

To: All Members of the STANDARDS PANEL

When calling please ask for:

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Calls may be recorded for training or monitoring

Date: 20 June 2022

Membership of the Standards Panel

Cllr Maxine Gale
Cllr Michael Goodridge

Cllr Peter Marriott

Dear Member

A meeting of the STANDARDS PANEL to consider the External Investigator's report on a complaint against a Waverley Borough Councillor, will be held as follows:

DATE: TUESDAY, 28 JUNE 2022

TIME: 10.00 AM

PLACE: COUNCIL CHAMBER, COUNCIL OFFICES, THE BURYS,
GODALMING

The Agenda for the meeting is set out below.

In accordance with paragraph 7.2 of Waverley's Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011, meetings of the Standards Panel will be held in public unless the Monitoring Officer agrees there are exceptional circumstances that prevent this. Meeting papers that do not contain exempt information will be shared with all members of the Panel, the Independent Person, the Investigating Officer, and any witnesses. Meeting papers will not be shared in advance with the press and public but will be made available at the commencement of the hearing.

Yours sincerely

ROBIN TAYLOR

Head of Policy and Governance

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AGENDA

1 **ELECTION OF CHAIRMAN**

To elect a Chairman for the Panel.

2 **DECLARATIONS OF INTERESTS**

To receive from Members declarations of interest in relation to any matters on the agenda for this meeting, in accordance with the Waverley Members' Code of Conduct.

3 **PUBLICATION OF NON-EXEMPT AGENDA PAPERS TO THE PRESS AND PUBLIC**

In line with paragraph 7.2 of Waverley's Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011, to publish non-exempt meeting papers and make them available to the press and public.

Panel members and other individuals invited to attend the Hearing have received the agenda papers in advance on a confidential basis.

There are no exempt papers for this hearing. A small number of redactions have been made where documentation included personal sensitive or contact information. Where information has been redacted, this is noted in the papers.

Recommendation

That the non-exempt meeting papers be published and made available to the press and public.

4 **CHAIRMAN'S OPENING REMARKS**

The Chairman to make an opening statement on the procedure for the hearing.

5 MONITORING OFFICER'S REPORT - COMPLAINTS REGARDING THE CONDUCT OF A BOROUGH COUNCILLOR (Pages 5 - 80)

This report relates to a complaint against a Waverley Borough Councillor, the Subject Member.

It sets out the process followed, the relevant codes and protocols, copies of the complaint received, the External Investigator's report and statement received from the Independent Person.

The matter was referred to investigation following consultation with the Independent Person.

Today's panel has been convened to consider the report from the External Investigator, to establish facts about this situation, and consider whether or not the Subject Member has failed to comply with the code and, if so, what action, if any, should be taken.

The Subject Member was invited to submit a written statement in advance of the hearing but did not submit a statement.

The Subject Member will be invited to comment on the complaint, the External Investigator's report, and the statement of the Independent Person, and any other relevant documentation and correspondence and to give their view as the subject member in this case. They will also be asked to answer any questions put to them by or through the Chairman.

Recommendation

It is recommended that the Standards Panel:

- i. considers where or not the Subject Member has failed to comply with the Waverley Code of Conduct for Members; and**
 - ii. if they have, what further action should be taken, if any.**
- The Panel must provide reasons for any decisions it takes.**

6 CHAIRMAN'S CONCLUDING REMARKS

7 PANEL ADJOURNS FOR CONSIDERATION

The Panel will adjourn to consider whether the Subject Member has failed to comply with the Waverley Members' Code of Conduct.

8 PANEL DECISION ON WHETHER WAVERLEY MEMBERS' CODE OF CONDUCT HAS BEEN BREACHED

The Panel will reconvene and the Chairman will announce the Panel's decision on whether the Subject member has failed to comply with the Waverley Members' Code of Conduct.

If the Panel decides that the Subject member has failed to comply with the Code of Conduct, prior to adjourning to consider what action, if any, is needed, they will:

- consult with the Independent Person, and
- receive any further representations from the Subject Member.

9 PANEL ADJOURNS TO CONSIDER FURTHER ACTIONS, IF ANY

In the event that the Panel decides that there has been a breach of the Code of Conduct, the Panel will adjourn to consider what further action, if any, is necessary.

10 CONFIRMATION OF PANEL DECISION

The Panel will reconvene to confirm its decision and give its decision on what further action, if any, is to be taken.

11 EXCLUSION OF PRESS AND PUBLIC

If it is necessary during the hearing to consider any matter that will involve the likely disclosure of exempt information, the a Hearing Panel will be invited to consider passing the following recommendation on the motion of the Chairman:

Recommendation

That

- a) Pursuant to Procedure Rule 20, and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following item(s) on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during these items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972; and,
- b) In all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**For further information or assistance, please telephone
Louise Fleming, Democratic Services and Business Support Team
Manager (Deputy Monitoring Officer), on 01483 523517 or by email at
louise.fleming@waverley.gov.uk**

WAVERLEY BOROUGH COUNCIL

STANDARDS PANEL

28.6.22

Title:

Monitoring Officer's Report – complaint regarding the conduct of a Borough Councillor

Head of Service: Robin Taylor, Monitoring Officer

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 This report relates to a complaint received against Waverley Borough Councillor Jerry Hyman.
- 1.2 It sets out the process followed, the relevant codes and protocols, the External Investigator's report and statements received.
- 1.3 The Borough Council's Councillor code of conduct is attached at Annexe 1.
- 1.4 The relevant published arrangements for dealing with standards allegations against councillors (Annexe 3) are those that were in effect at the time the complaint was received and which have guided my approach in this case and not the revised version of these that has since been adopted by Waverley Borough Council.
- 1.5 I referred the matter for external investigation following consultation with the Independent Person.
- 1.6 Today's panel has been convened to consider the report from the Investigator, to establish the facts about this situation, and consider whether or not Cllr Hyman has failed to comply with his code of conduct and, if so, what action, if any, should be taken.
- 1.7 Cllr Hyman, the Subject Member, will be invited to comment on complaints, the External Investigator's report, and the statements of the Independent Person, and any other relevant documentation and correspondence and to give his view as the subject member in this case.
- 1.8 Cllr Hyman will be asked to answer any questions put to him by or through the Chairman.

2. Recommendation

It is recommended that the Standards Panel:

- i. considers whether or not Cllr Hyman has failed to comply with the Waverley Borough Council Code of Conduct for Members; and
- ii. if he has, what further action should be taken, if any.

The Panel must provide reasons for any decisions it takes.

3. Reason for the recommendation

3.1 To allow the panel to determine whether or not Cllr Hyman has breached his code of conduct and, if he has, what action, if any, should be taken.

4. Background

4.1 Waverley Borough Cllr Jerry Hyman attended a meeting (held by Zoom video conference) on 18th August 2021. The meeting was an internal briefing rather than a public committee meeting. All Waverley councillors were invited and a number of officers were present. The Chief Executive, Tom Horwood, was one of those members of staff who was present. I was also present.

4.2 The briefing covered two connected business transformation projects. The first was a project focused on the Council's hybrid and agile working arrangements. The second was about future options relating to the main Council offices in Godalming.

4.3 At one point during the meeting, Cllr Hyman asked a question and whilst the Chief Executive was answering his question, Cllr Hyman was clearly heard to say "Don't bullshit me".

4.4 At this point the Chief Executive paused to challenge Cllr Hyman on his language before continuing to answer the question asked.

4.5 Cllr Hyman apologised, at the time, for having mistakenly left himself 'unmuted' on the Zoom call but did not at that point, or at any point since, apologise for the words that had been used.

4.6 Following the meeting, I received a complaint about the matter from Cllr John Robini (who was also present at the Zoom briefing). Cllr Robini felt that the words used by Cllr Hyman breached the requirement, set out within the Waverley code of conduct, for councillors to treat others fairly and with respect.

4.7 I have taken the view throughout that it should have been entirely possible to deal with this matter without the need for an external investigation or a public hearing so long as Cllr Hyman took up the various opportunities offered to him to engage with the process.

4.8 Regrettably, however, he has not done so.

4.9 As required by the Council's arrangements, I consulted with the Independent Person Mr William Donnelly before commissioning an external investigation.

4.10 Mr Donnelly's view was that an external investigation would only be needed if Cllr Hyman failed to offer an apology and express some sense of regret. I agreed with this view and made it clear to Cllr Hyman prior to the investigation commencing that were he, on reflection, to regret his choice of words and offer some sort of apology for them then I would consider that a reasonable form of resolution and consider the matter closed.

4.11 I did not receive a response to that email.

4.12 Mr Lingard has concluded in his report that Cllr Hyman, by using the language he did, breached his code of conduct. I judge that Mr Lingard has conducted a satisfactory and proper investigation and have accepted his findings in full.

4.13 Under paragraph 7 of the relevant arrangements (Annexe 3), when the investigating officer concludes there is evidence of a failure to comply with the code of conduct then I am required to either send the matter for a local hearing or, after consulting with the Independent Person, seek local resolution.

4.14 After consulting again with the Independent Person, I wrote to Cllr Hyman on 9 May confirming the matter would be scheduled for consideration by a standards panel. I advised him, again, that the option remained open to him to choose, on reflection, to resolve the matter locally by way of an apology and that if he chose to take this route that I would consult with the complainant and the Independent Person about whether arrangements for the hearing should be cancelled.

