

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

Agenda Item No.

meeting date: WEDNESDAY, 27 NOVEMBER 2019
 title: REVIEW OF THE COUNCIL'S GOVERNANCE ARRANGEMENTS
 (MEMBER CONDUCT)
 submitted by: CHIEF EXECUTIVE
 principal author: DIANE RICE, HEAD OF LEGAL AND DEMOCRATIC SERVICES

1 PURPOSE

1.1 To provide Members with an opportunity to familiarise themselves with, and review, the Council's arrangements for ensuring good standards of Member conduct.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives – } The Council has a duty to promote and maintain high standards of conduct by its Members. Review of the arrangements the Council operates supports that duty.
- Corporate Priorities – }
- Other Considerations – }

2 BACKGROUND

2.1 In 1994 the Nolan Committee was formed to address concerns about standards of conduct in public life. The principles the Committee proposed are still the key principles guiding Member Conduct. In 2000 the Local Government Act 2000 created a standards regime aimed at embedding those principles in the way Councils operated, by way of a national code of conduct and a national body to oversee regulating the process called Standards for England.

2.2 The Localism Act 2011 modified these arrangements to return responsibility for ensuring good standards of Member conduct to local Councils.

2.3 The Localism Act made several key changes, it enabled Councils to choose their own Code of Conduct and abolished the Standards Board for England. Prior to the Localism Act Councils were required to have a Standards Committee and to have independent Members on that Standards Committee. The Localism Act changed this to require Councils to have an Independent Person. Councils could decide whether or not to have a separate Standards Committee or to place the responsibility for Member conduct with an existing Committee. This Council agreed that the responsibility for Member conduct should be included in the terms of reference of Accounts and Audit Committee.

2.4 This Council's current arrangements were developed between January 2012 and June 2013, details can be found on the document attached as Appendix 1.

2.5 The main elements of the Council's arrangements are as follows:

1. The Council's Code of Conduct – this can be viewed on the Council's website at https://www.ribblevalley.gov.uk/downloads/file/9066/code_of_conduct_for_members_part_7
2. The terms of reference for the Accounts and Audit Committee – these can be viewed at https://www.ribblevalley.gov.uk/download/downloads/id/9059/powers_and_duties_of_the_council_and_its_committees_part_31.pdf

3. The process for making a complaint which can be viewed at https://www.ribblevalley.gov.uk/info/200388/councillors/1306/complaint_about_an_elected_membercouncillor
4. The model arrangements for dealing with a complaint can be viewed at https://www.ribblevalley.gov.uk/meetings/meeting/730/accounts_and_audit
5. The rules which would apply in the event of a matter being referred to the Sub-Committee which can be viewed at Appendix 2.
6. The protocol dealing with the role of the Independent Person can be viewed at https://www.ribblevalley.gov.uk/meetings/meeting/783/accounts_and_audit

Since the Council's arrangements were put in place the following complaints have been dealt with.

	Complainant	Member	Outcome
2015	Public	Borough	Local Resolution
	Public	Parish	Local Resolution
2016	-	-	-
2017	Public	Borough	No evidence of breach
	Public	Borough	Local Resolution
	Councillor	Borough	Accounts & Audit - July 2019
2018	Councillor	Borough	Local Resolution
	Councillor	Borough	Local Resolution – 1 still open pending training
	Councillor	Borough	
2019	Councillor	Borough	No evidence of breach

3 ISSUES

- 3.1 The purpose of bringing this report to Committee is to provide an opportunity for Members to look at their own arrangements, which in general follow the national model, to determine whether improvements can be made. The Council's procedures must comply with the requirements of the Localism Act 2011.
- 3.2 Members will be aware that there has recently been a high-profile referral through the complaints procedure which created considerable discussion, and Members have already indicated that they wish to consider whether the process can be improved as a result of the problems which were experienced in the most recent case.
- 3.3 Notwithstanding this Members should primarily have regard to the more usual path which complaints take, rather than making changes based on a single atypical case.
- 3.4 Members of the Accounts and Audit Committee have been given an opportunity to put forward any suggestions which they wish to be considered and these are included in the paragraphs set out below.

