

AGENDA

Meeting: Standards Committee
Place: The Kennet Room - County Hall, Trowbridge BA14 8JN
Date: Thursday 26 January 2017
Time: 2.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Paul Oatway QPM (Chairman)	Cllr Julian Johnson
Cllr Allison Bucknell (Vice Chairman)	Cllr Sheila Parker
Cllr Desna Allen	Cllr Horace Prickett
Cllr Rosemary Brown	Mr Philip Gill MBE JP
Cllr Trevor Carbin	Mr Paul Neale
Cllr Terry Chivers	Mr John Scragg
Cllr Howard Greenman	Miss Pam Turner

Substitutes:

Cllr Glenis Ansell	Cllr Bob Jones MBE
Cllr Ernie Clark	Cllr Magnus Macdonald
Cllr Dennis Drewett	Cllr Pip Ridout
Cllr Peter Evans	Cllr John Smale
Cllr Charles Howard	Cllr Ian Thorn
Cllr George Jeans	

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes** (*Pages 7 - 38*)

To confirm the minutes of the meeting held on 29 June 2016.

To receive the minutes of the Review Sub-Committees held on 21 June, 3 August, 21 November and 9 December 2016 and 10 January 2017.

To receive the public minutes of the Hearing Sub-Committee held on 1 September 2016.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on 19 January 2017 in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on 23 January 2017. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the

Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Review of the Standards Complaints Procedure** (Pages 39 - 70)

To consider a report from the Monitoring Officer.

7 **Status Report on Standards Complaints** (Pages 71 - 72)

To receive a written update on current standards complaints.

8 **Local Government Ombudsman's Annual Review Letter 2015 - 2016** (Pages 73 - 80)

To receive a report from the Monitoring Officer.

9 **Appointment of Independent Persons** (Pages 81 - 90)

To receive a report from the Monitoring Officer on the process and timetable for the appointment of Independent Persons.

10 **Forward Plan** (Pages 91 - 92)

To approve the proposed Forward Work Plan.

11 **Date of Next Meeting**

The date of the next meeting is currently scheduled for 5 April 2017.

This would be the final meeting before the May 2017 Unitary Elections.

12 **Urgent Items**

To consider any items considered urgent by the Chairman.

13 **Exclusion of the Public**

To consider passing the following resolution:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minute No.5 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the item to the public.

Paragraph 1 – information relating to an individual

Part II

Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

14 **Minutes** (Pages 93 - 98)

To receive the confidential minutes of the Standards Hearing Sub-Committee held on 1 September 2016.

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STANDARDS COMMITTEE

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 29 JUNE 2016 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Julian Johnson (Chairman), Cllr Paul Oatway (Vice Chairman),
Cllr Allison Bucknell, Cllr Rosemary Brown, Cllr Trevor Carbin,
Cllr Howard Greenman, Cllr Sheila Parker, Mr Philip Gill MBE JP, Mr John Scragg
and Miss Pam Turner

Also Present:

Cllr Alan MacRae

12 Apologies for Absence

Apologies were received from Councillor Horace Prickett and Mr Paul Neale.

It was also confirmed that following his appointment as Cabinet Member for Public Health on 27 June 2016, Councillor Jerry Wickham was no longer able to be a member of the Standards Committee.

13 Minutes

The Committee received the minutes of the Standards Review Sub-Committees held on 19 April and 15 June 2016, and considered the minutes of the Committee meeting held on 27 April 2016.

Resolved:

To approve and sign as a true and correct record the minutes of the meeting held on 27 April 2016.

14 Declarations of Interest

There were no declarations.

15 Chairman's Announcements

With the agreement of the Committee the agenda order for the meeting was altered to take the recommendations from the Focus Group as the first substantive item of business.

16 **Public Participation and Questions**

There were no questions or statements submitted.

17 **Recommendations of the Constitution Focus Group: Finance Regulations and Contract and Procurement Regulations**

The Committee received a report detailing proposed changes to the Financial Regulations in Part 9 of the Constitution and the Contract and Procurement Rules in Part 10. As detailed in the report and the draft minutes contained in agenda supplement 1, the proposed changes had been recommended for approval by the Constitution Focus Group.

Michael Hudson, Associate Director, Finance, was in attendance and gave a presentation on the proposed changes. It was explained the existing regulations had been reviewed in order to provide greater clarity and consistency resulting in better governance overall. The regulations set out the core principles, rules and standards that apply and these would be supported by a more detailed web-based manual for staff on how these core rules and standards are to be met. This would form part of a renewed council competency and training programme for all relevant staff on the financial governance framework.

A similar approach had been taken in respect of the Contract and Procurement Rules.

The Committee discussed the proposals, seeking details on the accessibility of the new procedure manuals and how the effectiveness of the new arrangements would be monitored, including oversight by Members.

Resolved:

To recommend that Council adopt the proposed new Financial Regulations and Contract and Procurement Rules in Part 9 and Part 10 of the Constitution respectively, and request the Audit Committee to review the implementation and effectiveness of the new arrangements.

18 **Code of Conduct**

Following a review of the effectiveness of the Council's Code of Conduct the Committee in September 2015 recommended Council to consider changes to clarify and strengthen the Code.

On 10 May 2016 Full Council asked the Standards Committee to consider a possible alternative proposal requesting full guidance from the Monitoring Officer assisting Members to meet their Code of Conduct obligations and to report back to the next meeting of Council.

The Committee received a report detailing proposed guidance on the provisions of the current Code, including the principles of public life; the duty to promote and maintain high standards of conduct; explanation of specific provisions of the Code; use of social media; registration and declaration of interests; bias and predetermination and the complaints procedure and local assessment criteria.

The Committee discussed the proposed guidance and considered whether this approach would more effectively address the concerns identified previously by the Committee than making changes to the Code itself. Subject to some minor changes, in particular in relation to the declaration of charitable interests, the Committee was satisfied that the guidance approach would meet their overall objective of promoting and maintaining high standards of conduct and was therefore minded to recommend Council to adopt this approach. It was noted that the guidance would be reviewed as necessary to ensure that it remained fit for purpose and it was proposed that this would be approved through the Standards Committee.

The Committee was also informed that representations had been received on aspects of the code of conduct complaints procedure. This procedure had been in place since July 2012 and the Committee felt it would be appropriate to review its effectiveness to see if improvements could be made. It was proposed that this would be referred to the Constitution Focus Group to review and report back to the Committee. It was noted that parish and town councils would need to be advised of any proposed changes to the procedure given that parish and town councillor code of conduct complaints are required to be dealt with under the Council's procedure.

Resolved:

- 1) To recommend that Council makes no changes to the Code of Conduct but adopts the proposed guidance as attached to the report to assist Members in meeting their obligations under the Code.**
- 2) To ask the Constitution Focus Group to review the procedure for dealing with complaints under the Code of Conduct and report back to the Committee with advice on any proposed changes.**

19 **Status of Complaints Update**

The Committee received a regular update on the number of Code of Conduct complaints received so far in 2016, along with details of outcomes and types of complaint.

Resolved:

To note the update.

20 **Forward Plan**

The Committee noted the Forward Plan as detailed in the agenda papers.

21 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.05 - 3.00 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic & Members' Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS HEARING SUB-COMMITTEE

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 1 SEPTEMBER 2016 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Desna Allen, Cllr George Jeans, Cllr Paul Oatway QPM and Mr Philip Gill MBE JP (non-voting)

Also Present:

Caroline Baynes (Independent Person), Libby Beale (Senior Democratic Services Officer), Marie Lindsay (Investigating Officer), Stuart Middleton (Independent Person), Paul Taylor (Senior Solicitor), Kieran Elliott (Senior Democratic Services Officer), Mr Martin Davis (Head of Service) and Cllr Alan MacRae

1 Election of Chairman

Nominations for a Chairman of the Standards Hearing Sub-Committee were sought and it was,

Resolved:

To elect Councillor Desna Allen as Chairman for this meeting only.

2 Declarations of Interest

There were no declarations.

3 Meeting Procedure

The procedure to be followed for the meeting was noted.

4 Exclusion of the Press and Public

Resolved:

That in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 5 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

5 **Determination of Code of Conduct Complaint WC-ENQ00137 Regarding Councillor A MacRae, Wiltshire Council**

The Hearing Sub-Committee considered complaint WC-ENQ00137 submitted by Mrs Carolyn Godfrey, a Corporate Director of Wiltshire Council, against Councillor Alan MacRae of Wiltshire Council. It had been alleged that Councillor MacRae had breached the Wiltshire Council Code of Conduct as a result of disclosing confidential information obtained through his role as a councillor to an individual who was not entitled to that information.

Following an initial assessment decision by Mr Frank Cain, Deputy Monitoring Officer, the complaint had been referred for investigation. That investigation had concluded that by divulging confidential information gained specifically from his role at Wiltshire Council, Councillor MacRae had failed to abide by the Nolan Principles of Leadership as required by the Code of Conduct, and therefore failed to maintain high standards in public office and improperly conferred a disadvantage. The conclusion of the investigating officer's report was upheld by Mr Ian Gibbons, Monitoring Officer, and it had therefore be referred to the Hearing Sub-Committee for consideration and determination.

The Chairman welcomed all those present at the hearing and advised them of the procedure that was to be followed, as previously detailed during pre-hearing arrangements sent to all parties.

At the request of the Sub-Committee Mr Martin Davis, a Head of Service at Wiltshire Council attending on behalf of the complainant, then provided details on the requirements of confidentiality and potential implications of disclosure of confidential information in the circumstances of this case.

Mrs Marie Lindsay, Ethical Governance Officer and Investigating Officer, then presented her report to the Sub-Committee, which included details of the original complaint, supporting information, responses from and interviews with Councillor MacRae. The report detailed that the facts of the circumstances and nature of the disclosure of confidential information was not contested by Councillor MacRae, who had acknowledged his error in disclosing and cooperated fully with the investigation, and that his motivation for disclosing information was not in question.

The Sub-Committee then sought further details and clarity from the Investigating Officer.

Councillor MacRae was then given the opportunity to present his position to the Sub-Committee. He fully accepted that he had made a serious error in making the disclosure and apologised for doing so, noting that as a result he was no longer responsible for work at the council in the same area as at the time of disclosure, work he cared a great deal about.

The Parties were then given the opportunity to make concluding statements.

The Sub-Committee then withdrew at 13:30 with the Committee Lawyer, Democratic Services representatives and Mr Stuart Middleton, Independent Person supporting the Sub-Committee.

The Sub-Committee returned at 14:15 and detailed their decision.

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Hearing Sub-Committee decided:

That Cllr MacRae's actions were in breach of the Wiltshire Council Code of Conduct by failing to maintain high standards in public office and that by his actions he improperly conferred a disadvantage and so failed to abide by the Nolan principles.

Accordingly, the Sub-Committee resolved:

- a) To recommend to Cllr MacRae's group leader (and Leader of the Council) that he not be reappointed to any committee or position of responsibility that involves receipt of confidential information regarding the service area of his disclosure of information.**
- b) That this recommendation be included in the minutes of the Standards Committee.**

Reason for Decision

The Hearing Sub-Committee considered the facts of the case as detailed in the Investigating Officer's Report, including the original complaint, response of the subject member and supporting information on the nature and extent of the alleged breach, as well as the statements of the Investigating Officer and Cllr MacRae at the Hearing.