4.15 I did not receive a response to that email.

4.16 As set out within the timeline below, communications in this case have been largely one way. I have written at various points to Cllr Hyman on the substance of the case and my colleagues have written to him regarding various arrangements.

4.17 Cllr Hyman has not responded to any of these communications.

4.18 In case there was some issue with Cllr Hyman's IT set up, I checked my email messages were being delivered and also sent copies of the key correspondence in printed hard copy by post (recorded delivery).

4.19 Having done so, I am satisfied that my messages were delivered and I note that Cllr Hyman responded, during the period of this investigation to other emails from me and others, on entirely separate matters.

4.20 As set out within the timeline, before consulting the Independent Person on whether to progress the matter to the formal stage, I contacted Cllr Hyman by telephone to check he had received my emails and post, to advise him on the status of the investigation and to encourage him to engage with it.

4.21 I did manage to reach Cllr Hyman by phone. Regrettably, however, Cllr Hyman's conduct during the call was of a poor standard. He shouted, interrupted and was repeatedly aggressive.

4.22 This is not an isolated incident of poor conduct by Cllr Hyman. In February 2019, a panel of councillors met to consider allegations that Cllr Hyman had breached his code of conduct in how he had addressed council officers when expressing his views and concerns about planning and legal matters.

4.23 That panel concluded that Cllr Hyman's behaviour towards officers was a breach of his code of conduct.

4.24 Following an email exchange in July 2021 where Cllr Hyman referred to Council staff as 'habitual law breakers' and 'culprits' I wrote to Cllr Hyman reminding him that such use of language was unacceptable. In that email I reminded him that the February 2019 standards panel had noted that councillors have an important right of freedom of expression and that and that 'members can and should challenge officers' but that that this 'must be done in a respectful way'. I sent him a copy of the decision notice issued at that time and reminded him of the need to take care, when expressing his views and challenging others, to do so in a manner that avoided any element of personal criticism or disrespect.

4.25 Cllr Hyman did not respond to my email.

Table 1 - Timeline of events and correspondence

What	When	Additional comment	Agenda pack reference
Briefing meeting by Zoom takes place.	18 August 2021		
Monitoring Officer receives initial email from Cllr Robini about Cllr Hyman's conduct	23 August 2021		
Monitoring Officer responds to Cllr Robini asking him to confirm if his email is to be treated as a complaint and, if so, asking for further details	23 August 2021		
Cllr Robini replies confirming that he wishes his email to be handled as a formal complaint about Cllr Hyman and sets out details as requested	27 August 2021		
Monitoring Officer writes to Cllr Hyman setting out detail of the complaint, providing his initial view on the matter and	23 September 2021	Hard copies also sent by recorded delivery.	See Annexe 6, emails 1 and 2

inviting Cllr Hyman to consider options for informal resolution and to meet to discuss		No response was received from Cllr Hyman.	
Monitoring Officer writes to Cllr Hyman to check he received email dated 23 September 2021	28 September 2021	No response was received from Cllr Hyman	See Annexe 6, email 3
Executive Assistant to Monitoring Officer writes to Cllr Hyman offering 3 options for dates and times to meet.	1 October 2021	No response was received from Cllr Hyman	See Annexe 6, email 4
Monitoring Officer writes to Cllr Hyman asking him to reply to emails dated 23 Sep, 28 Sep and 1 October. Email advises Cllr Hyman that alternative dates for meeting can be made available if those initially offered not are not convenient. Email encourages Cllr Hyman to engage in the process so that his perspective can be considered at the informal stage.	8 October 2021	No response was received from Cllr Hyman	See Annexe 6, email 5
Hard copies of all emails sent to Cllr Hyman confirmed as being delivered to his home address by recorded delivery.	10 October 2021	No response was received from Cllr Hyman	
Monitoring Officer phones Cllr Hyman to confirm messages have been received, to update on status of investigation and to encourage his engagement as a route to informal resolution.	17 November 2021	Cllr Hyman displays poor conduct during the call and ends the call.	
Monitoring Officer sends email to Cllr Hyman summarising telephone conversation and confirming he would now consult with the Independent Person over whether to progress to a formal stage	17 November 2021	No response was received from Cllr Hyman	See Annexe 6, email 6

Monitoring Officer writes to Independent Person Mr William Donnelly setting out the results and approach by Cllr Hyman during the informal stage and seeking his view on whether to progress to the formal stage	3 December 2021		
Meeting between Monitoring Officer and Independent Person Mr William Donnelly	13 December 2021		
Independent Person Mr William Donnelly confirms his view in writing	13 December 2021		See Annexe 5
Monitoring Officer commissions Mr Richard Lingard as external investigator and formal investigation commences shortly after	11 February 2022		
Mr Lingard writes to Cllr Robini and Cllr Hyman introducing himself and asking to meet via Zoom.	21 February 2022	No response was received from Cllr Hyman	
Formal investigation by Mr Lingard paused following email from Cllr Robini suggesting he has spoken to Cllr Hyman and is expecting Cllr Hyman to apologise (and therefore resolve the matter without the need for further investigation)	22 February 2022	No communication received from Cllr Hyman.	
Formal investigation restarted following absence of any apology from Cllr Hyman.	14 March 2022		
Mr Lingard emails Cllr Hyman for the second time arranging to meet	14 March 2022	No response was received from Cllr Hyman	
Mr Lingard meets with Cllr Robini	17 March 2022		
Mr Lingard sends hard copies of his unanswered email	17 March 2022	No response was received from Cllr Hyman	See Annexe 4, appendix 2

communication to Cllr Hyman by recorded delivery.			
Cllr Hyman phones Mr Lingard. Call ends due to loss of signal. Mr Lingard tries to return Cllr Hyman's call but his call is not answered.	21 March 2022	No further communication was received from Cllr Hyman.	
Mr Lingard provides Cllr Robini and Cllr Hyman 10 days to comment on his draft investigation report.	30 March	No response was received from Cllr Hyman	
Monitoring Officer receives final report from Mr Lingard	8 April 2022		
Review of final report by Monitoring Officer	April 2022		
Monitoring Officer writes to Independent Person Mr William Donnelly seeking his view on the report and next steps	26 April 2022		
Monitoring Officer meets with Independent Person Mr William Donnelly who gives his final view in writing later that day. Mr Donnelly confirms his view that in the absence of an apology a hearing should be held.	5 May 2022		See Annexe 5
Monitoring Officer writes to Cllr Hyman confirming that following consultation with the Independent Person that arrangements will now be made to hold a hearing. Monitoring Officer makes a final offer to Cllr Hyman to resolve the matter by way of an apology and avoid the need for a hearing. In that email Cllr Hyman is invited to submit a written statement and to confirm if he wishes to call any witnesses.	9 May 2022	No response was received from Cllr Hyman	See Annexe 6, email 7
Executive Assistant to Monitoring Officer writes to Cllr Hyman proposing date of 28 June 2022 as the date of his hearing.	18 May 2022	No response was received from Cllr Hyman	

Executive Assistant to Monitoring Officer writes to Cllr Hyman asking for a response to her email of 18 May 22 about the hearing date.	30 May 2022	No response was received from Cllr Hyman	See Annexe 6, email 9
Monitoring Officer writes to Cllr Hyman confirming that in the absence of any response from him that his hearing will take place on 28 June.	10 June 2022	At the time of writing, no response received from Cllr Hyman	See Annexe 6, email 10
Date of hearing.	28 June 2022		

Conduct of the hearing

After the preliminary matters have been dealt with (election of chairman, declaration of interests, publication of agenda papers, chairman's opening remarks), the hearing will be conducted as follows:

- i. **Statement by the Investigating Officer**, who will present his report (Annexe 4) and call any witnesses, (which may or may not include the complainant).
- ii. **Questions from or through the Chair put to the Investigating Officer** and any witnesses (which may include either or both complainants).
- iii. **Statement by the subject member Councillor Hyman**, who will be given the opportunity to present his case at the hearing and call any witnesses.
- iv. **Questions from or through the Chair put to Councillor Hyman** and any witnesses.
- v. **Views/Submissions of the Independent Person**, who will refer to their statements at Annexe 5, and comment on whether or not they consider that, on the facts presented to the Hearings Panel, there has been a failure to comply with the Code of Conduct.
- vi. **Questions from or through the Chair put to the Independent Person**
- vii. **Summing up** first by the Investigating Officer and then by the subject member.
- viii. **Deliberations of the Panel:**
 - a) The Panel will adjourn the hearing and deliberate in private to determine whether, on the facts presented, the Subject Member Cllr Hyman has failed to comply with their Code of Conduct. The Panel must make its decision on the balance of probability, based on the evidence before it during the hearing.
 - b) The Panel will reconvene the hearing in public and the Chairman will announce whether or not, on the facts presented, Cllr Hyman failed to comply with the Council's

Code of Conduct.

c) If the Panel judges that Cllr Hyman has failed to comply with the Code of Conduct, they will adjourn to consider, what action, if any, is necessary

d) The Panel will reconvene the hearing in public and the Chairman will announce the decision on what action, if any, should be taken.

What action can the Hearings Panel take if they conclude there has been a failure to comply with the Code of Conduct?

