



Uttlesford District Council

Chief Executive: Dawn French

Standards Committee

Date: Monday, 5th November, 2018
Time: 5.00 pm
Venue: Committee Room - Council Offices, London Road, Saffron Walden,
Essex CB11 4ER

Chairman: Councillor D Jones
Members: Councillors K Artus (Vice-Chair), A Dean, N Hargreaves, T Knight,
P Lees, B Light, J Loughlin and G Sell
Other Mrs G Butcher-Doulton, Mr D Pearl and Mrs C
Attendees: Wellingbrook-Doswell (Independent Persons)

Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting. A time limit of 3 minutes is allowed for each speaker. Please refer to further information overleaf.

AGENDA PART 1

Open to Public and Press

- 1 Apologies for Absence and Declarations of Interest**
To receive any apologies for absence and declarations of interest.
- 2 Minutes of the Previous Meeting** 5 - 8
To consider the minutes of the previous meeting.
- 3 Standards Committee and Employment Issues following Harvey v Ledbury Town Council** 9 - 12

To consider the report on Standards Committee and Employment Issues following Harvey v Ledbury Town Council.

4 Visit to Uttlesford by the Committee on Standards in Public Life 13 - 14

To reflect on the visit to Uttlesford by the Committee on Standards in Public Life and to note the letter of thanks sent on behalf of the Committee.

5 Hearing Panel Procedure 15 - 18

To provide information about the procedure to be followed if members are appointed to a Hearing Panel.

MEETINGS AND THE PUBLIC

Members of the public are welcome to attend any of the Council's Cabinet or Committee meetings and listen to the debate. All agendas, reports and minutes can be viewed on the Council's website www.uttlesford.gov.uk. For background papers in relation to this meeting please contact committee@uttlesford.gov.uk or phone 01799 510548/369.

Members of the public and representatives of parish and town councils are permitted to speak or ask questions at any of these meetings. You will need to register with the Democratic Services Officer by midday two working days before the meeting.

The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

Agenda and Minutes are available in alternative formats and/or languages. For more information please call 01799 510510.

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For information about this meeting please contact Democratic Services

Telephone: 01799 510369 or 510548

Email: Committee@uttlesford.gov.uk

General Enquiries

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STANDARDS COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 16 APRIL 2018 at 5.00 pm

Present: Councillor D Jones (Chairman)
Councillors K Artus, N Hargreaves, T Knight, P Lees and G Sell

Mr D Pearl and Mrs G Butcher-Doulton (Independent Persons).

Officers in attendance: B Ferguson (Democratic Services Officer) and S Pugh
(Assistant Director - Governance and Legal)

SC22 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors Asker, Dean and Loughlin, and Mrs Wellingbrook-Doswell.

SC23 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 6 November 2017 were agreed as a correct record and signed by the Chairman.

SC24 STANDARDS IN PUBLIC LIFE: REPORT ON INTIMIDATION IN PUBLIC LIFE

The Assistant Director – Governance and Legal Services summarised the Committee on Standards in Public Life report on “Intimidation in Public Life”. He said the report recommended the non-disclosure of personal data that could lead to a councillor being subject to violence or intimidation e.g. home addresses, shares held by a councillor. He said he had written to councillors and parish clerks to advise them of this practice but asked Members to contact him if they had any concerns.

In a wider context the Assistant Director – Governance and Legal Services said it was desirable for councillors to foster a respectful environment in which people in public life behaved well. This could be achieved by following the Nolan principles and reinforcing the Code of Conduct. Political parties had an important role to play by enforcing the code, through the party whip and internal discipline. The establishment of a cross party consensus on what constituted acceptable terms of debate would go some way in fostering a respectful political environment.

Councillor Knight entered the meeting at 5.15pm.

Members discussed the use of social media in local politics, and the recommendations they had inferred after reading the report. There was a general consensus that social media could be used for the benefit, and detriment, of those in public life.

The Assistant Director – Governance and Legal Services said Member training on social media would be part of Member induction training in 2019. Members agreed this was a good idea.

The Assistant Director – Governance and Legal Services said the Local Government Association had guidance on the use of social media, not only warning public figures of the dangers but also highlighting the positives it could bring. He said he would circulate this guidance with Members.

SC25 **REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS: STAKEHOLDER CONSULTATION**

The Assistant Director – Governance and Legal Services said the committee should reach a consensus on how they wanted to respond to the consultation and he, along with the Chairman, would draft a response with the committee's approval. The other option put to Members was the formation of a task group although this would be difficult due to the deadline of 18 May 2018.

Members discussed how to respond to the consultation, with particular regard to the Code of Conduct, which had been adopted by the Council last year.

Councillor Knight said the Council's response should include mention that the code was meaningless due to the lack of punitive sanctions available when the code had been breached. She said parish councillors should have mandatory standards training, as the majority of complaints originated with parish councils.

