

The Committee considered a report of the Director of Law and Democratic Services regarding the outcome of various ethical framework compliance matters, including the details of Whistleblowing cases and Code of Conduct Complaints received since the last Committee and the outcome of any completed investigations in relation to these.

Resolved – That the Ethical Framework Compliance report be noted.

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SWINDON BOROUGH COUNCIL

Arrangements for dealing with Member Code of Conduct Complaints

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Respondent.”
- 1.3 No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing by post or email to: –

Mr Stephen Taylor, Monitoring Officer,
Swindon Borough Council, Civic Offices
Euclid Street, Swindon, SN1 2 JH
Tel: 01793 463012
Fax: 01793 463366
email: staylor@swindon.gov.uk
- 2.2 The standard complaint form should be used, which can be obtained from the Monitoring Officer or can be downloaded on the Council’s website, in order that all required information is included.
- 2.3 The Monitoring Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Respondent (and in the case of a complaint about a Town / Parish Councillor to the Clerk of the Town / Parish Council as well) with a summary of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).
- 2.4 The Respondent may, within 5 working days of receipt of details of the complaint unless otherwise agreed with the Monitoring Officer, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Assessment Panel has issued its Initial Assessment.

3. Initial Assessment Decision

- 3.1 The Assessment Panel is a Sub-Committee of the Swindon Borough Council’s (‘the Council’s’) Standards Committee. This will be drawn from

and comprise up to 4 Members of the Standards Committee. This will normally include 2 elected members and at least 1 of the Lay Members co-opted to the Standards Committee. Where the complaint is about a Parish Member, the Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee. The co-opted members will sit as assessors without a vote. The Assessment Panel will review the complaint and, after consultation with an Independent Person appointed by the Council if it considers it appropriate, take a decision (an Initial Assessment Decision) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint and will normally be sent in writing to the Complainant and the Respondent within 5 working days of the decision being made.

3.2 The decision process to be followed by the Assessment Panel is summarised in the flowchart attached at Annex 'A'.

3.3 If the complaint fails one or more of the following tests, it will be rejected:

- Whether the complaint is against one or more named Members or co-opted Members of the Council or a Town / Parish Council within the Borough.
- Whether the Respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
- Whether the complaint, if proven, would be a breach of the Code of Conduct under which the Respondent was operating at the time of the alleged misconduct.

3.4 If appropriate, the Assessment Panel will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally, or rejected:

- Sufficiency of Information – Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Assessment Panel may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
- Seriousness of the Complaint – Is the complaint Trivial, vexatious, malicious, politically motivated or 'tit for tat'? Are the resources / cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
- Duplication – Is the complaint substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority?

If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be

considered at the same meeting of the Assessment Panel, but will be determined individually.

- Length of Time – Did the events or behaviour to which the complaint relates take place more than 6 months old? Does the time lapse involved mean that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
- Public Interest - Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest where the member has died, resigned or is seriously ill. Similarly, if the member has offered an apology or other remedial action. If it is clear that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error, and the matter would not warrant a more serious sanction.
- Anonymous- Is it anonymous? Such complaints will not normally be entertained unless there is additional documentary evidence to support the complaint and it is sufficiently serious to consider.
- Other Action – Whether the complaint can be dealt with best by informal resolution, including training or conciliation.
- Wider Application – Does the complaint have wider applications, such as suggesting a wider problem throughout the Authority or Town / Parish Council?

4. Additional Information

- 4.1 The Assessment Panel may require additional information to come to a decision and may request information from the Respondent, in accordance with a specified timetable. Where the complaint relates to a Town / Parish Councillor, the Assessment Panel may also inform the Clerk of the Town / Parish Council of the complaint and seek the views of the Clerk of the Town / Parish Council before deciding whether the complaint merits formal investigation or other action.
- 4.2 In appropriate cases, the Assessment Panel may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Respondent accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Respondent or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Assessment Panel will take account of this in deciding whether the complaint merits formal investigation.

- 4.3 The Respondent whose behaviour is the subject of the complaint may seek the views of an Independent Person appointed by the Council.