The Panel may conclude that there has been no failure to comply with the Code of Conduct. If it does conclude there has been a failure to comply, paragraph 8 of the Council's arrangements set out what actions can (and cannot) be applied:

'The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Waverley members as necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

8.1 publish its findings in respect of the member's conduct;

8.2 report its findings to Council or to the Town or Parish Council for information;

8.3 recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

8.4 recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;

8.5 instruct the Monitoring Officer to arrange training for the member;

8.6 remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;

8.7 withdraw, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or

8.8 exclude, the 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.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances or special responsibility allowances.'

5. Can the complainant or subject member appeal the decision of the panel?

As per para 13 of the arrangements:

(a) There is no right of appeal for you as complainant against a decision of the Monitoring Officer or of the Hearings Panel.

(b) If the Member or co-opted member wishes to appeal against the decision of the Hearings Panel, the Member will have a right to have the decision reviewed by another three members of the Standards Panel who have not been involved. This will either involve a full rehearing of the case or be dealt with by way of written representation from the member.

If you [the complainant] feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

6. List of Annexes

- Annexe 1 – Waverley Members Code of Conduct
- Annexe 2 – Waverley Borough Council officer/member protocol
- Annexe 3 – Arrangements for dealing with standards allegations against councillors and co-opted members under the Localism Act 2011
- Annexe 4 – External investigator's report
- Annexe 5 – Statements provided by the Independent Person
- Annexe 6 – Correspondence with the subject member

7. Relationship to the Corporate Strategy and Service Plan

7.1 This report relates to:

- Waverley Borough Council's strategic objective 1 which is to promote 'open, democratic and participative governance'; and
- Policy and Governance Service Plan commitment SP22/25PG9.2 which is 'to resolve any complaints and questions about council procedure and conduct'

8. Implications of decision

8.1 Resource (Finance, procurement, staffing, IT)

Total external investigation costs incurred are TBC.

In addition to this, time has been spent by the Monitoring Officer and his Deputy Monitoring Officers handling this complaint. Time has been spent by members of the Democratic Services and Business Support team coordinating the complaints investigation and making arrangements for today's panel hearing.

8.2 Legal

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

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 subsection (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.

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.

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.

9. Consultation and engagement

9.1 The subject member Cllr Hyman was offered the opportunity to exercise his right to consult with the Independent Person before the Independent Person reached a view about whether this matter should be formally investigated but he did not do so.

9.2 The Monitoring Officer consulted with the Independent Person, William Donnelly, before deciding whether or not this matter should be formally investigated and again before accepting the report from the Investigating Officer Mr Lingard.

9.3 The Investigating Officer Mr Lingard consulted with the complainant and the subject members before issuing his final report to the Monitoring Officer.

10. Other options considered

10.1 As noted above, the other option would have been informal / local resolution without the need for a hearing but Cllr Hyman did not engage with opportunities to do so.

11. Governance journey

11.1 This matter is to be considered by the hearings panel who are asked to consider the report from the investigating officer and the other agenda papers, to consider any verbal or written statements from the subject member, the complainant and

the Independent Person and to decide whether or not Cllr Hyman breached his code of conduct and, if so, to decide what action, if any, should be taken.

11.2 As per para 13 of the arrangements, there is no right of appeal for the complainants against a decision of the Monitoring Officer or of the Hearings Panel.

11.3 As per paragraph 13 of the arrangements, if Cllr Hyman wishes to appeal against the decision of the Hearings Panel, he will have a right to have the decision reviewed by another three members of the Standards and General Purposes Committee Panel who have not been involved. This will either involve a full rehearing of the case or be dealt with by way of written representation from the member.

11.4 If the complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

Annexes:

- Annexe 1 – Waverley Members Code of Conduct
- Annexe 2 – Waverley Borough Council officer/member protocol
- Annexe 3 – Arrangements for dealing with standards allegations against councillors and co-opted members under the Localism Act 2011
- Annexe 4 – External investigator's report
- Annexe 5 – Statements provided by the Independent Person
- Annexe 6 – Correspondence with the subject member

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

CONTACT OFFICER:

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Local Government Association

Model Councillor Code of Conduct 2020

Joint statement

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

Introduction

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

Definitions

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - i. I have received the consent of a person authorised to give it;**
 - ii. I am required by law to do so;**
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - iv. the disclosure is:**
 - 1. reasonable and in the public interest; and**
 - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - 3. I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local or authorising their use by others:

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality

As a councillor:

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B Registering

interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

"Disclosable pecuniary interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it

is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in **Table 1**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter **affects** your financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the

	<p>councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were</p>

	spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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* 'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
 - (i) exercising functions of a public nature
 - (ii) any body directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to

review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.

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Officer / Member Protocol

WAVERLEY BOROUGH COUNCIL OFFICER/MEMBER PROTOCOL

Developing the way that Waverley officers and members work together for the good of the local community

This document is intended to provide guidance and direction in the way that members and officers work together in carrying out the Council's business.

It seeks to build on the clear benefits of ensuring that, from their different roles, members and officers develop effective and efficient internal working relationships that best serve the collective goal of improving the quality of life in the local community.

Whilst it gives guidance and direction, the document, should not be seen as being prescriptive. Rather it should be regarded as a tool that helps ensure that the Codes of conduct and policies that prescribe activities and behaviours are not compromised or breached.

Those relevant codes and policies are:

- the Waverley Member Code of Conduct
- the Waverley Borough Council Constitution
- the Officer Code of Conduct including the Addendum to the Code on the Use of IT Facilities;
- the Council's 'Dignity and Respect at Work' policy and procedures for dealing with Bullying and Harassment at work
- the Council's 'Disciplinary and Grievance Procedures' including the special arrangements that apply to the Chief Executive, the Section 151 Officer (Strategic Director) and the Monitoring Officer
- the Council's 'Public Interest Disclosure (Whistleblowing)' policy and procedures
- the Council's Equal Opportunities in Employment policy statement

A copy of the Member Code of Conduct and the Constitution is made available to all Members. Copies of all the other documents are issued to employees of the Council. Members who wish to see copies of those documents should ask the HR Manager.

This guidance will not cover every specific eventuality but the broad principles included in the document set standards for acceptable behaviour that should fit every eventuality.

For the avoidance of doubt, where there is a conflict between the guidance in these Protocols and any of the Codes/Policies defined above, compliance with the latter is obligatory. In cases of doubt, the Monitoring Officer will refer to the Waverley Code of Conduct for Members and give advice in accordance with the standards prescribed.

OFFICER/MEMBER PROTOCOLS

1. General Principles Underlying Member/Officer Relations

Waverley has a long tradition of constructive relationships between Councillors and Officers. These have developed into a strong partnership based on mutual respect and understanding of each others roles.

Both members and officers should aspire to conduct their relations, at all times, on a professional basis.

Relations must be based on mutual trust, respect and courtesy and neither members nor officers should seek to take unfair advantage of their position.

Close personal relationships between members and officers can damage professional relationships and can prove embarrassing to other members and officers. They could also give rise to suspicions and/or the appearance of improper conduct or behaviour. Close personal relationships should, therefore, be avoided.

Officers must, at all times, display political impartiality and members must, at all times, accept the political impartiality of officers.

Members and officers must have mutual respect for confidentiality where that is important to the relationship and where that does not compromise the duty of officers to serve the public (see Section 3). Officers must make that clear before entering into any confidential discussions with members.

Members should understand that officers have a contract of employment with the Council as a corporate body and not, as such, with individual members of the Council or the Executive.

2. Role of Members

In accordance with the Waverley Code of Conduct, the Member/Officer protocol and the Members' Planning Code of Good Practice, and maintaining the highest standards of conduct and ethics, members' roles are to:-

- (i) collectively be the ultimate policy-makers and oversee a number of strategic and corporate management functions;
- (ii) represent their communities and bring their views into Waverley's decision-making process;
- (iii) deal with individual casework and act if appropriate as an advocate for constituents in resolving particular concerns or grievances;
- (iv) balance different interests identified within their ward and represent the ward as a whole;

- (v) contribute to various forums for decision-making;
 - (vi) be available to represent the Council on other bodies.
- (as set out in the Constitution).

3. Role of Officers

- Advising the Council on policy matters and implementing Council decisions
- Taking day-to-day managerial and operational decisions
- Providing support/advice to members on matters of Council business
- Acting within their sphere of responsibility/accountability (see the Scheme of Delegation)
- Ensuring that the Council functions within the legislative framework
- Above all else, officers of the Council have a duty to serve the public in good faith and without fear or favour of anyone.

4. Relationship between the Leader of the Council and Officers

When functioning as the Leader of the Council, the Leader will work in close cooperation with the Chief Executive, Strategic Directors and Heads of Service in matters related to the corporate direction and functioning of the Council.

In this role, the Leader would not normally deal direct with other members of staff except when dealing with any other specific portfolio responsibilities that the Leader of the Council may hold.

This also applies to the Deputy Leader of the Council when acting in place of the Leader.

5. Relationships between the Leader and Members of the Executive and officers

The Leader works through Portfolio Holders who work with the Chief Executive, Strategic Directors and Heads of Service in respect of matters within the portfolio holder's brief.

6. Relationship between Chief Executive and Members

Any member may make an appointment to see the Chief Executive.

7. Relationship between Portfolio Holders and Officers

Portfolio Holders work closely with and discuss and consult, as they see necessary, with the Chief Executive, Strategic Directors and/or Heads of Service and specialist officers as agreed by the Head of Service.

