



REPORT OF: The Monitoring Officer

TO: Standards Committee

DATE: 4 March 2020

SUBJECT: Complaints Update to the Standards Committee

1. PURPOSE OF THE REPORT

To update Members on complaints received regarding Members conduct under the Arrangements for dealing with complaints about the Code of Conduct for Members up to 31st January 2020.

2. RECOMMENDATIONS

The Committee is asked

- to note the update report on complaints during December 2019 and January 2020
- to consider recommending to Full Council an update of the Arrangements for dealing with complaints about the Code of Conduct for Members to make it explicit that legislation does not provide for suspending/dismissing elected members as set out in this report
- to agree that a report on updating guidance on `two hatted` councillors be brought to a future meeting of the Standards Committee

3. BACKGROUND

The Committee has a role in considering any complaints received relating to the conduct of Members of the Borough Council, co-opted Members and Parish Councils in its area. Members will be aware that not all complaints are proceeded with for various reasons (unsubstantiated complaints, vexatious complaints etc.) however it is important that members are aware of receipt of these and legitimate complaints that are being processed and progressed.

Members of the Committee are to be kept up to date on receipt of all complaints and progress at meetings of the Standards Committee where appropriate subject to any relevant provisions relating to confidentiality.

In December 2019/January 2020 there have been 7 complaints received by the Monitoring Officer covering 5 different Councillors.

Case 1 – Councillors Kay, Sidat, McFall and Groves

In this first case the issue of confidentiality does not arise as the matter is already in the public domain and the outcome is subject to public apologies from the Councillors concerned.

On 12 December 2019, the Daily Mail published a story, which included reference to a `facebook` post by Councillor Kay in 2014.

2 complaints were received regarding this alleged `anti-Semitic` post and also the fact that this post was `liked` by 3 other Councillors, i.e. Councillors Sidat, McFall and Groves.

These complaints were considered in accordance with the `Arrangements for dealing with complaints about the Code of Conduct for Members` as set out in the Council's constitution (copy attached as an appendix to this report ease of reference).

Under these `Arrangements` the Monitoring Officer must make an initial assessment as regards whether the Complaint merits investigation or another course of action and do so following consultation with the Independent person.

Exceptionally in this case the Monitoring Officer is publishing his decision which was contained in a comprehensive written decision notice to the complainants as follows:

“Decision

It is without dispute that the `Facebook post` that is the subject of this complaint was posted in 2014 by Councillor Kay and he accepts its content and that he describes this as an error in that his words “may have been better chosen”.

All four Councillors confirm their errors of judgement as regards the need to take more care in being clear about wording and `liking` posts:

Councillor Kay “...there is no intention in my words to any individual or to any religious, ethnic or racial group. If anyone has taken personal offence at my words, I sincerely apologise, as there was and is no intention to offend individuals”

Councillor Groves “I apologise again if this incident has caused any distress to anyone”

Councillor McFall “If unfortunately someone has taken offence I am more than happy to apologise”

Councillor Sidat “If by liking the article I may have upset anyone then I am sincerely sorry and apologise whole heartedly for liking the post.”

The complaint is only raised some 5 plus years later with no intervening matters of concern being raised prior to this.

The allegation is that there has been a Breach of the Code. What is clear is that all the Councillors acknowledge they should have taken more care and as a result, their actions have given rise to this complaint, some 5/6 years later. On the balance of probabilities, it would be reasonable to conclude that there was no deliberate intention to make an Anti-Semitic comment/`like` which otherwise would clearly breach the Code of Conduct.

There have been no complaints made about any of the four councillors at the time or in the intervening years. The balance of evidence is that although an inappropriate comment was made and `liked` this was due to poor wording and poor social media practice as opposed to any underlying `anti-Semitic` behaviours.

I have taken into account also that all the Councillors have acknowledged they made an error and apologised unreservedly. I am also aware that Councillor Kay is no longer an Executive Member or representing the Council on Outside Bodies etc.

In view of the above and having considered all the circumstances, I consider that there would be no overriding public benefit from carrying out further investigations and taking into account the inevitable costs that would be incurred from this.

I have also taken the view that a referral to a Sub Committee of the Standards Committee as an exceptional circumstance is not required in this matter.