The circumstances of the alleged breach had involved Cllr MacRae disclosing confidential material he had obtained through his position as a councillor to a party who was not entitled to the information. Both complainant and investigating officer had emphasized that there was no question as to Cllr MacRae's motives in that the disclosure had been an error of judgement, and that Cllr MacRae had accepted this and cooperated fully with the investigation.

As the facts were not disputed the Sub-Committee concluded that Cllr MacRae had disclosed confidential information, and they considered that this amounted to a breach of the Code of Conduct as detailed above.

When considering possible sanctions, the Sub-Committee had regard to the serious nature of the breach arising from disclosure of confidential material. Although Cllr MacRae's motivations were not in question and he had been

removed from the positions he had held at the time of breach, the nature of the disclosure had very serious implications that he should have been aware of as a result of his position.

The Sub-Committee therefore concluded that in addition to censure Cllr MacRae's group leader should be informed they were of the view he should not be reappointed to a similar committee or position where he might be in receipt of similar information.

The Sub-Committee also noted the wider implications for the council and its members regarding responsibilities with confidential information. They recommended to the Standards Committee that within 3 months of taking office, all councillors should be mandated to attend training specifically in respect of confidentiality requirements, with group leaders informed where this had not taken place, with the recommendation that no councillor should be appointed to any committee or position of responsibility without completing said training.

(Duration of meeting: 1.00 - 2.15 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 21 JUNE 2016 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Glenis Ansell, Cllr Ernie Clark, Cllr Horace Prickett and Mr John Scragg (Non-voting)

Also Present:

Mr Stuart Middleton (Independent Person), Mr Paul Taylor (Senior Solicitor), Mr Kieran Elliott (Senior Democratic Services Officer)

16 **Election of Chairman**

Resolved:

To elect Councillor Ernie Clark as Chairman for this meeting only.

17 **Declarations of Interest**

There were no interests declared.

18 **Meeting Procedure and Assessment Criteria**

The procedure and assessment criteria for the meeting were noted.

19 **Exclusion of the Public**

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minute No.20 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

Review of an Assessment Decision: Reference WC-ENQ00091

The Sub-Committee considered a complaint against Councillor Simon Killane of Wiltshire Council. It was alleged he had failed to promote and support high standards of conduct when serving in public office as required by the Code of Conduct in that he failed to have regard to the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership as a result of personal comments made on social media and to the complainant's employers and friends and family between the period 15 to 18 February 2015.

The Sub-Committee went through the initial tests required by the local assessment criteria, and agreed with the assessment of the Deputy Monitoring Officer that the complaint related to the subject member, that they were in office at the time of the alleged incident, and were acting in their capacity as a councillor. They therefore then had to determine whether the remaining assessment criteria were met and, if so, whether the matters alleged in the complaint were, if proven, capable of breaching the Code of Conduct.

In reaching its decision the Sub-Committee relied upon the original complaint and supporting information, the response of the subject member, the initial assessment and the complainant's request for a review of the initial decision to take no further action.

Both complainant and subject member had provided lengthy submissions detailing competing allegations of poor conduct over an extended period around a number of personal and political issues that were intertwined. The Sub-Committee took the view that the actions on both sides were on the basis of the evidence clearly 'tit for tat' and therefore resolved to take no further action in accordance with paragraph 5 of the Assessment Criteria:

A complaint will not be referred for investigation if, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.

In any event on the evidence presented the Sub-Committee was not satisfied the behaviours listed would, if proven, be capable of breaching the Code of Conduct. It was apparent there had been considerable inflammatory commentary which involved both the complainant and the subject member and respective supporters, and the Sub-Committee accepted the view proposed by the Deputy Monitoring Officer that while the actions of the subject member may have escalated matters, these did not amount to a breach of the Code.

The Sub-Committee therefore upheld the reasoning and the initial assessment decision of the Deputy Monitoring Officer to take no further action in respect of their complaint.

The Sub-Committee was also strongly of the view that democracy in Malmesbury would be best served through some form of mediation to resolve the ongoing disputes between the parties, rather than the continued use of

public resources to investigate and assess competing allegations and counter allegations.

Resolved:

To take no further action in respect of the complaint.

(Duration of meeting: 9.30 - 10.15 am)

The Officer who has produced these minutes is Kieran Elliott, of Democratic & Members' Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 3 AUGUST 2016 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Desna Allen, Cllr Trevor Carbin, Cllr Pip Ridout and Mr John Scragg (Non-noting)

Also Present:

Mrs Caroline Baynes (Independent Person), Libby Beale (Senior Democratic Services Officer), Kieran Elliott (Senior Democratic Services Officer) and Paul Taylor (Senior Solicitor)

21 **Election of Chairman**

Resolved:

To elect Councillor Trevor Carbin as Chairman for this meeting only.

22 **Declarations of Interest**

There were no interests declared.

23 **Meeting Procedure and Assessment Criteria**

The meeting procedure and assessment criteria were noted.

24 **Exclusion of the Public**

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minute No.25 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

Review of an Assessment Decision: Reference WC-ENQ00149

The Sub-Committee considered a complaint against Councillor Ruth Lamdin of Fyfield and West Overton Parish Council, alleging she had breached her council's code of conduct in that the Parish Council had not adhered to the Transparency Code in that minutes/reports/agendas are not published to the public domain within the time scale stipulated by the Code, and further that the Parish Council has failed to meet an earlier reassurance given that a memorial tree would not be planted close to a memorial seat but then going ahead and planting the tree 10 feet away from the seat.

The Sub-Committee went through the initial tests required by the local assessment criteria. They were in agreement that the complaint related to the subject member, that they were in office at the time of the alleged incident, and were acting in their capacity as a councillor. The final test was whether, if proven, the alleged actions were capable of breaching the Code of Conduct of the Parish Council.

In reaching its decision the Sub-Committee relied upon the original complaint and supporting information, the response of the subject member, the initial assessment and the additional information submitted by the complainant in their request for a review of the initial assessment decision to take no further action.

The complaint had arisen principally over disagreement with a decision of the parish council regarding siting of a memorial tree, and its alleged impact upon a commemorative seat nearby, as well as a claim the council had not abided by its codes regarding publication of minutes and agendas.

The Sub-Committee was in agreement with the reasoning of the deputy monitoring officer that publication of minutes and agendas relate to processes of the parish council and therefore were not within the remit of the Sub-Committee to consider.

The complaint regarding the decision of the parish council in respect of the memorial tree would also not be covered by the standards regime, only whether the behaviour of the subject member in their interactions around that decision were a possible breach of some element of their Code of Conduct. The Sub-Committee did accept there had been some confusion between the parties in the interactions regarding whether the decision to site the tree had already been taken and there was dispute over what the subject member had told the complainant during those interactions.

Nevertheless, the Sub-Committee upheld the reasoning and the initial assessment decision of the Deputy Monitoring Officer to dismiss the complaint. While the subject member may not have been as clear as they could have been during the discussions with the complainants regarding the decision of the parish council, that decision itself was not challengeable as a Code of Conduct matter, and even if the allegations of the behaviour of the subject member in discussing that decision were proven, these would not rise to the level of a breach.

It was noted the complainant in their request for a review had stated they were minded to accept the decision of the deputy monitoring officer, but took issue with what they regarded as inaccuracies and falsities in the response of the subject member to the original complaint. The Sub-Committee took this into consideration, however they remained of the view that the behaviours alleged in the initial complaint would not, if proven, be a breach.

Resolved:

To take no further action in respect of the complaint.

(Duration of meeting: 2.00 - 2.30 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic & Members' Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 21 NOVEMBER 2016 AT THE NORTH WILTSHIRE ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Ernie Clark, Cllr Howard Greenman and Cllr Ian Thorn

Also Present:

Paul Taylor (Senior Solicitor), Kieran Elliott (Senior Democratic Services Officer), Edmund Blick (Democratic Services Officer), Becky Holloway (Democratic Services Officer) and Caroline Baynes, (Independent Person)

31 **Election of Chairman**

Resolved

To elect Councillor Howard Greenman as Chairman for this meeting only.

32 **Declarations of Interest**

There were no declarations.

33 **Meeting Procedure and Assessment Criteria**

The procedure and assessment criteria were noted.

34 **Exclusion of the Public**

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minutes No.35-36 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

Review of an Assessment Decision: Reference WC-ENQ00161

The Sub-Committee considered a complaint against Councillor Mike Hewitt of Wiltshire Council. It was alleged he had breached the Code of Conduct as a result of his behaviour at a meeting of Winterbourne Parish Council held on 15 June 2012.

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaint related to the conduct of a member and that the member was in office at the time of the alleged incidents and remains a member of Wiltshire Council. A copy of the appropriate Code of Conduct was also supplied for the assessment. The Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt it would be a breach, was it appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision, the Sub-Committee took into account the complaint, the response of the subject member, the initial assessment of the Deputy Monitoring Officer to take no further action and the complainant's request for a review. The Sub-Committee also considered the verbal representation made at the Review by the subject member.

The allegation was that the subject member had breached paragraphs 1 (did not act solely in the public interest and conferred a disadvantage on the complainant), 4 (failed to be accountable for his decisions or failed to co-operate with whatever scrutiny was suitable for his office) and 5 (failed to be as open as possible by his decisions or actions) of the Code of Conduct by behaving in a rude or hostile manner while attending the Parish Council meeting. Taking into the evidence as detailed above, while they Sub-Committee felt the situation could have been better handled, they noted the subject member had offered several apologies for the manner of his intervention both in writing and in person to the complainant.

The Sub-Committee therefore agreed with the reasoning of the Deputy Monitoring Officer in the Initial Assessment that even if the alleged actions could, if proven, be a breach of the Code of Conduct, as detailed in paragraph 5 of the local assessment criteria it should not be referred for investigation as both an apology and a reasonable explanation of the issues had been offered to the complainant and Sub-Committee.

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided that no further action will be taken in respect of this complaint.

36 **Review of an Assessment Decision: Reference WC-ENQ00170**

The Sub-Committee considered a complaint against Councillor Philip Whitehead of Wiltshire Council. It was alleged he had, in his position as Cabinet Member for Highways and Transport, failed to deal adequately, fairly or responsibly with an application by Marlborough Arts Association for street closures, had predetermined his position and paid insufficient regard to evidence and consultation processes, and through these actions breached the Code of Conduct.

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaint related to the conduct of a member and that the member was in office at the time of the alleged incidents and remains a member of Wiltshire Council. A copy of the appropriate Code of Conduct was also supplied for the assessment. The Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt they would be a breach, was it appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision The Sub-Committee took into account the complaint and the response of the subject member together with the initial assessment of the Deputy Monitoring Officer to take no further action. They noted in particular the conclusions of the Deputy Monitoring officer that much of the complaint related to the merits of the Executive decision, which had been taken by a different member of the Executive, and his finding that the behaviour of the subject member in discussing and assessing the issues prior to that decision had not been capable of breaching the Code.

The Sub-Committee also took into account the additional information supplied in the complainant's request for a review and the verbal representation made at the Review by the subject member.

Considering all the evidence that had been submitted by the parties, the Sub-Committee was in agreement with the reasoning of the Deputy Monitoring Officer that none of the allegations would, if proven, amount to a breach of the Code of Conduct.

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided that no further action will be taken in respect of this complaint.

(Duration of meeting: 11.30 am - 12.30 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 9 DECEMBER 2016 AT THE NORTH WILTSHIRE ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Trevor Carbin, Cllr Ernie Clark, Cllr George Jeans and Miss Pam Turner

Also Present:

Paul Taylor (Senior Solicitor), Colin Malcolm (Independent Person), Caroline Baynes (Independent Person) and Kieran Elliott (Senior Democratic Services Officer)

37 Election of Chairman

Resolved:

To elect Councillor Trevor Carbin as Chairman for this meeting only.

