

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE STANDARDS PANEL - 26 JANUARY 2015

SUBMITTED TO THE COUNCIL MEETING – 17 FEBRUARY 2015

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Michael Goodridge (Chairman)
Cllr Carole Cockburn
Cllr Jim Edwards
Cllr Jenny Else

Cllr Stephen Hill
Cllr Simon Inchbald
Cllr Peter Isherwood

Apologies

Cllr Diane James, Cllr John Ward and Cllr Kevin Deanus

Also Present

1. APPOINTMENT OF CHAIRMAN (Agenda item 1.)

Cllr Michael Goodridge was confirmed as Chairman of the Standards Panel for the Council Year 2014/15.

2. APOLOGIES FOR ABSENCE (Agenda item 2.)

Apologies for Absence were received from Councillor John Ward, Diane James and Parish Councillor, Councillor Kevin Deanus.

3. DISCLOSURE OF INTERESTS (Agenda item 3.)

There were no disclosures of interest.

PART I - RECOMMENDATIONS TO THE COUNCIL

Background Papers

Unless specified under an individual item, there are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to the reports in Part I of these minutes.

4. INDEPENDENT PERSONS PROTOCOL (Agenda item 5.)

The Council, on 3 July 2012, had appointed two Independent Persons to carry out the roles set out in its arrangements attached at Annexe 1. They were Vivienne Chapman and Tony Allenby.

Waverley had been working closely with Guildford and Spelthorne Borough Councils and Mole Valley District Council on its Code and Arrangements. The first two years of experience had shown that having a protocol for Independent Persons

would help these individuals carry out their roles and help Waverley's Monitoring Officer in investigating complaints.

A draft Protocol, drafted by Spelthorne Borough Council and endorsed by all four Monitoring Officers and the shared Independent Persons, is now attached at Annexe 2.

The Panel considered the Protocol and endorsed the approach but as it was recommended that the two Independent Persons be re-appointed for a period of 4 years, the Standards Panel would like an opportunity to meet them. Consequently, they would be invited to the Councillor Induction sessions in May 2015.

The Panel was advised that they would need to seek to appointments to the Standards Panel and Members supported the recommendation that these be sought following the elections with Town and Parish Clerks.

The Standards Panel therefore

RECOMMENDS that

- 1. the Independent Persons Protocol as a supporting document be adopted;**
- 2. the current two Independent Persons for a four year term be re-appointed;**
- 3. two nominees from Town and Parish Councils for the two places on the Panel be sought from May 2015; and**
- 4. the arrangements for dealing with complaints previously agreed by Council in July 2012 be re-endorsed.**

PART II - MATTERS OF REPORT

The background papers relating to the following items are as set out in the reports included in the original agenda papers.

5. **REVIEW OF COMPLAINTS TO THE MONITORING OFFICER** (Agenda item 6.)

The Standards Panel received a report from the Monitoring Officer, Robin Pellow, updating Members on complaints received since it had last met in June 2013 and since the Council had reviewed and made minor revisions to the operation of the New Code of Conduct at its meeting in July 2013. At that meeting Council agreed that the new Council after May 2015 should be asked whether it wished to carry out a further review of the Code.

The Standards Panel was advised that in the last eighteen months four complaints about Parish Councillors had been dealt with by the Monitoring Officer responding, and in four further cases involving Parish Councillors a more detailed initial investigation had been carried out by the Monitoring Officer, the Councillors who

were subject of the complaint interviewed and the views of the Independent Persons sought on the action proposed. Members noted that these views had proved very helpful and constructive, and given the process the element of Independent scrutiny that is important in maintaining public confidence in the new arrangements. In another four cases the Monitoring Officer had discussed issues with the Clerk of the Parish Council concerned and resolved the matter informally.

The Standards Panel was advised that the investigative procedure is set out had only been necessary to use this procedure in one case. This case related to a complaint about a Waverley Councillor in relation to a planning matter and after a thorough investigation the external solicitor concluded that there had not been a breach of the Code.

The Standards Panel was asked whether Members would benefit from receiving a bulletin about cases so that lessons could be learnt from happened. Members agreed that these would be useful, especially in the lead up to the Elections. However, they should be anonymised and circulated confidentially to Members only.