- The Council's Code of Conduct – Members may wish to consider whether they are satisfied that the Council's current Code of Conduct is fit for purpose. Matters for consideration include the following:
 - Is it sufficiently detailed?
 - Should there be a specific reference to bullying?
 - Should additional interests, similar to those shown on the related party relationships form be included as part of Members' declaration of non-pecuniary interests, ie the form to show both pecuniary and non-pecuniary interests.

- The Terms of Reference for the Accounts and Audit Committee – Members may wish to consider whether the current arrangements are satisfactory. Matters for consideration include the following:

Would a Standards Committee be more effective?

 - Is the current arrangement (Accounts and Audit Committee) which deals with governance in a transparent manner, reinforced by the presence of external auditors at each meeting, working effectively?
 - When the Council had a separate Standards Committee the Agenda was often light, dealing mainly with training, what would the workload of a separate Standards Committee involve?
 - The Council has a role in supporting good standards of Member conduct at Parish Council level, would a separate Standards Committee have more scope to provide this support, as it would have fewer areas of responsibility?

- The Arrangements for Independent Persons – The processes in place must focus on the importance of preserving their independence
 - what is the potential workload?
 - It has been suggested that the number should be increased to 4, would this reduce potential conflict of interest?
 - How should they be recruited?
 - How should they be trained?
 - Should they be paid for the time spent on Council business?
 - Are suitable indemnity arrangements in place?

- The Process for Making a Complaint – Details about how to make a complaint are set out on the Council's website, there have been no comments from Members of the public which suggest that they have any difficulty finding and dealing with the complaints information and form. Matters for consideration include:
 - How should the process deal with the case of a complaint by one Councillor about another, either from the same or a different political group?
 - In the case of Members of the same political group there is already a process in place to deal with disputes, a Code of Conduct complaint raises different issues than a complaint about treatment within a political group. Would it be helpful to remind Councillors who wish to complain about another Councillor that they should consider using their own complaints process first?
 - Should different political groups have reciprocal arrangements?

- The Model Arrangements for Dealing with a Complaint – It is necessary to reinforce the role of the local Council. Matters for consideration include:
 - How does the Council maintain confidentiality?
 - How does the Council deal with local resolution?
 - How should the Council deal with a Member who refuses to accept the Council's authority or its adopted procedures?
 - Should Councillors act as witnesses?
 - What is the distinction between investigating a complaint as opposed to formulating a defence?
 - Should there be time limits for responding/submitting information?
 - What are the resource implications of the changes?

- What is the role of Members generally, particularly those who are Members of the Committee?
 - Should there be conventions in place about the role of officers?
 - The rules which would apply in the event of a matter being referred to the Sub-Committee – Matters for consideration include:
 - Representation for both the complainant and Subject Member – should this be permitted?
 - Do the Committee endorse the rules agreed by the Sub-Committee and attached as Appendix 2?
- 3.5 Due to the number of issues which need to be considered and their complexity it is suggested that, as on the previous occasion when the complaints procedure was reviewed, a working group of Members should be appointed to oversee the process.
- 3.6 Those Members would then report back with their provisional findings to the next meeting of the Accounts and Audit Committee on 12 February 2020.
- 3.7 The recommendations approved by the Committee could then be referred as necessary to Policy and Finance Committee or Council with a view to implementation from 2020/2021 municipal year which commences in May 2020.
- 3.8 A training session in-between the two meetings of the Accounts and Audit Committee can be arranged to assist Members as they consider the Council's governance arrangements if required.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – N/A
- Technical, Environmental and Legal – None save as referred to above.
- Political – N/A
- Reputation – None save as referred to above.
- Equality & Diversity – N/A

5 RECOMMENDED THAT COMMITTEE

- 5.1 Appoint a working group comprising 5 Members of the Accounts and Audit Committee to consider the Council's current governance arrangements and to make recommendations to Committee to be considered at the meeting on the 12 February 2020.
- 5.2 Support the proposal to provide relevant training to all Members in advance of considering the final recommendations.