38 Declarations of Interest

There were no declarations.

39 Meeting Procedure and Assessment Criteria

The procedure and assessment criteria for the meeting were noted.

It was noted that Councillor George Jeans was attending in place of Councillor Pip Ridout.

40 Exclusion of the Public

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minutes No. 41 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

41 **Review of Assessment Decisions: WC-ENQ00148, WC-ENQ00182, WC-ENQ00183, WC-ENQ00184**

The Sub-Committee considered a series of complaints against Councillor Allison Bucknell, a member of Wiltshire Council. The allegations covered a series of interrelated events and actions the complainant considered were in breach of the Code of Conduct.

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaints all related to the conduct of a member and that the member was in office at the time of the alleged incidents and remains a member of Wiltshire Council. A copy of the appropriate Code of Conduct was also supplied for the assessment. The Sub-Committee therefore had to decide whether the allegations across the four complaints would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt they would be a breach, was it appropriate under the assessment criteria to refer the matters for investigation.

The Sub-Committee relied upon the report of the Monitoring Officer, original complaints, subject member responses, initial assessment for the first series of complaints and the additional information supplied in the complainant's request for a review of that initial assessment during their considerations. The Sub-Committee also considered the written representations made to the Review by the complainant and subject member, neither being in attendance.

General Points

A number of issues had been raised in consideration of the initial and subsequent complaints, which impacted across all the complaints.

Behaviour's Framework – The Sub-Committee was in full agreement with the Deputy Monitoring Officer's interpretation of the Wiltshire Council Behaviours Framework and its relationship with the Code of Conduct. A copy of the Framework had been included with the agenda since members were required to have regard to the Framework as an appendix to the Code, but as detailed by the Deputy Monitoring Officer, a breach of the Framework was not automatically sufficient to be a breach of the Code, though it was a relevant consideration as to whether a breach of the Code itself had potentially occurred.

Assessment Procedure – It was noted that while it was within the power of a Review Sub-Committee to come to a different view than the Deputy Monitoring Officer while utilising the same assessment criteria, the Sub-Committee had no authority to alter the proscribed constitutional procedure for the assessment of complaints or alter the relationship between the Code of Conduct and the Wiltshire Council Behaviours Framework as had been requested by the complainant in the request for a review of WC-ENQ00148.

WC-ENQ00148

Incident 1

The initial incident behind the complaint was the subject member's attendance at a meeting of the parish council, and what the complainant regarded as unacceptable interference and hostile behaviour from the subject member during or following that meeting.

Whatever the real or perceived motivations of the subject member at the meeting, no evidence had been provided with the complaint or subsequently which suggested her actions had been capable of breaching of the Code. It could not be a breach of any provision of the Code by the subject member for persons other than the subject member to disrupt the meeting, even if the disagreement that arose was indeed felt to be an unreasonable disruption.

Therefore, the Sub-Committee supported the reasoning of the Deputy Monitoring Officer to dismiss the complaint. Even if it were felt the behaviour of the subject member was unhelpful in the situation that had arisen, attending a meeting and disagreeing with the council were not actions capable of breaching the Code.

Incident 2

The incident behind the complaint involved an email from the subject member to council officers which included apologising for, as she saw it, parish council enquiries resulting in additional, unnecessary work.

The Sub-Committee was supportive of the reasoning of the Deputy Monitoring Officer that the email in question, copied to the complainant, was it appeared a standard communication from a councillor to an officer. There was no evidence information was being purposefully withheld from the parish council, the clerk to which had been copied into the email, and while the complainant was dissatisfied with the tone of the email, it could not rise to the level of a breach.

Incident 3

The incident behind the complaint involved the subject member questioning at a steering group meeting whether the parish council had lawfully taken a decision to withdraw from a proposal from the steering group.

Whether or not the decision to withdraw had indeed at that time been taken lawfully by the Parish Council, questioning the lawfulness could not in itself be a breach of a Code of Conduct. All decision makers must be open and accountable, and whether the subject member was correct or not, they were entitled to raise the question.

The Sub-Committee therefore supported the decision of the Deputy Monitoring Officer to dismiss the complaint.

Incident 4

The incident behind the complaint involved allegations the subject member withheld information and sought to undermine the parish council in an attempt to assert inappropriate influence and control of public money, in relation to a

meeting with the body appointed to set up the Bradenstoke Solar Park Community Benefit Fund arranged by the Defence Infrastructure Organisation (DIO) and the British Solar renewables who together set up the fund.

Insufficient evidence had been supplied to indicate a breach of the Code may have occurred, and therefore in accordance with the assessment criteria the Sub-Committee supported the reasoning of the Deputy Monitoring Officer to dismiss the complaint.

The following complaints did not receive initial assessments by the Deputy Monitoring Officer, as under paragraph 11.1 of Protocol 12 of the Constitution the Monitoring Officer determined to depart from the review arrangements in order to expedite the effective and fair consideration of the matters therein. Therefore, any determination is not subject to a further review. The departure from usual arrangements was only concerned with expediting the administrative process in the interests of efficient and fair consideration, and had no bearing on the assessment criteria or the Code on which the complaints would be assessed. Attempts had been made following submission of the complaints to undertake formal mediation between the parties.

WC-ENQ00182

This complaint was in relation to various comments made by the subject member when responding to the allegations in the complaints listed under WC-ENQ00148. Much of the substance of the complaint was concerned with arguing against the Deputy Monitoring Officer's initial assessment of those original allegations, which have been dealt with under the heading for WC-ENQ00148. The Sub-Committee therefore focused on the allegations that the comments of the subject member in responding to the previous complaints had themselves been capable, if proven, of breaching the Code. There were three incidents of alleged breaches of the Code:

Incident 1

The allegation was that the subject member had made false statements in response to the original complaints, and therefore breached the Nolan principles of integrity, openness and honesty, as well as paragraph 4 of the Code to be accountable for decisions and cooperate with scrutiny appropriate to one's office. These statements related to the meeting that was arranged between the subject member and members of the parish council and who had instigated that meeting.

Incident 2

The allegation was that the member had made false statements in response to the original complaints, and therefore breached the Nolan principles of integrity, openness and honesty, as well as paragraph 1 and 4 of the Code. These statements related to the actions of the subject member at the meeting of the parish council on 13 October 2015

Incident 3

The allegation was that the member had made false statements in response to the original complaints as detailed above, and therefore breached the Nolan principles of integrity, openness and honesty, as well as paragraph 4 of the Code. These statements related to the withdrawal of the parish council from the NEW-V group.

Paragraph 4 of the Code states '*You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office*'. The Sub-Committee noted that paragraph 4 of the Code related to decisions taken by a subject member, and that all three incidents in question concerned statements by the subject member recounting her version of events. Paragraph 4 therefore did not apply as no decisions were being taken by the subject member.

The Sub-Committee therefore had to consider if, by making her statements, the subject member would have breached the Nolan principles detailed above and whether, in recounting her version of events in the manner she had, the subject member had breached the Code, and even if that was felt to be the case, was an investigation in the public interest.

Paragraph 1 of the Code states '*You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate*'. The question was therefore whether, should the allegation in incident 2 be proven, would that confer an advantage to the subject member or disadvantage to others, to gain financial or other material benefit. No such financial or material benefit was alleged to have been gained; therefore the alleged false statements could not be capable of breaching the Code of Conduct.

It was apparent that the subject member and complainant had different recollections of some of the events concerned and that the comments made reflected their personal opinions on those events. On the accounts as provided, the Sub-Committee determined that the comments made by the subject member in respect of each incident forming the complaint for WC-ENQ00148 were not capable of being a breach of the Code.

WC-ENQ00183

Incident 1

The allegation was that the subject member had breached paragraphs 1 and 7 of the Code as a result of her views as summarised by the independent mediator who had attempted to help the two parties resolve their difficulties, as well as breaching the Nolan Principles of selflessness and accountability.

Paragraph 1 of the Code states '*You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate*'. The complainant clarified that the Parish Council had questioned the propriety of using public funds to pay for mediation to resolve

what they regarded as personal issues between the subject member and members of the Parish Council and that the subject member had breached paragraph 1 by expecting personal issues to be resolved at the public expense.

Paragraph 7 states 'You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986. Members of Wiltshire Council will have regard to the Roles and Responsibilities of Wiltshire Councillors according to Appendix 1 and Wiltshire Council Behaviours Framework at Appendix 2'.

It was noted that the complainant in their request for a review of WC-ENQ00148 had requested that mediation be undertaken between the parties, and that it had been the Monitoring Officer of Wiltshire Council who had authorised the use of resources to mediate between them following submission of subsequent complaints.

Therefore the Sub-Committee was of the view that consenting to mediation on the authority of the Monitoring Officer as being in the public interest, was not capable of breaching the Code of Conduct.

Incident 2

It was also alleged the subject member had, in the same email summary from the mediator, used denigrating terms regarding members of the parish council, breaching principles of integrity and objectivity as well as the requirement to promote and support high standards of conduct.

It was noted the complaint related to an email from a third party, the mediator, relating their summary of the subject member's views as part of the mediation process to identify issues as each side saw them. The Sub-Committee did not feel, therefore, that even if the alleged comments were proven they were capable of breaching the Code of Conduct.

WC-ENQ00184

This complaint related to comments made by the subject member regarding the decision of the parish council to apply for a re-designation of the parish as a neighbourhood plan area, and the implications of that decision on the consideration of a planning application for residential development in the parish. It was alleged that the subject member, in her comments, had denigrated the work of the parish council and shown disregard for the principles of integrity, objectivity, honesty and leadership, as well as breaching the obligation to promote and support high standards of conduct.

Having considered the complaint and the subject member's response, the Sub-Committee did not consider the allegation, if proven, was capable of breaching the Code of Conduct. Merely commenting upon the actions of a council or member, even negatively, was not in itself capable of breaching the Code.

Conclusion

When viewing the totality of the complaints and the incidents from which they arose, it was readily apparent that there had been a breakdown of trust in the relationship between the subject member and the parish council members and its supporting officer, the complainant. It was further apparent that multiple attempts had been made, with the support of Wiltshire Council, to improve the working relationship between these parties, and that these efforts had been unsuccessful, to the detriment of the political and communal environment of Lyneham and Bradenstoke and its residents.

The Sub-Committee were strongly of the view that the standards regime was not an appropriate forum to try to resolve the issues between the subject member and the parish council, given they were of the view that none of the allegations listed above would, if proven, amount to a breach of the Code, or were in the public interest to investigate further. Therefore, it was hoped there might be renewed efforts arising from the conclusion of the current complaints to resolve the personal difficulties that had arisen between the parties.

Therefore, it was,

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided not to refer any of the complaints for further investigation. However, in view of the number and nature of the complaints that had been raised, the Sub-Committee decided to ask the Monitoring Officer to consider whether there were any other measures that might be taken to try to reconcile the obvious conflicts that existed between the subject member and members of the parish council, whilst accepting that formal mediation was not likely to be appropriate in this case.

