

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

Agenda Item No. 5

meeting date: WEDNESDAY, 10 APRIL 2019
 title: REVIEW OF THE COUNCIL'S COMPLAINTS PROCEDURE (CODE OF CONDUCT)
 submitted by: CHIEF EXECUTIVE
 principal author: DIANE RICE, HEAD OF LEGAL AND DEMOCRATIC SERVICES

1 PURPOSE

1.1 To provide Members with information to support the proposed review of the Council's Complaints Procedure (Code of Conduct).

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives - }
 - Corporate Priorities - }
 - Other Considerations - }
- The Council aims to be a well-managed Council. Review of Council procedures contributes to this objective.

2 BACKGROUND

2.1 In November 2017 the Council received a complaint relating to an alleged breach of the Council's Code of Conduct.

2.2 The Council has a procedure in place to investigate such complaints, and several policies which support managing the complaint process.

2.3 For a number of reasons it has not been possible to bring the complaint to a conclusion before the term of office of sitting Councillors comes to an end in May 2019.

2.4 The Council has given a commitment to review the complaint procedure once the outcome of the complaint is known. The current complaint must be dealt with within the existing procedure.

2.5 As some of the Members who will have to undertake this review will be new to the office of Councillor, the purpose of this report is to place on record information about how the complaint had been dealt with and the issues which have been identified by Members and Officers to assist the review. This report does not deal with the substance of the complaint.

3 ISSUES

3.1 The Process for Making a Complaint

3.1.1 The Council has Model Arrangements for dealing with a complaint that a Member has breached the Council's Code of Conduct. The complaint form, brief guidance and details of the Model Arrangements can all be found on the Council's website. The Council uses a nationally recognised procedure.

3.1.2 The Council's arrangements make no distinction between Complainants who are members of the public or Councillors.

3.1.3 The Complainant, Independent Persons and Monitoring Officer have not raised any issues with the procedure. The Subject Member has proposed an alternative procedure which would apply where the Complainant and Subject Member are from same political group or the Member complained about is the Leader of the political group. It has been suggested that political groups should deal with such complaints where both the Complainant and Subject Member are from the same group. If so, Members will need to consider how this could operate where relationships within a group prevent this.

3.2 The Process for Dealing with a Complaint

3.2.1 The following timeline may assist Members to assess the factors that have contributed to the delay in dealing with the complaint.

- 16 November 2017 - Complaint received.
- 17 November 2017 – Complaint acknowledged and Subject Member informed.
- 30 November 2017 - Independent Person consulted.
- 6 December 2017 – Complainant and Subject Member notified of referral for investigation. Referral to Investigating Officer.
- 7 December 2017 – copy of complaint requested by Subject Member
- 10 January 2018 – Request to arrange interviews sent.
- 15 January 2018 – Interviews with Complainant and 2 witnesses, transcripts forwarded 25 January 2018 and signed and agreed subsequently.
- 19 January 2019 – Arrangements for Subject Member to consult an Independent Person put in place.
- 12 February 2019 – Interview of Subject Member.
- 5 March 2018 – Witness interview.
- 10 April 2018 – Draft report sent to Complainant and Subject Member comments requested by 24 April 2018. Request from Subject Member for additional time to respond. Extension given until 1 May 2018.
- 25 April 2018 – Further request from Subject Member for extension of time, extended to 3 May 2018.
- 17 May 2018 – Investigating officer’s final report submitted to Monitoring Officer. The Investigating Officer concluded there was evidence of a breach of the Council’s Code of Conduct.

3.2.2 Since receipt of the complaint the matter has been considered by Committee on the following dates, a brief description of the business transacted is as follows:

- 21 February 2018 – The Accounts and Audit Committee was asked to appoint 3 Members to form a Sub-Committee to deal with the

complaint; the Sub-Committee comprised Councillors Stuart Hirst, Allan Knox and Richard Sherras.

