

WAVERLEY BOROUGH COUNCIL

STANDARDS & GENERAL PURPOSES COMMITTEE

30 NOVEMBER 2022

Title:

Monitoring Officer's Report regarding Misconduct Allegations

Head of Service: Stephen Rix, Executive Head of Legal & Democratic Services
(Interim) and Monitoring Officer

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 This report is to inform the Committee about complaints received and action taken on allegations of misconduct against Waverley borough and parish councillors since July 2021.

2. Recommendation

It is recommended that the Committee notes the cases referred to in Annexe 1, and advises the Monitoring Officer of any areas of concern about which the Committee would like further information and/or further work carried out.

3. Reason for the recommendation

To ensure the Committee is aware of the overall level and type of complaints submitted to the Monitoring Officer relating to allegations of councillor misconduct, and action taken; to consider learning points for the future; and, to seek to promote and maintain high standards of conduct amongst borough and parish councillors.

4. Background

Summary of recent complaints against Waverley Borough and Parish councillors

- 4.1 Complaints under the Member Code of Conduct are submitted to the Monitoring Officer (Executive Head of Legal & Democratic Services). Following consideration of the complaint the Monitoring Officer will decide the appropriate course of action in accordance with the Arrangements for dealing with Code of Conduct complaints. The Arrangements for dealing with Code of Conduct complaints were reviewed in 2021, with revised Arrangements agreed by Full Council on 22 February 2022.
- 4.2 Attached at Annexe 1 is a summary of the complaints against Waverley Borough and Town/Parish councillors considered by the Monitoring Officer between 1 July 2021 and 30 September 2022. The table also shows the outcome of the complaints that had not reached a resolution at the date of the previous report.

- 4.3 The identity of councillors the subject of a complaint has been anonymised, except where the complaint has resulted in an open hearing before a Hearings Sub-Committee.
- 4.4 Complaints largely focus on allegations that the subject member(s) failed to treat others with respect, either through comments made during meetings or by comments made in social media. There are also a number of complaints related to the conduct of councillors in relation to planning matters and the declaration of interests, and perceived conflicts of interests.
- 4.5 **Number of allegations.** There have been nine new complaints lodged during the reporting period, with some cases involving more than one complainant, and/or more than one subject member. Three complaints were regarding town/parish councillors, and six were regarding borough councillors.

Outcomes. Most cases have been concluded following an informal investigation by the Monitoring Officer. Where a mutually satisfactory informal resolution has been achieved it has relied upon the willingness of both parties to engage constructively with the process at the informal stage.

- Four cases were still in progress at the date of the last report to the Committee. Of these, two progressed to hearings before a Standards Panel which were held in July 2022. These were very complex cases that took a considerable time to investigate, and further complaints were lodged against the councillors during the investigation. The Hearings found there had been breaches of the Haslemere Town Council Code of Conduct by the two councillors concerned. The councillors appealed the decisions which were considered by a new Panel and dismissed. The decisions were referred to Haslemere Town Council for consideration of what action to be taken, if any.
 - One case received within the current reporting period progressed to a Standards Panel Hearing following consultation with the Independent Person and an external investigation. The Hearing was held on 28 June 2022 and found that the councillor had breached his Code of Conduct. The councillor made a verbal apology during the hearing proceedings, and the Panel agreed that no further action should be taken.
 - Two complaints, relating to councillor behaviour during a Planning Committee meeting resulted in a finding by the Monitoring Officer that the councillors had breached their Code of Conduct. Both councillors apologised during the course of the Monitoring Officer's informal investigation and no further action was taken.
- 4.6 Whilst in most cases there has been insufficient evidence to conclude objectively that there has been a breach of the code of conduct, this does not take away from the fact that a complainant may be very angry or upset because of the words or actions of a councillor. In most cases the Monitoring Officer will offer words of advice to the subject members to emphasise the need for them to think carefully about how their actions and words are received by others.

- 4.7 The statistics above do not include instances where individuals have contacted the Monitoring Officer with a general complaint but have not followed-up with a specific complaint against named councillors, as has happened on several occasions. They also do not include requests for advice from the Monitoring Officer which may come from Waverley councillors, members of staff, Town and Parish clerks and councillors, and members of the public, but where no formal complaint has been made.

Recent developments

- 4.8 In February 2021, the Council adopted the new LGA Model Code of Conduct. The LGA has committed to keeping the model code of conduct under regular review.
- 4.8 Refresher training on the Code of Conduct was provided to Waverley councillors on 29 March 2022, and to Town and Parish Councillors who have adopted the LGA Model Code of Conduct on 10 May 2022, by Bethan Evans. Officers are currently drawing up the Induction Programme for new councillors elected in May 2023, and this will include mandatory training for all Waverley councillors on the Code of Conduct and Register of Interest. Equivalent training will be provided for town and parish councillors.
- 4.9 **Appointment of Independent Persons.** In 2019 Waverley appointed seven Independent Persons (IPs) as part of a joint recruitment in partnership with Guildford, Epsom & Ewell, Mole Valley, Reigate & Banstead, Spelthorne, and Surrey Heath. Three of the IPs have since resigned, and the term of the remaining IPs ends in May 2023. We have begun the process of recruiting IPs for a four-year term from May 2023 and will bring forward recommendations to the Committee in February 2023.

