

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON  
ROAD SAFFRON WALDEN at 4pm on 13 OCTOBER 2014**

Present: Councillor R Lemon – Chairman  
Councillors C Cant, E Godwin, J Loughlin and J Menell  
Mrs G Butcher-Doulton, Mr V Lelliott (Independent  
Members)

Also present:  
Councillors A Dean and T Knight

Officers in attendance: R Dobson (Principal Democratic Services  
Officer) and M Perry (Assistant Chief Executive – Legal  
and Monitoring Officer)

Members of public present: C Griffiths (Debden Parish Council Clerk),  
Councillors S Luck, R Simmons, J O'Brien (Debden  
Parish Council), A Hynes, D Wilson and C Wilson  
(Debden residents).

**CHAIRMAN'S ANNOUNCEMENT**

The Chairman opened the meeting and asked all the parties present to introduce themselves.

**PUBLIC SPEAKING**

Statements were made by Councillor Luck, Mr D Wilson, Mrs C Wilson and Mr Hynes. A summary of their statements is appended to these minutes.

Councillor Knight expressed a wish to speak. The Monitoring Officer said whilst the constitution did not now include provision for any member to speak at any Committee, it would be appropriate to permit them to do so with the consent of the Chairman.

The Chairman said he would be content to exercise his discretion to enable Councillor Knight to speak.

SC10

**APOLOGIES AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

SC11            **MINUTES OF THE PREVIOUS MEETINGS**

The minutes of the meetings held on 16 June and 5 August 2014 were received and signed by the Chairman as a correct record, subject to the amendment of the list of those attending the meeting on 5 August to include Councillor Knight.

SC12            **MATTERS ARISING**

(i)            **Minute S4 – Annual Report to Full Council**

In reply to a question from Mrs Butcher-Doulton regarding a meeting to discuss the role of independent persons in advising the subject member, the Assistant Chief Executive – Legal said he had intended to hold a meeting after he had attended the Monitoring Officers’ conference, and arrangements would now be made.

SC13            **CORRESPONDENCE FROM DEBDEN PARISH COUNCIL**

The committee considered a report on correspondence received from Debden Parish Council, following the conclusion of an investigation into an allegation that a member of that council had breached its code of conduct.

The Assistant Chief Executive – Legal referred the committee to the report setting out the background of how the investigation was conducted. He said the question of the apology was first raised in documentary evidence Councillor Luck had sent to him. At that stage, he had given that evidence little weight. At the hearing, Councillor Luck’s solicitor had handed him two statements, and on the balance of probabilities, he had then accepted that Councillor Luck had made an audible apology. The Parish Council had accepted the committee’s findings, and that Councillor Luck did not breach its code of conduct. The weight of the evidence produced at the meeting was only relevant for mitigation. Under the old regime there were significant sanctions; under the new regime the only sanction was censure, therefore there was a need to be proportionate. Councillor Luck’s solicitor had said that if the Standards Committee felt the evidence of the apology was not enough, he would be prepared to make a further apology. Therefore it would not have been proportionate for the committee to censure him.

The Assistant Chief Executive – Legal said if the committee had had any concerns regarding whether to find as a fact that an apology had been made, it would have been possible to adjourn the hearing for further enquiries to be made. However this would have been a

disproportionate step, as to have adjourned the hearing to enquire into mitigation would not have been an appropriate use of resources.

The Assistant Chief Executive – Legal referred members to the report setting out the specific issues raised by the chairman of the parish council to the chairman of the Standards Committee, and his comments in response. Members were asked to consider how the Committee would respond.

The Assistant Chief Executive – Legal said his report detailed how he had viewed evidence about whether an apology had been made. People might recollect events differently, not through any dishonesty. On the evidence, in the light of what was produced on the day, it was found that on the balance of probabilities an apology was made.

Mrs Butcher-Doulton said whilst the background made sense, she was concerned about the procedure. Neither side seemed content with the outcome of the hearing. She agreed with the principle of acting proportionately in terms of the council's costs, but to be ridiculed in the press was not helpful. She was concerned that the two independent persons had voiced opinions, as they should be part of the process.

