

STANDARDS COMMITTEE

18 February 2021 at 6.00 pm

Present: Councillors Edwards (Chairman), Bennett (Vice-Chairman), Bower, Coster, English, Kelly and Mrs Warr [Substituting for Councillor Blanchard-Cooper].

Councillor Dixon was also present at the meeting.

Also presented were Independent Persons Mr J Thompson, MBE, Mr B Green, Mrs S Prail and Mr J Cooke.

[Note: The following Councillors were absent from the meeting during the consideration of the following matters set out in Minutes indicated: Councillor Mrs Warr – Minute 483 [Part] to Minute 492; and Councillor English – Minute 492.

479. WELCOME

The Chairman welcomed Members and Officers to this virtual meeting of the Standards Committee.

Having explained, the virtual meeting procedure rules in place, the following introductions were made by the Committee Services Manager:

Mr S Agutu – Interim Monitoring Officer
Mr P Hoey – Hoey Ainscough Associates Ltd

480. APOLOGIES FOR ABSENCE

Apologies for Absence had been received from Councillors Blanchard-Cooper and Tilbrook.

481. DECLARATIONS OF INTEREST

No Declarations of Interest were made.

482. MINUTES

The Minutes of the meeting held on 3 December 2020 were approved by the Committee as a correct record and would be signed by the Chairman as soon as possible following the Council's resumption of normal working.

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483. LOCAL ASSESSMENT (CASE AND HEARINGS) PROCEDURE REVIEW

The Interim Monitoring Officer introduced this report following a review of the Local Assessment Procedure which had been undertaken as part of the review of the Code of Conduct.

The Interim Monitoring Officer explained that the review of the procedure undertaken formed two parts, the hearing process and the case handling process. Also, to be noted in reviewing this matter was that the Appendices to the report contained tracked changes to highlight points raised by the Council's Officer team in reviewing the procedure and those raised by Hoey Ainscough Associates (HAA) who had conducted this review. The purpose was for the Committee to consider the changes and to confirm if these could be accepted.

In view of HAA's role in this review, Mr Hoey was then invited to explain the detail of the draft document produced and to respond to any questions or queries from Members. He explained that both appendices had been drafted to be used as internal documents and so once approved there would be the need to draft a simplified procedure for public viewing.

The Committee worked through the Appendices to the report section by section with many issues being raised which have been set out below:

Appendix 1 – Case Handling Procedure

- On the Initial Assessment – Paragraph 2 - the wording “This will be completed within 28 working days” had been struck out. Since it had been proposed to reduce this to ten days further on in the documents, the question asked was if this was workable and would this place undue stress onto Officers in terms of meeting this deadline? Mr Hoey provided clarification in that the 10 days referred to and the 28 days referred to were two completely different elements of the process. The 28 days was saying that when a complaint was submitted, the Monitoring Officer (MO) had 28 days to complete the process, to decide if any action should or should not be taken. The 10 days referred to later formed part of the process where the Subject Member (SM) would be invited to comment on the complaint before them – it was at that time that the SM had 10 days, within the 28 day timeframe to provide their views.
- Concerns were expressed on this and reassurance was requested that the timeframe for complaints would not be extended to 38 days as this would make it too stressful for those involved. Mr Hoey confirmed that the 28 days was an absolute and that the 10 days were a sub-set within those 28 days. He then reminded Members of the process and the timeline in place for processing and dealing with complaints. There were Councillors who were not happy with the wording in this section stating that it was not clear. It was agreed that this would be looked at again and that the

wording “This will be completed within 28 working days” should be reinstated in this paragraph.

