

Committee:	Council	Date:	23 rd May 2023
Title:	Report of a Standards Complaint Conclusion		
Report Author:	Peter Holt, Chief Executive pholt@uttlesford.gov.uk 01799 510400	Item for decision:	For Information

Summary

1. This report is for information only, and does not require a vote. It presents to full Council the Decision Notice [Appendix A] summarising the conclusions reached in April 2023 by a Standards Panel of three [then] Councillors having heard a complaint lodged by a [then] Councillor against another [then] Councillor. As can be seen in that Standards Panel's Decision Notice, they resolved that the Investigator's Report that they considered in reaching their conclusion should also be reported to full Council, and that too is therefore attached [Appendix B].
2. In terms of lessons learned, this report provides an interim update on a range of actions being put immediately in place to support Councillors in future in avoiding similar difficulties. It further updates on a more thorough process to look more carefully at other lessons that can be learned and applied, and how both Councillors and other interested parties can feed in their thoughts and suggestions to inform that lessons learned process.
3. This report goes on to address the outstanding process towards the approval of the 2019/20 Annual Accounts.

Recommendations

4. Nil – this report is for information only. Councillors are asked to carefully note the advice section below and to understand the extent and limitations of full Council's role in considering this matter, in line with the Council's Constitution, and also in line with the law.

Financial Implications

5. There are no direct financial implications to this Report.

Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - Appendix A – Decision Notice
 - Appendix B – Redacted Report of the Independent Investigator into this Standards Complaint

- Appendix C – Terms of Reference for Internal Audit Review into Standards Complaints process
- [The Council's Constitution](#)

Impact

7.

Communication/Consultation	-
Community Safety	Councillors routinely face harassment and are at times physically at risk. Members are reminded that the tone of public discourse can contribute positively or negatively to those risks.
Equalities	-
Health and Safety	-
Human Rights/Legal Implications	Councillors' attention is drawn carefully to the advice section of this report and to understand the extent and limitations of full Council's role in considering this matter, in line with the Council's Constitution, and also in line with the law, and to their own potential personal liability for their actions and speeches.
Sustainability	-
Ward-specific impacts	-
Workforce/Workplace	Councillors are respectfully reminded that Officers do not have an equal right of reply to any criticisms they may lodge in the debate of this report, and that there are proper processes for complaints against Officers that should be followed.

Advice to Councillors on handling this debate

8. It is not Constitutionally the role of full Council to re-hear the consideration of the complaint properly undertaken by the Standards Panel. That means that Councillors cannot question either the one remaining Councillor who sat on that Panel – the other two having lost their seats in the May elections – nor Officers about either the process, contents, or conclusions of the process, which are covered in the Decision Notice and in the Redacted Investigator's Report at Appendices A and B. Councillors may understandably reach their own conclusions, but should understand that the Standards Panel had the

advantage of hearing directly from participants and in asking and hearing the answers to questions. Members should therefore understand that even if they conclude that they might have reached a different conclusion had they been present and involved to that degree, they should trust and respect the judgment of the three [then] Councillors who were in the room and had access to the fuller picture which the rest of Council does not.

9. It is not Constitutionally the proper role of full Council to reverse or otherwise change the conclusion of the process in terms of either findings of fact or in sanctions applied. The Panel's conclusions are now a matter of historical fact, and there can be no motion accepted for vote that seeks to reach any different conclusion, as that is beyond full Council's Constitutional or legal powers.
10. It is not Constitutionally the proper role of full Council to introduce into the debate any other allegations, justifications or evidence either directly related to the [then] Councillor against whom the Standards Complaint was heard, or to any other participant or interested party, whether that is a current or former Member, or any Witness or Staff Member. Councillors are cautioned very carefully and explicitly: they are responsible for their actions and their words, and they should not expect to rely on Privilege in their speeches, and thus that they are potentially open to be sued for slander or libel (e.g. in any related social media posts), for which they cannot expect to rely on legal support from the Council in their subsequent defence.
11. The Standards Panel undertook to redact the Investigator's Report very slightly before publication to remove references identifying third parties. Councillors are cautioned explicitly not to do or say anything that seeks to undermine these minor redactions by directly or indirectly identifying any of those third parties – including by speculation.
12. Councillors may legitimately express opinions about the process of this Standards Complaint, but they should be aware both that there is an Internal Audit process in place into which they can feed their detailed considerations, and that the ensuing Internal Audit Report will routinely be presented to the cross-party Audit Committee for detailed consideration in due course. Members are reminded to carefully observe the Member/Officer protocol in any criticisms of Officers, for which there are proper processes of which debates in full Council are not a part.

