

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 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:

Name: Robin Taylor

Position: Monitoring Officer

Telephone: 0148 3523108

Email: robin.taylor@waverley.gov.uk