

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 4pm on 21 MARCH 2016**

Present: Councillor T Knight (Chairman)
Councillor D Jones
Mrs G Butcher-Doulton, Mr D Pearl and Mrs C Wellingbrook-
Doswell (Independent Persons).

Officers in attendance: M Perry (Assistant Chief Executive – Legal) and A Rees
(Democratic and Electoral Services Officer).

Also Present: Councillor A Dean

The Chairman adjourned the meeting under Council Procedure Rule 7 as the meeting was not quorate. It was agreed that the meeting would reconvene on 29 April at 9am.

The Assistant Chief Executive – Legal said that the Standards Task Group now ceased to exist. The Members who were part of the Task Group were still able to meet informally, but would have to wait until the Task Group was formally re-established by the Committee before they could meet formally and agree to their recommendations.

SC11

RECONVENED MEETING HELD AT 9AM ON 29 APRIL 2016

Present: Councillor T Knight (Chairman)
Councillor K Artus, N Hargreaves, D Jones, J Loughlin and G Sell.
Mr D Pearl and Mrs C Wellingbrook-Doswell (Independent
Persons).

Officers in attendance: M Perry (Assistant Chief Executive – Legal) and A Rees
(Democratic and Electoral Services Officer).

Also Present: Councillor A Dean.

SC12

APOLOGIES FOR ABSENCE

Apologies for absence were received from Mr Pearl and Councillors Anjum, Asker, Hargreaves and Sell for the originally scheduled meeting on 21 March.

For the adjourned meeting on 29 April apologies for absence were received from Councillor Asker and Mrs G Butcher-Doulton.

SC13

MINUTES OF THE MEETING HELD ON 6 JULY 2016

The minutes were received and signed by the Chairman as a correct record.

SC14

MATTERS ARISING

(i) SC7 – Matters Arising

In response to a question by Councillor Hargreaves, the Assistant Chief Executive – Legal said that where no breach of the Code was found, the finding was not published unless the subject member requested it. He had found that in instances where the complainant had put the complaint into the public domain, the subject member was more likely to want their exoneration to be public knowledge.

The Assistant Chief Executive – Legal then spoke in reply to a question by Councillor Jones. He said that the Monitoring Officer always circulated findings of no breach to the Committee. The publication of findings was always at the discretion of the subject member.

Councillor Dean asked for discussions on the matter to be deferred until the Committee had heard from the sub-group of the task group in relation to the Code of Conduct review. In reply, the Assistant Chief Executive – Legal said that it was not appropriate for a sub-group of the Task Group to report to the Committee.

SC15

REPORT OF THE STANDARDS TASK GROUP

The Committee considered the report which had initially sought an extension of time for the Standards Task Group to complete its report. Following the adjournment of the meeting, the Task Group had ceased to exist, so it was now proposed that the Task Group was re-established with the same Members and terms of reference.

The Assistant Chief Executive – Legal said the Committee had appointed the Task Group to review the Code of Conduct and procedures in relation to allegations of breaches of the Code. The Task Group had been due to submit its final report at the meeting.

The Task Group met on 4 August 2015 and divided into two sub-groups; one to look at the Code and the other to look at procedures. A subsequent meeting took place on 19 October 2015. Whilst the sub-groups had been making progress, there had been no subsequent meeting of the Task Group. Therefore, the Task Group was unable to provide any recommendations for the Committee to consider. Furthermore, under the Council's constitution a task group would cease to exist after either; the production of its final report, or the date a final report was required by.

The Committee could however appoint the same or different members as a task group to complete the task. The Assistant Chief Executive – Legal said that as this was an important piece of work it was recommended that the Task Group was re-established with a final date of 20 March 2017. The Task Group could still report its final recommendations earlier if it was able to do so. An

extraordinary meeting of the Committee could be called by the Chairman pursuant to rule 3.1.2 of the Council's procedure rules, or by the Assistant Chief Executive – Legal pursuant to rule 3.1.3 if deemed necessary.

Members agreed to re-establish the task group with the same members and terms of reference as before. The task group would have to produce its final report by 20 March 2017.

The Chairman thanked all the members of the previous task group for the considerable amount of work they had put into the review and for volunteering to continue the review.

RESOLVED that a new task group was established with same members and terms of reference as the previous one, with a final report to be produced by 20 March 2017.