- Paragraph 3 stated that anonymous complaints would not be accepted unless the MO concluded that there was a compelling public interest. The rationale behind this was questioned as some Councils did allow these and some didn't. Mr Hoey outlined that some Councils had dealt with anonymous complaints as they had sufficient evidence and seriousness that they should and could be investigated as the evidence was sufficient. In most cases, it was not possible to pursue these types of complaints without knowing who the complainant was.
- A suggestion was made that a simple flowchart be inserted to illustrate the process more simply. Mr Hoey responded stating that once the procedure was in its final form; this would be a great approach to use with the public facing document.
- Paragraph 7 – An Independent Person (IP) thought that it might be helpful to set out how and with whom the IP's confidence in this part of the process was shared in terms of transparency so that it was clear whether the IP's part in the process was being shared with just the MO or with a wider audience and/or the complainant. Mr Hoey outlined that there were some Information Commissioner cases around this in terms of at what stage could the IP's views be disclosed. He presented his views confirming at this stage in the process (Initial Assessment) it be kept simple with the complainant being told that an IP had been consulted and had agreed with their views but not disclosing these as they were confidential but later in the process, when an IP was giving views at a hearing, then those views would be public views and needed to be published as part of the decision notice. Mr Hoey confirmed that he would be happy to reflect this in the process, but caution needed to be raised in terms of it being too open and transparent at this stage in the process.
- Concerns were expressed on the fact that the Council had no authority to deal with complaints which related solely to a Councillor's private life or things they did which were not related to their role as a Councillor. Clarification was sought. Mr Hoey confirmed that the law [the Localism Act 2011] was very clear in that the Code of Conduct could only apply when acting as a Councillor – the law did not allow for investigation into Code of Conduct complaints when these were about a Councillor's private life or what they may have placed onto social media as an individual rather than a Councillor. This explanation generated many questions and queries in terms of examples and instances where it had been seen that this was not the case.
- Lengthy discussion then took place on this matter and it was felt that the final sentence to Paragraph 5 [The Council has no authority to deal with complaints which relate solely to a Councillor's private life Should be deleted. This was because in the examples discussed, there was no opportunity for such cases to be then investigated further by the MO which was felt to be dangerous and would prevent people from reporting instances and having them heard and then having the judgement made to

determine if a breach of the Code had taken place or that the matter was personal and could not be investigated further.

- On Paragraph 7 – when an IP was invited to take part in an investigation, then that the same IP would be used for all steps in the case handling and hearing parts of the investigation. Mr Hoey agreed that it should be the same IP throughout the process and that this should be made clear in the procedure – he would review and check that this was the case.
- On Paragraph 10(k) and the additional discretionary factor incorporated around misconduct at formal Council meetings, did this really add anything in terms of picking up additional points and if retained, should it not be made clear that this should apply just as much to Committee meetings not just Council meetings and that it also should apply to Town and Parish Councils, being fairly applied across all tiers of local government. Discussion on this was expanded because this mentioned that the view of the Chairman would be required. What would happen if it was the Chairman of the meeting that was being attacked? Mr Hoey confirmed that this paragraph had been added at the request of Officers. The Interim MO outlined that he had been trying to strengthen the role of the Chairman of a meeting [Council or Committee] to make them aware of the sanctions that role had and that they could refer some misconduct to the Standards Committee for investigation. It was hoped that this might encourage better behaviour and would strengthen the authority of the Chairman of a Committee or Council meeting. The Interim MO stated that this had been left open for discussion by the Committee.
- This generated wide discussion with many Members of the Committee not being sure if this should or needed to be included. It was pointed out that there were many differences between being Chairman of the Council and Chairman of a Committee and that these differences needed to be recognised and enforced.
- Other Members of the Committee were against this being included because in the case of any breach taking place, the process to be followed was clearly set out.
- Following further discussion, it was agreed that the Interim MO would take another look at this paragraph for the Committee to consider.

Informal Resolution

No comments were raised.

Investigation

- Paragraph 21 - On the role of IP it was felt by an IP that it should set out exactly what the Subject Member (SM) could seek more from the IP, the role of the IP should be very clearly defined setting out what views the SM could or should be able to consult the IP on and if these should be shared with the MO to reflect good practice. More clarity on the role and the process for recording such views was thought to be needed.

- This point was agreed by some Members of the Committee.
- On Paragraph 22, there were concerns that the SM and the Complainant could speak to the IP – how easy did it then make it for the IP to remain independent? It was therefore felt that some clarity needed to be applied to Paragraphs 21 and 22 to confirm when a SM or complainant might not have the ability to consult an IP.
- John Thompson confirmed that this had not at any time been an issue for him during his time as an IP.
- Mr Hoey confirmed that Paragraph 21 was a statutory requirement and for during the investigation stage. With regard to what the IP could or could not say, he would not wish to write this into the process, however, it was important that there be in place desk instructions that would underline this process; a piece of work to be actioned to ensure that the IP would be aware of what they could and could not say to each party; that it be made clear in any correspondence with the SM that they could consult with the IP.
- Paragraph 22 was not a statutory requirement meaning that the Council could choose to include this into its processes or not.
- Arun had four IPs and so it was felt that there was even greater need to fully set out the consistency of the role in relation to Paragraphs 21 and 22 so that it underlined exactly what the IP role was.