(Duration of meeting: 1.30 - 2.30 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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STANDARDS REVIEW SUB-COMMITTEE

MINUTES OF THE STANDARDS REVIEW SUB-COMMITTEE MEETING HELD ON 10 JANUARY 2017 AT THE WEST WILTSHIRE ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Peter Evans, Mr Philip Gill MBE JP, Cllr Bob Jones MBE and Cllr Horace Prickett

Also Present:

Trevor Bedeman (Complainant), Sue Kershaw (supporting Complainant), Paul Taylor (Senior Solicitor), Caroline Baynes (Independent Person) and Kieran Elliott (Senior Democratic Services Officer)

1 Election of Chairman

Resolved:

To elect Councillor Horace Prickett as Chairman for this meeting only.

2 Declarations of Interest

There were no declarations.

3 Meeting Procedure and Assessment Criteria

The procedure and assessment criteria for the meeting were noted.

4 Exclusion of the Public

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Minute No.5 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the item to the public.

Paragraph 1 – information relating to an individual

5 Review of an Assessment Decision: Reference WC-ENQ00180

The Sub-Committee considered a complaint against Councillor Magnus Macdonald, a member of Wiltshire Council. The complaint involved a confrontation between the complainant and subject member outside a meeting

of Bradford on Avon Area Board with the subject member allegedly breaching paragraphs 1 and 4 of the relevant Code of Conduct, as well as the requirement to uphold high standards of conduct and the principles of public life as set out in the Code.

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaint related to the conduct of a member and that the member was in office at the time of the alleged incident and remains a member of Wiltshire Council. A copy of the appropriate Code of Conduct was also supplied for the assessment. The Sub-Committee agreed with the reasoning of the Deputy Monitoring Officer in his initial assessment that in discussing the forthcoming meeting while outside the venue on the way into that meeting, the subject member could be considered as acting in their capacity as a member and therefore subject to the Code.

The Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt it would be a breach, was it appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision, the Sub-Committee took into account the complaint, the response of the subject member, the initial assessment of the Deputy Monitoring Officer to take no further action and the complainant's request for a review. The Sub-Committee also considered the verbal representation made at the meeting by the complainant.

The allegation was that the subject member had behaved inappropriately prior to a meeting of Bradford on Avon Area Board through intimidating and insulting actions, to the extent of breaching the Code of Conduct under the provisions listed above.

Paragraph 1 of the Code states '*You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate*'.

Paragraph 4 of the Code states '*You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office*'.

The Sub-Committee noted both provisions related to decision making by elected representatives, and as no decisions were taken by the subject member during the alleged incident, the behaviours, if proven, could not amount to a breach of the Code under those provisions.

The Sub-Committee therefore considered whether the alleged behaviour and actions of the subject member, if proven, breached the requirement to promote

and support high standards of conduct and the need to have regard to the principles as set out in the Code.

It was clear that, if proven, the alleged behaviour would be both impolite and unwise for an elected member. No specific provisions in the Code related to disrespectful or bullying behaviour, however such behaviour was mentioned in the Guidance on the Code of Conduct as an example of behaviour that, in appropriate circumstances, could be considered to be not supporting high standards of conduct or having sufficient regard to the principles listed. The question, therefore, was whether allegedly rude and insulting behaviour as set out in the incident that was the subject of the complaint, was of such a level as to breach those provisions.

The need to promote and support high standards of conduct in the Code was not intended to stand in the way of lively debate. It was clear from the papers submitted that various parties felt strongly about issues in the town and how they might be discussed at the area board, where the subject member is Chairman. It was also noted the issue had been aggravated by procedural concerns which had been the subject of a separate, corporate complaint. The Sub-Committee considered, on the basis of the evidence as submitted, that while the alleged actions, if proven, may have been impolite or insulting, it had not risen to the level of an excessive attack on an individual which would justify an impediment to debate, even if that debate may have become unpleasant in this instance.

Similarly, the Sub-Committee considered that the complaint related to a single incident, noting that the issue which had provoked the alleged confrontation was later discussed at the meeting in question without incident, and that therefore there was inadequate grounds to consider that high standards of conduct had been sufficiently undermined by the isolated incident that was the subject of the complaint so as to constitute a breach.

The Sub-Committee therefore agreed with the reasoning of the Deputy Monitoring Officer that even though the alleged behaviour, if proven, would not reflect well on the subject member, it did not rise to the level of a breach under the Code of Conduct, and therefore it was not in the public interest to refer the matter for investigation.

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided that no further action will be taken in respect of this complaint.

(Duration of meeting: 2.00 - 2.35 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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Wiltshire Council

Standards Committee

26 January 2017

Review of the Standards Complaints Procedure

Purpose of Report

1. This report asks the Standards Committee to consider if it wishes to make or recommend revisions to constitutional and other documents in relation to the Standards Complaints Procedure.

Background

2. Following a review of complaints and the Code of Conduct, at its meeting on 29 June 2016 the Standards Committee recommended the adoption of guidance to the Code of Conduct to clarify its interpretation and to support councillors in meeting their obligations. The proposed guidance was adopted by Council on 12 July 2016, with any review or alteration of that guidance to be overseen by the Standards Committee.
3. At the meeting on 29 June 2016 the Standards Committee also resolved to request the Constitution Focus Group to review the procedure for dealing with complaints under the Code of Conduct. These arrangements came into force on 1 July 2012 following adoption at Council on 26 June 2012, and have not been reviewed since.

Main Considerations

4. The Constitution Focus Group met on 6 September 2016 to consider the existing procedure for dealing with complaints under the Code of Conduct. The minutes of the meeting on 6 September 2016 are included at **Appendix 1**. Any additional comments from Focus Group members will be provided at the meeting.
5. The documents considered by the Constitution Focus Group were:
 - Protocol 12 of the Constitution: Procedure for dealing with Code of Conduct Complaints
 - Local Assessment Criteria for Code of Conduct Complaints
 - Procedure Notes for Review Sub-Committees
6. Only Protocol 12 is a document of the Constitution. The Assessment Criteria was originally agreed by the Standards Committee and then included as part of the guidance adopted by Council on 12 July 2016. Any substantive changes to the Protocol would need to be approved by Full Council, but changes to the other documents may be made by the Standards Committee.

7. The Constitution Focus Group considered a report, attached at **Appendix 2**, inviting them to consider the following aspects of the procedure, obtained from comments noted from complainants, subject members, councillors serving on review and hearing sub-committees, officers supporting the process and the Council's three Independent Persons:
- Confidentiality of proceedings and enforcement of obligation of confidentiality;
 - Dealing with trivial or vexatious complaints;
 - Informal resolution and mediation - use of independent persons;
 - Timescales for subject members to respond and for arranging assessments, reviews and hearings;
 - Support for subject members;
 - Clarity regarding the power of the Review Sub-committee to 'dismiss the complaint or take no further action on the complaint';
 - Sanctions;
 - Publication of the procedure and information to parties on the process;
8. Revised versions of the documents listed at paragraph 5 are included at **Appendix 3**. Generally, as noted in Appendix 1, the Constitution Focus Group did not consider that significant changes were necessary; however, they felt the procedures could be clarified and enhanced with some alterations.
9. Review Sub-Committees have, on occasion, also commented upon the existing procedure and its supporting documentation. The revised documents in Appendix 3 include a variety of potential changes encompassing Focus Group and Review Sub-Committee suggestions.

Safeguarding Implications

10. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

11. There are no equalities impacts arising from this report.

Risk assessment

12. There are no significant risks arising from this report.

Financial Implications

13. There are no direct financial implications arising from this report.

Legal Implications

14. The recommendations in this report are consistent with the Council's obligations under the relevant legislation.

Public Health Impact of the Proposals

15. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

16. There are no environmental impacts arising from this report.

Recommendation

17. **The Standards Committee is therefore asked to consider if it wishes to adopt any changes to the Local Assessment Criteria and Review Sub-Committee Procedure, and whether to recommend to Council any changes to Protocol 12 of the Constitution.**

Ian Gibbons, Associate Director, Legal and Governance and Monitoring Officer

Report Author: Kieran Elliott, Senior Democratic Services Officer,
kieran.elliott@wiltshire.gov.uk , 01225 718504

Appendices:

Appendix 1 - Minutes of the Constitution Focus Group 6 September 2016

Appendix 2 - Report to the Constitution Focus Group 6 September 2016

Appendix 3a - Draft Revised Protocol 12

Appendix 3b - Local Assessment Criteria

Appendix 3c - Review Hearing Procedure

Background Papers:

None

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 6 SEPTEMBER 2016 AT THE LONGLEAT ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Stuart Wheeler (Chairman), Cllr Ernie Clark, Cllr Glenis Ansell, Cllr Jon Hubbard and Cllr Tony Deane

12 Apologies

Apologies were received from Cllr Julian Johnson, Mr Paul Neale and Miss Pam Turner.

13 Minutes of the Previous Meeting

The minutes of the meeting held on 21 June 2016 were presented and it was,

Resolved:

To approve and sign the minutes as a true and correct record.

14 Review of Protocol 12: Procedure for Dealing with Code of Conduct Complaints

At its meeting on 12 July 2016 Council adopted guidance to support the Code of Conduct and also agreed the Standards Committee's recommendation to ask the Focus Group to review the procedure for dealing with complaints under the Code and report back to the Standards Committee in the first instance with advice on any proposed changes.

The Focus Group considered a report from the Monitoring Officer, setting out the number of complaints received since the current arrangements came into effect on 1 July 2012, the number of complaints which progressed to a formal review at the request of the parties, and a summary of comments received from complainants, subject members, supporting officers, councillors serving on review and hearing sub-committees and the Council's Independent Persons.

The Focus Group considered the existing arrangements as contained in Protocol 12 of the Constitution, as well as the Local Assessment Criteria for assessment of complaints and procedures for review and hearing sub-committees. Issues considered included requirements of confidentiality and

enforcement of that obligation, trivial and vexatious complaints, use of informal resolution and how the Independent Persons could support this, timescales for responses and arrangement of assessments, reviews and hearings and support for the parties.

The Focus Group discussed the documents and possible amendments. Although the language of some sections could be improved to remove ambiguity and improve awareness of procedures and available support, they were of the view the current arrangements were satisfactory, with appropriate timescales, clear rules on assessment of vexatious complaints and therefore did not feel major revisions were required at the present time.

At the conclusion of discussion,

Resolved:

To request the Monitoring Officer produce suggested clarifications, corrections and other minor alterations to Protocol 12, the Local Assessment Criteria and Procedures for Review and Hearing Sub-Committees, to be circulated to the Focus Group for comment.

15 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.40 - 4.30 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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Review of Protocol 12 of the Constitution: Procedure for Dealing with Code of Conduct Complaints

Purpose

1. To review Protocol 12 of the Constitution in accordance with Council's request on 12 July 2016 and make recommendations to the Standards Committee on any changes to improve the current arrangements.

Background

2. At its meeting on 12 July 2016 Council adopted guidance to support the Code of Conduct and also agreed the Standards Committee's recommendation to ask the Focus Group to review the procedure for dealing with complaints under the Code and report back to the Standards Committee in the first instance with advice on any proposed changes.

