

**Minutes of the Ethical Standards
and Member Development Committee**

**28th September, 2018 at 2.30 pm
at the Sandwell Council House, Oldbury**

Present: Councillor Lewis (Chair);
Councillor E M Giles (Vice-Chair);
Councillors Hartwell, P Hughes, Sandars,
Shackleton and Trow.

Observers: Councillors Hadley, I Jones, O Jones and B Price.

Apology: Councillor Underhill;
Mr Tew (Independent Person).

5/18 **Declarations of Interest**

In relation to Minute No. 9/18 below, Councillor P Hughes declared an interest as he was a member of Hill Top Association Committee. Councillor Hughes left the room and took no part in the debate in relation to matters pertaining to Hill Top Association Committee.

Councillor E M Giles declared that she worked at Walsall Council and Councillor I Jones was previously her manager. Councillor Giles did not leave the meeting.

6/18 **Minutes**

Resolved that the minutes of the meeting of the Ethical Standards and Member Development Committee, held on 9th March 2018, be confirmed as a correct record.

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7/18

Appointment to Ethical Standards Sub Committees and Standards Working Group

The Localism Act 2011 required authorities to adopt arrangements for dealing with complaints about breaches of the Member Code of Conduct. The Council's arrangements for dealing with complaints provide for a Sub-Committee of the Ethical Standards and Member Development Committee to consider investigation reports referred to it by the Monitoring Officer and to conduct hearings (including the imposition of sanctions).

The Council, at its annual meeting held on 22nd May 2018, agreed the membership of the Ethical Standards and Member Development Committee for the 2018/2019 municipal year. It was now necessary for the Committee to make appointments to the Ethical Standards Sub Committees for this municipal year.

At its meeting on 9th March 2018, the Ethical Standards and Member Development Committee gave approval to the establishment of a Standards Working Group to review the Council's Ethical Framework. Confirmation was sought as to which three members would be appointed to the Group, alongside the Chair.

Resolved:-

- (1) that two Ethical Standards Sub-Committees be established for the 2018/19 municipal year, with flexibility between membership to cater for availability and workload, with delegated powers to carry out the functions set out in the following terms of reference, and with the membership set out below:

Terms of reference

- To consider investigation reports referred to it by the Monitoring Officer.
- To conduct hearings (including the imposition of sanctions).

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Membership

SUB-COMMITTEE 1		SUB-COMMITTEE 2	
Member	Substitute	Member	Substitute
Lewis	E M Giles	E M Giles	Lewis
Hartwell	P Hughes	P Hughes	Hartwell
Shackleton	Sandars	Sandars	Shackleton
Trow	Underhill	Underhill	Trow

- (2) that Councillors P Hughes, Lewis, Sandars and Shackleton be appointed to the Standards Working Group.

8/18

Appointment of Independent Persons

In accordance with the Localism Act 2011, arrangements must be put in place for the appointment by the Council of at least one Independent Person whose views must be sought and taken into account by the Council before it made a decision on an allegation against an elected member that it had decided to investigate.

The Independent Person's views may be sought by a member or co-opted member of the Council if that person's behaviour was the subject of an allegation, and may also be sought by the Council in relation to an allegation it had not yet decided to investigate.

The Council had decided to have three Independent Persons. Following the expiry of the term of office for two Independent Persons, there were two vacancies.

To improve the prospects of securing successfully the appointment of two further Independent Persons, the Director – Monitoring Officer had liaised with the Monitoring Officer at Walsall MBC with a view to undertaking a joint recruitment exercise.

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The benefits of a joint recruitment exercise included:

- a broader remit attracting a broader pool of potential candidates;
- greater opportunities for the sharing of knowledge and support amongst the Independent Persons;
- increased opportunities to gain greater experience; and
- a joint recruitment exercise would mean the costs of the recruitment could be shared between both councils.

Any successful recruitment exercise would be on the basis that the person(s) appointed would act as an Independent Person for both councils. Each authority would however need to confirm the appointment of the Independent Person through their respective Full Council. Each Council would therefore still retain control over the appointment.

It was proposed that the arrangements for the recruitment exercise principally followed the same processes that had been undertaken in the past, such as an advert being placed in the local newspaper, Council website and other forums, etc. and that both Council details and contact information were on relevant recruitment literature.

One change that was proposed was for the Recruitment Panel to be reconfigured as a joint panel made up of an equal number of Committee Members from both councils. The Chair and Vice Chair of the Panel would be agreed by the Panel Members. Any successful candidate would be by majority decision in favour.

It was proposed that the Chair be authorised to approve a new joint job role with Walsall Council for the purposes of this recruitment exercise and to agree all necessary recruitment arrangements/ procedures between both Councils to ensure an effective recruitment exercise is undertaken.

Resolved:-

- (1) that, in relation to the appointment of Independent Persons for dealing with standards matters, the proposal for a joint recruitment exercise to be undertaken with Walsall Council be approved;

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- (2) that the Chair of the Ethical Standards and Member Development Committee be authorised to approve a new job role for the Independent Person and to agree all necessary recruitment arrangements/procedures between both Councils, in consultation with the Director - Monitoring Officer and Walsall Council.