Hearings Panel

- Paragraph 32 – there was concern from one Member that the word ‘public’ had been crossed out and been replaced with ‘private’. This was queried as it was this Member’s recollection that hearings in the future should be held in public. Clarity was requested. Mr Hoey stated that in his view the law was very clear in that hearings had to be held in public unless there were lawful reasons why a matter needed to be confidential.
- The Interim MO explained why ‘public’ had been crossed out. He stated that if a hearing was public and papers had been placed into the public domain, if during the course of the hearing there was a need for it to be heard in private session, those papers had already become publicly available. Whereas, if the hearing started in private session, and it was then decided that it could be heard in public, then it could become a public hearing without having put confidential information in the public arena.
- This response had mixed views and it was felt that perhaps the way the procedure had been written needed to change – it was one Councillor’s view that the hearings should be public.
- The Interim MO explained the difference at Arun which was the status of the Sub-Committee had been changed to a Panel. The law required Committees to be open to the public, but Panels could be private bodies. There were some cases when it was clear that the hearing had to be either public or private.

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- An IP was of the view that it should be public subject to the normal rules being able to be put into place to cover exemption. On Paragraphs 33 [the view of the IP be sought and made public] it needed to be clear in terms of what was meant by 'public' – what was the process for this? On Paragraph 36 'Sub-Committee' needed to be changed to 'Hearings Panel' to be compatible with the rest of the procedure. Steps for the IPs views to be shared before the Panel retired, also needed to be built into the procedure. This had been built into the procedure later on but not at this point. It was felt that under the procedure for hearings at Paragraph 14 – the IP retiring again to consider what if any sanctions be imposed, needed to be looked at again.
- Other Committee Members felt uneasy about hearings being held in public. The minutes which were part of the adjudication process were public documents and this should suffice. Also, a private hearing could become public if it needed to be. The consequences of a holding a hearing in public and the possibility of legal challenge needed to be properly thought through.
- A very lengthy discussion followed with the Committee ending up being in the position where it could not agree whether a hearing should be public or private.
- It was felt that Paragraph 32 be reworded to reflect the views of the Committee – but the Committee could not agree what its view should be.
- Paragraph 33 – it was felt that the IP should retire with the Hearings Panel as the IP had a vital input to the entire process.
- It was felt that it should not be for the Hearings Panel to determine if a Panel should be held in public or private session – this should be for the MO to determine.
- The draft procedure written made it sound that it was for the Hearings Panel to determine if the hearing should be private or public and there were Members who could not agree to this – referring it to the MO to make that decision.
- Mr Hoey to assist explained his understanding of the law and Interim MO explained his.
- This left the Committee split in terms of how it should proceed.

Following further debate, a consensus decision could still not be reached. Councillor Bennett then proposed:

“Agendas for Hearing Panels shall be published and held in public unless the exemptions set out under the procedure for hearings before a Hearings Panel of the Standards Committee at Paragraph 4 – a) and b) could be applied”

Councillor Mrs Warr seconded this proposal.

In discussing this amendment, Councillor Bower confirmed that he could not support this and that this would not work and then proposed a further amendment to read:

“That the wording as set out at Paragraph 32 under Hearings Panel be accepted, this being that the Hearings Panel will meet in private subject to the normal rules on exempt and confidential information”.

Mr Hoey provided further advice and following further debate on Councillor Bennett’s proposal being put to the vote it was declared LOST.

The Chairman then returned to Councillor Bower’s counter proposal which he reconfirmed. Having reconfirmed the wording, the Chairman outlined that this almost duplicated the wording at Paragraph 32, but that with the Committee’s permission, that the wording as follows be added **in bold**:

“The Hearings Panel will meet in private subject to the normal rules on exempt and confidential information **being met at Paragraph 4 (a) and (b) of the procedure for hearings**. This was agreed by Councillor Bower.