Next steps

- 4.10 The Committee is asked to note the matters contained in this report and advise the Monitoring Officer of any areas of concern, or further information or action required.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 This report supports the corporate priority of open, democratic and participative governance.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no direct resource implications arising from this report.

6.2 Risk management

The arrangements for investigating complaints against councillors and co-opted members under the Council's code of conduct, is a key mechanism for mitigating against the risk of reputational damage, a lack of good governance and loss of public confidence.

6.3 Legal

The Localism Act gives councils an explicit duty to promote and maintain high standards of Member conduct. It requires the Council to adopt a Code of Conduct setting out the standard of conduct that is expected of Members when acting in their official capacity. Each Town or Parish Council in the borough has its own code of conduct but these use the Waverley code as a template so are either identical or similar. The Monitoring Officer continues to discharge his statutory functions in relation to ethical standards by reference to the Code of Conduct and the legislative framework.

6.4 Equality, diversity and inclusion

There is a general obligation in the Code of Conduct in which Members undertake to “not do anything which may cause the Council to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2010”.

6.5 Climate emergency declaration

Most of the correspondence related to standards matters is sent, received and stored digitally so, aside from occasional face to face visits requiring local travel, there are limited climate implications.

7. Consultation and engagement

7.1 N/A

8. Other options considered

8.1 N/A

9. Governance journey

9.1 This report is for the Standards & General Purposes Committee to note.

Annexes:

Annexe 1 – Code of Conduct Complaints received 1 July 2021 – 30 September 2022

Background Papers

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

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Annexe 1 - Code of Conduct Complaints received 1 July 2021 – 30 September 2022

Case	Date complaint received	Complainant(s)	Subject Member(s)	Relevant parts of the Code of Conduct	Comments	Decision	Date of decision/outcome
The following cases were ongoing at the date of the last report to the committee and have now been concluded:							
3.	4/03/20, 2/03/20, 24/03/20, 06/04/20, 18/12/20	Members of the public (Nb. During the course of the investigation of these complaints, further complaints were received regarding the same issues and these were rolled into the ongoing investigation)	1. Cllr Nikki Barton 2. Cllr Kirsten Ellis	Non-declaration of interests impacting on objectivity of decision-making.	Informal investigation by MO followed by referral to IP (12/08/20). Referred to external investigator for formal investigation (17/12/20). Final report received from external investigator 3/12/21.	Standards Hearings on 21/07/22 (Cllr Barton) and 22/07/22 (Cllr Ellis). Findings that councillors had breached the Haslemere Town Council Code of Conduct appealed. Appeals considered 5/09/22 (Cllr Barton) and 6/09/22 (Cllr Ellis). Both appeals were dismissed. Decisions referred to Haslemere Town Council for action.	05/09/2022 06/09/2022
10.	12/10/20, 19/10/20	Members of the public	Town	Non-declaration of interests.	Informal investigation by MO. MO has written to the Councillor regarding his Register of Interests.	Councillor has updated his Register of Interest	19/11/2021

Case	Date complaint received	Complainant(s)	Subject Member(s)	Relevant parts of the Code of Conduct	Comments	Decision	Date of decision/ outcome
12.	15/03/21	Member of the public	Borough	Lack of integrity regarding comments made on social media.	Informal investigation by MO.	No breach of Code of Conduct identified	12/10/2021
New complaints received 1 July 2021 – 30 September 2022							
1.	27/08/21	WBC Councillor	Cllr J Hyman	Lack of respect shown to officers and councillor colleagues during a councillor briefing.	Following consultation with the IP (3/12/21), referred to external investigator. External investigator's report received 8/4/22.	Standards Panel Hearing held 28/06/22. Hearing concluded Cllr Hyman had breached the Waverley CoC. Cllr Hyman made a verbal apology during the hearing – no further action recommended.	28/06/22
2.	18/10/21	Member of the public	Parish	Failure of accountability, leadership, general obligation to treat others with respect, bullying behaviour.	Informal investigation by MO.	No breach of Code of Conduct identified. Words of advice given by MO to the subject members.	8/04/22
3.	18/10/21	Member of the public	Borough	Failure to show respect to resident in interaction.	Informal investigation by MO.	No breach of Code of Conduct identified. Words of advice given by MO to the subject members.	16/03/22

Case	Date complaint received	Complainant(s)	Subject Member(s)	Relevant parts of the Code of Conduct	Comments	Decision	Date of decision/ outcome
4.	17/11/21	Member of the public	Borough	Lack of objectivity and truthfulness in planning committee proceedings	Informal investigation by MO.	No breach of Code of Conduct identified.	31/03/22
5.	10/12/21	Member of the public	Town	Lack of honesty, making misleading statements in a meeting.	MO preliminary enquiries indicated no evidence from the minutes of the meeting to take further action.		10/06/22
6.	29/01/22	Member of the public	Parish	Failure to disclose interest in relation to a planning matter	Informal investigation by MO.	No breach of the parish code of conduct identified.	28/04/22
7.	14/06/22	Member of staff	Borough	Breach of Officer/Member protocol	Pathway to informal resolution identified.		Ongoing
8.	23/06/22	Member of staff	Borough	Breach of Officer/Member protocol	Informal investigation by MO	Breach of code of conduct by two councillors; no breach of the code by a third councillor. All have apologised and acknowledged the distress they that was caused to the officer.	01/08/22
9.	02/08/22	Member of the public	Borough	Failure to disclose interest in relation to a planning matter	Awaiting further information from the complainant		Ongoing