The Assistant Chief Executive – Legal said it was not correct to say that neither side were content, as he recalled after the hearing that Mr Luck's solicitor had said the finding was very fair.

Mrs Butcher-Doulton said that subsequent press comment had changed the perception of both parties.

The Assistant Chief Executive – Legal said the Standards Committee's function ceased with its decision, and any further issues following that decision had come from the parish council.

Councillor Loughlin said the parish council was at liberty to make a complaint, but the committee had come to its decision and she thought it was the right decision. All members of the committee had had the opportunity to speak. It had been Councillor Knight who made the complaint, and not the parish council. The issue seemed to have escalated, and had done no one any favours. Before the hearing Mr Luck was vilified in the press. He had this evening read out to the committee an extract from the local parish magazine, but he could take action to rebut that comment.

The Assistant Chief Executive – Legal said the parish council was objecting to a finding of fact that the Standards Committee had made. However some people would inevitably be disappointed with its decision. The committee had found that Mr Luck had made an apology at the meeting in February which was sufficiently audible, as it was entitled to. If it could not reach a conclusion it would have had to give the benefit of the doubt to the accused. The committee had to make a

finding of fact and then stick to it, and there was nothing amiss with the procedure.

Councillor Lemon said the Standards Committee had had the benefit of independent legal advice.

Councillor Knight said she considered the process was not applied correctly in many ways and there was conflicting evidence. She said that at the hearing Councillor Luck had not stated the whole truth, but that no-one else could comment. She had been concerned that having been told witness statements would not be admitted, subsequently they were admitted. She was also concerned that witness statements taken by telephone were admitted. She would like this case to be used as a case study.

Councillor Lemon said these comments should be made in relation to the agenda item regarding procedure for complaints to the committee.

The Assistant Chief Executive – Legal said after first concluding that Councillor Luck had not tendered an apology he had then been persuaded that he had done so, only on the morning of the hearing. The evidence changed his and the Committee's mind, but it would have been disproportionate to obtain further evidence.

Councillor Knight said the validity of the evidence had not been checked.

The Assistant Chief Executive – Legal said the only available way in which the case could be re-considered would be by way of judicial review in the High Court.

Mrs Butcher-Doulton said the points raised should be taken on board.

Councillor Lemon said the committee would take notice of the comments which had been made.

AGREED that the chairman of the Standards Committee would reply to the chairman of Debden Parish Council, reflecting the responses stated in paragraphs 17 to 21 of the report of the Assistant Chief Executive – Legal.

SC14

## **MONITORING OFFICERS' CONFERENCE ON STANDARDS**

The committee considered the report of the Assistant Chief Executive – Legal on topics of potential interest to the Standards Committee discussed at the recent conference for Monitoring Officers which he had attended.

Regarding the lack of effective sanctions under the new standards arrangements, the Assistant Chief Executive – Legal said the increase in the number of complaints under the new regime indicated the public were more interested in the finding of wrongdoing than in the consequences of it. The question had been considered as to whether the far more severe sanctions under the previous regime had been any more effective than under the present regime. The case of Councillor Bleakley of Wigan Council had been cited, where the imposition of various severe sanctions had nevertheless not acted as a deterrent to repeated serious breaches of the code of conduct.

Mrs Butcher-Doulton said she did not agree that stronger sanctions were not effective deterrents. She advocated considering further sanctions.

The Assistant Chief Executive – Legal said the committee could not consider further sanctions as it had no power to do so.

Mrs Butcher-Doulton said the committee should ask for a review of legislation regarding sanctions.

The Assistant Chief Executive – Legal said primary legislation would be required in order to re-open the question of sanctions, and whether a different government would view that question differently was unknown. Councillors like Mr Bleakley were few and far between, and those councillors the committee usually dealt with usually took matters far more seriously, and in fact tended to find being the subject of a complaint very stressful. The fact that some councillors were prepared to take the findings of a Standards Committee to judicial review showed how seriously members took the existing regime.