8. Relationships between Chairmen and Vice-Chairmen of Overview and Scrutiny Committees and officers

Chairmen and Vice-Chairmen of Overview and Scrutiny Committees may seek advice from the Chief Executive, Strategic Directors (and/or Heads of Service) and any designated support officers.

9. Relationship between Chairman and Members of other Committees and Officers

Chairmen of Regulatory Committees may seek advice from the Chief Executive, Strategic Directors (and/or Heads of Service).

10. Officer relationships with party groups (Note: Local Government and Housing Act 1989 introduced politically restricted appointments)

Officers will do work on behalf of all political party groups fairly and consistently.

It is critical that officers respect confidentiality between political party groups.

11. Officer relationships with other individuals who are members of Council bodies

This protocol will apply also to lay or co-opted Members of Committees or Working Groups etc.

12. Members in their ward role and officers

Members may seek advice from relevant officer(s) on ward matters and, if they wish to do so, may first inform the relevant Head of Service.

Those relevant officer(s) will advise the Chief Executive or their Head of Service as appropriate.

Officers should keep ward Councillors informed of relevant matters affecting their ward.

13. Publicity, Press Releases and other contact with the Media

NOTE: The specific rules governing such activities of members are set out in Section 2 of the Local Government Act 1986 and the Code of Practice on Local Authority Publicity.

Contact with the media on issues related to Council business is handled through the Communications and Engagement Manager who provides support and guidance and training as necessary to members and officers.

Press releases from officers should not relate to the political views of any group of officers or members.

Officers, in communicating with the media, should restrict their comments to matters of fact and should avoid expressing personal opinions on Council policy or political decisions and/or views expressed by members.

No member or officer may be quoted in media/press releases without their specific consent.

For service specific media issues – these will be discussed with the relevant Portfolio Holder.

Wider ‘corporate’ media issues – these will be discussed with the Leader (or Deputy Leader in absence of the Leader) unless this cannot be achieved by the Press deadline. Where it is not possible, the Communications and Engagement Manager will advise.

Members may issue their own media releases. However, they must not: -

- use Council resources for that purpose where the media issue is to publicise an individual Councillor or the views of a political party; and
- impute or ascribe particular views to officers or otherwise refer to officers without that being agreed with the Chief Executive or Strategic Directors in advance.

Overview and Scrutiny Committees may authorise Waverley media releases on their work, the content of which is to be jointly agreed by the appropriate Overview and Scrutiny Committee Chairman and Vice-Chairman.

14. Councillor access to documents and information

Members are entitled to have such access to information as they reasonably need to carry out their role as members of the Council. However, Members cannot have access to personal information about residents or members of staff, such as council tax, rent or benefit records, unless they have written consent from the individual.

The legal right of members to have access to information is covered partly by common law but also by different pieces of legislation. Members requiring advice on such rights should contact the Monitoring Officer.

15. Officer attendance/participation at formal meetings of the Council

Executive

Meetings of the Executive will be attended by the Chief Executive, Strategic Directors and, as necessary, Heads of Service and specialist staff.

Portfolio Holders will normally present reports to the Executive.

The Leader of the Council and/or Portfolio Holders may call on officers in attendance to speak. Officers may ask to speak if factual information is being reported incorrectly, for a point of clarification or if relevant data could be overlooked.

Regulatory Committees

The Chairman of the Committee will require officers, as designated by the relevant Head of Service, to present a report and recommendations on each matter.

Overview and Scrutiny Committees

Meetings of Overview and Scrutiny Committees may be attended by the Chief Executive and relevant Director and/or Heads of Service as necessary.

The Chairman of the Committee will ask the relevant Director or Head of Service to present the report.

16. Access to Officers by Members

On any new specific service issue and to ensure consistency, it should only be necessary for members to contact either the Chief Executive, Strategic Directors and/or Heads of Service, or in the case of media issues the Communications and Engagement Manager. If members are unsure of who to contact, they should contact Democratic Services.

These officers should recognise that members will have needs for information that are not always predictable and will try to respond quickly.

However, to help manage workloads and to help the smooth working of the Council's departments, the following guidelines should, so far as is practicable, be observed.

- An uninvolved/uncomplicated enquiry may be made by telephone.
- Otherwise, members should send their enquiry by e-mail

- If members do not have access to e-mail or if a personal visit is considered more appropriate, an appointment should be made with the relevant officer ideally giving a minimum of 24 hours' notice.
- Where there is a need for immediate action, ideally, the member should telephone the officer to ensure that a meeting on the same day is practicable.
- Portfolio Holders should arrange times for their meetings with their Strategic Directors and/or Heads of Service as appropriate, and should not make demands on time which could affect officers' ability to carry out their jobs.
- Both members and officers should aim to keep meetings short and focused.

17. Officers Dealing with Member Enquiries: Response Times

Heads of Service will support their staff in achieving the following broad performance targets in responding to Member's enquiries: -

- within 2 working days - straightforward enquiries
- within 5 working days - more complicated enquiries
- within 15 working days - enquiries involving research

18. Officers Dealing with Member Correspondence

Letters from the Council that create obligations or give instructions on behalf of the Council must always be sent out in the name of an officer.

Officers who are requested to prepare correspondence on behalf of members will work to the response times above.

19. Effective Working Relationships between Members and Officers

This is best achieved by working together in partnership.

Members should:

- avoid putting officers under undue pressure to the extent that it could be regarded as harassment and/or bullying. Members should be particularly sensitive when dealing with less senior officers in the absence of the relevant senior officer.
- not require officers to do things that are not consistent with Council policy, not within normal budgetary controls and not part of the officer's normal duties.
- avoid criticising officers, particularly at meetings open to the public or in the media;

- avoid actions or words that may appear to others to be attaching blame to an officer(s) particularly when the officer(s) is not present
- avoid words or actions that may serve to undermine the professionalism and integrity of officers.

Officers should:

- Treat members with courtesy and respect at all times;
- Not use undue influence over a member or put a member(s) under undue pressure
- Avoid words or actions that may undermine respect for members

20. Scheme of Delegation

Members should not challenge, publicly, a decision made in good faith by an officer under the Scheme of Delegation, whether or not that decision requires consultation with nominated members.

Members who require information on why a particular decision has been made may ask the relevant officer to explain the basis on which the decision has been made including the use of any pre-prepared guidelines to help decision-making.

21. Dealing with Breaches of this Protocol

By Members

An officer who feels that they have been treated by a member in a way that is contrary to the principles and ideals set out in this document should follow the steps in the Council's Dignity and Respect at Work policy and procedures. The employee, under those procedures, may follow whatever initial approach they prefer. However, the matter must also be raised with the Chief Executive and the relevant Head of Service.

Members who are in breach of this protocol will be dealt with using, as appropriate, one or more of the approaches set out below:-

Leader of the relevant political group
Monitoring Officer
If necessary, by a meeting of the Standards Panel.

By Officers

A Member who has a complaint that an employee has acted contrary to the principles and ideals set out in this document should raise the matter with the Chief Executive or Strategic Directors.

Officers who are in breach of this protocol will be dealt with under one or both of the following procedures:-

Dignity and Respect at Work policy and procedures
Disciplinary Procedures.

22. Conclusions

Members and Officers, in following the guidelines in this Protocol, help maintain that the constructive officer/member relations that have existed in Waverley for years.

Having a written Protocol will enable members and officers to build on and improve the Member-Officer partnership by identifying practices and approaches that work best to ensure effective working relationships. The Protocol will be kept under review and amended to reflect identified best practice.

[Amended January 2018 to reflect job title and structural changes only]



Arrangements for dealing with Standards Allegations against Councillors and co-opted Members under the Localism Act 2011

1. Context

Waverley Borough Council is committed to high standards of conduct by its councillors and co-opted members.

This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Waverley Borough Council and the Codes of Conduct adopted by Parish and Town Councils in the Waverley area.

2. The Code of Conduct

Waverley Borough Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and is available on Waverley Borough Council's website at www.waverley.gov.uk and on request from Reception at the Council Offices.

The Code of Conducts of Town and Parish Councils are available for inspection on either Waverley Borough Council's website or the relevant Town or Parish website (if the Parish Council has one) and may also be viewed by arrangement with the Town or Parish Clerk.

3. Making a complaint

If you wish to make a complaint, please write or email to:

The Monitoring Officer
Waverley Borough Council
Council Offices
The Burys
Godalming
Surrey
GU7 1HR

monitoring.officer@waverley.gov.uk

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for dealing with complaints about member misconduct.

Please provide us with your name and a contact address or email address so that we can acknowledge receipt of your complaint and keep you informed of its progress. Requests not to disclose your name and address to the member against

whom you make the complaint without your prior consent will only be agreed by the Monitoring Officer in exceptional circumstances. If the Monitoring Officer determines that your complaint is to be formally investigated, requests for your name and address to be kept confidential would only be considered for safeguarding reasons or if disclosure could reasonably be expected to prejudice the investigation. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it and will keep you informed of the progress of your complaint.

4. Will your complaint be investigated?

The Monitoring Officer will review every complaint received and apply the following criteria make a decision as to whether it will be treated as a 'valid complaint' about a councillor. The following types of complaint will not be considered as 'valid complaints' under this procedure:

- a) Complaints which are submitted anonymously, unless there is a clear public interest in doing so;
- b) Complaints which do not identify a subject Member;
- c) Complaints which relate only to a Member's personal or private life;
- d) Complaints concerning a failure to respond to a request from a constituent or other individual;
- e) Complaints which relate to the alleged actions of employees of the Council or non-voting co-optees which are subject to a different code and the corporate complaints process;
- f) Complaints which relate to a decision of an employee or a Committee;
- g) Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council;
- h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
- i) Complaints containing trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat;
- j) Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action;
- k) Complaints which do not relate to the Members' Code of Conduct.