DIANE RICE
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTTNAME
CHIEF EXECUTIVE

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

DATE	COMMITTEE	MINUTE
24 January 2012	Policy & Finance	<p>RESOLVED:</p> <ol style="list-style-type: none"> 1. Noted the report of the Head of Legal and Democratic Services related to changes to the standards regime resulting from the Localism Act 2011. 2. The Head of Legal and Democratic Services undertook to report the concerns of the Committee about the existing standards regime to the Standards Committee at its next meeting.
1 February 2012	Standards	<p>RESOLVED: To recommend to Policy and Finance Committee:</p> <ol style="list-style-type: none"> 1. The Standards Committee and procedures set out for dealing with the complaint should be retained as at present (with the amendment to procedures that a Councillor should be told immediately about the nature of a complaint made against them and not the identity of the complainant until July 2012 where the responsibilities of the Committee should be transferred to a new Standards Committee that should include Parish Council representation if possible; 2. The format of the current Code of Conduct should be retained with relevant modifications made to it to comply with the requirements of the Localism Act 2011; 3. The procedure for dealing with misconduct complaints should be referred to the new Standards Committee; 4. The Monitoring Officer be authorised to put arrangements in hand to recruit 2 independent persons for the new regime in consultation with a working group of 6 members comprising Mr Dearing, Mrs Walsh from the Standards Committee; 2 representatives from Policy and Finance Committee and 2 representatives from Personnel Committee; 5. Action be deferred relating to the Register of Interests/Dispensations/Standing Order issues pending further regulations with a report to be submitted to Full Council on 24 April 2012; 6. Any changes to the Council's constitution be considered by existing Standards Committee if timing permits.

27 March 2012	Policy & Finance	RESOLVED: That consideration of this matter be deferred with a further report coming to the June Policy and Finance Committee.
12 June 2012	Policy & Finance	<p>RESOLVED: That</p> <ol style="list-style-type: none"> 1. it be a recommendation to Full Council that the Department of Communities and Local Government Code to form the basis of the Council's Code of Conduct modified to reflect the final regulations in respect of disclosable pecuniary and non-pecuniary interest; 2. it be a recommendation to Full Council that the Council's duties under the Localism Act relating to Member conduct, promoting high standards of Member conduct and investigating complaints for discharge by the Council's Accounts and Audit Committee; 3. the Head of Legal and Democratic Services be authorised to prepare new Terms of Reference for Policy and Finance and Accounts and Audit Committee for approval by Council; 4. the Working Group to recommend who the Council should select as their independent persons to advise Members on matters of conduct; and 5. a report be prepared for the September meeting of Parish Councils' Liaison Committee by the Head of Legal and Democratic Services informing all Parish Councils of the Council's decision in relation to its Code of Conduct and its impact on Parish Councils.
27 June 2012	Accounts & Audit	RESOLVED: That the information report about changes to Standards Committee be noted.
17 July 2012	Full Council	RESOLVED: The Council approve the appointment of Mr IB Dearing and Mr IS Taylor as Independent Persons to assist with Standards.
22 August 2012	Accounts & Audit	RESOLVED: That Committee
		<ol style="list-style-type: none"> 1. endorse the arrangements set out at 3.1 of the Head of Legal and Democratic Services report relating to the Register of Pecuniary Interests; 2. recommend the proposed amended Standing Order set out at 3.2(2) to Policy and Finance Committee; 3. delegate the Grant of Dispensations a Sub-Committee comprising 3 Members of the Accounts and Audit Committee convened by the proper officer, in this case the Monitoring Officer as set out at 3.3; and 4. authorise the use of procedures set out at 3.4 for complaints investigation as now amended.

26 June 2013	Accounts & Audit	RESOLVED: That Independent Person protocol be adopted with the amendments made at the training session.
29 March 2017	Accounts & Audit	Re: appointment of Independent Persons RESOLVED: To confirm the continuation in post of the current Independent Persons and to review these appointments in 3 years' time.
26 July 2017	Accounts & Audit	RESOLVED: That the report prepared by the Head of Legal and Democratic Services be noted.

EXTRACT OF PROCEDURE RULES FOR STANDARDS COMMITTEE HEARINGS TAKEN FROM THE MONITORING OFFICER HANDBOOK

1. General

- 1.1 These rules govern the conduct of hearings by the Hearing Sub-Committee.
- 1.2 The hearing will be into the written allegation(s) of failure to comply with the Code of Conduct made to the Council's Monitoring Officer and investigated in accordance with the arrangements adopted by the Council.
- 1.3 The hearing may cover more than one allegation or set of allegations and more than one investigation, if the Sub-Committee is satisfied that it is expedient and fair.
- 1.4 In these rules:

"The Monitoring Officer" means the officer designated as the Monitoring Officer to the Council, provided that if the Monitoring Officer is unable to act or has a conflict of interest, (for example as a result of having conducted an investigation into the complaint) then another person or persons may perform the Monitoring Officer's role and these rules will be construed accordingly.