Mrs Butcher-Doulton said the effect of the previous regime might have been carried forward to an extent. The imposition of a sanction was not registered anywhere.

The Assistant Chief Executive – Legal said that where there had been a breach of the code of conduct this was recorded in public minutes.

Councillor Cant said the whole issue of standards regarding public office had been through many changes. There might be an opportunity to lobby government so that in serious cases there was the ability to refer a matter. Mr Bleakley should clearly not hold public office, and there ought to be a higher regime to deal with persistent conduct which brought a public office into disrepute.

The Assistant Chief Executive – Legal said at the conference the consensus was that although there were no sanctions, most members other than odd rogues did take the standards regime seriously. The view of the government was that correction would take place via the

ballot box. Certain types of breaches of a code of conduct were subject to criminal proceedings, for example failure to disclose a disclosable pecuniary interest, for which there was a sanction.

Councillor Dean said this topic opened up a whole discussion between the area of internal processes and public sanctions, as in a recent example in the media of the activities of a minister who was not fit to be a Member of Parliament. Parliament had considerable powers of recall, which this council did not have. The key was the strength of any process to support the democratic process.

Councillor Loughlin said it was surprising Councillor Bleakley had been re-elected.

Councillor Cant said if an officer had abused a member of staff in the way that Councillor Bleakley had done, there would be severe repercussions. The absence of any real sanction other than a slap on the wrist made a mockery of the system.

Councillor Lemon said members could not change the system, but its view could be made known to the Minister.

AGREED the Chairman of the Committee would write to the Secretary of State for Communities and Local Government to express the committee's concerns that the sanctions under the standards regime were not satisfactory.

The Assistant Chief Executive – Legal said one of the government's concerns was that the previous regime was excessively bureaucratic. Any provision for suspension of a member entailed provision for a right of appeal.

Regarding consideration of when the code of conduct applied to members, it was noted that Uttlesford had adopted the definition of "official capacity" used in the previous standards regime, so effectively its code in this regard was inconsistent with the legislation in that it effectively adopted the definition of "official capacity" under the previous standards regime. However legislation provided for minimum requirements for a code of conduct, and it was open to authorities to adopt more stringent requirements than those required by the legislation.

Members commented on the potential difficulties for councillors in rural areas in feeling they could never be "off duty".

Members agreed that the council's code of conduct should remain unchanged.

The issue of criminal convictions which councillors might receive was considered. It was agreed there should be no variation to the code of

conduct as since the proposed legislation to address criminal convictions of councillors had not been made into statute, there were difficulties for addressing the issue via the code of conduct.

Members considered the council's current practices in relation to the roles of independent members. The independent members spoke about their experiences. Mrs Butcher-Doulton said she did not feel the role of the independent person could be limited to providing "quality assurance", but should focus on ensuring rules were observed and providing support. Mr Lelliott said he had not had to advise a member so had found it straightforward to fulfil his role in deciding whether or not to conduct investigations and in advising the committee. Advising a councillor was difficult as it was not obvious whether the independent person should act as a friend or advocate, or simply to advise on procedure.

Members felt the role of independent person should be clarified. The Assistant Chief Executive – Legal said the input of the independent persons was valuable in deciding whether or not to hold an investigation. However the only statutory function of the role was to be available to the subject member and to advise the committee.

Councillor Loughlin said it was preferable for independent persons to have some experience of being a councillor or working with a councillor, to give them insight into how easy it was to be accused of a breach of the rules.

Mrs Butcher-Doulton said the presence of the independent person provided a reassurance to the public that the Standards Committee was not solely comprised of fellow councillors, which could otherwise give the impression that councillors favoured each other.

Councillor Cant said she felt councillors tended to be more harsh on fellow councillors, as they felt breaches of the code of conduct brought their office into disrepute.

Councillor Godwin said professional legal advice would be more important if she were a subject of an investigation than the advice of an independent person.