Councillor Artus said the Council's response should include the implementation of a graduated scale of sanctions, where the frequency and severity of breaches of the code could be taken into account.

Members agreed unanimously that the code was 'toothless' and sanctions needed to be strengthened in cases where the code had been breached. They requested that this point be made in the consultation response.

In response to a Member question, the Assistant Director – Governance and Legal Services said that Independent Persons could not be given voting rights as this was contrary to legislation. He said that Member comments on the importance of the Independent Persons role, and their belief that the role should be further empowered, could be included in the consultation response.

RESOLVED for the Chairman and Assistant Director - Governance and Legal Services to draft a response to the consultation and circulate with Members for comment and approval.

SC26 **UPDATE ON THE ADOPTION OF THE COUNCIL'S CODE OF CONDUCT BY TOWN AND PARISH COUNCILS**

The Assistant Director – Governance and Legal Services said 18 out of 52 parish/town councils in the district had adopted the Code of Conduct. He said he would send out a reminder to parish clerks.

Councillor Sell said UDC Members should be included in any correspondence so they could also encourage the parishes within their ward to adopt the code.

SC27 **STANDARDS WORK PROGRAMME 2018 - 19**

Members discussed potential items for the Standards Work Programme 2018-19.

The Chairman said that any work on the Constitution would now be the business of the Governance, Audit and Performance (GAP) Committee which had been established in 2017.

Councillor Knight said the Constitution, and council procedures, required much work, which she had begun. She said her findings could be forwarded to the GAP committee for consideration.

Mrs Butcher-Doulton said more training was required for members of the Standards Committee, specifically on hearings.

The Assistant Director – Governance and Legal Services said training would be provided during induction for new Members but he would look at a ‘stop-gap’ session to cover the period before the next election.

SC28 **TIME OF FUTURE MEETINGS**

Members agreed that the start time of scheduled meetings would be changed from 4.00pm to 5.00pm.

The meeting ended at 6.35pm.

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Committee: Standards Committee
Title: Standards Committee and Employment Issues following Harvey v Ledbury Town Council
Report Author: Simon Pugh, Assistant Director - Governance and Legal
spugh@uttlesford.gov.uk
Date: Monday, 5 November 2018

Summary

1. This report summarises issues raised by a recent court case and its implications for the Standards Committee and Monitoring Officer. The case (Harvey v Ledbury Town Council) concerned action taken by the Town Council in respect of an allegation of bullying against a councillor. The judgment sheds light on the roles of the Town Council and the council responsible for Standards (in this case Herefordshire County Council).

Recommendations

2. To note.

Financial Implications

3. None

Background Papers

4. There are no background papers but the judgment in Harvey v Ledbury Town Council may be found at <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The judgment in this case has legal implications, which are explained in the body of the report.

Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	There are implications for councils in how they handle employment-related matters where complaints are made against councillors.

Situation

6. Cllr Harvey was a member of Ledbury Town Council. Complaints were made against her by the Clerk and by the Deputy Clerk. The complainants alleged a campaign of bullying against them. The Clerk asked for the matter to be dealt with under the Council's Harassment Grievance Procedure and asked the Council to impose sanctions against Cllr Harvey. Ledbury Town Council then set up a "grievance panel" to consider the complaints against Cllr Harvey.
7. Cllr Harvey said that she did not accept that this was the appropriate way to deal with the complaint and self-referred herself to the Monitoring Officer at Herefordshire County Council. The Monitoring Officer informed Cllr Harvey that that, having sought the views of the "independent person", she could not resolve the Complaint informally, that it was sufficiently serious to require further investigation, and that she was making arrangements for the complaint to be investigated by an external investigator.
8. The Grievance Panel met and resolved to take action, *"in order to reduce contact between the two officers and the two concerned, and thereby help prevent the on-going bullying, intimidation and harassment of staff ..."*. The action taken in respect of Cllr Harvey was:
 - i) she should not serve on any of the Parish Council's committees, sub-committees, panels or working / steering groups;*
 - ii) she should not be eligible to substitute for a member of any of the Parish Council's committees, sub-committees, panels or working / steering groups;*
 - iii) she should not represent the Parish Council on any outside body;*
 - iv) all of her communication with the Clerk or Deputy Clerk should go through the Parish Council Mayor (or Deputy Mayor in his / her absence);*
 - v) the LA be informed of the above actions taken by the Council;*
 - vi) all bodies affiliated to the Council be informed of the above actions; and that the prohibitions should remain in place "until the Annual Meeting of [the Parish Council] in May 2017, when the matter may be reviewed".*
9. Shortly afterwards, the independent investigation commissioned by the Monitoring Officer found that there was no basis to support a finding that the Claimant had breached the Code. The Monitoring Officer's decision was that

there had been no breach of the Code, and she would be taking no further action on the Complaints.