The Monitoring Officer and Deputy will arrange training sessions for all Waverley Members on the framework after the May 2015 elections. Training sessions will also be organised for all Town and Parish Councils. However, unlike with Waverley Councillors, it was difficult to enforce training for Town and Parish Councils but they would be positively encouraged to attend.

RESOLVED that the report be noted.

The meeting commenced at 5pm and concluded at 5.35pm

Chairman

ANNEXE 1



Arrangements for dealing with Standards Allegations under the Localism Act 2011

1. Context

Waverley Borough Council is committed to high standards of conduct by its councillors and co-opted members. These "Arrangements" set out how you may make a complaint that an elected or co-opted member of Waverley Borough Council ("the Council") has failed to comply with Waverley Borough Council's Code of Conduct and sets out how the Council will deal with allegations of a failure to comply with its Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of either authority, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated and whose views can be sought by the authority at any other stage, or by a member against whom an allegation as been made.

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

robin.pellow@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. If you want to keep your name and address confidential, please say and we will not disclose your name and address to the member against whom you make the complaint without your prior consent. 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 Council's criteria for assessing if an investigation is appropriate and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. 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 14 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 identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies. 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 has 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.

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 may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

- publish its findings in respect of the member's conduct;
- report its findings to Council or to the Parish Council for information;
- 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;
- recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- instruct the Monitoring Officer to, arrange training for the member;
- remove, the Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- withdraw, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 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 are 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?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post and is 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.

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 review the arrangements after not more than six months 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 or for the member 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.

ANNEXE 2

WAVERLEY BOROUGH COUNCIL INDEPENDENT PERSON PROTOCOL

Waverley Borough Council in conjunction with 3 other County authorities, namely Guildford Borough Council, Mole Valley District Council and Spelthorne Borough Council has appointed a pool of Independent Persons to be drawn from when required.

Any reference in this document to 'the Council', applies to each of the four Local Authorities. Any reference in this document to 'the Committee' applies to any Committee or Panel of the Council which may have responsibility for promoting the maintenance of high standards of conduct by councillors and any co-opted members of the Council. The four Councils follow a similar approach, but the committee structures vary between them according to each Council's Constitution and Arrangements.

This Protocol sets out the expected roles and responsibilities of an Independent Person (IP) when they are carrying out their function in assessing an allegation that a Member of the Council or Town and Parish Council has failed to comply with the appropriate Council's Code of Conduct for Members.

Principles

Appointment

1. Each Independent Person (IP) will initially be appointed until May 2015. In respect of Waverley Borough Council, only two of the three IPs have been appointed for 2012 – 2015.
2. Thereafter appointments will be made on the basis of a four year term, which reflects the ordinary term of office of a councillor, with serving IPs being eligible for re-appointment.

Role and Obligations

3. The role of the IP is a consultative position required under section 28 of the Localism Act 2011.
4. The purpose of the IP role is to assist the Council and Town and Parish Councils in promoting high standards of conduct by elected and co-opted members of the Council and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
5. The IP is expected to develop a sound understanding of the ethical framework as it operates within the Council.

6. The IP may be invited to attend or participate in training events organised or promoted by the Council.
7. The views of an IP 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), or by a Member against whom an allegation has been made.
8. The Council is expected to support the IP in his/her role by:
 - providing information on its processes and procedures
 - adhering to this Protocol
 - providing training which meets the needs of the IP
 - supporting the IP by dealing with press enquiries
 - providing advice if an IP is unsure of their role or conduct
 - paying reasonable travelling and subsistence expenses claimed by the IP for undertaking this role. (Such expenses must be claimed within three months of incurring them). The IP will receive no other remuneration.

