



To:
All members of the
Members' Code of Conduct Committee

Please reply to:
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Date: 16 June 2015

Supplementary Agenda

Members' Code of Conduct Committee - Thursday, 18 June 2015

Dear Councillor

I enclose the following items which were marked 'to follow' on the agenda for the Members' Code of Conduct Committee meeting to be held on Thursday, 18 June 2015:

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|---|---------------|
| 4. Role of the Independent Persons | 1 - 4 |
| To consider a report from the Monitoring Officer on an additional role for the Independent Persons following amendments to the regulations. | |
| 5. Update on complaints against councillors | 5 - 10 |
| To receive an update report from the Monitoring Officer on complaints made against councillors since the last meeting of this Committee. | |

Yours sincerely

Gillian Hobbs
Corporate Governance

To the members of the Members' Code of Conduct Committee

Councillors:

Mr Murray Litvak (Chairman)	A.L. Griffiths	R.W. Sider BEM
Miss Sue Faulkner (Vice-Chairman)	J.G. Kavanagh	B.B. Spoor
M.M. Attewell	S. Lohmann	
A.E. Friday	A.J. Mitchell	

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Members' Code of Conduct Committee

18 June 2015



Title	New role for Independent Persons as a consequence of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015		
Purpose of the report	To make a recommendation to Council		
Report Author	Michael Graham, Monitoring Officer		
Cabinet Member	Not applicable	Confidential	No
Corporate Priority	Not applicable		
Cabinet Values	Accountability		
Recommendations	<ol style="list-style-type: none"> 1. The requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 be noted 2. The following be appointed as Independent Persons to support the Council's Code of Conduct and Statutory Officer procedure rule requirements: <ul style="list-style-type: none"> • Mr Roger Pett • Mr Tony Allenby • Ms Vivienne Cameron • Mr Paul Sherar • Mr David Seymour 3. The Monitoring Officer be authorised to make consequential amendments to the Employment Procedure Rules within the Constitution for approval by Council. 		

1. Key issues

- 1.1 The Council is required to maintain a Constitution and Standing Orders, setting out how the Council will operate and take decisions. The Constitution includes Employment Procedure Rules, which govern recruitment, disciplinary and dismissal of staff.
- 1.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 were laid before Parliament on the 25th March 2015 and come into force on the 11th May 2015. These Regulations provide for new arrangements for taking disciplinary action against Council Statutory Officers.
- 1.3 The Council employs three Statutory Officers, as follows:

Mr Roberto Tambini	Head of Paid Service
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Mr Terry Collier

Chief Finance (S151) Officer

Mr Michael Graham

Monitoring Officer

Policy Background

- 1.4 Specific senior officers of a council i.e. the Head of Paid Service, the Monitoring Officer, and the Chief Finance Officer, have statutory responsibilities to discharge to their councils. Since they work with and report to the elected members, they discharge these responsibilities in a political environment.
- 1.5 As a result, statutory protection requiring an appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against these senior officers was introduced in the 2001 Regulations.

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

- 1.6 The 2015 Regulations have been introduced following a consultation exercise carried out in 2013.
- 1.7 The new Regulations seek to simplify and localise the disciplinary process for the most senior officers by removing the mandatory requirement that a DIP should be appointed.
- 1.8 In place of the DIP process the decision will be taken transparently by full council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.
- 1.9 In the case of a proposed disciplinary action against one of the most senior officers, the council is required to invite Independent Persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form an independent panel.
- 1.10 Councils are required to modify their standing orders to implement these Regulations no later than the first ordinary meeting of the Council after the Regulations come into force on the 11th May 2015.
- 1.11 **Independent persons**
- 1.12 The Council has appointed three Independent Persons under the Localism Act; Mr Roger Pett, Mr Tony Allenby and Ms Vivienne Cameron.
- 1.13 Spelthorne Borough Council appointed these three Independent Persons in a shared pool arrangement with 3 other County authorities, namely Guildford Borough Council, Mole Valley District Council and Waverley Borough Council to provide sufficient cover should an Independent Person be unavailable or face a conflict of interest.
- 1.14 As the new Regulations increase the role of the Independent Person, it is recommended that the shared pool arrangement be extended to include Reigate and Banstead Council and that additional Independent Persons be appointed, as follows:
- 1.15 Mr Paul Sherar (previous Chairman of Reigate & Banstead Independent Remuneration Panel)
- 1.16 Mr David Seymour (previous Chairman of Reigate & Banstead Independent Remuneration Panel) subject to paragraph 1.17 below.