SC16

BUDGET FOR INVESTIGATIONS

The Assistant Chief Executive – Legal presented his report. Under the Local Government Act 2000, Councils were required to have arrangements which allowed breaches of the Code of Conduct to be investigated.

Currently complaints were considered by an independent member of the Standards Committee and the Monitoring Officer, who determined whether it was appropriate for an investigation to be carried out.

The Assistant Chief Executive – Legal said there was no budgetary provision for external investigations and there was no budget for standards issues. The Council was required to provide resources for the Monitoring Officer to carry out their duties under s.5(1)(b) Local Government & Housing Act 1989, but this did not extend to supporting the Committee and carrying out investigations.

There had been 61 complaints since the current standards regime came into being on 1 July 2012. 30 cases had been passed for investigation and 17 of these were currently pending. All investigations bar one of the pending investigations had been carried out internally. That investigation had been carried out, on the instruction of the Assistant Chief Executive – Legal, by an assistant director of Essex County Council who was also the monitoring officer for Maldon District Council. The instruction was made via the Public Law Partnership.

The Assistant Chief Executive – Legal said the partnership offered very attractive rates. The hourly rate was £85, but it was expected that a solicitor of the assistant director's experience would be paid at least £217 per hour. Procurement through the Partnership is done through an electronic circular. Only one bid was received so a preferential rate cannot be guaranteed.

The final bill is likely to be around £3,000 which would equate to around 35 hours of work. This was typical for an investigation. It followed that the cost of

an investigation would be around £3,000 through the partnership or £7,700 for an external solicitor.

The Chief Executive had indicated that funding for investigations could be provided out of reserves if necessary. The Assistant Chief Executive – Legal added that following the email from Councillor Dean it was now recommended that this matter was deferred until the newly appointed task group had finished its review.

RESOLVED that the matter was deferred until the Task Group had finished its review.

SC17

ROLE OF MEMBERS OF THE STANDARDS COMMITTEE WHILST THEY ARE SUBJECT TO COMPLAINTS

The Assistant Chief Executive – Legal presented his report. All Members had to observe the Council's Code of Conduct and could be subject to a complaint by anyone. Not all complaints are passed for investigation. Once a complaint is made and the subject member has been notified, the complaint is then considered by an independent member of the Standards Committee and the Monitoring Officer. They then consider whether the complaint was worthy of an investigation. This took between five to ten days.

If a complaint was not passed for investigation, no further action was taken. If a member of the Committee was subject to an allegation that they had broken the Code and it was not passed for investigation there was no reason they couldn't take full part in the activities of the Committee.

The Assistant Chief Executive – Legal said that if a complaint was passed for investigation the process was more prolonged. There were three questions for the Committee which were;

- (a) Whether it is appropriate for members of the Standards Committee who are the subject of complaints to continue to take part in committee activities
- (b) If not, at what stage of the process they should withdraw from those activities.
- (c) How such withdrawal is to be achieved.

If Members determined that members of the Committee should not serve whilst they are subject to a complaint, they could achieve this through three ways:

- (a) There could be a protocol by which members of the committee agree they will not serve whilst they are the subject of a complaint or under investigation.
- (b) As per (a) but with an amendment to provide that the member should stand down from the Standards Committee for the duration

of the investigation and the group leader should appoint an alternative member in their place.

- (c) By an amendment to the Code of Conduct to provide that members of the Standards Committee who are the subject of a complaint or the subject of an investigation should not take any part in Standards Committee activities until such time as the complaint has been determined.

The Chairman said that the matter of whether members of the Committee should step down whilst they are subject to an investigation had been raised by the independent members. She understood the viewpoint of the independent members. However, she felt that there were a number of complaints which were made on a tit for tat basis, and whilst she did not feel that Members under investigation should be part of Committee hearings, there would not be any impact on councillors regarding their ability to make decisions at ordinary meetings of the Committee.

Councillor Artus agreed with the Chairman's comments and added that when he had been under investigation, the process had taken five months. This was an excessive period of time for a Member to be unable to be part of the Committee.

Councillor Dean said that the sub-group of the Task Group had been of the opinion that Members should step aside from the decision making process whilst they were subject to an investigation. It did seem sensible though to allow all Members to take part in discussions.

The Chairman asked the independent members for their views. Mr Pearl said the issue of whether Members should remain part of the Committee whilst subject to an investigation was partly one of public perception. Allowing Members to remain part of the decision making process could be seen as a regrettable step and could prevent natural justice from being seen to be done.

