

WAVERLEY BOROUGH COUNCIL

STANDARDS PANEL

21 JULY 2022

Title:

Monitoring Officer's Report – complaints regarding the conduct of a Town Councillor

Head of Service: Robin Taylor, Monitoring Officer

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 This report relates to two complaints received against Haslemere Town Councillor Nikki Barton.
- 1.2 It sets out the process followed, the relevant codes and protocols, the External Investigator's report and statements received.
- 1.3 The relevant Haslemere Town Council code of conduct (Annexe 1) and the Borough Council's published arrangements for dealing with standards allegations against councillors (Annexe 2) are those that were in effect at the time the complaints were received (not the revised versions that have more recently been adopted).
- 1.4 The matter was referred to investigation following consultation with the Independent Person.
- 1.5 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 Barton has failed to comply with the town council code of conduct.
- 1.6 Cllr Barton, the Subject Member, will be invited to comment on complaints, the External Investigator's report, and the statement of the Independent Person, and any other relevant documentation and correspondence and to give her view as the subject member in this case.
- 1.7 She will be asked to answer any questions put to her by or through the Chairman.

2. Recommendation

It is recommended that the Standards Panel consider and determines whether or not Cllr Barton has failed to comply with the Haslemere Town Council Code of Conduct for Members and refer their conclusions to Haslemere Town Council

The Panel must provide reasons for any conclusions it reaches.

3. Reason for the recommendation

3.1 To allow the panel to determine whether or not Cllr Barton has breached her code of conduct.

4. Background

4.1 Table 1 - Timeline of events including commentary on delays experienced

	What	When	Monitoring Officer Comment, including in respect of delays
1	Written complaint from Mr Benson sent to Haslemere Town Councillor John Robini and copied to Haslemere Town Clerk Lisa O'Sullivan. With Mr Benson's consent, Lisa O'Sullivan forwarded the complaint letter to Monitoring Officer.	28 th February 2020	
2	Written complaint from Neil Baker, of Clarke Willmott solicitors, on behalf of Mr Cox (the complainant), sent to the Monitoring Officer.	12 th March 2020	
3	Correspondence between Monitoring Officer and complainants, including: <ul style="list-style-type: none">- Providing information to complainants about the complaints procedure that would be followed.- Requesting and receiving additional information from complainants, including which elements of the HTC code were alleged to have been breached and why.- Seeking consent from complainants to disclose	March and April 2020	<p>The operations of all Council operations between Mid-March 2020 and Mid-May 2020 were substantially impacted by the Covid Pandemic.</p> <p>From 19 March 2020 the Council's covid response group oversaw the redirection of Council resources, including the work of staff, to support the immediate health, wellbeing and safety of local residents, particularly the vulnerable.</p>

	identity or reasons to justify not doing so		For a short period of time, the handling of conduct complaints was deprioritised whilst both I and Deputy Monitoring Officers prioritised essential covid response duties instead.
4	Desktop case review by Monitoring Officer of all allegations submitted.	April and first two weeks of May 2020	<p>I acknowledged this delay at the time and the reason for it. I apologised, at the time, in writing both to the complainants and the subject members for the delays during March, April and May 2020 this caused as a result.</p> <p>Although the delay was regrettable it was, in my view, the correct decision to deprioritise the processing of conduct complaints such as this one in favour of delivering and supporting front-line covid response efforts.</p> <p>I ruled out, at a very early stage in my informal investigation, any question of Cllr Barton having had a disclosable pecuniary interest that she failed to declare. I found no evidence that Cllr Barton had a Disclosable Pecuniary Interest ('DPI') in the matter.</p>
5	Informal investigation meetings by telephone conference calls with complainants to discuss the detail of their complaints.	21 May 2020	
6	Email from Monitoring Officer to Cllr Barton confirming complaints had been submitted about her and setting out the detail of the allegations made and inviting them to meet and discuss the complaints.	26 May 2020	

7	Informal investigation meeting with Cllr Barton	18 June 2020	
8	Informal investigation and review of all evidence and meeting notes by Monitoring Officer, including review of all additional documentation subsequently supplied by both Cllr Barton and complainants.	July 2020 and early August 2020	
9	<p>Conclusion of informal investigation by Monitoring Officer.</p> <p>Monitoring Officer wrote to Cllr Barton and complainants and confirmed that on the basis of his informal investigation he had concluded that Cllr Barton may have had a non-pecuniary interest that she failed to declare and therefore may have breached her code.</p> <p>The Monitoring officer confirmed he had identified no realistic prospect for an acceptable and appropriate informal resolution (having discussed this question with both complainants and Cllr Barton) and would therefore now consult with the Independent Person on the question of whether this matter should now be formally investigated. Cllr Barton was reminded she had the right to consult the Independent person herself.</p>	12 August 2020	
10	Monitoring Officer wrote to Independent Person confirming the outcome from his informal investigation and sharing all relevant documentation and asking her for a view on whether the matter should be formally investigated.	12 August 2020	
11	Meeting between Monitoring Officer and Independent Person by Zoom to discuss the case.	28 August 2020	By this time, Cllr Barton had made me aware that she wished to exercise her right to consult with the Independent Person.