In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information only.

If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly. The complainant will be informed about the corporate complaints process.

In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

If the complaint is judged to be valid, the Monitoring Officer will consider whether an investigation is appropriate or whether it merits formal investigation. The Monitoring Officer will not commence any formal investigation without consulting the Independent Person.

The Monitoring Officer will inform the subject member or co-opted member of receipt of the allegation and its details and of their right to consult the Monitoring Officer and Independent Person. This decision will normally be taken within 30 days of receiving your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you, the member and the Independent Person of his/her decision in writing and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information and may request information from the member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint alleges criminal conduct or breach of other regulation by any person, including the alleged non-disclosure of disclosable pecuniary interests, the Monitoring Officer has the power to call in the Police and other regulatory agencies and may determine that it is not possible to commence his own investigation until the Police or other regulatory agencies have concluded their own investigations of the matter. At this stage, any media enquiries will be advised that a review of a complaint is in process and that it would not be appropriate to comment.

5. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer who may be an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint and an explanation of the arrangements for the investigation and ask the member to provide his/her explanation of events and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration. The report will include details of the allegation, the evidence considered and the investigation's findings.

Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer which will include his/her findings as to whether there may have been a breach of the Code of Conduct.

6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer will ask the Independent Person to comment on the investigation report.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the authority. If the member

complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Panel Lead Member.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of three Members drawn from the Group appointed by the Council, which will conduct a local 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. In the case of a complaint involving a Town or Parish Member, as well as the three Members, there will be a Town or Parish Councillor attending as a non-voting Member.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any prior advice in writing from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations in writing to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

Meetings of the Hearings Panel will be held in public unless the Monitoring Officer agrees there are exceptional circumstances that prevent this. The agenda for the meeting will be publicised in advance. Meeting papers that do not contain exempt information will be shared with all members of the panel, the Independent Person, the Investigating Officer and any witnesses. Meeting papers will not be shared in advance with the press and public but will be made available at the commencement of the hearing.

8. What action can the Hearings Panel take where it finds that a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Waverley members as necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

- 8.1 publish its findings in respect of the member's conduct;
- 8.2 report its findings to Council or to the Town or Parish Council for information;
- 8.3 recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- 8.5 instruct the Monitoring Officer to arrange training for the member;
- 8.6 remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 8.7 withdraw, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 exclude, the 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.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances or special responsibility allowances. In the case of Town or Parish complaints, the conclusion will be referred to that Town or Parish Council for such action they consider appropriate.

9. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel and send a copy to you, to the member and the Independent Person and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council. The decision will also be placed on the Waverley Borough Council website, unless no breach is found and the member requests it should not be publicised.

10. Who is on the Hearings Panel?

The Hearings Panel is drawn from the members appointed by the Council. The Independent Person's views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member'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.

11. Who is the 'Independent Person'?

Waverley Borough Council has appointed three Independent Persons. These are members of the Community who have applied for the post following advertisement of a vacancy for the post and have been appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she:

- 11.1 is, or has been within the past five years, a member, co-opted member or officer of the Council; or
- 11.2 is, or has been within the past five years, a member, co-opted member or officer of a parish council of which the authority is the principal authority; or
- 11.3 is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means:
 - 11.3.1 spouse or civil partner;
 - 11.3.2 living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 grandparent of the other person;
 - 11.3.4 a lineal descendent of a grandparent of the other person;
 - 11.3.5 a parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 a spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

The role of the independent person is set out in Section 28 of the Localism Act 2011. As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The views of an Independent Person **must** be sought by the Council before it takes a decision on whether an allegation may be investigated, and **may** be sought by the Council at any other stage (e.g. before a final hearing is arranged or where a local

resolution may be appropriate). Where the authority voluntarily chooses to seek the independent person's views on an allegation that it has not decided to investigate, there is no requirement for the authority to take the views of the Independent Person into account.

A member against whom an allegation has been made has the right to consult the Independent Person should they wish to do so.

12. Review of these arrangements

The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter. The Council will keep these arrangements under review and identify any improvements to the processes and ensure that they are helping the Council maintain high standards of conduct.

13. Appeals

- (a) There is no right of appeal for you as complainant against a decision of the Monitoring Officer or of the Hearings Panel.
- (b) If the Member or co-opted member wishes to appeal against the decision of the Hearings Panel, the Member will have a right to have the decision reviewed by another three members of the Standards Panel who have not been involved. This will either involve a full rehearing of the case or be dealt with by way of written representation from the member.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Report of an Investigation into a complaint by
Cllr John Robini against Cllr Jerry Hyman of
Waverley Borough Council

Private & Confidential

Final Version
8 April 2022

Richard Lingard LLB
Solicitor

PERSONAL CONTACT DETAILS REDACTED

ICO Registration No: Z2740952

Richard Lingard – Curriculum Vitae

Educated at Magdalen College School Oxford and Southampton University, I qualified as a Solicitor in 1980, trained in private practice and spent four years in the commercial sector before going into Local Government.

At the time of my retirement in September 2011, when I became a non-practising Solicitor, I was the Head of Legal & Democratic Services and Monitoring Officer at Guildford Borough Council, for whom I worked for some 30 years.

Since 2011, I have conducted and reported on over 50 investigations covering allegations of misconduct against City, County, Borough, Parish and Town Councillors and Officers in Berkshire, Hampshire, Hertfordshire, Kent and Surrey.

I have also carried out a number of procedural and governance reviews for local authorities in these areas and provided training sessions on ethical standards.

I am also an Independent Member of the Surrey Police Misconduct Panel.

EXECUTIVE SUMMARY

This is the final version of my report of an investigation that I was commissioned to carry out into a complaint brought by Cllr John Robini against Cllr Jerry Hyman, of Waverley Borough Council (WBC), in respect of alleged breaches of the WBC Members' Code of Conduct.

I have concluded that Cllr Hyman has breached Paragraphs 1.1 and 1.2 of the Council's Code of Conduct.

1. INTRODUCTION

- 1.1 Following an initial enquiry on 11 February 2022, I was formally instructed the following day by Mr. Daniel Bainbridge, Deputy Monitoring Officer of WBC, to conduct an independent investigation into a complaint brought by Cllr John Robini against Cllr Jerry Hyman, arising out of the latter's alleged conduct during an on-line 'Zoom' internal briefing meeting held on 18 August 2021.
- 1.2 The full text of Cllr Robini's complaint, as submitted to WBC Monitoring Officer Robin Taylor, is set out in **Appendix 1** to this report.
- 1.3 Cllr Robini's first email to Robin Taylor was on 23 August 2021. Mr Taylor replied to Cllr Robini with some follow up questions which he replied to on 27 August 2021. It was in his 27 August email that Cllr Robini confirmed that he wished his concerns to be handled by Mr Taylor as a formal complaint to the Monitoring Officer under WBC's arrangements for dealing with standards complaints.

2. PROCESS

- 2.1 Mr. Bainbridge provided me with background information to the complaint, a number of copy emails and contact details for the two councillors involved. Having examined the documentation, I contacted Cllrs Robini and Hyman by email on 21 February, introducing myself and inviting them to 'meet' via Zoom.
- 2.2 The following day I received an email from Mr. Bainbridge advising me that Cllr Robini had told him he anticipated that a suitable apology might be forthcoming from Cllr Hyman and he asked me to 'hold fire' with the investigation until advised otherwise.
- 2.3 On 14 March Mr. Bainbridge told me that nothing had been heard from Cllr Hyman and asked me to resume the investigation. On that same day I accordingly sent further emails to the two councillors inviting them to

suggest a convenient time for us to speak. Cllr Robini replied later the same day and we agreed to meet via Zoom on 17 March.

2.4 I heard nothing from Cllr Hyman.

3. COUNCILLOR JOHN ROBINI

3.1 I spoke to Cllr Robini via Zoom on 17 March and in accordance with my normal practice, and with his consent, I made an audio recording of our conversation and used it as the basis of a draft statement that I sent to him for comment and return, amended as he deemed necessary. He did not offer any comments on or corrections to my notes of our discussion.

3.2 Cllr John Robini (JR) is one of the Liberal Democrat members for Haslemere Critchmere and Shottermill ward and he is currently Mayor of Waverley. He is also a member of Surrey County Council and of Haslemere Town Council. He served as a Surrey Police officer for 43 years.

3.3 We discussed the incident that took place during a Zoom briefing on 18 August 2021. JR explained that WBC has been looking at cost savings and exploring ideas for increased efficiency. One issue under discussion is whether the Council needed to retain their offices at The Burys which are regarded as no longer fit for purpose. Suggestions for the future include disposal, renting out part and redevelopment / relocation.

3.4 There were some 30 participants (councillors and officers) in the briefing on 18 August. The Chief Executive was explaining a number of possible proposals including whether continued home working, introduced during the pandemic, was or might be the way forward when Cllr Hyman (JH) interrupted him claiming that he was 'bullshitting'.

3.5 He said that he did not realise that his microphone was switched on and apologised for that, rather than for the words he used. He then claimed that the proposals had been formulated in secret and that they had not been through any proper transparent process. This was denied by the Chief Executive, who described the processes to which the proposals had been subjected.