1.17 David Seymour has not yet been interviewed by Reigate and Banstead BC (RBBC) for the role of Independent Person (IP) and this is due to take place next week. If he is appointed by RBBC, the Monitoring Officer will ask him if he consents to act for Spelthorne BC too. Paul Sherar has already been interviewed for the role of Independent Person and has given consent to be IP for Spelthorne BC and the other councils too.

2. Legal implications

2.1 The Council is required to adopt the requirements within the Regulations at the first Council after they come into force.

2.2 The recommendations within this report will ensure that the Council meets the requirements of the Regulations.

3. Financial implications

3.1 There are no financial implications arising from the changes outlined in this report.

Background papers: There are none.

Appendices: There are none.

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Report to: Members' Code of Conduct Committee
From: Michael Graham, Monitoring Officer
Date: 10 June 2015

Politically motivated complaints

Background

1. The Arrangements made by the Council for dealing with complaints under the Member Code of Conduct were established in July 2012 and have been reviewed and amended since that time based on experience of the Committee in operating the procedures. Generally, the Arrangements are working well. These Arrangements have been appended to this agenda at pages 7 – 15.
2. One of the principles of the Arrangements is that decisions on investigations are made by councillors in an Assessment Sub-Committee. Councillors decide if complaints are serious enough to warrant investigation. This arrangement allows members to take the lead on dealing with conduct of other councillors. This arrangement has worked well since it was introduced in July 2012 as part of the Localism Act; the Council has proportionate and local procedures for dealing with complaints against councillors.
3. The Council has a static low level of complaints about councillors from members of the public. Those which were referred through the Monitoring Officer from July 2012 to May 2015 (totalling 4 in number) were all referred to the Assessment Sub-Committee and none of them were considered suitable for further investigation.
4. As part of the Arrangements, the Monitoring Officer has the power to strike out complaints which are vexatious, frivolous, or politically motivated. Please see Principles of the Arrangements para 4(e) and (f) and also para 25:

The Monitoring Officer has power to reject complaints which are vexatious, frivolous or malicious or which are politically motivated or in some other way an abuse of process. Where the Monitoring Officer has taken a decision that a complaint falls into one of these categories, he will inform the complainant of his decision and the reasons for that decision. There is no appeal from this decision, but the Monitoring Officer will report all such decisions to the next meeting of the Members' Code of Conduct Committee who are entitled to refer the matter for investigation if they feel that the Monitoring Officer has acted incorrectly.

5. Earlier this year, in the run up to the election, a number of complaints were received by me which were complaints by one councillor against another councillor. I have taken the view that all these complaints would not have been made but for the fact that there was an election pending and tensions were raised between councillors generally. I have therefore decided to strike out these complaints and I am reporting this fact to the Committee accordingly.

6. It is also worth bearing in mind that in order to keep the Arrangements free of damaging and timewasting “political tit-for-tat” complaints which have dogged some councils, this Council amended its original Arrangements in 2014 to introduce an amendment which is now contained in para 10 of the Arrangements. Cases of councillor complaints about other councillors, are now expected to be subject to informal resolution between Group Leaders:

Where a complaint concerns an issue between two Spelthorne Borough Councillors, the Monitoring Officer will initially refer the matter to the appropriate Group Leader(s) to resolve amongst themselves, if at all possible. Every effort should be made to resolve the matter within 28 days and if this is not possible the matter may be referred back to the Monitoring Officer.

7. One case has been referred under these Arrangements, although it was not successfully resolved and I am reporting that fact to the Committee although the Arrangements do not formally require me to do so.

Politically motivated complaints

8. All these complaints were received around March 2015 and on 17 March 2015 I wrote to the group leaders to advise them that I was not prepared to entertain these complaints and asked for their co-operation to ensure that the Members Code of Conduct Committee was not involved in the pre-election anxiety. This communication to group leaders is enclosed as **Annex 1**.

9. In summary these are the complaints:

Cllr Rough complaining about Cllr Watts and Cllr Forbes-Forsyth.