10. Cllr Harvey challenged the decision of Ledbury Town Council on various grounds but the one that is of relevance to the Standards Committee is that its decision was *ultra vires*; i.e. that it did not have the power to investigate the complaint and to impose sanctions other than on the recommendation of the principal Council, in this instance Herefordshire County Council.
11. The High Court agreed with Cllr Harvey and set aside the decision made by Ledbury Town Council. The behaviour alleged fell within the scope of Ledbury TC's Code of Conduct. The Localism Act set out a procedure for dealing with Code of Conduct complaints; in particular, it made the higher tier local authority responsible for determining Code of Conduct complaints. The Court judgment commented, in particular, that circumventing this would remove from members the protection afforded by the role of the Independent Person.
12. The High Court also held that the Town Council could only impose sanctions on its councillors on the recommendation of the council responsible for Code of Conduct complaints. It could not impose sanctions of its own accord.
13. The judgment has led to concern and uncertainty on the part of town and parish councils, in particular regarding the scope of established grievance procedures. It is, unfortunately, not uncommon for town or parish council employees to make complaints against councillors, especially of bullying. Whilst the judgment makes it clear that town and parish councils cannot make decisions on the merits of complaints that fall within the Code of Conduct and cannot impose sanctions, they also have a responsibility to their employees and will need to manage situations in which there is dispute between employees and members. The Ledbury decision does not provide guidance on this.
14. Whilst there is uncertainty, and whilst the decision makes it difficult for town and parish councils to manage situations in which employees allege bullying behaviour against councillors, my advice is that there are still steps that they can take. This is the advice I have given when asked about the position:
 - a. Formal complaints about bullying (or other behaviour within the scope of the Code of Conduct must be referred to the Monitoring Officer for formal consideration and, where appropriate, investigation.
 - b. Town and parish councils must not make judgments, in response to complaints, as to whether or not a councillor is guilty of conduct falling within the Code of Conduct. They also must not impose sanctions on councillors, other than on the recommendation of UDC's Standards Committee.
 - c. The Ledbury decision does not prevent town and parish councils taking administrative steps that do not involve making findings against councillors or the imposition of sanctions. They can take practical measures to manage the situation. For example:

- i. they might consider changing the reporting responsibilities of the employee so that they have less contact with the member,
- ii. they might arrange for a second employee to be present when the councillor and employee need to meet or
- iii. they might agree with the councillor for alternative means of contact; e.g. by email rather than by telephone or in person.
- iv. They might agree with the parties to pursue mediation.

However, care needs to be taken not to cross the line by imposing a sanction, and there will be grey areas. The right of employees to pursue a formal standards complaint also needs to be respected.

15. The Standards Committee raised this issue in its recent representations to the Committee on Standards in Public Life. It is likely that it was widely raised by other consultees. Members can further consider the point when the Committee on Standards in Public Life publishes its report.

Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
The primary risk is to town and parish councils if they mishandle complaints. However, there is a risk to UDC if incorrect advice is given regarding the remit of the Standards regime.	2	2	If the Monitoring Officer is consulted by town or parish councils, he will advise as outlined in this report.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

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Simon Pugh
Monitoring Officer

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Committee on
Standards in
Public Life

1 October 2018

Dear Simon,

I am writing to thank you for giving up your time on Monday 10 September to talk to me and my fellow Committee member, Jane Ramsey, about your experiences of ethical standards in local government as well as matters relating to ethical standards in public life generally. This will be enormously helpful in helping to inform our review.

We were impressed by the leadership demonstrated by senior officers and members of the council, which has led to a redrafting of its code of conduct and procedure for dealing with complaints under the code, as well as by the council's commitment to uphold standards by delivering high quality, relatable induction and ongoing training for members. It was also insightful to see how Uttlesford builds and maintains an ethical culture through its use of Independent Persons. Georgina Butcher-Doulton and Catherine Wellingbrook-Doswell were clearly highly committed and experienced in matters of propriety and procedure; had high expectations of councillors and a conviction of the need for professionalism and due process.

I would be grateful if you would pass on the thanks of our Committee to the Chief Executive of Uttlesford District Council and Cllr Derek Jones for taking the time to share their experiences and views with the Committee.

I also particularly wish to convey the thanks of the Committee to you and your team in Democratic Services, who coordinated our visit and provided us with such a warm welcome. We understand that coordinating a programme with so many participants is a very time consuming activity for the council. Your efforts ensured that we had many fruitful conversations on the day.

The Secretariat will write to you closer to the time of the publication of the Committee's report and will ensure that your council receives a copy and details of the launch.

My sincere thanks once again.

Yours sincerely,

 (pp. Amy Ashkin)

Dr Jane Martin CBE
Member, Committee on Standards in Public Life

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The procedure for hearings before a Hearing Panel of the Standards Committee.