3.6 JH refuted this assertion and continued to complain about what he could tell his residents. He then went further by criticising the staff who had been working at home, suggesting that they had not been working as hard as they should. JR commented that any criticism of staff should be addressed confidentially to, for example, line managers and not broadcast in a wider forum such as the briefing under discussion.

- 3.7 I asked JR why he decided to lodge the complaint when the words complained of were not directed at him but at the Chief Executive. His response was that as Mayor, he felt it incumbent upon him not to allow such unbecoming comments about the Chief Executive and his staff to go unchallenged.
- 3.8 JR did not speak to the Chief Executive prior to lodging his complaint with the Monitoring Officer. He described the matter as trivial and said that a quick apology would have resolved the matter but a hoped-for apology from JH had not been forthcoming.
- 3.9 He spoke to JH on the telephone to try and persuade him accordingly, but to no avail because although JH agreed that the words he had used were not appropriate, he said that he had already apologised. In fact, his apology related to his having left his microphone switched on and not to the words he used.
- 3.10 I said that I would write to JH and establish whether he was willing to apologise or even engage in the investigation process. I added that if he declined to engage, I would compile my report without the benefit of any input from him.

4. CLLR JERRY HYMAN

- 4.1 As noted above, I initially contacted Cllr Hyman by email on 21 February and again on 14 March once Mr. Bainbridge had asked me to proceed.
- 4.2 Having received no reply to either message, I sent Cllr Hyman the letter reproduced at Appendix 2 by Recorded Delivery. That letter was posted on Thursday 17 March. It will be noted that I suggested to Cllr Hyman that there was still an opportunity to proffer an acceptable apology, which would not only bring this matter to a close but also avoid continued expenditure of taxpayer's money by prolonging this investigation.
- 4.3 On Monday 21st March I received a telephone call from Cllr Hyman. During a very brief conversation, curtailed (I believe) because of a loss of signal, Cllr Hyman told me that he understood Cllr Robini to have withdrawn his complaint because he (Cllr Hyman) had apologised for what he had said during the briefing in August.
- 4.4 I explained that my understanding was that the apology he had offered (i.e., for the fact that he had left his microphone switched on rather than for the words used) was regarded by Cllr Robini as inadequate, that his complaint was still 'live' and that I would accordingly continue with my investigation. When we were cut off, I tried to return Cllr Hyman's call but to no avail.

- 4.5 I received no further communication from Cllr Hyman and did not think it a good use of time or resources to write to him again. I accordingly proceeded without any further input from him.

5. THE WAVERLEY CODE OF CONDUCT FOR MEMBERS

- 5.1 On 22 March 2021, Waverley Borough Council adopted the LGA Model Councillor Code of Conduct 2020 as its Local Members' Code of Conduct. The current version of the Code is enshrined as Part 5 of the Council's Constitution.

- 5.2 The Code applies to councillors when acting as such. At the material time (i.e., 18 August 2021), Cllr Hyman was a serving councillor and acting as such and was therefore bound by the provisions of the Code, the relevant section of which reads as follows:

Section 1. RESPECT

As a councillor:

- 1.1 I treat other councillors and members of the public with respect.
- 1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas opinions and policies in a robust but civil manner, You should not however subject individuals, groups of people or organisations to personal attack.

- 5.3 It is appreciated that the subject of discussion during the briefing on 18 August was controversial and it is understandable that feelings may have been running high and although in the general scheme of things, the word 'bullshitting' may not nowadays be regarded as particularly offensive when compared with other expressions, in using the language that he did towards the Chief Executive (the actual words not being in dispute) Cllr Hyman was in my view in clear breach of the provisions of the Code cited above.
- 5.4 The fact that the Chief Executive did not bring a complaint does not detract from the view I take of Cllr Hyman's conduct and it is unfortunate that he has

not taken the opportunity, either before or after our curtailed telephone conversation on 21 March to proffer an appropriately worded apology.

6. DRAFT CONCLUSION

6.1 My draft conclusion was that Cllr Hyman breached Paragraphs 1.1 and 1.2 of the WBC Code of Conduct for Members.

7. THE DRAFT REPORT

7.1 On 29 March I sent my draft report to Mr. Bainbridge seeking his confirmation that it met the Council's requirements in terms of format, content and coverage. I did not seek his views on my draft conclusion. On receipt of this confirmation the following day I sent copies of the draft to Cllrs Robini and Hyman inviting them to comment within the following ten days.

7.2 Cllr Robini's response was that my report was 'fair' and he said that he had nothing to add.

7.3 I heard nothing from Cllr Hyman in response to the draft

8. FINAL CONCLUSION

8.1 In the circumstances, I stand by my draft conclusion, namely that by accusing the Chief Executive of 'bullshitting' during the briefing on 18 August 2021, Cllr Jerry Hyman breached paragraphs 1.1 and 1.2 of the WBC Code of Conduct.

Richard Lingard

8 April 2022

APPENDICES

1. Full Text of the complaint by Cllr John Robini
2. Letter to Cllr Hyman dated 17 March 2022

THE COMPLAINT

Robin

Reluctantly I feel as Mayor | must make a formal complaint against Councillor Jerry Hyman. This took place on 18th August 2021 at a zoom meeting entitled Where Work Happens.

There were Councillors and Waverley employed Officers present at this meeting. It was not being broadcast to the public, and was an update to Councillors on the present and future workings of the Council and its staff and its resources.

During this presentation the Chief Executive Tom Horwood was explaining staff practice of working at home during and following the pandemic, and the projected use of our main building.

| was upset and astounded by Councillor Hyman rudely interrupting the CE claiming he was bullshitting. He then claimed he did not realise his audio was on. He went further by claiming all these plans had been held in secret and they had not been subject to any proper and transparent process. This was denied by the CE and gave information of the process. Councillor Hyman refuted this and continually complained about what he could tell his residents. He then went further criticising the staff working at home as allowing them not to work as hard as they should.

This interrupted the presentation and the CE refused to be baited by Councillor Hyman and passed over to other Officers to continue. I found the rudeness and the denial of facts abhorrent from a long-standing Councillor, and I was embarrassed by his attack on the staff, executive and CE who I have every faith in them working hard and following the correct and transparent processes under extremely difficult circumstances.

I would suggest his actions break one of the seven principles treating people fairly and with respect. Under 1/ Respect 1.1 treat other Councillors fairly and with respect

And 1.2 treat employees fairly and with respect.

I am sure other members and staff were offended and embarrassed by Councillor Hyman's conduct.

I am happy to allow my name to be released as author of this complaint. Regards
Councillor John Robini.

PERSONAL CONTACT DETAILS REDACTED

17 March 2022

Dear Cllr Hyman

COMPLAINT BY CLLR JOHN ROBINI

I refer to my emails of 21 February and 14 March and note that I have not heard from you. I consider it highly unlikely that neither of these messages reached you, but am sending you this letter out of an abundance of caution.

I have been instructed by Daniel Bainbridge, Deputy Monitoring Officer of Waverley Borough Council, to conduct an independent investigation into the complaint brought against you by Cllr John Robini arising out of a remark you addressed to the Chief Executive during a briefing meeting entitled 'Where Work Happens' held via Zoom on 18th August 2021.

Whilst I have been provided with background information and certain documentation, it would be helpful to hear your 'side of the story' now that I have spoken to Cllr Robini.

In the interests of economy and expediency, I would favour a Zoom meeting. If you are happy to proceed on this basis, perhaps you could let me know your availability over the next ten days in the hope that we can identify a time that suits both of us. I don't imagine that I would need more than, say, 45 minutes of your time. I am available in the evenings if that helps.

It has been suggested that I put it to you that an appropriately worded apology from you for the actual words used rather than for the fact that you left your microphone switched on would be a satisfactory and considerably swifter and more economical means of bringing this matter to a close than continuing with the conduct of my investigation.

I set out below a brief CV for your information and look forward to hearing from you but if you do not wish to engage in this process, I should be grateful to know that as soon as possible.

Yours sincerely

Richard Lingard

Curriculum Vitae

Educated at Magdalen College School Oxford and Southampton University, I qualified as a Solicitor in 1980, trained in private practice and spent four years in the commercial sector before going into Local Government.

At the time of my retirement in September 2011, when I became a non-practising Solicitor, I was the Head of Legal & Democratic Services and Monitoring Officer at Guildford Borough Council, for whom I worked for some 30 years.

Since 2011, I have conducted and reported on over 50 investigations covering allegations of misconduct against City, County, Borough, Parish and Town Councillors and Officers in Berkshire, Hampshire, Hertfordshire, Kent and Surrey.

I have also carried out a number of procedural and governance reviews and provide training sessions on ethical standards.

I am an Independent Member of the Surrey Police Misconduct Panel

Annexe 5 – Statements provided by the Independent Person Mr William Donnelly

Statement provided by email by Independent Person on 13 December 2021:

Dear Robin,

Further to our informal conversation on zoom today, I promised to let you have a copy of the key points that I raised :-

1. The words used in themselves might not be regarded as overly offensive to many people, by today's common standards, but in the wider background and context of Cllr Hyman's past, it is another sign of poor public conduct of a representative of the Council under the Council's own regulations, and very disrespectful toward a senior officer of the Council and to the others present, and hence not at all "trivial".