Main Considerations

3. At its meeting on 26 June 2012 the Council adopted arrangements for dealing with Code of Conduct complaints against parish and unitary councillors under the standards regime introduced under the Localism Act 2011. These arrangements came into effect from 1 July 2012 and are included at **Appendix 1**.
4. Since the arrangements came into effect the Council has dealt with over 200 complaints, of which over 30 have resulted in reviews. To date, only one hearing has taken place under the new procedure. A number of comments have been received during this time on aspects of the procedure, from complainants, subject members, councillors serving on review and hearing sub-committees, officers supporting the process and the Council's Independent Persons.
5. Based on these comments the Focus Group may wish to review the following aspects of the procedure in particular:
 - Confidentiality of proceedings and enforcement of obligation of confidentiality;
 - Dealing with trivial or vexatious complaints;
 - Informal resolution and mediation - use of independent persons;
 - Timescales for subject members to respond and for arranging assessments, reviews and hearings;
 - Local assessment criteria – see **Appendix 2**;
 - Procedure for reviews and hearings – see **Appendix 3**;

- Support for subject members;
- Clarity regarding the power of the Review Sub-committee to 'dismiss the complaint or take no further action on the complaint';
- Sanctions;
- Publication of the procedure and information to parties on the process;

Safeguarding Implications

6. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

7. There are no equalities impacts arising from this report.

Risk Implications

8. There are no risk implications arising from this report.

Financial Implications

9. There are no financial implications arising from report.

Legal Implications

10. The complaints procedure must meet the requirements of the Localism Act 2011.

Public Health Impact of the Proposals

11. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

12. There are no environmental impacts arising from this report.

Recommendation

13. The Constitution Focus Group is asked to review the process for dealing with complaints under the Code of Conduct and recommend any changes to the Standards Committee.

Ian Gibbons, Associate Director, Legal and Governance and Monitoring Officer

Report Author: Kieran Elliott, Senior Democratic Services Officer,
kieran.elliott@wiltshire.gov.uk , 01225 718504

Appendices

Appendix 1a – Protocol 12 of the Constitution

Appendix 1b – Annex 1 of Protocol 12 – Flowchart

Appendix 2 – Local Assessment Criteria

Appendix 3 – Review Procedure and Hearing Procedure Summary

Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

1 Context

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- 1.2 An overview of the complaints process is attached at Annex 2.
- 1.3 These arrangements are subject to the Council's Procedure for dealing with vexatious complaints.
- 1.4 The Monitoring Officer will determine as a preliminary issue whether a complaint relates to the Code of Conduct and is to be dealt with under these arrangements.
- 1.5 The Monitoring Officer will encourage complainants to explore whether the matter can be resolved without the need to submit a formal complaint under this process.

2 Interpretation

- 2.1 'Member' means a member or a co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
- 2.2 'Council' means Wiltshire Council.
- 2.3 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Member.
- 2.4 'The Monitoring Officer' is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.

- 2.5 'Independent Person' means a person appointed under Section 28(7) of the Localism Act:
- a. whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b. who may be consulted by the Member about the complaint.
- 2.6 In order to avoid any conflict of interest two Independent Persons will be allocated to each complaint, one to advise and assist the Monitoring Officer and the Hearing Sub-Committee, and the other to be available for consultation by the Member.
- 2.7 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 2.8 'Code of Conduct' means the code of conduct for members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- 2.9 'Days' means working days.
- 2.10 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.11 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under these arrangements.
- 2.12 The 'Review Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of these arrangements.
- 2.13 Where a complaint is made against a member of a Parish Council the Clerk to the Parish Council will be notified of the complaint and kept informed of the progress and outcome of the matter.
- 2.14 Documents will be deemed to have been received by the Parties on the seventh day after the date of posting.

3 Making a Complaint

- 3.1 A complaint against a Member under the Code of Conduct must be made in writing on the Council's standard form (*available from the Council's web-site and offices*) and addressed to the Monitoring Officer [County Hall, Trowbridge / ian.gibbons@wiltshire.gov.uk / governance@wiltshire.gov.uk] within 20 days of the date on which the complainant became or ought reasonably to have become aware of the matter giving rise to the

complaint.

- 3.2 The Monitoring Officer will acknowledge receipt of the complaint within 5 days of receiving it, and will send a copy to the Member.
- 3.3 The Member will be invited to submit a written response to the complaint within 10 days of the date on which it is sent to them.
- 3.4 At any time during the complaints process the Member may seek advice and assistance in connection with the complaint from a friend or professional legal adviser, in confidence, and/or consult the Independent Person designated for that purpose.
- 3.5 Anonymous complaints will not be accepted for assessment unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the Complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

4. Initial Assessment

- 4.1 The Monitoring Officer will review the complaint within 5 days of receiving the Member's response and, after consultation with the Independent Person, will decide whether it merits formal investigation.
- 4.2 In reaching this decision the Monitoring Officer will have regard to the Standards Committee's assessment criteria.
- 4.3 The Monitoring Officer will inform the Parties of his or her decision and the reasons for it in writing.
- 4.4 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. This may involve mediation or other suitable action, including training or an apology by the Member.
- 4.5 Where the Member or the Council make a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether the complaint merits formal investigation.
- 4.6 If the complaint identifies potential criminal conduct by any person, the Monitoring Officer may call in the Police or other regulatory agencies.
- 4.7 The Complainant or the Member may request a review of the Monitoring Officer's decision at the initial assessment stage.
- 4.8 A review will be determined by a Review Sub-Committee who may decide:

- a. to dismiss the complaint or take no further action on the complaint;
- b. to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

5 Investigation

- 5.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer within 2 days of the decision to investigate and inform the Parties of the appointment.
- 5.2 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer and will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 30 days of the notification of the Investigating Officer's appointment.
- 5.3 The Parties will be invited to submit any written comments on the report to the Monitoring Officer within 10 days of the date on which the report is sent to them. The Member may request an extension of this timescale.

6 Consideration of Investigating Officer's Report

- 6.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report and any comments submitted by the Parties, in consultation with the Independent Person.
- 6.2 Where the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct and the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will, after consultation with the Independent Person, inform the Parties that no further action is required.
- 6.3 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report and findings.
- 6.4 Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will, after consulting the Independent Person, either refer the matter for hearing before the Hearing Sub-Committee or seek an alternative resolution.
- 6.5 The Complainant may request a review of a decision by the Monitoring Officer, following consideration of the Investigating Officer's report, to dismiss the complaint.

- 6.6 A review will be determined by the Review Sub-Committee who may decide:
- a. to dismiss the complaint;
 - b. to refer the complaint for hearing by the Hearing Sub-Committee
 - c. To refer the complaint to the Monitoring Officer to seek alternative resolution.

7. Alternative Resolution

- 7.1 Where the Monitoring Officer, in consultation with the Independent Person, considers that the matter can reasonably be resolved without the need for a hearing, he/she will consult with the Parties to seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.
- 7.2 Alternative resolution may involve mediation and may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council or the Parish Council as the case may be. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee, and the relevant Parish Council where appropriate, for information, but will take no further action.
- 7.3 The Member may elect to proceed to a hearing rather than accept alternative resolution.

8. Hearing

- 8.1 If the Monitoring Officer, after consultation with the Independent Person, considers that alternative resolution is not appropriate or, after exploring the possibility, concludes that it is unlikely to be achieved he/she will refer the matter to the Hearing Sub-Committee to conduct a local hearing to determine the complaint. A hearing will be held within 20 days of the date on which the Monitoring Officer refers the matter to the Hearing Sub-Committee for determination, subject to the Member's right to request an extension of time.
- 8.2 -The Member may be represented at the hearing by a friend or legal representative.
- 8.3 The Hearing Sub-Committee, supported by the Monitoring Officer, will conduct a pre-hearing review to identify the issues, areas of agreement and disagreement, and to give directions for the efficient conduct of the hearing. This may either be conducted in writing or by a meeting with the Parties.

- 8.4 The Monitoring Officer will notify the Parties in writing of the directions for the hearing.
- 8.5 The Sub-Committee may exclude the press and public from the hearing where it appears likely that confidential or exempt information will be disclosed and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.
- 8.6 At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct.
- 8.7 The Complainant will have the right to make a statement in support of their complaint.
- 8.8 The Members of the Hearing Sub-Committee and the Member may ask questions of the Investigating Officer and any witnesses called.
- 8.9 The Member will have an opportunity to give their evidence, to call witnesses and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.10 The Members of the Hearing Sub-Committee and the Investigating Officer will have the opportunity to ask questions of the Member and any witnesses called.
- 8.11 The Parties may each make a concluding statement.
- 8.12 The Members of the Hearing Sub-Committee will then withdraw, with the Independent Person, to consider the case, taking advice from the Independent Person and, where necessary, from the Monitoring Officer on law and procedure.
- 8.13 The Hearing Sub-Committee may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 8.14 If the Hearing Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Parties of this finding and the Hearing Sub-Committee will then consider what action, if any, should be taken as a result of the breach.
- 8.15 The Investigating Officer and the Member will be invited to make representations on the question of sanctions.
- 8.16 The Hearing Sub-Committee will, after consulting the Independent Person, determine what action, if any, to take (or recommend in the case of a parish councillor) in respect of the matter.

9. Sanctions

9.1 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in Annex 1.

10. Decision

10.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.

10.2 The Monitoring Officer will send the Parties, and where appropriate the relevant Parish Council, a formal decision notice, which will be published on the Council's web-site and made available for public inspection.

11. Revision of these arrangements

11.1 The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, [the Review Sub-Committee](#) and the Hearing Sub-Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

12. Reviews

12.1 Any request for a review must be made in writing to the Monitoring Officer within 5 days of the date of receipt his/her decision and must set out the grounds for the review.

12.2 A review request will be determined by the Review Sub-Committee, after consulting the Independent Person, within 14 days of receipt of the request.

13. Appeals

13.1 There is no right of appeal for the Complainant or the Member against a decision of the Hearing Sub-Committee.

14. Confidentiality

13.2 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring Officer, [Review Sub-Committee](#) or Hearing Sub-Committee.

Annex 1

Sanctions

Censure

1. Censure and report to the Council or relevant Parish Council; and/or

Removal from Committees, Sub-Committees, Cabinet and Outside Bodies

2. Recommend to the Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
3. Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
4. Remove the Member from any or all outside appointments to which he/she has been appointed or nominated by the Council or relevant Parish Council.

Training

5. Instruct the Monitoring Officer to arrange training for the Member.

Publish

6. Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

Note:

In the case of *R v Broadland District Council ex parte Lashley* the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

The Monitoring Officer will adopt the approach and apply the criteria set out below in the assessment of complaints under locally adopted Codes of Conduct for Members.

The Review Committee will use the same approach and criteria.

Relevance

1. It is likely that complaints will be received which do not relate to local codes of conduct for members. These might include complaints relating to the provision of services by local councils; matters relating to the local council as a corporate body; or matters which should be dealt with under a council's complaints procedure. They may be matters relating to council employees, other authorities or matters relating to a member's private life which do not fall within the remit of the Standards Committee. *The Monitoring Officer will advise the complainant in such matters that they cannot proceed under local codes of conduct, but that the complainant should contact the relevant council in order to bring a complaint under the appropriate complaints procedure.*

Alternative resolution

2. The Monitoring Officer will always consider whether an alternative means of resolving the complaint would be appropriate.

Initial Tests

3. Before the assessment of a complaint begins, the Monitoring Officer should be satisfied that:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council ~~at the time of the complaint~~;
 - d) That ~~the complainant has provided a copy of the~~ Code of Conduct ~~of for~~ the relevant council is in force and provided;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

If the complaint fails one or more of these tests it cannot be investigated and no further action will be taken.

Sufficiency of information

4. The complainant must provide sufficient information to enable the subject member and those responsible for assessing the complaint to understand the substance of the complaint. If insufficient information is provided, the Monitoring Officer will not normally proceed with assessment of the complaint.

If the complaint meets the criteria set out in 3. a-e above, and the complainant has provided sufficient information to enable the issues complained of to be understood, the Monitoring Officer will send a copy of the complaint to the subject member and ask for the subject member's comments. When these have been received, the Monitoring Person will assess the complaint, after consulting the Independent Person.