This complaint was historic and concerned Cllr Rough’s treatment in the Conservative group and dated back to events in 2012/2013. In itself the complaint offended the rule in the Arrangements that complaints should be made promptly and within 28 days unless there are exceptional circumstances. See para 8. Nonetheless in an attempt to resolve the matter, Cllr Watts agreed to meet with Cllr Rough under the informal arrangements. That meeting did not take place in the end. Cllr Rough contended that there were exceptional circumstances about the timing of the complaint and why she was not in good health to bring the complaint promptly. Notwithstanding this, my impression is that the background to the matter was political and bringing the complaint was also politically motivated in its timing. I have therefore decided to strike out this complaint.

Cllr Smith-Ainsley complaining about Cllr Ayers and all the SIP councillors. This complaint was about election material published by the SIP party and whether it accurately portrayed the work and policies of the Council. The subject matter of the complaint could not have been determined without examining these issues and at its heart the complaint was not about member conduct but about political viewpoints and how they were expressed in the election. For this reason the complaint should be struck out. The complaint also was misguided in

that the publishers of the material were the election agents for the SIP party – neither of whom were the councillors subject of the complaint.

Cllr Ayers complaining about Cllr Smith-Ainsley (and his complaint about Cllr Ayers). This was a complaint about the fact that a complaint was made (see above). Whilst the complaint was presented as an integrity issue – fundamentally this was a “tit-for-tat” response, the type which the Committee has sought to avoid.

Cllr Patterson complaining about Cllr Smith-Ainsley (and his complaint about Cllr Ayers). This was a complaint about the fact that a complaint was made (see above). Whilst the complaint was presented as an integrity issue – fundamentally this was a “tit-for-tat” response, the type which the Committee has sought to avoid.

Cllr Mrs Grant complaining about Cllr Smith-Ainsley (and his complaint about Cllr Ayers). This was a complaint about the fact that a complaint was made (see above). Whilst the complaint was presented as an integrity issue – fundamentally this was a “tit-for-tat” response, the type which the Committee has sought to avoid.

10. None of the complaints concerning Cllrs Smith-Ainsley and Ayers were subject to informal resolution between group leaders.

Recommendation

11. The Committee is asked to note this report. The Committee does have the power to refer these complaints back to me for investigation, but my advice is that this would not be in the public interest to progress matters where there is no fundamental issue concerning the conduct of councillors.

Michael Graham

10 June 2015

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From: Graham, Michael
Sent: 17 March 2015 14:52
To: Watts, Robert (Councillor); Ayers, Frank (Councillor); Beardsmore, Ian (Councillor)
Cc: Murray Litvak; Tambini, Roberto; Statham, Victoria
Subject: Complaints against councillors

Dear Group Leaders

I am seeing a spate of Code of Conduct complaints between councillors. No doubt this may be due to heightened anxiety and tension because of the forthcoming elections.

I have spoken at different times in the past two weeks to Cllr Ayers, Cllr Watts, Cllr Smith-Ainsley and earlier to Cllr Rough to inform them of my general position about such complaints, and I am writing now for the sake of clarity, and to ask if we can have some calm brought to the pre-election period. I am also copying the email to the Chairman of the Members Code of Conduct Committee so that he is up to date with position.

In 2014 we altered the arrangements for dealing with complaints so that complaints from one councillor about another would be referred to group leaders to resolve. This move was supported by all parties on the Members Code of Conduct. It was designed to ensure that the political parties take responsibility for good relations between each other and also to ensure that the Members Code of Conduct Committee was not used as a political battleground in tit for tat complaints.

We are now seeing tit for tat complaints.

The Committee is a fundamental safeguard for the public to know that we (a) promote high standards of conduct and (b) we can take action if a complaint is made.

So far as of this morning we have:

- Cllr Rough complaining about Cllr Watts and Cllr Forbes-Forsyth
- Cllr Smith-Ainsley complaining about Cllr Ayers and all the SIP councillors
- Cllr Ayers complaining about Cllr Smith-Ainsley (and his complaint about Cllr Ayers)
- Cllr Patterson complaining about Cllr Smith-Ainsley (and his complaint about Cllr Ayers)

These matters will be dealt with under our procedures and referred to group leaders for you to resolve amongst yourselves. It matters not that some of the complaints are about group leaders, the expectation is for you to take the lead to speak to your opposite number and try and resolve them.

Cllr Watts has already indicated that he is happy to meet with Cllr Rough regarding her complaint.

I would be grateful if you could note this position and try and use influence in your groups to see that further member complaints are not generated as part of the election campaign.

Thank you.

Michael.

Michael Graham
Head of Corporate Governance

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