2. Cllr Hyman has apologised for the fact that he left his zoom microphone on, but not for the words or intent of his utterance.

3. He continues to disparage the Council's complaints process by failing to engage with your attempted communications with him, finally calling them a "waste of time".

4. He has by his own inaction caused the process to take a lot more than the 30 days recommended - but that has not been for lack of attempts on your behalf to involve him, or to give him further opportunities to redress his behaviour by making a more fulsome apology to those involved.

5. In a wider context, the Mayor, Cllr Robini has properly "challenged poor behaviour" as the Code on Leadership requires - but it might have been better for someone other than a person holding the Mayoral role to make the actual complaint - the issue was not at all to do with the Mayoralty itself.

6. Similarly, you might yourself consider the degree to which you might have been seen as not wholly an independent judge of the situation given your role in the disciplining of Cllr Hyman for his behaviour in the past - although all your recent communications and statements all demonstrate fully the impartiality with which you have conducted your role.

Altogether, it would seem that without a proper apology **for the actual words used**, and some sense of regret and sorrow for their use in that Council context, the Complaint stands the test for further Investigation.

You or the appointed Investigating Officer might offer Cllr Hyman a very last opportunity to fully apologise to the Council and its CEO for his choice of words used on that occasion, (and not for the microphone lapse situation or the later failure to engage with the process to apologise for his words). You might even draft for him a set of apologetic words that would meet the Council's standards.

Failing such an apology, the matter should be thoroughly investigated with whatever consequences that process might engender.

I hope you found my comments helpful.

Best Regards

Bill Donnelly

Independent Person

Statement provided by email by Independent Person on 5 May 2022:

Dear Robin

Strictly Confidential

Many thanks for giving me the opportunity, as the prescribed Independent Person, to review the Report from the Investigation into a Complaint by Cllr John Robini against Cllr Jerry Hyman of Waverley Borough Council, prepared by Mr Richard Lingard LLB, the appointed Independent Investigator.

I found the Report to be concise and clear, in so far as the parties had informed and cooperated with the Investigation.

It concluded that the incident described had, without an apology for the words used at the time but only for the misuse of the microphone equipment, represented a breach of the Council's Code of Conduct. Cllr Hyman had continued to absent himself from the investigative process and declined to make a full apology for the intemperate words he had used, allegedly in response to the CEO's presentation.

I can see no evidence therefore to suggest that there was anything other than an abuse of the Waverley Borough Council Code of Conduct, which all councillors have signed up to and are fully aware of.

Without a last ditch fulsome apology, I believe that the Council has no alternative but to conduct a Public Hearing into Cllr Hyman's action on that occasion.

I would also ask that the hearing take full account of the attitude of non-cooperation shown by Cllr Hyman during the Investigation, and the slurs he has made upon the investigative process itself - indeed, I feel that his own recalcitrant approach in the later handling of this matter has itself caused the process to be unnecessarily lengthy and time consuming for all concerned and not a welcome example to your voting public of the cost-effective use of Council resources.

I would therefore support the notion that Cllr Hyman should be subject to a Public Hearing to be held by Waverly Borough Council, concerning the alleged incident on 18th August 2021.

Best Regards

William A Donnelly

Independent Person

Annexe 6 – correspondence

Email 1

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 23.9.22

Dear Cllr Hyman

I am writing to let you know that I have received a complaint about you from Cllr John Robini.

Cllr Robini feels that you breached your code of conduct at the 18th of August councillor briefing on 'where work happens' and the Burys development projects when you were heard by all present at the Zoom meeting to describe an answer given to you by the Chief Executive as "bullshit". Cllr Robini feels that you showed disrespect to others by using this language, by interrupting the Chief Executive and by criticising staff.

Cllr Robini submitted his complaint to me the day after that meeting. In line with our arrangements, before approaching you I asked him to confirm the details of his complaint and whether he would be happy to be identified as the complainant which he has since done. My leave arrangements during August and early September have prevented me from progressing this matter with you until now.

In the interests of transparency I copy below the text of Cllr Robini's complaint.

Copy of email from Cllr Robini:

Robin

Reluctantly I feel as Mayor I must make a formal complaint against Councillor Jerry Hyman.

This took place on 18th August 2021 at a zoom meeting entitled Where Work Happens.

There were Councillors and Waverley employed Officers present at this meeting. It was not being broadcast to the public, and was an update to Councillors on the present and future workings of the Council and its staff and its resources.

During this presentation the Chief Executive Tom Horwood was explaining staff practice of working at home during and following the pandemic, and the projected use of our main building.

I was upset and astounded by Councillor Hyman rudely interrupting the CE claiming he was bullshitting. He then claimed he did not realise his audio was on. He went further by claiming all these plans had been held in secret and they had not been subject to any proper and transparent process. This was denied by the CE and gave information of the process. Councillor Hyman refuted this and continually complained about what he could tell his residents. He then went further criticising the staff working at home as allowing them not to work as hard as they should.

This interrupted the presentation and the CE refused to be baited by Councillor Hyman and passed over to other Officers to continue.

I found the rudeness and the denial of facts abhorrent from a long standing Councillor, and I was embarrassed on his attack on the staff, executive and CE who I have every faith in them working hard and following the correct and transparent process's under extremely difficult circumstances.

I would suggest his actions break one of the seven principles treating people fairly and with respect.

Under 1/ Respect 1.1 treat other Councillors fairly and with respect

And 1.2 treat employees fairly and with respect.

I am sure other members and staff were offended and embarrassed by Councillor Hymans conduct.

I am happy to allow my name to be released as author of this complaint.

Regards

Councillor John Robini

The briefing meeting in question was one I also attended so I am aware of the exchange that took place. This means I am not hearing about the matter second hand but witnessed it directly. I would suggest that any reasonable person would judge that your behaviour towards the Chief Executive fell short of the standards set out within your code of conduct and indeed within the Council's officer/member protocol. That is certainly the view I took at the time and I was particularly disappointed given that I had only written to you two weeks before the meeting in question expressing my concern about your approach towards Council Officers and reminding you of the outcomes of the 1 February 2019 Standards Hearing which found you had breached the code of conduct and the Council's member/officer protocol and advised you on how you could avoid doing so in the future.

As a reminder I attach that email from me. The links to the code and member/officer protocol are now out of date due to changes to our website. For reference I copy up to date links below to both documents. The link to the February 2019 standards panel report remains the same.

I continue to take the view that the conclusion reached by the Standards Hearing panel when they considered the previous complaint against you that 'members can and should challenge officers' but that 'this must be done in a respectful way' 'is highly relevant and something you urgently need to give your attention to. I think it was certainly relevant here. I noted, for example, that in the exchange at the August briefing meeting the Chief Executive confirmed he shared some of your concerns and responded to you about how the Council intended to tackle these issues. The challenge from him was very clearly in respect of your language and your confrontational approach rather than the fact that you held concerns and wished to express these.

It is my job to ensure that the complaint from Cllr Robini is properly considered and dealt with.

I would therefore like to meet with you to talk through the concerns that have been raised and to provide you with the opportunity to give your own perspective on the matter. As you know, our arrangements encourage an informal resolution without formal escalation where this is to the satisfaction of those involved. I would ask you to give careful consideration to what you feel you could do in order to informally resolving this matter, for example by way of an apology and a clear commitment to taking a less confrontational and more respectful approach in future. You may have other ideas and I would like to hear these.

My assistant Alice Raines will be in touch to arrange a meeting with you to discuss this. I am happy to meet face-to-face or by Zoom as you prefer. I will be joined in that meeting by one of the Council's Deputy Monitoring Officers and by a note taker. You would be very welcome to bring along a companion to the meeting should you wish to.

For the avoidance of doubt, I have not received any complaint about you from the Chief Executive himself. However, I have made him aware that a complaint that has been submitted to me by Cllr Robini about your words and actions during the meeting in question and that I will be inviting you to discuss this matter with me.

If you have any questions about the process please do not hesitate to get in touch with me.

Kind regards

Robin

Links to standards documentation

A link to the Council's arrangements regarding complaints about alleged councillor misconduct can be found by clicking on the following link:

<https://modgov.waverley.gov.uk/documents/s42120/ArrangementsfordealingwithMembercomplaintsOct2016.pdf>

The Waverley Borough Model Councillor Code of Conduct can be found by clicking on the following link:

[Model Councillor Code of Conduct 2020 \(waverley.gov.uk\)](#)

The Waverley Officer/Member protocol can be found by clicking on the following link:

[Part 5 - Officer Member Protocol.pdf \(waverley.gov.uk\)](#)

Robin Taylor

Head of Policy and Governance (Monitoring Officer)

Waverley Borough Council

www.waverley.gov.uk

Direct line: 01483 52 3108

Email 2 (this email was attached to email 1 above and is referred to in that email)

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 4.8.21

Dear Cllr Hyman

A short while has passed since the recent Western Planning meeting. However, I feel it is important to write to you and share my reflections on an email that you circulated to councillors, a local journalist, the Head of Planning and Economic Development and a member of his team on 20 July at 17:37 (copy attached) which was shared with me.