Situation

Specifics of this case

13. The specifics in this case of the allegations, the investigation, the findings of fact and the conclusions, including the sanctions, are all presented in the Decision Notice and Redacted Investigator's Report provided as Appendices A and B, and stand in their own words, which do not require further interpretation or explanation.

Timing of the reporting and publication of the conclusion of this case

14. There has been understandable public interest and speculation since the Standards Panel met as to what its conclusion was, and when its Decision Notice etc. was to be published – particularly in relation to the subsequent all-out elections. Journalists have cried foul, and members of the public have complained directly to the Local Government Ombudsman and allegedly even a criminal complaint about Officers to the Police.
15. Now that the Decision Notice has been published, those interested parties can all see for themselves that it was the Standards Panel that decided to publish the Decision Notice, and also the Redacted Investigator's Report, only after the election was over. The subject member of the complaint, former Cllr Lodge, was not running in those elections, and so the publication or not before or after the election could not have affected the public's decision to vote for him, as he simply wasn't on any ballot papers. The complaint of course related to an individual not to a wider party or any other candidates running for office for that party.
16. This delay in publication was an entirely proper decision for the Panel to have reached, and therefore for Officers to have delivered. There is no specific timing requirement in any procedures stipulating how quickly a Decision Notice should be published, and so this discretion was entirely in line with relevant policies and procedures, and requires no further justification.

Immediate lessons learned and applied

17. The Council's Statutory Officers – the Head of Paid Service [Chief Executive], Section 151 Officer [Director of Finance and Corporate Services], Monitoring Officer [Assistant Director, Corporate Services] and Deputy Monitoring Officer [Interim Legal Services Manager] met soon after the Standards Panel had concluded to consider lessons learned. Until that point the Head of Paid Service and Section 151 Officer had not been privy to the specifics of the matter or to the detailed Investigator's Report, as they have no proper direct role in the detailed handling of specific Standards Complaints, which are handled in line with the Council's proper procedures and in line with the law by the Monitoring Officer (and Deputies) in coordination with the assigned Independent Persons, who are appointed by full Council.
18. These Statutory Officers have made immediate changes to support arrangements in place for incoming Councillors in regards to declarations of interests – both in filling in the forms on joining the Council, and in regularly reminding and supporting them in keeping them up to date – and in properly making declarations at relevant meetings. The specifics of those immediate changes will be presented to Councillors in their induction meetings during May. Officers concluded that, whilst the duty to properly declare interests remains with each Councillor, the complexity of the system requirements is such that Officers' experience and perception is that many Councillors from across different parties have fallen short in the last four years of various of the requirements that former Cllr Lodge was found to have breached.

19. For example, Officers have introduced new and more intuitive Declaration of Interest Forms for the 2023 intake of Councillors to complete that should avoid a future situation where they commit a breach by declaring the information required, but in the wrong form of words or simply on the wrong page of the form, as former Cllr Lodge was found to have done. This should in future support Councillors who have attempted to do the right thing in demonstrably trying to properly declare something which the public have a right to know do so in the fully compliant format technically required.
20. As a second example, Officers will now ask follow up questions to Councillors once they have filled in their form to check that when they make one specific declaration that there aren't also consequential matters they need to declare separately so as not to fall foul of the rules in another of the ways that former Cllr Lodge was found to have done (e.g. if they declare that they are a Director of a Company, to check with them that they need also to declare that they also hold a significant shareholding in that company, or if their spouse is also a Director and/or major shareholder – all of which information is in any event publicly available by a simple search of the Company's House website).
21. As a third example, Officers will now routinely provide a laminated sheet on the table for Councillors attending meetings alongside their name plate, with prompts on this sheet of illustrations of the types of the proper forms of words they should use so that when they declare an interest and leave the room when they have an interest in the next agenda item that means they should not take part, that before they leave the room, they properly declare the nature of that interest, e.g. a Disclosable Pecuniary Interests or Other Registerable Interests or other Non-registerable Interests. This should help Councillors in future avoid just imagining that saying 'I declare an interest' on their way out the door is sufficient when it is not, as was another finding against former Councillor Lodge.