The Assistant Chief Executive – Legal said the resources of the council's small legal team were such that legal advice could not be provided to members, due to the need to ensure that legal officers could not be seen to pre-judge an investigation, or if they were required to advise the committee.

Councillor Dean asked whether a conclusion that no investigation was required was notified to all members of the committee.

The Assistant Chief Executive – Legal explained the procedure, which was to reach a conclusion by consensus with the independent person. If after investigation there was a finding of no breach, then the investigating officer's report was circulated and any member of the committee could then indicate whether they disagreed, in which case they could require an investigation, much like a call in.

There had not yet been a finding of no breach where members had disagreed; there had been some instances of a finding by the investigating officer that there had been a breach, but members had considered there had not been a breach. The calling of a meeting of the committee to determine whether there was no breach would be disproportionate in terms of time and cost.

Councillor Lemon asked members whether they were content with the existing system of potentially involving independent members in separate roles within the investigation. Members agreed the current system worked well.

Members also agreed there should be no change to the council's current arrangements in respect of protection from public disclosure of findings of no breach of the code of conduct unless requested by the subject member.

Members noted advice on fairness of process, in that Article 6 of the European Convention on Human Rights did not apply to the present standards regime, but did not prevent applications for judicial review.

The report described the practice of one council to go straight to a hearing if a case was considered worthy of investigation. The Assistant Chief Executive – Legal advised that such a procedure was inconsistent with the Localism Act 2011 which required authorities to have in place arrangements whereby complaints could be investigated.

Councillor Knight said in her view the council should have a procedure whereby a case went straight to a hearing.

The Assistant Chief Executive – Legal said investigation was necessary and that to proceed to a hearing without investigation was inconsistent with the legislation.

Councillor Knight said this matter should be considered in the light of the next item, which was the review of the procedure for dealing with complaints to the Standards Committee.

Councillor Cant said in her view there would be many more hearings if the system permitted a case to go to a hearing without an investigation.

Members agreed there should be no change to the current procedure.

The final paragraph of the report highlighted the view of those attending the Monitoring Officers' conference that investigations did not need to be "gold-plated", but should be proportionate to the likely sanction. Members agreed that the important outcome to try to achieve was that at the end of the process both the complainant and the subject member should consider the process had been fair.

AGREED there should be no change to the Council's Code of Conduct.

SC15

## **REVIEW OF THE PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE**

The committee considered a report reviewing the procedure for dealing with complaints regarding the code of conduct, in the light of experience gained in the two years since the procedure was adopted.

Amendments were suggested in response to comments received so as to make the code clearer.

Councillor Knight said she was concerned the procedure was not fair to either side, and she had a complaint regarding the latest case dealt with by the committee. She said perceptions could be very different to different people, for example there were different accounts in the recent case regarding the fact of whether someone had left a meeting before it had closed. It was not satisfactory that the Monitoring Officer was judge, jury and executioner. In an investigation there should be two people so a balanced view could be obtained. She wished to treat this latest case as a case study. She acknowledged there was conflicting evidence, but the minutes of the meeting in question should have been relied on. Whilst an emailed request to amend the minutes to reflect an apology should be capable of being checked, telephone evidence should be supported by a transcript. Councillor Knight said letters produced at the hearing were not dated or signed, and one was allegedly not seen by the recipient. In her view, the balance of evidence changed on the day of the hearing but could not then be challenged.

Councillor Knight said she felt councillors had a life outside their role and had freedom of speech, so at a meeting they could say they were there as a member of the public. She understood this practice was permitted in some councils. In the case dealt with recently, she had answered a technical question about declaration of a disclosable pecuniary interest in the belief that she could "wear two hats", so had chosen to speak as a non-district councillor.

Councillor Knight said she was also concerned that a case could not be re-opened. The process jumped from the slap on the wrist of a censure, to judicial review. If further evidence came forward, the procedure should allow for review, and the current process was not a fair one. It would be more helpful if more substantial procedures could be drawn up, as the current process was very hit and miss. Confusion was unhelpful to the Standards Committee as it caused disquiet in public perception. If the committee had no teeth, what was the point? It was beyond belief that Councillor Bleakley, whose conduct at Wigan Council had been described earlier, had got away with such behaviour.