"The Subject Member" means the member or co-opted member against whom the allegation of failure to comply with the relevant code of conduct has been made.

"The Investigator" means the person who has conducted an investigation into the allegation or his or her representative at the hearing.

"The Complainant" means the person who has made the written allegation(s) of failure to comply with the Code of Conduct.

2. Composition and Voting

- 2.1 The Sub-Committee will comprise three voting Members drawn from the Accounts and Audit Committee, one of whom shall be appointed or elected to Chair the meeting. The Members will be selected in accordance with the legislation on political balance on Committees.
- 2.2 The quorum for a meeting is three.
- 2.3 All matters before the Sub-Committee will be decided by a simple majority of votes cast. In the case of equality of votes, the Member chairing the meeting will have a second or casting vote.
- 2.4 An Independent Person appointed by the Council will normally be present at the hearing. The Sub-Committee must take the Independent Person's views into account before reaching a decision, but he or she will not participate in the hearing or in the decision as a member of the Sub-Committee. Alternatively if the Independent Person will not be present for all or part of the hearing, he or she may submit his or her views to the Sub-Committee in writing.

3. Before the Hearing

- 3.1 Before the hearing the Monitoring Officer will, in order to identify the issues and the evidence to be considered, and any procedural issues, provide the Subject Member with the Investigator's report and the accompanying evidence and invite the Subject Member and the Investigator to:
- a. indicate the facts that are agreed and those that are not;
 - b. indicate the issues in dispute;
 - c. indicate whether they intend to introduce any additional evidence and the witnesses they intend to call to give evidence;
 - d. state whether they would like all or any part of the hearing to be conducted in private, and if so why.
 - e. state whether they intend to be present at the hearing;
 - f. state whether they intend to be represented at the hearing and if so by whom.
- 3.2 The Monitoring Officer will copy the replies to the Subject Member and the Investigator or if they so request to their representatives.
- 3.3 If the Member chairing the meeting, or, if none has yet been appointed or elected, the Chairman of the Accounts and Audit Committee, considers that the additional evidence or any of the witnesses that are proposed to be called will not assist the Sub-Committee to determine the relevant issues (for example because the evidence or the witnesses evidence will not be relevant, or will unnecessarily duplicate other evidence and prolong the hearing, then in consultation with the Monitoring Officer he or she may direct that the evidence or the number of witnesses should be limited. The Monitoring Officer will advise the Subject Member and the Investigator of the direction.
- 3.4 The Monitoring Officer will prepare a report to the meeting including the Investigator's report and the accompanying evidence. The proper officer will send the report to the Members of the Sub-Committee and make it available to the public in accordance with the statutory requirements, excluding public access to any part of the report or background papers which, in the proper officer's opinion, relate only to any part of the hearing which is not likely to be open to the public.

4. Request for Adjournment and Absence of Parties

- 4.1 If, before the hearing, the Subject Member requests an adjournment, or indicates that he or she will not be present or represented, the Monitoring Officer will consult the Member chairing the meeting or if none has yet been appointed or elected, the Chairman of Accounts and Accounts Committee. The Member consulted will consider any written representations made by the Subject Member and may direct that either the hearing be adjourned or that the hearing will take place.
- 4.2 If the hearing then takes place, or if there has been no prior request but the Subject Member is not present at the start of the hearing, or if the Subject Member is present or represented and makes an oral request for an adjournment, then the Sub-Committee will decide whether to adjourn or proceed with the hearing, taking into account the representations that have been made. The Sub-Committee will consider whether it is satisfied with the reasons given for a request for an adjournment or whether, in exceptional circumstances it is not so satisfied, and whether it is in the public interest to hear the allegations expeditiously. In the latter case the Sub-Committee may proceed with the hearing in the Subject Member's absence.

4.3 The complainant may attend the meeting if called as a witness, or otherwise but need not do so.

5. Representation at the Hearing

5.1 The Subject Member may choose to be accompanied or represented at the hearing by a professional representative, fellow Councillor, friend or colleague.

5.2 The complainant can be accompanied by a friend or colleague. Unless called as a witness, or requested by the Sub-Committee to address them, the complainant has not right to participate in the meeting.