			<p>I asked the Independent Person not to reach a view until she had had spoken with Cllr Barton.</p> <p>The diary commitments and personal circumstances of the Independent Person and Cllr Barton, prevented the consultation meeting happening until mid October.</p>
12	Meeting between Monitoring Officer and Independent Person.	26 October 2020	
13	Independent Person confirmed her view about the case to Monitoring Officer.	27 October 2020	
14	Monitoring Officer writes to all parties confirming that having heard and reflected on the Independent Person's view that he has concluded the matter should be externally investigated. He advised all parties that complaints would only be investigated at the formal stage on an open basis eg the anonymity granted at the informal stage would not apply to the formal stage. He advised that complainants had been asked to either confirm their consent for their identity to be disclosed or to withdraw their complaint.	30 October 2020	<p>There were originally three complainants. I corresponded with all three on the question of whether they would choose to disclose their identity or withdraw their complaint.</p> <p>Unfortunately, it took much longer than I would have hoped or expected for all of the complainants to reach their decision on this matter. In particular, the complainant who ultimately withdrew their complaint corresponded with me at length on this matter.</p> <p>It was regrettably not until the first week of December that that this matter was resolved, the outcome being that one of the three complainants decided to withdraw from the process whilst the other two (Mr Cox and Mr Benson) confirmed their consent for their identities to be disclosed.</p>
15	Monitoring Officer writes to all parties confirming that Mr Melvin Kenyon of Hoey Ainsocough Associates had been	24 December 2020	

	commissioned by him to formally investigate the complaint against Cllr Barton		
16	Discussions between External Investigator Mr Kenyon and Monitoring Officer	January 2021	
17	Formal interviews undertaken by External Investigator Mr Kenyon	4 February 2021 – 11 June 2021	<p>In February 2021, Cllr Barton submitted a complaint to the Chief Executive about how the standards investigation into her had been handled. At the Chief Executive's request, this separate complaint was investigated by separate external investigator. This investigation concluded on 21 June 2021.</p> <p>The External Investigator Mr Kenyon has noted in section 7.1 of his report that this 'parallel investigation' contributed to delays in him completing his own investigation.</p>
18	First draft of report issued by External Investigator Mr Kenyon in confidence to complainants and Cllr Barton. They are given 3 weeks to respond with comments.	20 September 2021	
19	Second draft of report issued by External Investigator Mr Kenyon in confidence to complainants and Cllr Barton. They are given 3 weeks to respond with comments.	12 November 2021	
20	Deadline given for final comments from complainants and Cllr Barton	22 November 2021	
21	Final report from External Investigator Mr Kenyon submitted to Monitoring Officer	29 November 2021	
22	Monitoring Officer meets with Independent Person Vivienne Cameron to discuss the External Investigator's report and, in particular, to hear her view on	13 December 2021	

	whether the matter should proceed to a standards hearing.		
23	Monitoring Officer writes to all parties confirming that he agrees with the view of the Independent Person that this matter should proceed to a standards hearing, that this will need to take place in the new year and that statements should be submitted by 24 January 2022.	22 December 2022	
24	All parties asked about their availability for hearings dates in February 2022.	January 2022	
25	Due to the unavoidable circumstances of some parties, and at their request, Monitoring Officer agrees to extend statement deadline until 14 th March and consults on hearing dates in March and April.	28 January 2022	A number of parties confirmed they cannot make dates in March and April and others do not respond.
26	Due to the unavoidable circumstances of some parties, and at their request, Monitoring Officer agrees to extend deadline for statements extended again until 6 June. Monitoring Officer confirms July date for hearing.	26 May 2022	All parties were asked to confirm their availability for a July hearing date and were reminded on a number of occasions of the need to respond so that a date could be set which was convenient to them. Where a response was received, this was taken into account in the date set. Unfortunately, despite a number of reminders issued, responses were not received from all parties and, where this was the case, this means the dates set in July did not take account of their availability or lack of availability.

