

## **WAVERLEY BOROUGH COUNCIL**

### **STANDARDS PANEL – 29 JANUARY 2018**

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**Title:**

**REVIEW OF COMPLAINTS SUBMITTED TO THE MONITORING OFFICER**

**[Wards Affected: All]**

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**Summary and purpose:**

The Standards Panel last received a report of complaints submitted to the Monitoring Officer under the Member Code of Conduct in July 2016 and prior to that in January 2015.

This report summarises the complaints received since the last report.

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**How this report relates to the Council's Corporate Priorities:**

Good governance and high standards of conduct support the delivery of all of the Council's corporate priorities.

**Equality and Diversity Implications:**

There are no Equality and Diversity implications.

**Financial Implications:**

There are no financial implications.

**Legal Implications:**

The ethical standards regime has been governed by the Localism Act 2011 for a number of years now, and the Council's Code of Conduct under the 2011 Act is well established, and has been reviewed by the Council since first being adopted in July 2012. The Monitoring Officer continues to discharge his statutory functions in relation to ethical standards by reference to the Code of Conduct.

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**1. Introduction**

- 1.1 The Localism Act gave councils an explicit duty to promote and maintain high standards of Member conduct. It obliged the Council to adopt a Code dealing with the high standard of conduct that is expected of Members when acting in their official capacity.
- 1.2 Waverley Borough Council adopted its code of conduct in July 2012 and first revised it in July 2013. The Standards Panel, with input from the Council's designated Independent Persons and co-opted Town and Parish representatives,

reviewed the code again in October 2016 alongside the Council's 'Arrangements for dealing with Standards Allegations' and 'Councillors Planning Code of Good Practice' and put forward a number of changes which were subsequently agreed by Council. The current code is attached as Annexe 1.

1.3 Each Town or Parish Council in the borough has its own code of conduct but these use the Waverley code as a template.

## **2. Review of complaints under the new Code since the last report to the Panel in July 2016.**

### Live complaints passed to me upon appointment

2.1 Upon appointment as Monitoring Officer in July 2016, four existing complaints passed from my predecessor to me for resolution. These related to a Town Councillor, a Borough Councillor and two further Councillors in their capacity as both Borough and Parish Councillors. All related to planning matters and alleged interests and in all cases I sought the views of a designated Independent Person before reaching conclusions on the complaints.

2.2 For all complaints, I did not conclude it would have been reasonable or necessary to undertake any further or formal investigations beyond those undertaken by the Council's previous monitoring officer. However, there were lessons to be learnt in all cases and in addition to some face-to-face conversations with councillors where this was needed, I wrote to all four councillors setting my advice.

2.3 There was also learning for the Council corporately as a result of these complaints, in particular the revision of the code in 2016 to recognise that councillors may have non-pecuniary interests that they consider to have sufficient weight so as to undermine their ability to make an open-minded and objective decision and that where this is the case the member should exclude themselves from the chamber for the duration of it being discussed (paragraph 6.4 of the new code).

### Complaints submitted to me since July 2016

2.4 Nineteen complaints have been submitted to the Monitoring Officer since July 2016. Of those:

- 5 complaints related to Town and Parish Councillors; and
- 14 related to Borough Councillors.

### Complaints about Town and Parish Councillors

2.5 Of the five complaints submitted to the Monitoring Officer about Town and Parish Councillors since July 2016:

- 3 were informally investigated by the Monitoring Officer and subsequently resolved informally;
- 1 was informally investigated by the Monitoring Officer and subsequently closed because there was no evidence of any breach the Member code of conduct; and

- 1 is a live complaint currently in the initial stages of informal investigation by the Monitoring Officer.

### Complaints about Waverley Borough Councillors

2.6 Of the fourteen complaints submitted to the Monitoring Officer about Waverley Borough Councillors since July 2016:

- 9 were informally investigated by the Monitoring Officer and subsequently resolved informally;
- 1 was informally investigated by the Monitoring Officer and subsequently closed because there was no evidence of any breach the Member code of conduct;
- 3 are currently still live and are at the formal investigation stage. Following initial informal investigation by me and subsequent consultation with the Independent Person, the decision was taken to commence a formal investigation into these three complaints. An Independent Investigator was procured and has undertaken his investigation and at the time of writing is currently compiling his draft report; and
- 1 was not accepted on the basis that it had been submitted anonymously. The identity of the complainant was requested and the complainant was given the opportunity to put forward any reasons why their identity should not be disclosed but neither request was granted by the complainant and it was not judged that there was a clear public interest in investigating it anonymously.

### Consultation with the Independent Person (IP)

2.7 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. The arrangements for dealing with Standards Allegations against Councillors set out more detail about these arrangements.

2.8 In addition to consulting with the IP in respect of the four complaints passed to me by the Council's previous monitoring officer as noted in paragraph 2.1 above, I have also consulted with the IP on two further occasions since. As noted above, the views of the IP were sought by me, as they must be, before deciding to commence a formal investigation into the 3 complaints about a Waverley Borough Councillor. The views of the IP were also sought before reaching the decision to close the complaint against a Town Councillor for lack of evidence of a breach of the code.

### Common themes, features and learning points

- 2.9 No one complaint is exactly like another but common themes, features and learning points may be identified without compromising confidentiality. These are as follows:
- i. Alleged breaches of the first general obligation of the code, namely to always treat others with respect, were the most common feature of complaints made to the Monitoring Officer. Complaints by members of the public regarding

alleged disrespect towards them did feature but more common were complaints from members and officers regarding alleged disrespect by members.

- ii. As is indicated by the statistics above, it was possible to resolve the majority of complaints informally. Wherever there is scope to appropriately resolve a complaint informally so that the complainant is satisfied with the outcome and the subject member has the opportunity to reflect on any learn to be learnt from the situation, it is always preferable to do so. Where informal resolution was achieved it relied upon the willingness of those members alleged to have breached their code to constructively engage with the process at the informal stage.
- iii. A number of complaints related in one way or another to section 6 of the code – disclosure of interests and participation. In particular, a number of complaints related to interests which are non-pecuniary but which nonetheless are of a nature which undermine the members' ability to make an open-minded and objective decision and are therefore a reason for the member to withdraw from debate and decision-making. As noted, in paragraph 2.3, the revision of the code to recognise this type of interest has been very helpful. All members need to ensure they are aware of this type of interest and act accordingly.
- iv. Things written by elected members in emails or posted online have featured heavily in complaints. Electronic communications can be created, widely transmitted, read and infinitely shared with an audience the original author may not have intended in just a few moments. This, combined with the absence of tone of voice and context, makes electronic communications far more likely to lead to allegations of code breaches than any other form, especially when sent in haste.

### Other matters

- 3.1 The statistics above do not include cases where individuals have consulted the Monitoring Officer about complaining but decided not to complain as has happened on a number of occasions. They also do not include cases where advice has been given by the Monitoring Officer to elected members, members of staff, Town and Parish clerks and councillors, but where no complaint has been made.

### Guidance and information

- 4.1 Following the revisions to the code and associated guidance and at the request of the Standards Panel, all member training workshops were delivered by the Monitoring Officer and Deputy Monitoring Officers in December 2016 and January 2017. The Monitoring Officer and Deputy Monitoring Officer also visited Cranleigh Parish Council and Haslemere Parish Council to talk through code changes and answer questions from members.
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## **Recommendation**

That the Standards Panel receives the report and makes any observations on it to the Monitoring Officer.

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## **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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