6. Conduct of the Hearing

6.1 Subject to the exercise of discretion by the Chairman the order of business but the hearing shall be as is set out below.

6.2 The Chairman may vary the order of business at his or her discretion where he or she considers it expedient and fair to do so.

6.3 The Sub-Committee may adjourn the hearing at any time.

6.4 The Sub-Committee can decide at any time to resolve to exclude the press and public for the following part of the hearing or the remainder of the hearing if it is likely otherwise that confidential or exempt information will be disclosed, in accordance with the provisions of the Local Government Act 1972.

6.5 The first items of business shall be:

- a. the election of the chairman if none has been appointed.
- b. any apologies for absence.
- c. any declarations of interest.
- d. if relevant at this time, consideration whether to exclude the press and public.
- e. if relevant consideration of any request for an adjournment and/or whether to proceed with the hearing in the absence of the Subject Member.

6.6 The Chairman will then introduce (if present) the Members of the Sub-Committee, the Independent Person, the Subject Member, any person representing the Subject Member, the Investigator, the Monitoring Officer and any other officers present to clerk the meeting or provide legal advice to the Sub-Committee. The Chairman will explain their roles and outline the procedure for the hearing.

6.7 Any witnesses of fact present in the room will then leave the room apart from the Subject Member. In exceptional circumstances, the Chairman may permit the complainant to remain in the room, unless it would be unfair to do so.

6.8 The evidence presented must be relevant to the issues under consideration and should not be unduly repetitious.

6.9 Presentation of the Investigation report.

- a. The Investigator will present his or her report and accompanying evidence and call his or her witnesses, who may include the complainant. The Investigator will not normally be permitted to introduce new issues or evidence at this stage.

- b. The Subject Member or his or her representative may question the Investigator on the content of his or her report and may question the witnesses called by the Investigator on their evidence.
- c. The Members or the Sub-Committee may question the Investigator on the content of his or her report and may question the witnesses called by the Investigator on their evidence.

6.10 Presentation of the Subject Member's Case

- a. The Subject Member or his or her representative will present his or her case and evidence and call his or her witnesses.
- b. The Investigator may question the Subject Member and the witnesses called by the Subject Member or his or her representative on their evidence.
- c. The Members of the Sub-Committee may question the Subject Member and the Witnesses called by the Subject Member or his or her representative on their evidence.

6.11 Summing Up

- a. The Investigator will sum up his or her case.
- b. The Subject Member or his or her representative will sum up his or her case.
- c. In summing up the Investigator and the Subject Member or his or her representative should express a view on any conflict of evidence and explain why, in their view, the evidence discloses or does not disclose a failure to comply with the Code of Conduct. No new evidence may normally be introduced at this stage.

6.12 Views of the Independent Person

- a. The Chairman will invite the Independent Person, if present, to express a view on the evidence and on whether it discloses a failure to comply with the Code of Conduct.
- b. If the Independent Person is not present, the chairman will read out the Independent Person's written representations.

6.13 Deliberations of the Sub-Committee

- a. If the press and public are present, the Sub-Committee will decide whether to resolve to exclude them from the deliberations. They will normally do so, because otherwise they would disclose their views on the individuals who have participated and their evidence, and the balance of the public interest favours free discussion on these matters. They may clear the room or retire to another room. They may be accompanied by the Monitoring Officer (provided that he or she has not been involved in the hearing in any other capacity) or the legal advisor, who's role should be limited to the provision of legal advice.

6.14 The Decision

- a. The Sub-Committee will reconvene the hearing and the Chairman will announce whether or not, on the facts found, the Sub-Committee considers that there has been a failure to comply with the Code of Conduct.
- b. If the Sub-Committee has found that there is a failure to comply with the Code of Conduct, the Chairman will invite the Investigator, the Subject Member and the Independent Person to make representations on the seriousness of the failure, whether or not any sanctions should be applied and, if so, what form they should take.
- c. The Sub-Committee may also invite the Monitoring Officer to comment on these matters if he or she has not been involved in the hearing in any other capacity.
- d. The Sub-Committee may make recommendations as to any other matter arising to the Council, a Committee or Sub-Committee, the Chief Executive or the appropriate officer.

6.15 Deliberations as to Sanction

- a. the Sub-Committee will then consider whether to impose any sanction and, if so, in what form.