4.2 Outcome of Monitoring Officer's pre-hearing process: what is likely to be agreed and what is likely to be in contention

At section 7.1 the Council's arrangements for handling standards allegations (Annexe 2) state that:

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

This section of the report sets out my comments in this respect. The chair retains the right to issue their directions as to how the hearing will be conducted but in this report I provide my advice, as Monitoring, in that respect.

Cllr Barton's statement is attached at Annexe 4.

Having reviewed this as part of the pre-hearing process, my view about what appears likely to be in contention and what is not is as follows.

Table 2: what appears to be in contention and what appears not to be

Matters which appear likely <u>not</u> to be in contention
<p>1. The Haslemere Town Council code of conduct</p> <p>The question of whether or not Haslemere Town Council should adopt of the Local Government Association (LGA) model code of conduct appears not to be in contention.</p> <p>The External Investigator Mr Kenyon has set out, in detail, within his report the reasons why he believes there was a 'deficiency' within the Haslemere Town Council Code of Conduct which was in place at the time. It is for this reason that he has concluded that it would be 'unfair to derive a breach [relating to the proximity of her home] based on the Nolan Principles alone where the Council itself has failed adequately to translate those principles fully into its Code with sufficient clarity.'</p> <p>Cllr Barton appears to agree with this finding and this matter is therefore not in contention.</p> <p>Although Mr Kenyon's report contains a recommendation that the Town Council adopt the LGA model code, I ask panel members to note that Haslemere Town have since done exactly this (the model code was adopted on 20 January 2022).</p> <p>I therefore recommend that the panel accepts the Investigator's finding in this respect, accepts that this matter is not in contention and that the recommendation has already been actioned and focuses its attention only</p>

matters on those questions which appear to be in contention.

2. Proximity of Cllr Barton's home.

There appears to be agreement that there is no evidence of a breach in relation to proximity of Cllr Barton's home to the site in question.

The External Investigator Mr Kenyon has comprehensively investigated and considered whether or not there was any breach of the Haslemere Town Council code of conduct in relation to the proximity of Cllr Barton's home to the site in question. He has set out, in detail, within his report the reasons why he has ultimately concluded that there was not. As Cllr Barton also takes the view that no breach of the town code occurred in relation the proximity of her home, this question of home proximity appears not to be in contention.

Mr Kenyon has recommended that I, as Monitoring Officer, should take no further action in respect of this aspect and it is important to note that if the proximity of Cllr Barton's home was the only basis upon which a non-pecuniary interest may have been thought to exist then, on the basis of Mr Kenyon's report, I would therefore not have brought this matter before the hearing panel.

I therefore recommend that the panel accepts the Investigator's finding in this respect, accepts that this matter is not in contention and focuses its attention only matters on those questions which appear to be in contention.

Matters which appear likely to be in contention

3. Membership of the Haslemere South Residents Association (HSRA)

There appears to be disagreement as to whether there is evidence of a breach in relation to Cllr Barton's membership of the Haslemere South Residents Association (HSRA).

Whilst there appears to be no real disagreement that Cllr Barton was a member of this organisation, there does appear to be disagreement about whether or not the action (or inaction) of Cllr Barton in registering/declaring/withdrawing as a result of that membership, and the interest it represented, is evidence of a breach of the code on her part.

The External Investigator Mr Kenyon has comprehensively investigated and considered whether or not there was any breach of the Haslemere Town Council code of conduct in relation to Cllr Barton's membership of this organisation.

The External Investigator Mr Kenyon has set out, in detail, within his report the reasons why he has ultimately concluded that there was.

On the basis of her statement, it appears that Cllr Barton disagrees with Mr Kenyon's findings in this respect.

This point therefore appears to be in contention.

As the Council's Monitoring Officer, I therefore recommend that the panel focus their attention on whether or not they accept or refute Mr Kenyon's findings, as set out within paragraph 1 of his report, that:

- (i) By failing to register her membership of HSRA she [Cllr Barton] breached paragraph 5 (5) of the Haslemere Town Council Code which requires registration of non-pecuniary interests as defined in that paragraph since HSRA is a body one of whose principal purposes is to influence public opinion or policy;
- (ii) By failing to disclose her membership at the 28th November meeting she [Cllr Barton] breached paragraph 5 (5) which requires disclosure of non-pecuniary interests as defined in that paragraph; and
- (iii) By failing to declare that interest and failing to exclude herself from consideration of item 109/19 by withdrawing from the chamber, she [Cllr Barton] breached paragraphs 5 (1), 6 (4) and 6 (5) of the Haslemere Town Council Code of Conduct.

Summary

I advise the panel to focus on Cllr Barton's membership of the HSRA as listed above rather than any other matter. This is because it falls within scope of the investigation I asked Mr Kenyon to undertake and because it appears likely to be in contention.