- 1 August 2018 – The Accounts and Audit Sub-Committee met and appointed Councillor Stuart Hirst as Chairman, agreed procedure rules for the hearing of the complaint, including whether the matter should be provisionally dealt with in Part 1 or 2, the role of the Independent Person and considered a request by the Subject Member to be allowed a further 28 days to submit additional witness statements.
 - 13 September 2018 – The Accounts and Audit Sub-Committee met to consider the additional witness statements submitted by the Subject Member. The meeting was closed by the Chief Executive as a result of problems he identified relating to undermining of the Council's procedure, both internally and externally and intimidation.
 - 21 November 2018 – A Special meeting of the Accounts and Audit Committee was convened to consider a report of the Chief Executive seeking the support of Members to deal with the complaint in accordance with the Council's adopted procedures. At the meeting an amendment was proposed. The Committee resolved that they confirm that maintaining high standards of conduct for all Members is essential as is preserving the Council's reputation for impartiality and fairness. The Sub-Committee decided to vary the Council's arrangements in reliance in paragraph 12 of the RVBC Model Arrangements for dealing with standards allegations under the Localism Act in order to appoint a Monitoring Officer from another authority to review the complaint and if necessary to direct reinvestigation. In addition the Committee sought to rely on paragraph 12 to invite the Local Government Association to appoint 3 Conservative Councillors from other authorities; one of whom should be a group leader, to adjudicate on this complaint under RVBC Model Arrangements as amended by the motion. The Committee requested that the Independent Person, Mr Taylor, give his advice to the Committee on the implementation of procedure and standards pursuant to paragraph 12 of the Independent Persons Protocol, and finally requested that following conclusion of the current complaint Committee should conduct a review and revise the Complaints Procedure against Councillors with proposals being brought to the next meeting of the Accounts and Audit Committee.
- 3.2.3 11 December 2018 – At the meeting of the Full Council the decision of the Special Accounts and Audit Committee on 21 November 2018 was revisited as a result of use of the Call-in Procedure.
- 3.2.4 Members were provided with advice specific to the terms of the amendment moved on 21 November 2018.
- 3.2.5 Council resolved to endorse the course of action advised by the Chief Executive in his original recommendation to Special Accounts and Audit Committee including the appointment of a third Sub-Committee Member who was not a Member of the Conservative Group and confirmed that the selection of the third Sub-Committee Member be made by agreement between the 3 Members of the Committee who were not Members of the Conservative Group to ensure that the panel reflected the requirement of political balance. Councillor Allan Knox was selected.

- 3.2.6 13 February 2019 – The matter was referred to the Accounts and Audit Committee for the replacement of Councillor Stuart Hirst as he had been removed from the Accounts and Audit Committee during changes made by Councillor Stephen Atkinson, (Leader of the Conservative Group) to the membership of Committee at the meeting of Council on 15 January 2019. At that meeting Councillor Richard Bennett was appointed as Chairman of the Committee. On the 13 February the Accounts and Audit Committee approved his appointment to the Sub-Committee.
- 3.2.7 15 March 2019 – The Accounts and Audit Sub-Committee was convened to deal with the complaint but the meeting was cancelled due to the resignation of one Member of the panel.
- 3.3 Copies of the relevant reports and minutes can be found on the Council’s website.
- 3.4 The complaint process cannot proceed until a Sub-Committee can be convened. In the period immediately before local elections, no arrangements have been made as they would be unlikely to proceed unchallenged.
- 3.5 The Process for Determining the Complaint if the Investigating Officer finds evidence of a breach of the Council’s Code of Conduct
- 3.5.1 The Investigating Officer is required to set out in the report their conclusion, and the basis of their conclusion. Providing the Monitoring Officer is satisfied with the report the Monitoring Officer then consults the Independent Person to consider whether local resolution should be attempted. In this case attempts were made at local resolution, as these failed the complaint is referred to a panel, made up of 3 Members of the Accounts and Audit Committee. As political balance applies, the Sub-Committee comprised 2 Conservatives and one other Member of the Committee. The Monitoring Officer is required to carry a pre-hearing process with the parties, this would normally be informal and by agreement. The Monitoring Officer convened the Sub-Committee (1 August 2018) to ensure this process was transparent and the process could not be criticised as solely the decision of the Monitoring Officer.
- 3.5.2 On 1 August a request was made to submit additional witness statements, whilst these could have been submitted prior to the Investigating Officer’s report being concluded the matter was deferred until 13 September to allow these statements to be included. Members of the Accounts and Audit Committee were amongst the witnesses whose statements were submitted. Consideration should also be given to additional training for Members of the Accounts and Audit Committee to manage the conflicts which have arisen in this case where witness statements have been provided by Members of the Committee. When reviewing the procedure Members may wish to consider what arrangements could be put in place to avoid a similar delay.
- 3.6 Procedural Issues which have arisen during the Process
- 3.6.1 Confidentiality
- The parties to a complaint and officers dealing with the complaint have a reasonable expectation that complaints will be dealt with in private at least after any investigation is completed. In dealing with this complaint the following problems have arisen - emails have been copied to individuals who are either not Council Members or Council officers, or have no role in dealing with the complaint. Members of the Sub-Committee and the Committee have been emailed without the Monitoring Officer or Complainant being copied in, mainly about procedural issues. The complaint has been discussed in

political group meetings and information has been leaked to the press. None of these breaches have helped to finalise the complaint in a fair and proportionate manner.

- 3.6.2 As a result the reputation of the Council has potentially been put at risk. Failure to ensure confidentiality prejudices all parties. Officers and Members cannot respond unless they are also prepared to breach confidentiality thus inaccurate information goes unchallenged. In this case this has resulted in third party involvement including the submission of requests under the Freedom of Information Act arising from knowledge of confidential matters and personal approaches about the complaint to the Independent Person at his home address. When reviewing the complaint procedure Members may wish to require additional training for Members about confidentiality and consider what sanctions could be used if breaches occur.