The Chairman said that she understood the points made by Mr Pearl, but she did not feel that a Members' ability to have a fair and balanced viewpoint would be affected by being subject to an investigation.

Mrs Wellingbrook-Doswell spoke about the need for the public to have full belief in the integrity of the Committee. The investigation process needed to be both speedy and beyond reproach. When she was first appointed as an independent member to the Committee she was surprised that Members of the Committee did not have to step down whilst they were subject to a complaint.

Members discussed the need for the process to allow for faster resolutions to complaints. Councillor Artus said that the speed of the process was not always dependent on the Council, so whilst procedures and processes could be put in place, this would not guarantee faster outcomes. If a Member was subject to an investigation they should not take part in voting, but could still have an input into the decision making process.

Councillor Jones said that this was a difficult decision and asked whether a further check could be put in place to determine whether a complaint was serious enough to warrant the Member stepping down whilst subject to an investigation. He noted that there was currently no requirement for more senior councillors such as the leader to step down whilst they were subject to a complaint.

In response to the points made by Councillor Jones, Councillor Artus said that a complaint could be serious, but not founded in evidence. This happened fairly often and had happened to him in the past.

Councillor Dean suggested that the matter was discussed in further detail by the Task Group. There was a danger of the process becoming too convoluted.

In response to questions by Councillor Sell, the Assistant Chief Executive – Legal said that most complaints which were not passed for investigation were not vexatious, but were based on a misunderstanding of the Code of Conduct, which did not apply when councillors were acting in a personal capacity. There was a member of the public who was lobbying the Government to have this changed. This followed the conviction of a parish councillor for the possession of hundreds of indecent images of children. The councillor had not received a custodial sentence and as he was acting in a personal capacity, he had not breached his council's code of conduct.

There had been repeat complaints from the members of Hatfield Broad Oak Parish Council. Due to the number of complaints, the Assistant Chief Executive – Legal, along with the three independent members, had agreed that it would write to the Parish Council explaining that it was unlikely to consider complaints made by Hatfield Broad Oak's parish councillors against each other.

The Assistant Chief Executive – Legal then informed the Committee that the majority of complaints were not passed for investigation and it normally took less than two weeks to decide whether a complaint would be investigated.

The Chairman said the Task Group had been examining many of the procedures currently in place and had looked at including the complainant and subject member at an earlier stage in the process. The current procedures were hindered by the current legislation and therefore the Committee lacked the ability to impose meaningful sanctions. This would be discussed by the Task Group.

RESOLVED that the matter was deferred to allow the Task Group to discuss it in more depth.

SC18

ANY OTHER BUSINESS

The Chairman asked that the papers produced by the Task Group were circulated to the rest of the Committee and the relevant officers so they could comment.

Councillor Hargreaves asked whether the Committee could discuss a possible breach of the Code of Conduct which had been referred to the Police. The Assistant Chief Executive – Legal advised the Committee that the matter contained information exempt under Paragraph 2 of Schedule 12A of the Local Government Act 1972 and if they wished to discuss it they should move into Part 2.

SC19

EXCLUSION OF THE PUBLIC

RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 2 part 1 of Schedule 12A of the Act.

The Assistant Chief Executive – Legal outlined the complaint. It became apparent that the allegation, if proven, would have amounted to fraud so he referred the matter to the Police.

The Police's response was not satisfactory and it took them two years before they interviewed the subject member. The Assistant Chief Executive – Legal said that this was regrettable as if a conviction was achieved it was likely that a custodial sentence would have been imposed. He had complained to the Police about their handling of the matter.

The Police had now closed the matter as they did not feel there was enough evidence to pursue the allegation any further. A breach of the Code could now only be established if the subject member admitted any wrongdoing. This was unlikely to happen, so the Assistant Chief Executive – Legal proposed that he also closed his investigation.

In response to a question by Councillor Hargreaves, the Assistant Chief Executive – Legal said that if new evidence came to light then the Police could re-open their investigation.

Members discussed making a formal complaint to the Police. It was agreed that the Committee would write to the Police and Crime Commissioner and asked that any action against the complainant was suspended indefinitely until further evidence came to light.

RESOLVED that:

- A formal letter of complaint would be written to the Police and Crime Commissioner.
- Action against the complainant would be suspended indefinitely unless further evidence came to light.

The meeting ended at 10.15am.