1.1 Formal hearings will be conducted by a panel of three councillors drawn from membership of the Standards Committee on the basis of availability plus one of the Independent Persons.

1.2 A member of the Standards Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of a Hearings Panel until consideration of the complaint has been concluded.

1.3 Agendas for hearings panels shall be published and hearings panels shall be held in public unless:

- This would involve disclosure of exempt information as defined by Schedule 12A, Local Government Act, 1972; and
- In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1.4 Before a hearing panel meets, the Monitoring Officer shall write to the member and to the complainant, asking each:

- Whether they accept the finding in the report
- Whether they dispute any factual part of the report, identifying any areas of dispute.
- Whether they wish to call any witnesses at the hearing. (Only witnesses identified to the Investigating Officer by the complainant or by the member may be called as witnesses. In law, witnesses do not have to attend a hearing panel.)
- Whether the complainant wishes to be present at the hearing. (The complainant shall be invited, but is not obliged, to attend the hearing. If the complainant is not present, the procedure below shall be adapted accordingly.)
- Whether they wish to be accompanied at the hearing.

1.5 In advance of a meeting of a Hearing Panel its members shall seek to agree who will chair the hearing. The Chair may issue directions about the conduct of the hearing. A member of a Hearing Panel shall not act as Chair unless they have received relevant training.

1.6 Subject to the discretion of the Chair, the hearing shall be conducted as follows:

- a. The Investigating Officer will be invited to present their report and to call witnesses. The complainant, the member and the Panel (including the Independent Person), in that order, may ask questions or seek clarification both of the Investigating Officer and any witnesses.
- b. The complainant will be invited to comment on the report and its findings and to call witnesses. The Investigating Officer, the member and the Panel, in that order, may ask questions or seek clarification both of the complainant and any witnesses.
- c. The member will be invited to comment on the report and its findings and to call any witnesses. The Investigating Officer, the complainant and the Panel, in that order, may ask questions or seek clarification both of the member and any witnesses.
- d. The Investigating Officer, the complainant and the member will be invited, in that order, to make brief concluding remarks.

1.7 The Chair and Panel, including the Independent Person, may ask for advice at any stage from the Monitoring Officer.

1.8 Once the hearing has been concluded, the Hearing Panel, with the Independent Person, will retire to consider its decision. It may call on the Monitoring Officer to provide advice and guidance. The Hearings Panel is required to do the following: (i) to decide on the facts, (ii) to decide on whether these facts constitute a breach of the Code of Conduct, and (iii) to decide on the appropriate sanction.

1.9 In deciding whether or not to uphold the complaint the Hearing Panel must apply, as the standard of proof, the balance of probability, with the burden of proof resting on the Investigating Officer. The Hearing panel may only make an adverse finding if satisfied, on this basis, that the member has breached the Code of Conduct.

1.10 The Hearing Panel will then return and announce its findings on whether there has been a breach of the Code, with reasons.

1.11 Following announcement of the Hearing Panel's findings, the complainant and the member will be invited to make submissions, if necessary, regarding remedies or sanctions.

1.12 The Hearing Panel will then consider what, if any, sanction it wishes to impose. It shall retire whilst it considers this. It will then announce its decision and give reasons.

1.13 Following the hearing, the Monitoring Officer shall draft a record of the decision for approval by the Hearing Panel. Once the record of decision has been settled, a copy shall be sent to each of the parties.

2. Appealing a Decision about a Complaint

2.1 There is no right of appeal against a decision on a Code of Conduct complaint. If the complainant or the member considers that the complaint has not been considered properly by UDC, they may be able to complain to the Local Government Ombudsman or seek permission for judicial review.

3. Sanctions available to a Hearings Panel

3.1 The Hearings Panel has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct.

3.2 The Hearings Panel may do one, or a combination, of the following:

- a. Issue a formal Censure or Reprimand to the Member
- b. Report its findings to Council (or to the Parish or Town Council) for information
- c. Recommend the Member's Group Leader (or in the case of ungrouped members, recommend the Council or Committees) to remove the Member from appointments to Committees or Sub-Committees of the Council
- d. Recommend the Leader of the Council to remove the Member from any appointment to the Cabinet, or from particular Portfolio responsibilities
- e. Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the Member
- f. Recommend to the Council (UDC) or its Cabinet, or to the Parish or Town Council that all outside appointments to which he has been appointed or nominated by that Authority are removed
- g. Exclude (or recommend that the Parish or Town Council exclude), the Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings
- h. If relevant, recommend that the Council removes the Member from the post of Leader of the Council.
- i. Publish its findings in respect of the Member's conduct.

In cases where a Hearings Panel makes an adverse finding against a Member, its decision will be published on the Standards Committee pages of the Council's website. This includes decisions relating to members of Town or Parish councils.

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