[At this initial assessment stage the Monitoring Officer will not normally consider any further representations or correspondence from either the complainant or subject member]

Seriousness of the Complaint

5. A complaint will not be referred for investigation if, on the available information, it- appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.

A complaint will not normally be referred for investigation if the subject member has offered an apology, a reasonable explanation of the issues, or if the Monitoring Officer takes the view that the complaint can reasonably be addressed by other means.

Bearing in mind the public interest in the efficient use of resources, referral for investigation is generally reserved for serious complaints where alternative options for resolution are not considered by the Monitoring Officer to be appropriate.

Length of Time Elapsed

A complaint will not be referred for investigation when it is made more than 20 working days from the date upon which the complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint. [In any event, the Monitoring Officer may decide not to refer a complaint for investigation where, in his opinion, the length of time that has elapsed since the matter giving rise to the complaint means that it would not be in the interest of justice to proceed.]

Anonymous Complaints

Anonymous complaints will not be considered unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

Multiple Complaints

6. A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be considered separately. If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

Confidentiality

7. All information regarding the complaint will remain confidential to the parties until determined otherwise by the Monitoring Officer or Hearing Sub-Committee.

Withdrawing Complaints

8. A complainant may ask to withdraw their complaint before it has been assessed. In deciding whether to agree the request the Monitoring Officer will consider:
 - (a) the complainant's reasons for withdrawal;
 - (b) whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
 - (c) whether action, such as an investigation, may be taken without the complainant's participation.

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STANDARDS COMMITTEE

PROCEDURAL RULES FOR REVIEWS OF INITIAL ASSESSMENT DECISIONS OF CODE OF CONDUCT COMPLAINTS

1 Purpose

- 1.1. These rules have been prepared to facilitate proper consideration by the Standards Committee's Review Sub-Committee, when conducting a review of initial assessment decisions by the Monitoring Officer in respect of Code of Conduct complaints ('the Review').
- 1.2. The rules set out a framework for how Reviews are to be conducted and explain the role of the participants at the Review.

2. Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Review:
 - **'Subject Member/Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire Local Authority area, against whom a complaint has been made under the Code of Conduct.
 - **'Complainant'** means the person(s) who have lodged a complaint against the conduct of a Member
 - **'Council'** means Wiltshire Council.
 - **'The Monitoring Officer'** is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
 - **'Democratic Services Officer'** means the Council's Officer who is present at a Review Sub-Committee meeting to take minutes and advise on procedure.
 - **'Independent Person'** means a person appointed under Section 28(7) of the Localism Act:
 - a) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b) who may be consulted by the Member about the complaint.
 - **Initial Assessment** means a review of the complaint and any written response by the subject member to consider whether on the papers the complaint merits a formal investigation as set out in paragraph 4.1 and the following provisions of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **'Code of Conduct'** means the code of conduct for members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- **'Local Assessment Criteria'** are the arrangements made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- **'Party'** means the Subject Member and the Complainant
- The **'Hearing Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under the arrangements in Protocol 12 of the Constitution..
- The **'Review Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of the arrangements in Protocol 12 of the Constitution.. This can include voting and co-opted non-voting members of the Standards Committee.
- The **'Constitution'** means the Constitution of Wiltshire Council, which includes rules on public participation at committees and the code of conduct complaints procedure.

3. The Review

- 3.1. The Review is dealt with on the papers and is not to be treated as a hearing of the complaint itself, which can only be convened after an investigation has been concluded and a decision has been made under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing.
- 3.2. Information submitted in a request for a review should be focused solely upon the substantive allegations of the original complaint.. If new allegations are raised in the review request, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:-
 - 3.2.1. The new allegations may be considered as part of the Review of the original complaint, but only if they relate to the original complaint and all parties, including if appropriate, the officer who carried out the initial assessment of the original complaint, have had an opportunity to comment on them.
 - 3.2.2. The Review of the original complaint may be postponed until there has been an initial assessment of the new complaints, so that, if appropriate, all of the complaints can be considered together.
 - 3.2.3. The new complaints may be the subject of separate assessment and be dealt with independently from the Review of the original complaint

4. Attendance at Meetings

- 4.1. The Review Sub-Committee is a committee of the Council and as such the meeting shall take place in public, However, the Sub-Committee may exclude the public from all or part of the Review, by passing a resolution in accordance with Section 100A(4) of the Local Government Act 1972, where it considers that there is likely to be disclosure of exempt information and that it is in the public interest to do so . Given the nature of the issues to be considered by the Sub-Committee it is likely that such a resolution would normally be appropriate at this stage in the process.
- 4.2. The Complainant and the Subject Member, as parties to the Review, would not be covered by such a resolution to exclude the public and press and may attend the Review Sub-Committee. However, the Sub-Committee will normally retire to consider their decision and return to inform the parties of their decision.
- 4.3. If a party has informed the Council that they do not intend to attend the Sub-Committee meeting, or have not given any indication as to whether or not they intend to attend, the Review will proceed in their absence.
- 4.4. If a party has indicated an intention to attend the meeting, but is not present at the start of the meeting, the Review will proceed in the absence of that party, unless the Sub-Committee considers it necessary to adjourn the meeting to enable the party to attend and make their representations.
- 4.5. If a party does not intend to attend and speak to the meeting, they may submit short written representations that will be taken into account by the Sub-Committee in reaching their decision.
- 4.6. In addition to the Sub-Committee members and any co-opted member, the meeting may be attended by one or more Independent Persons, Democratic Services Officer(s) and the Monitoring Officer, being someone other than the officer who made the initial assessment under review.

5. Procedure

- 5.1. Prior to the Review commencing, the Chairman shall introduce the persons present and explain the procedure to be followed at the Review
- 5.2. The Complainant and the Subject Member (or their representative) will be permitted up to three minutes to make any statement. If there is more than one complainant present, then, subject to the discretion of the Chairman, the maximum total time for statements by all complainants shall be three minutes. Any statements made should relate to the specific issues being considered by the Review Sub-Committee and should not raise any new issues or allegations.
- 5.3. No new documentation is to be introduced at the Sub-Committee meeting without the agreement of the Sub-Committee. New documentation should only be admitted if is considered by the Sub-Committee to be essential to its consideration of the issues in the Review.
- 5.4. The Sub-Committee may take into account written representations made by, or correspondence from, a party that have been received since the publication of the agenda, where it is considered that this will assist the Review.
- 5.5. No questioning of the parties will be permitted, other than by the Sub-Committee with the agreement of the Chairman, to seek clarification of any point that has been made

- 5.6. Following any statements by the parties, the Review Sub-Committee will normally withdraw, with the Independent Person(s), and relevant officers, to consider the case.
- 5.7. Taking into consideration the documents provided, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will apply the tests required under paragraph 3 of the local assessment criteria, namely whether:
- a) the complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) the member was a member at the time of the incident giving rise to the complaint;
 - c) the member remains a member of the relevant council;
 - d) a Code of Conduct is in force for the relevant council and provided;
 - e) the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
- 5.8. If the Sub-Committee are not satisfied that the criteria in a-e above are met, the complaint will be assessed as requiring no further action.
- 5.9. If the Sub -Committee are satisfied that a-e in para 5.7 above are met, they shall consider whether, under the rest of the local assessment criteria, the complaint should proceed to investigation. The Sub-Committee may also recommend any other suitable action, including mediation.
- 5.10. In reaching its decision the Sub-Committee will have regard to the initial assessment reasoning and decision.

6. Decision

- 6.1. The parties will be informed of the Sub-Committee's decision once it has been made and a full decision with written reasons shall be sent to the Complainant and Subject Member as soon as practicable thereafter.

Review Sub-Committee Meeting Procedure Summary

1. The Democratic Services Officer will request nominations for a Chairman for the Review.
2. The Chairman welcomes all those present and introduces the Review.
3. If appropriate, the Chairman invites the Sub-Committee Members, Council Officers, the complainant (if present), and the Subject Member (if present) to introduce themselves.
4. The Chairman outlines the Review Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.
5. The Sub-Committee determines whether to pass a resolution to exclude the press and the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a statement to the Sub-Committee of up to three minutes for each party.
7. The Sub-Committee retires to consider their decision.
8. Taking into consideration the evidence, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council.
 - d) That a Code of Conduct for the relevant council is in force and provided;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
9. If the criteria in 8 a) to e) are met, the Sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or other suitable action, including mediation, or whether the complaint should be dismissed or no further action should be taken.
10. In reaching their decision the Sub-Committee will have regard to the initial assessment of the Monitoring Officer.

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STANDARDS COMMITTEE

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- 1.2 The rules set out a framework for how Reviews are to be conducted and explain the role of the participants at the Review.

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 - **‘Complainant’** means the person(s) who have lodged a complaint against the conduct of a Member
 - **‘Council’** means Wiltshire Council.
 - **‘The Monitoring Officer’** is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
 - **‘Committee Lawyer’** means the Council’s Lawyer (including an external Lawyer instructed by the Council’s Head of Legal Services) who is present at a Hearing to advise the Chairperson and the Members.
 - **‘Committee Clerk’** means the Council’s Officer who is present at a Hearing to take minutes and advise on procedure.
 - **‘Independent Person’** means a person appointed under Section 28(7) of the Localism Act:
 - a) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b) who may be consulted by the Member about the complaint.
 - **Initial Assessment** means a review of the complaint and any written response by the subject member to consider whether on the papers the complaint merits a formal investigation as set out in paragraph 4.1 and following of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **‘Parish Council’** means a parish, town or city council within the area of Wiltshire Council.
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- **‘Parties’** includes the Complainant, Subject Member and the Investigating Officer (if applicable).
- **‘Local Assessment Criteria’** are the arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- The **‘Hearing Sub-Committee’** is a sub-committee of the Council’s Standards Committee appointed to determine complaints of member misconduct under the arrangements of the local assessment criteria.
- The **‘Review Sub-Committee (The Committee)’** is a sub-committee of the Council’s Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of the local assessment criteria. This can include voting and non-voting members of the Standards Committee.
- The **‘Constitution’** means the Constitution of Wiltshire Council, which includes rules on public speaking at committees and the code of conduct complaints procedure.

3 The Review

- 3.1 The Review Sub-Committee is a public body and as such the meeting shall take place in public.
- 3.1.1 The Committee may exclude the public from all or part of the Review where it considers it to be in the public interest to do so and pass a resolution in accordance Section 100A(4) of the Local Government Act 1972.
- 3.1.2 The Committee may require any person attending the Review who, in its opinion, is behaving in a disruptive manner, to leave the Review and may:
- a refuse to permit them to return;
 - b permit them to return only on such conditions as the Committee may specify;
- 3.2 Prior to the Review commencing, the Chairperson shall advise the parties of the procedure it proposes to follow at the Review.
- 3.3 In accordance with paragraphs 24-26 of Part 4 of the Constitution, speakers will be permitted a maximum of three minutes to make any statement.
- 3.4 Taking into consideration the documents provided, namely the original complaint, response of the subject member and any additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:

- a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
- b) That the member was a member at the time of the incident giving rise to the complaint;
- c) That the member remains a member of the relevant council at the time of the complaint;
- d) That the complainant has provided a copy of the Code of Conduct of the relevant council;
- e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

3.5 If the committee are satisfied a-e are met, it shall consider if under the rest of the local assessment criteria the complaint should proceed to investigation. If it is not satisfied the criteria are met, the complaint will be assessed as for no further action.