5. Criminal Conduct

- 5.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

6. Confidentiality

- 6.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Panel at the Initial Assessment stage.
- 6.2 Unless the Assessment Panel otherwise agrees, the Respondent will be given a summary of the complaint but will not normally be told the identity of the Complainant at the Initial Assessment stage. The identity may subsequently be released in the event of an investigation, however, in exceptional circumstances, the Assessment Panel may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 6.3 If the Assessment Panel decides to refuse a request by a Complainant for confidentiality, they may offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

7. Investigation

- 7.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.
- 7.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints and shall agree a timetable for the investigation with the Monitoring Officer. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.
- 7.3 The Investigating Officer will ensure that the Respondent receives a copy of the complaint subject to the Assessment Panel's decision on Confidentiality.
- 7.4 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Respondent for comments, which should normally be submitted within 5 working days of receipt of the draft report. The

Investigating Officer will take such comments into account, before issuing the final report to the Monitoring Officer.

8. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

- 8.1 The Assessment Panel in consultation with an Independent Person, will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.
- 8.2 The Monitoring Officer will write to the Complainant and the Respondent (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.
- 8.3 If the Assessment Panel are not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

9. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

- 9.1 The Assessment Panel will review the Investigating Officer's report and will then after consulting an Independent Person **either** seek a Local Resolution **or** refer the matter for a Hearing.

10. Local Resolution

- 10.1 If the Assessment Panel considers that the matter can reasonably be resolved without the need for a hearing, it will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action.
- 10.2 If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town / Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Respondent refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Hearing without further reference to the Complainant or the Respondent.

11. Hearing

- 11.1 Where, in the opinion of the Assessment Panel, Local Resolution is not appropriate or the Complainant and/or Respondent refuse to co-operate in any Local Resolution, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a Hearing before deciding whether the Member has failed to comply with

the Code of Conduct and, if so, whether to take any action in respect of the Member.

12. Pre-Hearing Procedure

- 12.1 Prior to the convening of a Hearing Panel the Monitoring Officer will issue the forms annexed to these Arrangements (Annex B) to the Complainant and Respondent for completion by them to facilitate the pre-hearing process and the preparation for the Hearing. The Monitoring Officer will then ask the Investigating officer to comment on the responses. The Hearing Panel will then be convened to consider the responses, and any comment from the Investigating Officer, and finalise the arrangements for the Hearing.

13. Constitution of the Hearings Panel

- 13.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. This will comprise at least 5 Members of the Standards Committee. This will normally include at least 1 of the Lay Members co-opted to the Standards Committee, and where the complaint is about a Parish Member, the Hearings Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee. The co-opted members will sit as assessors without a vote.
- 13.2 The Independent Person may be invited to attend all meetings of the Hearings Panel and his or her views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Respondent's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

14. The Hearing

- 14.1 The Hearing will be conducted in accordance with the 'Practical Arrangements for the hearing of the Standards Committee' attached as Annex C.

15. Right to Representation

- 15.1 The Complainant and the Respondent may be represented or accompanied during the hearing by a solicitor, barrister, or (with the permission of the Panel) another person.
- 15.2 The Complainant and Respondent should meet their own costs of such representation, unless the Council has otherwise agreed.

16. Legal Advice

- 16.1 The Panel may take legal advice from its Legal Advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the Panel should be shared with the Complainant and the Respondent, and the Investigator, if they are present at the hearing.

17. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct

17.1 Where a Hearings Panel find that a Member has failed to comply with the Code of Conduct, the Hearings Panel may impose any one or a combination of the following sanctions:-

- censure the Respondent;
- request the Respondent to submit a written apology in a form specified by the Panel;
- request the Respondent to undertake such training as the Panel may specify;
- request that the Respondent participates in such conciliation as the Panel may specify;
- report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
- advise the Leader of the Council and/or Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include:
 - Formal letter of censure from them;
 - Formal censure of members e.g. through a motion at Council or Committee of the Council;
 - Securing the removal of a member from cabinet / committees;
 - Issuing a press release setting out the outcome of the hearing;
 - The withdrawal of facilities
- such other sanction as may be permitted under the law.

18. Revision of these arrangements

18.1 The Monitoring Officer may amend or depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19. Appeals

19.1 There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

July 2012

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