Allocation of Independent Person

9. This Protocol covers all the IPs appointed by the authorities and any reference in this Protocol to an IP covers reference to all IPs.
10. The four authorities will endeavour to choose IPs from the pool on an even and fair basis, as far as possible. In order to assist this, each authority will inform the other authorities at the time an IP first becomes involved in a complaint.
11. The authorities will keep a log on Sharepoint and update it promptly when a new case arises.
12. Before approaching an IP, the Council will consider the number of complaint cases each IP has been allocated by all the Local Authorities using the pool.
13. An IP is not obliged to accept a request to be involved in a complaint, should they either have other commitments or have recently been involved in a complaint at one of the other authorities.
14. Where there is a link between any complaints made to the Council, the same IP will normally be approached if the MO feels it will assist the efficiency of the investigation.

Independent Person's Conduct

15. In carrying out the role, the IP will ensure that he/ she -
 - a. acts in accordance with -
 - i. any relevant legislation or guidance and the Council's Code of Conduct in force at the time; and

- ii. the agreed processes/ procedures approved by the Panel and the Council's Constitution; and
- b. acts impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice; and
- c. maintains confidentiality at all times.

The Standards Panel

- 16. The Monitoring Officer's (MO) role is to give advice to the Panel.

Involvement in hearings

- 17. The MO will brief the IP, either on the phone, face to face or by email, to provide the context of a complaint upon first contact.

- 18. The MO will consult the Independent Person for advice on action to take in accordance with the Council's hearing arrangements, which may include any of the following stages:

Upon receipt of a complaint, (either before referring the matter to any Assessment Panel with a recommendation as to whether it merits formal investigation or in consultation with the Chairman of the Committee to decide whether or not to investigate, depending on the individual authority's arrangements).

When the Monitoring Officer feels it is appropriate to resolve the complaint informally, without the need for a formal investigation.

Following a formal independent investigation, on the outcomes or recommendations of the Investigating Officer.

Where an Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, on whether any form of local resolution is possible.

- 19. When the MO is deciding how to progress with a complaint, he/she should consult with the IP and should consider the following:

- a. Was the Member/ co-optee acting in their official capacity at the time of the alleged misconduct?
- b. Was the Member/ co-optee in office at the time of the alleged misconduct?
- c. Can the complaint be considered as being of a very minor or trivial nature; or vexatious, frivolous or politically motivated?
- d. Has the complaint been made within the appropriate time scales?
- e. Is there a potential breach of the Council's Code of Conduct?
- f. Is there public interest in the matter?
- g. Is there sufficient information to enable him/her to make a decision? If not, what information is required?

- 20. The MO will make a written record of any discussions that take place with the IP and send these to the IP for agreement.

- 21. The MO will provide a summary with any documents provided to the IP.

22. The MO will inform the IP at the earliest opportunity in the process of an investigation, of the Council's expectations with regards to the timescales for their responses during each stage.

Feedback and Learning

23. At the resolution of the complaint, whether there is a formal investigation or not, the MO will advise the IP of the outcome of the complaint.
24. The MO and IP may have a discussion on the lessons learnt, from both the hearings arrangements process and following this Protocol, whether any improvements are required.
25. The MOs and IPs will meet on an annual basis to review progress with the operation of the Protocol and deal with any training requirements.

Conflicts of Interest, Access to Contact details and Confidentiality

26. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved in the matter.
27. If the IP approached has a conflict of interest, another IP will be consulted.
28. A complainant will not be given the IP's contact details. In the unlikely event that the IP is contacted directly by a complainant, he/she should not respond to them and is expected to inform the MO immediately.
29. The subject member will not automatically be given the IP's contact details. Upon first contact, the MO will ask the IP how they wish to communicate with the subject member. Where the subject Member wishes to speak to the IP then the MO will try to facilitate this in a planned way between the IP and the Member.
30. The Council will not give out details of IPs to the Press or other enquirers.
31. In terms of confidentiality, the IP should not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken from the MO.

Methods of Contact

32. The IP is requested to provide the MO with appropriate methods of contact e.g. email and telephone numbers, and is expected to make themselves available at all reasonable times.
33. The IP will advise during initial discussions with the MO their preference for communications, whether in hard copy, by email, or both.

34. The IP is asked to inform the MO with as much reasonable notice as possible if they will not be contactable for any extended period once they have first become involved in an investigation, so that one of the other IPs can be advised that he/she would be required to stand-in as necessary during this period.