

Standards Committee

Minutes of a Meeting of the Standards Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **9th October 2019**.

Present:

Cllr. Mrs Bell (Chairman);
Cllr. Shorter (Vice-Chairman);
Cllrs. Chilton, Link, Michael, Ovenden, Pickering.

Mrs C Vant – Independent Person.
Mr R Brasier, Mr D Lyward – Parish Council Representatives.

Apologies:

Cllr. Knowles

Also Present:

Cllr Harman.

Monitoring Officer, Principal Solicitor – Strategic Development and Deputy
Monitoring Officer, Member Services Liaison Manager

164 Minutes

Resolved:

That the Minutes of the Meeting of this Committee held on the 18th March 2019 be approved and confirmed as a correct record.

165 Report of the Monitoring Officer – Code of Conduct Complaints ABC/17/06 and ABC/17/09, ABC/18/09 and ABC/18/05

The Monitoring Officer explained that the agenda contained two substantive reports: item 4, which was a white or public report, and item 6, which was an exempt or pink report. The public report at item 4 consisted of not only his report but also a Decision Notice and a redacted copy of the Investigating Officers final report on complaints which were referred to him and also the redacted comments of the subject Member on the Investigating Officer's draft report. The Monitoring Officer said that because of the fulsome nature of those documents, which described in some detail the events and the process, he did not consider there was a need to enlarge on item 4, but said he was happy to answer any questions. In terms of the public report, there were some redactions in the documents, particularly in the Investigator's report, but also the subject Member's comments, where some personal data had been redacted from those documents. He asked Members, and

members of the public who were present and due to speak, to respect those redactions and not to put into the public domain any information which had been redacted even if it was known to them.

The Monitoring Officer also said in the context of item 6, which was the pink exempt report, that one of the public speakers, as well as Members, were in receipt of some of the confidential documents in relation to the complaints referred to on the agenda as 18/09 and 18/05. When dealing with item 4, neither Members nor members of the public should refer to, or discuss, those confidential items of business that were relevant to item 6. If Members wished to refer to those documents, he said that this should be done only when the appropriate resolution had been passed to exclude the public.

The Chairman asked that both of the speakers confirm that they would not refer to any redacted information or make comments which impugned the professionalism or motives of Council Officers.

In accordance with Procedure Rule 9.3, Sheila Garrard spoke and confirmed that she would not refer to any redacted material and would try to make sure that she did not call anybody into disrepute.

The Speaker advised that she was the former Chairman of Aldington and Bonnington Parish Council and her co-complainant, the Vice-Chairman, was currently abroad but he had written and said that he fully supported what she intended to say. The Monitoring Officer had stated that in respect of their complaints against the subject Member, there was no right of appeal against his decision and asked the Standards Committee to note his report. The report stated that “the subject Councillor was not re-elected in May 2019. For this reason I have decided that there is little or no public benefit in holding a formal hearing into the matter and that no further action should be taken in relation to the complaint”. The Speaker said that she would like to remind the Committee of paragraph 14.1 of the Arrangements for Dealing with Code of Conduct Complaints, which stated, “the Borough Council may by resolution agree to amend these arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these arrangements where considered expedient to do so in order to secure the effective and fair consideration of any matter”.

In view of the statement above, the Speaker said that she would like to ask the Standards Committee, in the interests of a fair consideration of this matter, not merely to note the Monitoring Officer’s decision, but to amend the Arrangements and to consider the matter, including any action to be taken, in full. The reason for this was that the complainants did not consider that the Monitoring Officer had fulfilled his duties in either an effective or a fair manner. The behaviour complained of had taken place in August 2017 and their complaint was made in September 2017 and the Speaker commented that the Monitoring Officer had consistently missed his own deadlines. The Investigator’s draft report was ready for comment in August 2018 and the final report, with its very clear conclusions, was issued on 2nd September 2018. However, it was not until early 2019 that the Monitoring Officer had written stating that he could not see a way forward and would write to the complainants within four weeks with his decision. This did not happen and they had written to him