3.7 Managing the Relationship with the Independent Person

- 3.7.1 Details of the Council's procedure can be found in the Model Arrangements and the Council's protocol. The Localism Act requires the Council to appoint 1 Independent Person, the Council has 2, they are volunteers receiving no remuneration for their contribution to the work of the Council. Their role is advisory rather than judicial ie they are not decision makers. During the course of dealing with the current complaint much has been made of how the Council deals with the Independent Person's relationship with the Subject Member. The key to their role is their independence – to that end, and bearing in mind the Complainant has no access to the Independent Person, Council officers have ensured one of the Independent Persons has been independent of both 'parties', but have also ensured that the Subject Member has had access to the second Independent Person to take their advice.
- 3.7.2 James Goudie QC confirmed the Council has complied with its obligations under the Localism Act. Some Members do not accept this advice.
- 3.7.3 Due to the number of referrals to Committee (about which the Independent Persons have been kept informed) and the number of documents circulated and meetings required both Independent Persons have had to commit the equivalent of many working days to the process. Whilst both Independent persons have agreed to support the consideration of this complaint until it is determined they have also expressed the view that a change of approach is necessary before this is likely to happen, in particular they consider that the process will not be completed until Members agree to abide by the Council's procedure rather than continuously challenging the procedure and the individuals who have to implement it.
- 3.7.4 In addition to dealing with this complaint the workload of the Independent Persons has involved 5 further complaints associated with this complaint relating to the Code of Conduct. (There have also been 2 complaints to the Ombudsman about the Council and its officers, whilst these are not within the remit of the Independent Persons they have been briefed about them as part of the process.)
- 3.7.5 When reviewing the procedure Members may wish to consider a role description setting out the expected workload of an Independent Person, remuneration of the Independent Persons, appointing additional Independent Persons, and making the protocol more explicit about the issue of conflict.

3.8 The Role of Professional Advice

3.8.1 Officers are employed to provide Members with advice. In dealing with this complaint Members have been critical of officer advice and have instead taken their own advice. Officers accept their advice can be challenged, their response is to review their advice, in this case by careful consideration of the Monitoring Officer handbook, practice in other authorities, the advice of Mr James Goudie QC, (one of the most senior lawyers dealing with this area of law) and from Hoey Ainscough Associates (the main national provider of training and advice about conduct matters). Dealing with the complaint has taken a significant amount of officer time, not in the main dealing with the issues complained about but rather the challenge to the Council's procedures, culminating in the proposal to Accounts and Audit Committee in November 2018.

3.9 Dealing with Complaints at the Local Level

3.9.1 The view of Members about issues such as bias have been widely canvassed, in particular the Subject Member has from the outset challenged Members on the Hearing Panel and officers involved in dealing with the complaint. Members should note that the Localism Act, in its current form, (and even if modified by the proposals currently being considered arising from the recommendations of the Committee on Standards in Public Life) requires each Council to have its own internal process to determine complaints about its Members, rather than 'outsourcing' the issue to another body as was the case prior to the abolition of the Standards Board for England. It is difficult to see in the context of the Localism Act how the complaints process can avoid the relationships that exist between Council Members and officers, particularly where Members are critical of officers when they attempt to implement the Council's agreed procedure.

3.9.2 The problems identified by Members about this local procedure include – relationships between officers and Members; the role of both in the creation of the Council's procedures; difference of political and professional opinion; interpretation of Council policies – factors Members may consider would apply equally to other areas of Council business eg applicants for planning permission or a licence to sell alcohol, a grant must all apply to those who formed the relevant policies and procedures.

3.9.3 Similarly any Complainant who is a member of the public rather than a Councillor could argue that the Council's procedure can never deliver an unbiased or fair decision about their complaint. The Council must manage these potential conflicts by having procedures in place, which are based on tested nationally recognised models rather than creating a bespoke procedure for each complaint ensuring transparency wherever possible and providing training and advice to ensure Members can deal with difficult cases with confidence and integrity. When Members review the process they may wish to request that a budget be allocated for external advice and additional staff (thereby avoiding the problems identified by the Chief Executive on the 13 September 2018).

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – See 3.9.3 above.

- Technical, Environmental and Legal – See 3.8.1 above.
- Political – N/A.
- Reputation – See 3.6.2 above.
- Equality & Diversity – None identified.

5 CONCLUSION

- 5.1 Note the information provided above which has been collated by the Council's Monitoring Officer with the support of the Council's two Independent Persons.

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BACKGROUND PAPERS

None.

For further information please ask for Diane Rice, extension 4418.

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