I advise the panel not to focus on: any matters that seem likely not to be in contention (as listed above); and any matters which do not fall within the scope of Mr Kenyon's investigation (including any matters that were ruled out by me at the informal stage or any matters that have been ruled out by Mr Kenyon in his report).

The above advice is not intended to stifle the panel's freedom to pursue any lines of questioning but is offered, instead, as professional advice, on how the panel might most usefully concentrate its discussions on the basis of what appears to be contentious and non-contentious having received both the investigation report and Cllr Barton's statement on that report.

4.4 Conduct of the Hearing

After the preliminary matters have been dealt with (election of chairman, declaration of interests, publication of non-exempt 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 3) and call any witnesses

ii. **Questions from or through the Chair put to the Investigating Officer** and any witnesses.

iii. **Statement by the subject member Councillor Barton**, who will be given the opportunity to present her case at the hearing and call any witnesses.

iv. **Questions from or through the Chair put to Councillor Barton** and any witnesses.

v. **Views/Submissions of the Independent Person**, who will refer to their statement 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 Barton has failed to comply with the Code of Conduct that was in effect at the time. 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 Barton failed to comply with Haslemere Town Council's Code of Conduct.

As noted within the arrangements, the conclusion of the panel will be referred to Haslemere Town Council for such action it considers appropriate.

Note: The panel's mandate and authority is to reach a judgement as to of whether any misconduct has occurred by the subject member. Any complaints relating to alleged procedural deficiencies insofar as they relate to the protocols and processes followed by Waverley Borough Council / the Monitoring Officer would be need to be considered under Council's corporate complaints process or by the Local Government and Social Care Ombudsman rather than under this process. As noted in section 7.1 of Mr Kenyon's report and in table 1 above, a corporate complaint was submitted by the subject member in February 2021 and that process concluded in June 2021. The final investigation report is attached for information at Appendix 6.

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

As set out within Section 8 of the arrangements (Annexe 2) the panel will report its conclusions to Haslemere Town Council for such action as it considers appropriate.

5. Relationship to the Corporate Strategy and Service Plan

5.1 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’

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

Total external investigation costs 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.

6.3 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.

7. Consultation and engagement

- 7.1 The subject member Cllr Barton exercised her right to consult with the Independent Person, Vivienne Cameron, before the Independent Person reached a view about whether this matter should be formally investigated.
- 7.2 The Monitoring Officer consulted with the Independent Person, Vivienne Cameron, before deciding whether or not this matter should be formally investigated and again before accepting the report from the Investigating Officer Mr Kenyon.
- 7.3 The Investigating Officer Mr Kenyon consulted with the complainants Mr Benson and Mr Cox and with Cllr Barton on the first and second drafts of his report before finalising it.

8. Other options considered

8.1 Today's hearing is taking place because the complaint was not resolved at the informal stage and, upon receipt of the Investigator's report which confirmed there was evidence of a breach of the code, the judgement of the Monitoring Officer, after consultation with the Independent Person, was that there was no realistic prospect of an appropriate local resolution. Many cases like this one are resolved without the need for a public hearing. Although every case is different, such resolution often takes the form of any, some or all of the following: the subject member acknowledging their error; the subject member committing to doing things differently in the future; the subject member apologising; the subject member committing to undertaking learning and development; the subject member engaging with the standards process in an open and positive manner and proactively seeking to resolve the situation without resorting to the need for a public hearing.

9. Governance journey

- 9.1 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 and the Independent Person and to decide whether or not Cllr Barton breached her code of conduct. The panel are required to report their conclusions to Haslemere Town Council.
- 9.2 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.
- 9.3 As per paragraph 13 of the arrangements, if Cllr Barton wishes to appeal against the decision of the Hearings Panel, she 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. The Monitoring Officer will decide whether this will either involve a full rehearing of the case or be dealt with by way of written representation from the member.
- 9.4 The decision notice from today's hearing meeting that is shared with the Town

Council will note that Cllr Barton has 14 days within which to appeal the decision. If they exercise their right to do appeal, the Town Council will be advised of this and will be advised of the outcome of the consideration of that appeal.

9.5 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 – Haslemere Town Council Code of Conduct (as was in place at the time)
- Annexe 2 – Arrangements for dealing with standards allegations against councillors and co-opted members under the Localism Act 2011 (as was in place at the time)
- Annexe 3 – External investigator's report
- Annexe 4 – Statement from the subject member Cllr Barton
- Annexe 5 – Statement provided by the Independent Person
- Annexe 6 – Corporate complaint investigation report

Background Papers

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

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