Councillor Lemon said training for parish councillors was important, and whilst tonight's agenda had been too full to include it, that topic would be considered at the next meeting.

The Assistant Chief Executive – Legal said he had provided training for parish councillors in roadshows and had also offered training on the Localism Act. Take up had been disappointing.

Councillor Knight said it should be mandatory that councillors including those co-opted were trained.

The Assistant Chief Executive – Legal said mandatory training was a matter for legislation.

The Assistant Chief Executive – Legal said the Council had a statutory duty to promote high standards of conduct and accordingly had adopted a code of conduct. The council had to have procedures for dealing with breaches of that code. The power to do this had been delegated from Full Council to the Standards Committee. In his experience, censure was taken seriously as members found being the subject of an investigation stressful.

Members considered how best to ensure training was taken up by parish councillors. The Assistant Chief Executive – Legal said he had written to all parish clerks, and it was not possible to do anything about failure to attend training. If there was a particular problem at a parish council he could arrange training, but he could not offer training on an individual basis.

Councillor Dean referred to the issue of members acting in a private capacity, and asked whether behaviour which was improper but was not criminal could be considered as subject to the code of conduct.

The Assistant Chief Executive – Legal said the test suggested at the Monitoring Officers' conference was whether the person in carrying out that act was describing him or herself as a councillor. An example would be writing a letter as a councillor to try to have a parking fine incurred by a relative lifted. In relation to the case considered earlier of benefit fraud, it was not part of the business of a council to engage in

benefit fraud, so it was not the business of a councillor to commit benefit fraud therefore the code of conduct did not apply, whereas it would apply to any false claim for expenses.

Councillor Knight asked what the position was in relation to a district councillor dealing with a matter on a personal level, and asking another councillor to put in a good word for them.

The Assistant Chief Executive – Legal said that conduct would be an abuse of their position as a councillor.

Councillor Cant said regarding reliance on telephone evidence, she would be keen to see telephone calls authenticated. The subject member's reputation was at stake so it was important to rely on sound evidence.

Councillor Godwin said the committee should tighten up the procedures. She was worried about the prospect of decisions being re-opened.

The Assistant Chief Executive – Legal confirmed decisions could not be re-opened.

Regarding suggested amendments to paragraph 14c of the code, in relation to the procedure to be followed for a hearing, Mrs Butcher-Doulton said the determination of whether live witness rebuttal evidence would be permitted should be considered not only by the Monitoring Officer and Chairman or other member of the committee, but also by an independent person.

The Assistant Chief Executive – Legal said he would be concerned at having too many people involved in the process. He did not have a preference as to whether the other person was a voting member of the committee, or an independent person, but considered two rather than three people to be better. Members agreed to leave the proposed amendment as it was.

Councillor Dean said in relation to paragraph 14b, where it was suggested that live evidence would not usually be given at a hearing, that this statement would change the onus away from live evidence. In his view it was important not to deter people from giving live evidence, as the impact from a live statement was often greater than a written one.

Councillor Loughlin said she agreed live evidence could be perceived as having more impact, and that sometimes a person needed to have their day in court.

The Assistant Chief Executive – Legal said the difficulty with live evidence was that it could extend the duration of the meeting

intolerably, which was not proportionate for the sanction which could be imposed.

Members commented further on the question of when live evidence could be permitted. Mr Lelliott said the situations where live evidence would be permitted were set out in the following subsections, so to include the statement that it would not normally be called would simply be inflammatory.

The Assistant Chief Executive – Legal said it was important to have regard to the expectations of live witnesses were called. If not called to speak they were likely to be disappointed. The council's reputation could then suffer. Statements were admissible, and the weight given to them was a matter for the committee. To adopt the procedure of the county court would be too expensive and not proportionate. There was provision in the suggested paragraphs for the subject member to call live evidence.