3.6 The committee will also consider the initial assessment reasoning and decision.

3.7 The Members of the Review Sub-Committee may withdraw, with the Independent Person, the Committee Lawyer and the Committee Clerk, to consider the case.

3.8 The review is dealt with on the papers and is not to be treated as a hearing into the complaint itself which can only be convened after an investigation has been concluded and decision has been made under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing

4 Documentation

4.1 No party shall present new documentation to the Committee at the Review. This does not preclude the Officers from correcting errors

5 Intervention

The Chairperson shall permit the following interventions at any point in the Review:

5.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require the Committee, the Committee Lawyer and the Committee Clerk to leave the Review so that advice can be given.

5.2 The Committee Clerk to advise the Committee on procedure generally, or to request that statements made are repeated for reasons of clarity and so that they can be properly recorded.

6 Failure of Parties to Attend Review

- 6.1 If a party has informed the Council that it does not intend to attend a Review, the Review may proceed in its absence.
- 6.2 If a party has not indicated that it does not intend to attend or be represented at a Review and fails to attend the Review then the Council may:
 - 6.2.1 where it considers it be necessary in the public interest, adjourn the Review to a specified date; or
 - 6.2.2 hold the Review in the party's absence.
- 6.3 Where the Council holds a Review in the absence of a party, it shall consider at the Review the review, representations or notice made by that party.

7 Decision

- 7.1 Written reasons for any decision shall be provided to all parties soon after the deliberations of the Review.

Review Procedure Summary

1. The Democratic Services Officer/Committee Clerk will request nominations for a Chairman for the Review
2. The Chairperson welcomes all those present and introduces the Review.
3. The Chairperson invites the Sub-Committee Members, Council Officers, the complainant (if present), and the subject member (if present) to introduce themselves.
4. The Chairperson outlines the Review Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.
5. The Sub-Committee can choose to pass a resolution to exclude the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a brief statement to the Sub-Committee.
7. Taking into consideration the evidence, namely the original complaint, response of the subject member and any additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council at the time of the complaint;
 - d) That the complainant has provided a copy of the Code of Conduct of the relevant council;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
8. The Members of the Review Sub-Committee may withdraw, with the Independent Person, the Committee Lawyer and the Committee Clerk, to consider the case.
9. Depending on the outcome of 7. the sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or if no further action should be taken.
10. The sub-committee will then consider the initial assessment of the monitoring officer, and if in their view, on the basis of available information, it was reasonable.

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Code of Conduct Complaints - Status Report

	Cases received	Cases open (cumulative)	Assessed investigation	Assessed no further action	Assessed alternative resolution/ *complaint withdrawn	Pending assessment (*assessed & decision notice being finalised)	Other	Cases closed
2012	25	11	1	24	0	0	0	14
2013	24	11	0	16	7	1	0	24
2014	79	17	1	62	16	0	0	73
2015	47	17	1	37	9	0	0	47
2016								
January	4	17	0	3	0	1	0	4
February	4	18	1	2 & 1*	0	0	0	3
March	9	22	0	9	0	0	0	5
April	3	25	0	3	0	0	0	0
May	7	30	0	7	0	0	0	2
June	3	22	0	3	0	0	0	11
July	8	28	1	1	*1	*1	1** + 3***	2
August	6	27	2	4	0	0	0	7
September	5	22	0	2	0	*1	1** + 1***	10
October	6	27	0	1	0	1 + *3	1***	1
November	3	25	0	0	*1	*2	0	5
December	1	23	0	0	0	1	0	3
	59	N/A	4	36	2	10	7	53

- * referred to Police – NFA being taken
 ** referred to police
 *** further information not supplied

Appeals received
4 (not upheld)
5 (not upheld)
16 (14 not upheld & 2 upheld)
9 (not upheld)
0
1 (upheld)
0
2 (upheld)
0
10 (upheld)
0
1 (upheld)
0
1 (overturned)
2 (upheld)
0
17

Complaints referred for investigation since 1 January 2016

Case reference	Date of Assessment	Progress
WC-ENQ00137	22/03/2016	Hearing Sub-Committee 01/09/2016 – Investigating officer’s finding of breach agreed – file closed
WC-ENQ00167	09/09/2016	Investigating Officer appointed 06/12/2016 – investigation ongoing
WC-ENQ00172	04/10/2016	Review Sub-Committee 26/01/2017
WC-ENQ00173	04/10/2016	Investigating Officer appointed 03/01/2017 – investigation ongoing

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The types of complaints received in 2016 are categorised as follows:

Type of complaint	Number
Non-disclosure of interests/participating and voting at meetings	7
Inappropriate behaviour i.e. disrespect/bullying	24
Failing to respond to letter/emails or to provide information/lack of communication	2
Deliberate misrepresentation of facts	12
Spreading false rumours	2
Data breach	1
Showing bias towards/against parishioners	4
Failing to act in the public interest	2
Inappropriate use of social media	2
Bringing council into disrepute	1
Seeking to damage complainant’s reputation	1
Operation of parish council (not Code of Conduct)	1

Wiltshire Council

Standards Committee

26 January 2017

Local Government Ombudsman's Annual Review Letter 2015 – 2016

Purpose of Report

1. To inform the Standards Committee of the Annual Review Letter for 2015-16 published by the Local Government Ombudsman (LGO) in respect of Wiltshire Council.

Background

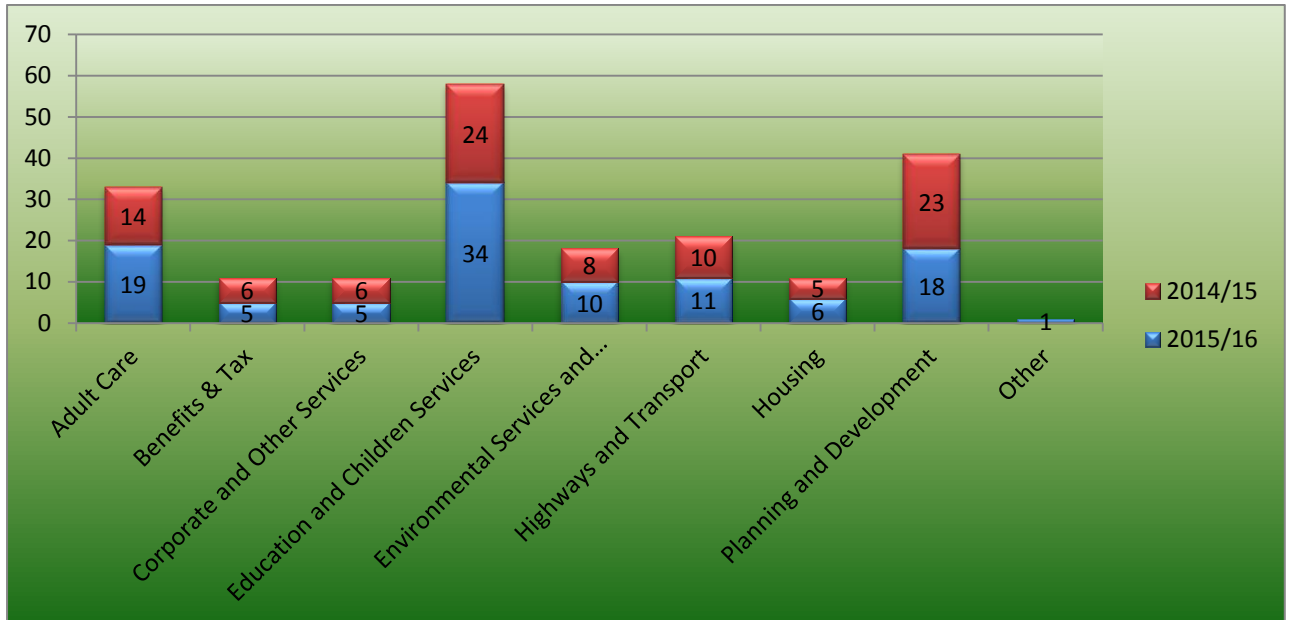
2. Under the Council's Constitution the Standards Committee has responsibility for the oversight of complaints handling, including complaints to the LGO.
3. The LGO is required to provide an annual overview of complaints received. The LGO issues its findings in the form of an Annual Review Letter which goes out to all authorities at the same time, providing a breakdown of the number of complaints received against each authority.

Main considerations

4. A copy of the LGO's report for Wiltshire Council for 2015-16 is attached at Appendix 1.
5. It is encouraging to see that the number of complaints referred to the LGO for 2015-16 has not changed significantly from the previous reporting year 2014/2015, as shown in the table below. The total number of complaints and enquiries referred to the LGO in 2015-16 was 109, compared with 96 for 2014-15.
6. Whilst there is no ability to control whether customers of the Council decide to pursue their complaint further with the LGO, the fact that the numbers remain consistent may in part be attributed to the approach taken by the Council's complaints team and the efforts which are undertaken within the Council's own complaints procedure to engage with the customer and ensure that a full response and explanation are provided, together with a clear plan of action. Rigorous monitoring of LGO investigations ensures that the Council engages constructively with the LGO and contributes to providing the customer with a detailed and reasoned outcome.
7. In terms of the number of complaints upheld by the LGO there was a slight rise from 17 in 2015-15 to 19 in 2015-16. There were no public reports of

maladministration issued and the Council agreed and actioned all recommendations proposed by the LGO in order to resolve these cases.

8. A comparison of the complaints received by the LGO in 2014-15 and 2015-16, broken down between the various services, is included below.



9. The complaints handling function is currently in the process of being restructured within the Council's Legal team and an update on the new arrangements will be provided to the next meeting of the Standards Committee in April when the restructure has been concluded.

Safeguarding Implications

10. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

11. There are no equalities impacts arising from this report.

Risk assessment

12. There are no significant risks arising from this report.

Financial Implications

13. There are no direct financial implications arising from this report.

Legal Implications

14. There are no legal implications arising from this report.

Public Health Impact of the Proposals

15. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

16. There are no environmental implications arising from this report.

Recommendation

17. The Standards Committee is asked to note the outcome of the LGO's Annual Review Letter 2015-16.

Ian Gibbons

Associate Director, Legal and Governance and Monitoring Officer

Report Author: Ian Gibbons, assisted by Sarah Butler, former Complaints Manager.

Background Papers

The following unpublished documents have been relied on in the preparation of this Report: NONE

Appendices

Appendix 1 Local Government Ombudsman Review Letter for 2015-16

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21 July 2016

By email

Carlton Brand
Corporate Director
Wiltshire Council

Dear Carlton Brand,

Annual Review Letter 2016

I write to you with our annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about your authority for the year ended 31 March 2016.

The enclosed tables present the number of complaints and enquiries received and the decisions we made about your authority during the period. I hope that this information will prove helpful in assessing your authority's performance in handling complaints.

Last year we provided information on the number of complaints upheld and not upheld for the first time. In response to council feedback, this year we are providing additional information to focus the statistics more on the outcome from complaints rather than just the amounts received.

We provide a breakdown of the upheld investigations to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us. In addition, we provide a compliance rate for implementing our recommendations to remedy a fault.

I want to emphasise that these statistics comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside an annual review of local government complaints. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

Effective accountability for devolved authorities

Local government is going through perhaps some of the biggest changes since the LGO was set up more than 40 years ago. The creation of combined authorities and an increase in the number of elected mayors will hugely affect the way local services are held to account. We have already started working with the early combined authorities to help develop principles for effective and accessible complaints systems.