Having got to this stage, Mr Hoey asked if he could provide some further clarity on the views of the Independent Person – as raised by an IP earlier on in the meeting in relation to Paragraph 33. Mr Hoey confirmed that the IP’s views would be given as part of the full session of the Hearing. It was accepted that this did need to be clarified in more detail. He referred to case law confirming that the IP could not then retire with the Hearings Panel.

In response, an IP stated that in Paragraph 14 on the procedure for hearings, this stated that the IP would retire again with the Hearings Panel to consider what any sanction it wished would be imposed. Mr Hoey outlined that this appeared to be an error and should have read WITHOUT the IP.

The Committee then moved on to discuss Annexe 2 – the procedure for hearings and the sanctions available to a Hearings Panel.

A query was raised as to whether the SM should remain in the hearing at all times as this had not been listed clearly in the procedure. Mr Hoey confirmed that the SM should be present throughout the hearing so that they could hear the evidence against them. It was agreed that the procedure rules needed to be checked to ensure that this requirement was accurately included.

The Chairman made an observation and it was agreed that under Paragraph 35 (j) “if relevant recommend to the Secretary or appropriate official of the Group that the Member be removed as Group Leader of other position of responsibility” should have been carried over to be included in the list of sanctions available to a Hearings Panel”. This was noted and agreed.

The Chairman then returned to the options that were available to the Committee in reviewing the Local Assessment (Case and Hearings) Procedure.

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The Committee

RESOLVED

To adopt the Local Assessment (Case and Hearings) Procedure Review as conducted by Hoey Ainscough Associated Ltd to include the amendments discussed and approved at the meeting.

484. REVIEW AND REVISION OF THE MEMBER CODE OF CONDUCT

The Interim Monitoring Officer introduced this report, outlining the Model Code of Conduct that was produced by the Local Government Association. It was open to the Council to adopt this Code in whole, or with amendments. Alternatively, the Council could amend its existing Member Code of Conduct.

It was explained that the LGA Model Code used slightly different terminology for declaring interests. The Interim Monitoring Officer had taken the view that the current Arun scheme for declaring interests was clearer than the LGA Model Code and so it was being recommended to the Committee that Appendix B of the LGA Model Code be substituted with the Arun Scheme of declarations of interest.

In discussing the new Code, it was emphasised how important it was to ensure that as much as possible the Town and Parish Councils would also sign up and adopt this new code.

The Committee

RECOMMENDED TO FULL COUNCIL - That

- 1) It notes that the adoption of a Code of Conduct for Members is merely one aspect of the overriding duty to promote and maintain high standards of conduct my Members;
- 2) The Local Government Association's New Model Member Code of Conduct 2020 be adapted with the substitution of the Arun Appendix B for the LGA Appendix B and adopted in principle as the proposed Statutory Arun Member Code of Conduct; and
- 3) Where Committee agrees to 2 above, the Interim Monitoring Officer consult with the County Council and the ADC Parish Councils with a view to adopting a consistent code across Arun District.

485. REVIEW OF INDEPENDENT PERSONS TO THE STANDARDS COMMITTEE

The Interim Monitoring Officer presented this report, which referred to the continuation of the appointment of two Independent Persons, in line with the terms of their original appointment.

The Committee

RESOLVED – That

- (1) The appointment of John Cooke and Sandra Prail as Independent Persons to the Standards Committee be confirmed for the remainder of their term of office; and
- (2) The Interim Monitoring Officer be given authority to confirm the continuation of these appointments with the Independent Persons, as set out in the report.

486. RECRUITMENT OF A REPLACEMENT INDEPENDENT PERSON TO THE STANDARDS COMMITTEE

The Interim Monitoring Officer presented this report which informed the Committee that an existing Independent Person had resigned from the role, effective from 31 March 2021. The Committee was asked to consider whether it wished to recruit a replacement in order to maintain the 'pool' of four Independent Persons.

The Committee was reminded that the Localism Act 2011 (Section 28) required local authorities to appoint at least one Independent Person to its Standards Committee. The Council's Constitution at Part 3, Paragraph 4.5 required the Committee to have access to three Independent Persons.

The Committee was advised that, should it agree to pursue a recruitment drive to fill the fourth post, any appointment of a successful candidate would be recommended to Full Council in line with the Constitution at Part 3; Para 4.5[7]).