It was agreed to change paragraph 14b to "Live evidence will not usually be called by the Investigating Officer at the hearing."

AGREED to amend the procedure for dealing with complaints to the Standards Committee as set out in the report, save as to paragraph 14b, to be amended as stated in the above minute.

SC15

## **INDEPENDENT MEMBERS**

The Committee considered a report informing members of the resignation of one of the independent members of the Standards Committee. The Assistant Chief Executive – Legal said that if members were content, two new independent persons could be recruited.

Members accepted there would be an additional cost to recruiting two independent persons, but acknowledged the benefit of having an additional person gaining experience.

Mrs Butcher-Doulton asked that the sub-committee which would be set up for recruitment of the new independent members should include one of the existing independent persons.

AGREED that:

- (a) There be no amendment to the job description and Person Specification for Independent Persons.
- (b) Members recommend to Full Council that a sub-committee of the Council be appointed for the purpose of

recruiting new independent persons, such sub-committee to include one of the independent persons of the Standards Committee.

- (c) That members recommend appointing two independent persons as soon as possible.

SC16

## **URGENT BUSINESS**

The Chairman said he had been asked to take the following matter as an item of urgent business as a decision had been requested by 14 November. There was no other meeting of the committee scheduled before that date and it would not be proportionate for an extraordinary meeting to be called for the purpose of considering this report.

The committee then considered a report informing members of a draft protocol for co-operation between the police and Monitoring Officers with regard to allegations of improper conduct relating to disclosable pecuniary interests. Breach of any of the provisions relating to disclosable pecuniary interests was a criminal offence.

The Assistant Chief Executive – Legal said in his view it was doubtful whether the protocol was necessary, for the reasons set out in his report. He had grave doubts as to the governance arrangements, and had concerns with regard to the provision in the draft Protocol which placed a burden on the Monitoring Officer to determine the seriousness of a complaint and whether it should therefore be reported to the police. The Assistant Chief Executive – Legal said his view was that any decision on whether or not a matter should be investigated should rest with the police.

AGREED the council should not sign up to a draft protocol between Essex Police and district councils.

The meeting ended at 6.20pm.

## **SUMMARY OF PUBLIC STATEMENTS**

### **Councillor Luck**

Councillor Luck referred to submissions he had circulated to the Committee before the meeting, in which he contended that the item on the review of procedure for dealing with complaints to the Standards Committee did not fully address procedural flaws. He said he had benefited from the advice of the former Independent Person, Allen Brobyn. Mr Brobyn had advised him that the change in the Standards regime restricted the rights of the subject member. The report contained no proposals to clarify the role of the Independent Member.

Consequently he had submitted “tainted” evidence to the committee. Councillor Luck said he had expected the matter to be dealt with by a meeting with the Monitoring Officer and independent persons, and he urged the committee to meet as soon as possible and to proceed to recruit a new independent person. He asked that his submissions be considered.

### **Mrs C Wilson**

Mrs Wilson said she found it confusing that a district councillor attending a meeting was subject to a code of conduct, but when attending other types of meeting was not subject to it. There should be a code of conduct to cover all proceedings.

### **Mr A Hynes**

Mr Hynes said he had been asked by Councillor Luck to forward a witness statement. He had written down what he had heard. Subsequently the Monitoring Officer had decided his statement carried no weight, and he could not believe he was being dismissed as an unreliable witness.

### **Mr D Wilson**

Mr Wilson expressed his frustration at the situation. He said the original complaint had been made by a self-proclaimed “off-duty” councillor, who was subsequently “on duty” and who left the meeting in question before it closed, so could not have known what was said. He had made a statement which was given very little weight. If it had been allowed by the Monitoring Officer, Councillor Luck’s apology would have been disclosed. In his view the new procedures were too restrictive.

Councillor Luck then quoted from a letter sent to a parish publication referring to the finding of the Standards Committee that there had been no breach, and asserting that this finding was not a correct reflection of what had taken place. He said this statement had been made after the committee had made its finding.