We have also reviewed how we structure our casework teams to provide insight across the emerging combined authority structures. Responding to council feedback, this included reconfirming the Assistant Ombudsman responsible for relationship management with each authority, which we recently communicated to Link Officers through distribution of our manual for working with the LGO.

Supporting local scrutiny

Our corporate strategy is based upon the twin pillars of remedying injustice and improving local public services. The numbers in our annual report demonstrate that we continue to improve the quality of our service in achieving swift redress.

To measure our progress against the objective to improve local services, in March we issued a survey to all councils. I was encouraged to find that 98% of respondents believed that our investigations have had an impact on improving local public services. I am confident that the continued publication of our decisions (alongside an improved facility to browse for them on our website), focus reports on key themes and the data in these annual review letters is helping the sector to learn from its mistakes and support better services for citizens.

The survey also demonstrated a significant proportion of councils are sharing the information we provide with elected members and scrutiny committees. I welcome this approach, and want to take this opportunity to encourage others to do so.

Complaint handling training

We recently refreshed our Effective Complaint Handling courses for local authorities and introduced a new course for independent care providers. We trained over 700 people last year and feedback shows a 96% increase in the number of participants who felt confident in dealing with complaints following the course. To find out more, visit www.lgo.org.uk/training.

Ombudsman reform

You will no doubt be aware that the government has announced the intention to produce draft legislation for the creation of a single ombudsman for public services in England. This is something we support, as it will provide the public with a clearer route to redress in an increasingly complex environment of public service delivery.

We will continue to support government in the realisation of the public service ombudsman, and are advising on the importance of maintaining our 40 years plus experience of working with local government and our understanding its unique accountability structures.

This will also be the last time I write with your annual review. My seven-year term of office as Local Government Ombudsman comes to an end in January 2017. The LGO has gone through extensive change since I took up post in 2010, becoming a much leaner and more focused organisation, and I am confident that it is well prepared for the challenges ahead.

Yours sincerely



Dr Jane Martin
Local Government Ombudsman
Chair, Commission for Local Administration in England

Local Authority Report: Wiltshire Council
For the Period Ending: 31/03/2016

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
19	5	5	34	10	11	6	18	1	109

Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
6	1	33	34	19	21	53%	114

Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.

The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

The compliance rate is the proportion of remedied complaints where our recommendations are believed to have been implemented.

Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement	Compliance Rate
16	1	100%

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Wiltshire Council

Standards Committee

26 January 2017

Appointment of Independent Persons

Purpose of Report

1. This report asks the Standards Committee to approve the process and timetable for the appointment of three Independent Persons to assist the Monitoring Officer with Code of Conduct Complaints in accordance with the Localism Act 2011.

Background

2. The Council is required under the Localism Act 2011 to appoint at least one Independent Person (IP) whose views must be sought and taken into account before the Council makes a decision on an allegation it has decided to investigate. The views of the IP may also be sought on other allegations, and by a member who is the subject of an allegation.
3. At its meeting on 10 July 2012 the Council appointed three IPs to fulfil their statutory role, as set out in the job specification attached at **Appendix 1**. The role involves:
 - advising and assisting the Council in discharging its duty to promote and maintain high standards of conduct by elected and co-opted members.
 - advising elected and co-opted members of Wiltshire Council and Parish, Town and City Councils in Wiltshire in connection with complaints made against them under their Code of Conduct.
 - advising the Monitoring Officer in connection with the initial assessment, review and hearing of member misconduct complaints in accordance with the Council's complaints procedure.
4. The three current IPs, Mr Stuart Middleton; Mrs Caroline Baynes and Mr Colin Malcolm have discharged their role in an exemplary manner. Since their appointment in 2012 they have been involved in a total of 234 complaints. IPs meet or liaise as required with the Monitoring Officer in the initial assessment of complaints, and to date have advised in connection with 31 Review Sub-Committee and 1 Hearing Sub-Committee.
5. It was originally envisaged that the term of appointment of each of the three IPs would be staggered for a period of up to four years in order to maintain continuity of knowledge and experience. In practice, however, as the IPs had gained considerable experience and expertise in their role it was beneficial to retain them for the full term.

6. At its meeting on 27 April 2016, therefore, the Standards Committee recommended that the terms of the IPs should be extended to May 2017 to coincide with the election of the new Council. Full Council subsequently approved this recommendation at its meeting on 10 May 2016, with a recommendation for appointments to be received at the meeting of the new Council on 16 May 2017.

Main Considerations

7. In appointing IPs, the Council is required by the Localism Act 2011 to advertise for a vacancy in a manner considered appropriate; applicants are to submit formal applications for the position, and the appointment must be approved by a majority of members of the Council.
8. It is proposed that a selection panel, comprising the Chairman, Vice-Chairman and a Co-opted Member of the Standards Committee is convened by the Monitoring Officer to shortlist and interview candidates for the role following advertisement on the Council's web site and receipt of applications. The Standards Committee will be advised of the successful candidates at its next meeting in April with a view to recommending them for appointment by the Council in May.
9. The Localism Act 2011 requires that at least one IP is appointed. However, the Council decided that three IPs should be appointed to provide the necessary support to the Monitoring Officer, subject members, and ensure that there is sufficient cover overall to manage all the complaints that are received efficiently. These arrangements have worked very well and it is strongly recommended that the Council continues with the same number of IPs.

Safeguarding Implications

10. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

11. There are no equalities impacts arising from this report.

Risk assessment

12. There are no significant risks arising from this report.

Financial Implications

13. The IPs each receive remuneration of £ 2,240 a year for carrying out their duties. This sum was fixed by Council in 2012 in accordance with the recommendation of the Independent Remuneration Panel.

Legal Implications

14. The recommendations in this report are consistent with the Council's obligations under the relevant legislation,

Public Health Impact of the Proposals

15. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

16. There are no environmental impacts arising from this report.

Recommendation

17. **The Standards Committee is therefore asked to authorise the Monitoring Officer, in consultation with the Chairman, to take all necessary steps to secure the appointment of three Independent Persons at the meeting of Full Council on 16 May 2017.**

Ian Gibbons, Associate Director, Legal and Governance and Monitoring Officer

Report Author: Kieran Elliott, Senior Democratic Services Officer,
kieran.elliott@wiltshire.gov.uk , 01225 718504

Appendices:

Appendix 1 - Job Specification: Independent Person and draft advert

Background Papers:

[Minutes of Council 15 May 2012](#) – Delegation to Monitoring Officer for IP appointment process

[Minutes of Council 26 June 2012](#) – Approval of new Standards Regime

[Minutes of Council 10 July 2012](#) – Appointment of IPs

[Standards Committee Report and Minutes 27 April 2016](#)

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WILTSHIRE COUNCIL

JOB DESCRIPTION AND PERSON SPECIFICATION

INDEPENDENT PERSON APPOINTED UNDER SECTION 28(7) LOCALISM ACT 2012

Job Purpose

To undertake the statutory role of the Independent Person appointed under section 28(7) of the Localism Act 2011 and to assist the Council generally in discharging its duty to promote and maintain high standards of conduct by members and co-opted members of Wiltshire Council.

Contacts

- Elected and co-opted members of Wiltshire Council and of Parish, Town and City Councils in Wiltshire
- Wiltshire Council officers
- Members of the Public

Key tasks

- Advising and assisting Wiltshire Council in discharging its duty to promote and maintain high standards of conduct by elected and co-opted members of Wiltshire Council.
- Advising elected and co-opted members of Wiltshire Council and of Parish, Town and City Councils in Wiltshire in connection with complaints made against them under their Code of Conduct.
- Advising the Monitoring Officer in connection with the initial assessment of member misconduct complaints in accordance with the Council's arrangements made under section 28(6) of the Localism Act 2011.
- Advising the Hearing Sub-Committee in connection with the determination of member misconduct complaints in accordance with the Council's arrangements made under section 28(6) of the Localism Act 2011.

Person specification

- The post holder must have personal integrity and a commitment to equality and diversity.
- They must be fair and able to take an objective view of sometimes emotive situations.
- They must act with independence and tenacity, and demonstrate skills of persuasion and influence.
- They must be able to exercise sound judgement, and must be able to analyse and solve complex problems.
- They must be able to express their ideas and point of view effectively, while being an excellent listener.
- They must have excellent inter-personal skills.

Equality and Diversity

The Independent Person is obliged to demonstrate and promote a commitment to the Council's Equality and Diversity Policy.

Eligibility

Under section 28(8) and (10) Localism Act 2011 the following persons are not eligible for appointment as an independent person:

- current members, co-opted members and officers of Wiltshire Council or of any parish, town or city council within its area, or their relatives or close friends;
- any person who has at any time during the 5 years ending with the appointment been a member, co-opted member or officer of the council or any of the parish, town or city councils in its area;

For these purposes a person is a relative of another person if they are -

- a. the other person's spouse or civil partner;

- b. living with the other person as husband and wife or as if they were civil partners;
- c. a grandparent of the other person
- d. a lineal descendant of a grandparent of the other person;
- e. a parent, sibling, or child of a person within a. or b. above;
- f. the spouse or civil partner of a person within c., d. or e. above; or
- g. living with a person within c., d., or e. above as husband and wife or as if they were civil partners.

Term of Appointment

The Council plans to appoint 3 independent persons. These will normally be appointed for a period of 4 years. However, in order to ensure continuity of knowledge and experience the initial appointments will be staggered - one for 2 years, one for 3 years and the other for 4 years.

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Appointment of Independent Person – Wiltshire Council

Wiltshire Council is looking to appoint three people to act as Independent Persons. Their role will be to assist the Council in promoting and maintaining high standards of conduct amongst its elected Councillors and members of Wiltshire's town, parish and city councils.

All councillors must comply with adopted Codes of Conduct and Wiltshire Council is responsible for considering complaints that councillors may have breached their adopted Codes. Wiltshire Council will seek the views of the Independent Person and take them into account before a decision is made on an allegation of misconduct by a councillor under the Code of Conduct. The Independent Person may also be consulted by the councillor who is the subject of the allegation.

Among the skills required of an Independent Person are a keen interest in standards in public life, personal integrity and a commitment to equality and diversity, an ability to act with independence, tenacity and objectivity, and sound inter-personal, decision making and analytical skills.

An allowance, travel and subsistence expenses will be paid. The amount is to be confirmed.

For further details, including a job description, person specification and application form, please visit Wiltshire Council's website or contact:

Marie Lindsay at marie.lindsay@wiltshire.gov.uk 01225 718465

The closing date for applications is 29th June 2012. Interviews will be on the 6th or 9th July 2012 (date to be confirmed).

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STANDARDS COMMITTEE FORWARD PLAN 2017

<u>Meeting Date</u>	<u>Items</u>	<u>Councillors Briefing (if required)</u>	<u>Council Date</u>
<u>26 January 2017</u>	<p>Appointment of Independent Persons Process</p> <p>Status Report on Complaints</p> <p>Review of Complaints Procedure</p>	<u>17 February 2017 (TBC)</u>	<u>21 February 2017</u>
<u>5 April 2017</u>	<p>Code of Conduct Training Post May 2017 Elections – Induction of new unitary cllrs and parish cllrs</p> <p>Appointment of co-opted members</p> <p>Constitutional Changes</p>	<u>TBD</u>	<u>16 May 2017</u>
<u>Future Items (7 June and 13 September)</u>	<p>Protocol 4 – Planning Code of Good Practice</p> <p>Review of Whistleblowing Policy</p>		

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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