With all the Subject Members expressing their apologies, they should be requested however to agree these be reported publically to the next meeting of the Standards Committee in March 2020. In addition, the Subject Members will be required to attend Social Media training refresher courses.

Should any Subject Members not comply with this suggested resolution, then the matter may be referred to the Standards Committee for their consideration.”

All four Councillors accepted the Monitoring Officers decision and confirmed their apologies be reported in public at this meeting.

A complainant further sought an explanation why there was not an initial suspension and potential dismissal of the Councillor(s) however it was explained that the Council does not have legal powers to suspend or dismiss any councillor. It was advised that the only sanctions available to the Council & Council Standards Committee – Hearing Panel in the event a matter was brought before them were those set out in Paragraph 13 of the `Arrangements for dealing with complaints about the Code of Conduct for members (attached).

In this very openly public case it became obvious to the Monitoring Officer that there was an expectation from a number of interested parties including the media reporting this matter that the `Arrangements for dealing with complaints about the Code of Conduct for members`, included an option for suspension, pending investigation and/or later dismissal from office. Albeit the `Arrangements for dealing with complaints about the Code of Conduct for members` does not and, cannot make such a provision.

As indicated above these options are not provided for in legislation and the powers available to the Council in the event of an alleged breach of the Code of Conduct, are only those as set out in the current `Arrangements for dealing with complaints about the Code of Conduct for members`.

It is suggested therefore from experience of this case that under the introduction to these Arrangements that the following could be added to make the position explicit at the outset for complainants, subject members, other Councillors and any other interested parties:

Paragraph

- 1.5 There are no powers in legislation and therefore under this complaints process for the suspension or dismissal of an elected councillor. In the event of a councillor being found in breach of the Code of Conduct only the sanctions as set out in Paragraph 13 below apply.

Case 2 – Complaint re Tree Preservation Order

3 separate complaints were received relating to 1 councillor who was alleged to have misrepresented a matter regarding a TPO. The first complainant did not pursue their complaint. In respect of the remaining two complainants the Monitoring Officer reviewed the complaints and representations received with the Independent Person and it was concluded that, the allegation did disclose a potential breach of the Code of Conduct, but the complaint was not serious enough to merit any action. In addition, the resources needed to investigate and determine the complaint, given all the information currently available, would be wholly disproportionate to the allegations, and also the Monitoring Officer therefore in all the circumstances could identify no overriding public benefit in carrying out an investigation.

In this case there was been some concern about the role being undertaken by councillors who may hold different positions (e.g. Parish Councillor & Borough Councillor), potential conflicts of interest and who they be being seen to represent at any given time. Previously the Committee has considered the challenges presented by Councillors wearing `two hats` and the Monitoring Officer is proposing to present a report to a future meeting of the Committee to review current advice and update this as appropriate following experience from this case.

Up to 31st January 2020 there were no further complaints received under the Members Complaints Procedures.

The Monitoring Officer has prepared this report for consideration by the Standards Committee.

4. RATIONALE

The Localism Act requires Councils to put in place mechanisms for reporting and investigation of complaints. This report provides information for the Standards Committee in a clear and transparent way to ensure that all members of the committee are aware of complaints received, progress and outcomes.

5. LEGAL IMPLICATIONS

The Council has adopted the Code of Conduct and the arrangements for dealing with member complaints in the Council's Constitution (set out in the Appendix attached), which it must follow when a formal complaint is received.

There is no legislative power for the suspension/dismissal of elected members which is reflected in these Arrangements for dealing with member complaints (set out in the Appendix attached). The sanctions available to the Council Standards Committee – Hearing Panel in the event a matter was brought before them are those set out in

Paragraph 13 of the `Arrangements for dealing with complaints about the Code of Conduct for members (attached).

The Monitoring Officer must ensure the Council acts lawfully and the Monitoring Officer must act in accordance with the Arrangements for dealing with complaints about the Code of Conduct for members and act impartially and objectively in consultation with Independent Person in handling complaints.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

The Council's arrangements for promoting and maintaining high standards of conduct have been discussed by the Standards Committee and the arrangements for dealing with complaints about the Code of Conduct for Members are the subject of this report, to ensure openness and transparency to Members of the Committee on complaints received and progress.

Chief Officer/Member

Contact Officer: David Fairclough

Date: 18 February 2020

Background Papers: The Localism Act 2011