Further consideration of lessons to be learned and applied

22. Shortly before Cllr Lodge's case had been heard, and when he was still not sighted on the specifics of that case, the Chief Executive received an external complaint relating to a different and entirely unrelated Standards Complaint process. The Chief Executive considered his general duty in regards to the efficient running of the Council generally; value for money considerations; and the general duty of care to both those District or Parish Councillors complained about, to complainants, to witnesses and to staff, and concluded that he had sufficient concern about the operation of the Standards Process generally to warrant an objective review.
23. The Chief Executive duly commissioned an Internal Audit Review, the terms of reference of which are set out in full in Appendix C and its scope reproduced below:

This audit will:

- review how well complaints are triaged before being progressed as appropriate and proportionate e.g. considering prima facie evidence

presented by the complainant at an early stage to indicate that a breach has potentially occurred.

- review the established criteria for requesting a full independent investigation.
- review how well the principles of natural justice are applied at all stages.
- review how long complaints take and how much they cost, proportionate to their seriousness, and in light of any disproportionate unintended consequences arising from the process itself
- review the current Considering a Complainant under the Code of Conduct Procedure. (dated 2017)
- Use at least three current/recent complaints as recommended by the Chief Executive (alongside any others that the Internal Audit team selects for itself) as test cases to review the process from receipt to conclusion.

24. Members can be advised that one of those three specific complaints selected by the Chief Executive to be reviewed by the Internal Audit is this case against former Cllr Lodge.

25. Members or others who have perspectives on the operation of the Standards Complaints process that they wish to feed into and inform that Internal Audit review as previously advised.

External Audit Sign Off to the 2019/2020 Annual Accounts

26. In mid-2020, the Council's External Auditors did not sign off the 2019/20 Annual Governance Statement as they became aware of allegations that were then subject to external investigation. This began a protracted delay to the sign off of the 2019/20 Annual Accounts, which cannot be completed without a signed off Annual Governance Statement. That 2019/20 Annual Accounts Audit has been on hold ever since, and with them every subsequent set of Annual Accounts, which relies on the previous year's signed-off accounts as its starting point.

27. Officers were not fully aware of various of the allegations as they were made to and considered by external agencies which properly do not share their work with the Council. Officers were aware of the issues in general terms, and so as to help identify whether there were any control processes that needed tightening, discreetly commissioned an expert independent law firm to carry out a systems review in those areas parallel to these external considerations, in a way that did not risk interfering with them. That external review found no material system weaknesses for Officers to consider fixing.

28. Now that all formal processes are, to the best of the Council's knowledge, complete, Officers have advised our External Auditors and are in discussion with them as to their requirements to return to work on the 2019/20 Annual Governance Statement and Annual Accounts, and thereafter in turn to subsequent years' Accounts. The Council's External Auditors face considerable work pressures and capacity issues, and there is not currently a

date for that work, though Officers will continue to liaise closely to support this process at the earliest opportunity.

29. Members should be advised that whenever External Auditors return to delayed earlier years' accounts in this way, the process is not generally a quick and cursory final sign off, even if there were no other material outstanding issues from the time, as the Auditors will properly take their time to consider issues dating back to that time, but with the benefit of subsequent hindsight.

Behaviours

30. These Officer-led immediate actions and review set out in paragraphs 17-21 and 22-25 above should lead to both immediate and lasting process improvements.
31. The equally important flip side requiring just as urgent attention is around behaviours. It has been observed by both Officers and Members that the Standards Complaints process within Uttlesford District Council has been weaponised, giving rise to concerns that it is used as a tool to oppress and intimidate those against whom complaints are lodged, whether District Councillors or Parish Councillors.
32. Members are invited to consider this perception of behaviours, and to determine whether they are minded to lead the public by example through their own behaviours in either challenging and changing this impression for the better over the coming four years, or else risking reinforcing the perception.

Risk Analysis

33.

Risk	Likelihood	Impact	Mitigating actions
That lessons are not learned and applied from this case, leaving Councillors in future at risk from having demonstrably tried to do the right thing still falling short of full technical requirements.	3 – significant risk	4 – substantial /serious impact on workload, reputation /public confidence, and duty of care considerations to individuals	Immediate actions as set out in paras 17-21 above and the fuller Internal Audit Review commission set out in paras 22-25 above.

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.