on 11th March 2019 stating that from their view point it was increasingly difficult not to entertain the thought that the Borough Council must be attempting to protect the reputation of the Borough Councillor at all costs. The Speaker explained that they did not receive a response to this email. After many months of further silence, the next they had heard from the Monitoring Officer was in respect of tonight's Committee Meeting. It might be said that the subject Member caused interminable delays but the Speaker asked how could it be fair that the subject Member was permitted to prevaricate for so long that the complaint was forced to fail? The Speaker asked the Committee to do more than just note the Monitoring Officer's decision so as to ensure effective and fair consideration of the matter. The Speaker also wished to point out that the subject Member had by no means left public life and was an elected Member of a Parish Council and a Community Council. Given this continuation in public life within the same Borough, the Speaker asked how could it possibly not be in the public interest to pursue this case to its proper conclusion. In conclusion she asked the Committee to amend the Arrangements and to give this complaint full consideration.

In accordance with Procedure Rule 9.3 Simon Hudson spoke and confirmed that he would not refer to any redacted material, but apologised in advance if there were any comments about the conduct of Ashford Borough Council which he would withdraw if these were pointed out.

The Speaker said that the subject Member had been found to have breached Ashford Borough Council's Code of Conduct by bringing her office into disrepute. He said that the original three complaints against the subject Member were made in September 2017, which was 26 months ago. The Council had decided to appoint an Investigating Officer, who had issued his final report in September 2018 and he explained that it had taken the Council, along with the appointed Independent Officer, some 13 months to make their decision and bring this matter to a conclusion, which he believed fell below any reasonable person's expectation.

The Speaker said that the Local Government Ombudsman's website stated that 12 weeks should be sufficient time to deal with most complaints, whereas this had taken nearly 112 weeks. He referred to possible reasons for the delays.

The Speaker said that the Decision Notice issued on 1st October 2019, which had found that the subject Member did bring her office into disrepute, also stated that she had ceased to be a Member of the Council in May 2019, after failing to be re-elected and she therefore had ceased to be subject to the Code of Conduct and any sanctions that might be imposed thereunder. The subject Member was now a Parish Councillor and the Speaker said that surely she continued to be subject to the Code of Conduct and to potential sanctions. The Decision Notice also referred to a letter issued by the subject Member to the entire Parish whilst in office and selectively quoted from it. In the letter the subject Member had stated that she had not sought to offend anyone and that she would at no time knowingly or intentionally use language or behaviour that would cause her to breach the relevant standards of conduct. The Speaker said that the subject Councillor's letter also expressed her desire to work together with the relevant Parish Council and also referred to a cost to the taxpayer being considerable with the Investigating Officer billing almost £20,000.

The Speaker further explained that the letter also incorrectly stated that her calls and emails to the Parish Chairman to resolve the matter by talking went unheeded. The Speaker said that he would like to know what agreement the Councillor had with the Council on the matter and commented that the letter was sent out a few days before the period of Purdah for the last election and he believed this was an attempt to make him and other Parish Council members unelectable on the local Parish Council. The fact that the subject Member had sent the letter out on formal Ashford Borough Council headed paper had given weight to the comments about himself and the Parish Council and should be investigated.

The Decision Notice, in which the subject Member was found to have breached the Council's Code of Conduct, and brought her office into disrepute, was also, in his opinion, biased. Attached to the Monitoring Officer's Decision Notice were, the Investigating Officer's final report, and the subject Member's comments on the Investigating Officer's draft report. He said that the appendices containing the evidence for example, emails to the subject Member, transcripts of text messages, along with interview notes and comments, had not been included in the Decision Notice, whereas the subject Member's defence comments, and contributions from close friends and allies were included. In the interests of balance the Speaker believed that all appendices should be attached.

In conclusion, the Speaker said that it was his belief that the Council knowingly and with purpose delayed the decision-making process on this complaint and had also put him under undue pressure to informally resolve the complaint so as to try and protect the subject Member.