In debating this item, the Committee thanked Mr Green for his long service as an Independent Person and for the dedication he had given to this role.

The Committee had mixed views in terms of whether the recruitment of a replacement IP was needed. One Councillor supported the proposal to recruit a further IP in view of the number of Code of Conduct complaints that had been submitted recently as this would allow the workload of IPs to be more fairly distributed.

Other IPs spoke and confirmed that they felt the additional person was not needed as to have three IPs was adequate with the current workload not being overwhelming in any way at all. It was also important for each IP to experience consistency of work which with another IP would become less frequent.

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Following discussion, Councillor Bennett proposed an amendment to Recommendations (1) and (2) in that they be replaced with a new Recommendation (1) to read “that the decision to recruit a replacement Independent Person to the Standards Committee at this time be deferred for twelve months to allow time to assess the workload for the Independent Persons with an update report being brought back to the Committee”

Councillor Edwards seconded this amendment. On this being put to the vote it was declared CARRIED.

The Committee then returned to the substantive recommendations and

RESOLVED – That

(1) the decision to recruit a replacement Independent Person to the Standards Committee be deferred for twelve months to allow time to assess the workload for the Independent Persons with an update report being brought back to the Committee”; and

(2) a vote of thanks be recorded in the minutes to Brian Green for his service to the community in his role as an Independent Person.

487. REGISTER OF ASSESSMENT OF COMPLAINTS AGAINST COUNCILLORS

In presenting this report, the Committee were advised of any updates on Code of Conduct complaints received or completed since the last meeting.

The Committee then

RESOLVED

That the Register of Complaints against Councillors and progress of any outstanding complaints be noted.

488. EXEMPT INFORMATION

The Committee

RESOLVED

That under Section 100A(4) of the Local Government Act 1972, the public and accredited representatives of newspapers be excluded from the meeting for the following items of business on the grounds that they may involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act by virtue of the paragraph specified against the items.

489. REGISTER OF ASSESSMENT OF COMPLAINTS AGAINST COUNCILLORS
[EXEMPT - PARAGRAPH 1 - INFORMATION RELATING TO INDIVIDUALS]

The Interim Monitoring Officer presented this report and provided verbal updates on several the cases included in the register.

Following a brief discussion, the Committee

RESOLVED

That the Register of Complaints against Councillors be noted.

490. CHANGE TO THE ORDER OF THE AGENDA

The Chairman requested and the Committee agreed to a change in the order of the agenda to bring forward Item 13 [Data Protection Breach – Referral from the Audit & Governance Committee] to be considered next.

491. DATA PROTECTION BREACH - REFERRAL FROM THE AUDIT &
GOVERNANCE COMMITTEE [EXEMPT - PARAGRAPH 1 - INFORMATION
RELATING TO INDIVIDUALS]

The Committee received a report from the Interim Monitoring Officer outlining that the Council was responsible for protecting personal data that was collected, processed, stored and disposed of in accordance with the Data Protection Act 2018.

Following a data protection breach the Council had become aware of in July 2020, the Information Commissioners (ICO) recommended that the Council minimised the risk of future data protection breach by raising awareness of the importance of Members and Officers being familiar with Council policies and completing mandatory training.

As a result of the data breach, the Audit & Governance Committee, at its meeting held on 19 November 2020, had considered the matter as a governance issue and had recommended that this Committee also be made aware of the matter to consider any needed Member Conduct issues.

The Standards Committee was therefore asked to consider the matter and whether any further action should be taken.

The Committee

RESOLVED

That the referral from the Audit & Governance Committee be noted and that no further action be taken.

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492. REQUEST FOR A REVIEW OF A PANEL DECISION [EXEMPT - PARAGRAPH 1- INFORMATION RELATING TO INDIVIDUALS]

(Prior to the consideration of this matter, Councillor English declared a Personal Interest in this matter and chose to leave the meeting as he was a complainant involved in this complaint).

The Committee received a report from the Interim Monitoring Officer who reported that a Subject Member had requested a review of the decision made against them. In line with the Council's Local Assessment Process the Subject Member had submitted an appeal request which the Committee now needed to consider

Following discussion, the Committee

RESOLVED

That the request for a review of the Panel decision be refused.

(The meeting concluded at 9.30 pm)