In this email I will not focus on any of your technical, planning or legal points. I am aware Zac Ellwood will be picking up some of the technical issues with you and if there is anything further you need by way of advice from the Council's legal team I know Daniel Bainbridge will be happy to ensure this is provided to you. Instead I wish to draw your attention to what I judge to be some unfortunate terminology in your email and to give you my advice as Monitoring Officer that you should avoid using language such as this when communicating with officers. As you know, as a councillor you are bound by [your code of conduct](#) to treat others, including officers, with respect (see general conduct 1.2 within the new code). The Council's [Officer-Member Protocols](#) commit councillors and officers to aspiring 'to conduct their relations, at all times, on a professional basis' and that those relations 'must be based on mutual trust, respect and courtesy'.

The references in your email to 'habitual lawbreakers' and 'culprits' do not, in my view, adhere to the expectations of good conduct and professional relations set out within these codes and I would ask you to carefully reflect on how you can convey your views and any concerns in a more objective way without resorting to this sort of disrespectful terminology.

In February 2019, a panel of councillors met to consider allegations that you had breached your code of conduct in how you had addressed council officers when expressing your views and concerns about planning and legal matters. [Here is a link](#) to the public record of the panel's judgement. I would respectfully ask you to reappraise yourself of the panel's decisions as I do think their conclusions remain very relevant.

I note in particular that the panel noted the rights you, and all councillors have, to freedom of expression. They judged that 'members can and should challenge officers'. However, they concluded that 'this must be done in a respectful way'. I would like to reiterate that advice today. You absolutely do have the right to hold and express your own views and to challenge the views of others. However, please take extra care in future to do so in a manner that avoids any element of personal criticism or disrespect.

If you would like to discuss any aspect of this advice note with me please do not hesitate to get in contact with me or a member of my team. In this situation there is no complaint from any individual for me to respond to I am simply choosing to share my thoughts and advice, as Monitoring Officer with the hope that you will reflect on my advice and take it on board.

Kind regards
Robin

Robin Taylor
Head of Policy and Governance (Monitoring Officer)
Waverley Borough Council
www.waverley.gov.uk
Direct line: 01483 52 3108

Email 3

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 28.9.21

Dear Cllr Hyman

Can I please check you received and have seen the email below from me?

Kind regards

Robin

Email 4

From: Executive Assistant to Monitoring Officer
To: Cllr Jerry Hyman
Date: 1.10.21

Dear Cllr Hyman

Further to, Robin Taylor's emails dated 23 September 2021 and 28th September 2021, please find below some suggested dates and times for you to meet with him:

- Wednesday 13th October at 11am
- Wednesday 13th October at 3pm
- Friday 15th October at 10am

Please can you let me know if you are available for any of the above dates and times?

Kind regards

Alice

Email 5

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 8.10.21

Dear Cllr Hyman

Can I please draw your attention to my emails of 23 Sept and 28 Sept and Alice Raines' email to you of 1 October. I would be grateful if you could ensure you read these emails and confirm when you would be available to meet (in person or remotely).

Alice will be able to provide alternative dates and times if those in her email are not convenient to you.

I am keen to ensure you make use of your right to be fully engaged and involved in my handling of the complaint I have received about you so that I can hear first hand from you what your perspective is.

I would respectfully ask that you respond to Alice or me next week even if only to confirm a date and time to meet (by the end of 17th October).

If I have not heard from you by then I will, reluctantly, continue to process the complaint without considering your own perspective on it.

Hopefully that will not need to be possible but if that is where we get to then it would not change of your rights under our arrangements, including to consult the Independent Person if I choose to seek their view on the matter.

Kind regards

Robin

Email 6

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 17.11.21

Dear Cllr Hyman

Thank you for phoning me at 1630 today as planned.

As I said during the call, the purpose of the call was threefold:

1. Firstly to ask whether or not you had received my emails and post.
2. Secondly, to advise you, out of courtesy, that the complaint against you would now move onto the next stage, review by the Independent Person (IP), without the benefit of your perspective being on record.
3. Thirdly, in the interests of being very flexible indeed, to provide a final chance for you to put your perspective on record and to engage in the process.

Thank you for confirming you received the various emails I have sent you and had received copies of the same by post. I was very disappointed to hear that you "hadn't bothered to read them".

I was very disappointed in the approach you took on the phone call, particularly that you chose to raise your voice, to talk (and shout) over me repeatedly, and to be consistently aggressive towards me personally during the call.

During the call, you also sought repeatedly to ridicule the Council's arrangements for dealing with allegations of misconduct by councillors, describing them as a "mickey mouse process" and a "kangaroo court".

In the call, when I challenged you on the aggressive approach you were taking, your reply was that it was Cllr Robini who, in making a complaint, was being aggressive rather than you. You also said that it was me who was being aggressive rather than you and that I was wasting your time in raising the matter with you.

You suggested it was ok for my time to be wasted as I was paid to have my time wasted whereas your time shouldn't be wasted as you are not. This statement seems to me to be factually incorrect in various ways as well as clearly running contrary to the mutual respect and courtesy expected by you within the Waverley member/officer protocol and the high standards of conduct and respect expected of you in your code of conduct.

[Sensitive personal information redacted]

I have always taken care to ensure that my communications with you have been fair, reasonable, calmly put and respectful. This is the approach I will continue to take whilst investigating this complaint, despite you not offering me the same courtesy.

During the call you made one point that seemed to relate to your perspective on the complaint. This was that you had apologised, at the time of the briefing, for having accidentally left your mic on. To be clear, what you actually did was to shout the words "I apologised at the time for leaving my mic on. What more do you want from me?". I will ensure the IP is made aware of your perspective in this respect.

Our call ended when you put the phone down whilst I was in mid-sentence.

To confirm, I will now write to the Independent Person to seek a view on this complaint before deciding whether or not a formal investigation is required. I will make a copy of this email available to the IP alongside the other documentation posted to you. You confirmed you refuse to meet with me to discuss this matter. However, I said that if you wished to put anything in writing then you may do so and I will ensure the IP sees it.

To be clear, it remains open to you, as the councillor being complained about, to engage in this process in the various ways set out within our arrangements. As I said on the phone, there is no point in you directing your aggression and ridicule towards me (or anyone of course) and it does not reflect well on you that you did so. I said on the phone that I'm sure you could do better than that and that is indeed my view.

It is my job to ensure that complaints are investigated and an important part of that process is to seek your perspective and consider this alongside the perspective of the complainant. I continue to hold the view that this process will be more meaningful if you take up the opportunity offered to you to engage in it properly and respectfully. If you do choose to do so, I will welcome that and ensure your views are heard and carefully considered.

Yours sincerely

Robin

Email 7

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 9.5.21

Dear Cllr Hyman

As you know, Mr Lingard has now completed his investigation and provided you (and Cllr Robini) with an opportunity to comment on his draft report before issuing the final version to me. Mr Lingard has now issued his final report to me. This is attached. The only change made to the final report is within paragraph 1.3 where the dates of Cllr Robini's emails to me have been added.

Having received this report, which identifies evidence of a breach of your code of conduct, and having now consulted with the Independent Person Mr William Donnelly on it, I am required to decide whether the matter is to be considered at a public hearing or whether some sort of local resolution can be reached.

As set out in my previous email to you (see below), this matter could be reasonably resolved by you choosing to apologise for your choice of words (and not just for having left yourself unmuted). This would, in my view, stand as a local resolution without the need for a hearing. The complainant Cllr Robini and the Independent Person and I all agree on this point. As you have not to date chosen to pursue this resolution, despite, as I understand it, suggesting to Cllr Robini that you would, I will now begin making arrangements for a hearing to take place.

However, it remains open to you even at this late stage to choose, on reflection, to make such an apology. If you do then please do copy this to me into this so I am aware that you have done it and can consult with the complainant Cllr Robini and the Independent Person William Donnelly about whether arrangements for the hearing should be cancelled.

My colleagues Alice Raines will get in touch with you about dates for your hearing. If you wish to submit a written statement to be considered at the hearing please submit this to me by 5pm 30 May. Please also confirm whether you plan to call any witnesses at the hearing. Please note if you do not respond or are unreasonable about your availability the hearing will still be convened. You are invited to attend but the hearing will take place whether or not you attend.

As a reminder, I reattach the arrangements that I am following. Please see section 7 in particular. You will be aware that these arrangements were recently revised by Council. However, the attached are those that were in place when the complaint was made and are the same as I have already shared with you and it is these that will continue guide my approach in regards to this case.

Kind regards

Robin

Email 8

From: Executive Assistant to Monitoring Officer
To: Cllr Jerry Hyman
Date: 18.5.22

Dear Cllr Hyman

Following on from Robin's email below, we are proposing to hold the hearing on Tuesday 28th June.

Please can you confirm if you available to attend on the above date?

Kind regards

Alice

Email 9

From: Executive Assistant to Monitoring Officer
To: Cllr Jerry Hyman
Date: 30.5.22

Dear Cllr Hyman

Please can you confirm if you available to attend the proposed hearing on Tuesday 28th June?

Kind regards

Alice

Email 10

From: Monitoring Officer
To: Cllr Jerry Hyman
Date: 10.6.22

Dear Cllr Hyman

Further to my email to you of 9 May and Alice Raines' emails to you of 18 May and 30 May, this email is to confirm that your standards hearing will take place on 28 June at 10am at the Burys in the Chamber. You were invited to submit a statement but have exercised your right not to do so. You were invited to provide information about your availability but regrettably did not respond. You are still very welcome to attend the hearing if you wish but do not have to if you do not wish to. Please let me know if you wish to attend and if you plan to call any witnesses. I will ensure you receive a hard copy of the papers in advance of the hearing.

Kind regards

Robin Taylor

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