The Monitoring Officer said that he wished to place on record that he took strong exception to remarks which impugned his motives and professional approach to the case. In terms of comments made by both speakers about the delay, he said that on occasions it was certainly true that his responses to individuals and decisions on next steps in these matters had taken longer than he or anybody would have wished. He further explained that matters had become progressively more complex, as further complaints had been lodged. The complexity had increased and positions had hardened and therefore, understandably, responses had taken longer to develop.

The Monitoring Officer also advised that it was not always appropriate to share information about the handling of individual complaints with everybody concerned and said that he would not want the Committee to have the impression that either he, or the Borough Council, was responsible for the lion's share of the prolongation, or indeed a significant part of it. He explained that the complaint which was the subject of the public report, involved the external Investigating Officer interviewing a number of interviewees, and that process had unquestionably been drawn-out. For example, it had taken the Investigating Officer five months to agree an interview date with the subject Member, seven months before the interview notes had been agreed by all those interviewed, and a further period approaching two months between draft and final reports. Following this there was an equally drawn out process of attempted informal resolution and the Monitoring Officer said that it was not uncommon in the course of that process for him to have to wait for several weeks or months for substantive responses from those involved. Ultimately, the Monitoring Officer said

that he was trying to navigate his way through an increasingly complex web of complaints and to seek a conciliatory and proportionate way forward.

The Monitoring Officer said that if either he or the Investigating Officer were guilty of anything it was possibly that they had been too accommodating to everybody involved in terms of dates and deadlines. He said that that lessons had been learnt from the process and one of his recommendations in the report was to review the Arrangements to make them work better which he believed was the appropriate way forward.

The Chairman then opened up the item for discussion and a summary of the issues raised and responses to questions is set out below:

- The reason for not referring the matter to a Hearing was that simply that the subject Member was no longer a Borough Councillor and it would not be possible to impose sanctions or resolutions, for example requiring training. It was also relevant that a process of seeking informal resolution had failed, confidential written advice had been given, and that the the subject Member's letter of 11 March 2019 contained conciliatory remarks and that the Investigating Officers report had been published and was in the public domain and therefore there had been transparency in the process. Therefore the Decision overall reflected a fair balance of the public interest.
- The capacity of the Monitoring Officer and legal services team to deal with complaints was not an issue in this case.
- In future it would be helpful to have information setting out the timelines in any similar report.
- Upon receipt of the Investigating Officer's report the Monitoring Officer considered that the best way forward was to seek informal resolution. Following this a further complaint had been received and the processing of the complaints had been delayed.
- The report asked the Committee to note the action of the Monitoring Officer.
- The Investigating Officer's costs for handling this complaint was £12,800.

Resolved:

- That (i) the report of the Monitoring Officer be received and noted.**
- (ii) the Monitoring Officer report to a future meeting regarding a wider review of the Arrangements.**

Recommended:

That the Monitoring Officer be retrospectively authorised to amend the Arrangements as set out in Paragraph 8 of the report.

166 Exclusion of the Public

Resolved:

That pursuant to Section 100A(4) of the Local Government Act 1972, as amended, the public be excluded from the meeting during consideration of the following item, namely ‘ Report of the Monitoring Officer – Code of Conduct Complaints ABC/18/09 and ABC/18/05 ; as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act.

167 Report of the Monitoring Officer – Code of Conduct Complaints ABC/18/09 and ABC/18/05

The exempt report of the Monitoring Officer informed Members of decisions he had taken in respect of the above complaints under the Council’s approved Arrangements. The Chairman then invited Mr Hudson to speak on these complaints.

In accordance with Procedure Rule 9.3 Simon Hudson spoke and gave his views on matters associated with these complaints and then left the meeting.

In response to questions, the Monitoring Officer provided further details on the background to these complaints and his decisions on them. He also explained that a change had been made to internal procedures to avoid the problem of letters on Ashford Borough Council headed paper from Members potentially being distributed without having been ‘cleared’ by Officers where relevant.

Resolved:

That the report be received and noted.