9/18

Elected Member Standards Complaints – Update

The Ethical Standards and Member Development Committee received reports periodically on the complaints received in respect of Elected Member conduct and their progress and outcome.

Only two 'live' standards cases currently remained outstanding. Over the last twelve months, a considerable number of standards complaints had been dealt with either at the preliminary stage, by local resolution or by the standards sub-committee.

There could be little dispute over the Council's commitment and determination to (i) openly and effectively deal with standards complaints, and (ii) challenge and hold to account those Elected Members whose conduct was alleged to fall below the standard of conduct expected of them. The approach taken by the Council was consistent with its representations to the LGA Peer Review and the recommendations of the Peer Review provided in January 2018 to continue to effectively deal with all standards complaints against Elected Members.

It was important to note that the majority of the more significant complaints related to events that went back several years – with one relating to events going back as far as 1999. Complaints that related to events dating back many years required careful consideration as the passage of time could lead to evidential difficulties and unfair prejudice, particularly as memories faded over time. Such factors needed to be weighed up against (i) the public interest, (ii) probative value of an investigation, and (iii) ensuring the public's confidence in the Council's Ethical Framework and Arrangements for dealing with complaints against Elected Members was maintained.

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The Committee was asked to note that the vast majority of Sandwell Elected and Co-opted Members all observed the Code of Conduct appropriately and had exemplary records of conduct.

Four specific complaints related to two former Elected Members, namely Mahboob Hussain and Richard Marshall and were received when they were both Elected Members. Unfortunately, it was not possible to complete the investigations and hold an Ethical Standards Sub-Committee (in accordance with the Arrangements) into all four complaints prior to the aforementioned persons ceasing to be Elected Members following their terms of office coming to end in May 2018.

Once a person ceased to be an Elected Member, the Code of Conduct ceased to apply to that person and in turn the Arrangements for dealing with the complaint also ceased to apply. Accordingly, notwithstanding both persons being found to have breached the Members' Code of Conduct following independent investigations (during their respective terms of office), it was not possible to progress these matters to an Ethical Standards Sub-Hearing (and consider potential sanctions (if appropriate)). However, this did not preclude the Committee considering the reports given the Council's overarching statutory duty to promote and maintain high standards of conduct pursuant to section 27, Localism Act 2011, and the high public interest arising in respect of these matters.

Given the statutory duty and the Committee's duties and responsibilities arising under its terms of reference, the Committee was entitled to consider and determine what other action ought to be taken (if any) in the interests of promoting and maintaining high standards of conduct amongst Elected and Co-opted Members in light of the update provided.

A brief summary was provided on complaints that had been addressed, together with investigating officers' reports and findings in those cases that had been subject to investigation. All complaints were dealt with in accordance with the Arrangements for dealing with standards allegations under the Localism Act 2011.

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(Councillor P Hughes left the room)

Complaints subject to formal investigation that do not require a hearing of the Ethical Standards Sub-Committee

Case Reference: MC/02/0517a - Councillor I Jones

Allegations concerning community events at Hill Top Park and Radcliffe Park and the indication that Councillor I Jones may have included the names of Council officers on official documents as organiser of an event without their knowledge and failure to follow appropriate Council procedures in arranging the events.

Finding: No breach of Code.

Case Reference: MC/02/0517b - Councillor O Jones

Allegations concerning community events at Hill Top Park and Radcliffe Park and an alleged failure of Councillor O Jones to register her interest as Vice-Chair of Hill Top Community Development Association and failure to follow appropriate Council procedures in arranging the events.

Finding: Breach of Code – training

The Director – Monitoring Officer advised the Committee that various steps had now been implemented by the Council to help ensure that both Elected Members and Officers better understood the grant applications process and decision-making arrangements.
(Councillor P Hughes returned)

Case Reference: MC/05/0717 - Former Councillor M Hussain

Allegations concerning land sales to the Councillor when displaced from his home by a Compulsory Purchase Order. In addition, further matters relating to housing allocated to individuals, including family members.

Finding: Breach of Code.

Elected Members found the case alarming particularly as this was not the only case considered by the Committee in relation to M Hussain's conduct. The thread was similar to others, including consistent lack of co-operation going back for a long period of time.

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No action could be taken in this case as M Hussain was no longer a councillor.

During the investigation, there was a question of witness willingness to provide statements of evidence. Two witnesses withdrew their willingness to engage in the investigation for fear of social media 'attacks'. Witnesses felt that due to the rise of social media abusive blogs they did not feel safe in providing evidence. The Committee acknowledged that such abuse should not take place and felt that there should be more protection for witnesses in these circumstances.

It was proposed that the Standards Working Group looked at a policy of providing greater assurance to officers/witnesses (where possible).

Committee Members acknowledged that certain councillor behaviours had not been acceptable. Officers needed safeguarding from bullying and repercussions of giving evidence. The Council and Committee should learn from the evidence and move on from these practices.

The Director – Monitoring Officer confirmed that the Chair of the Audit and Risk Assurance Committee had written to the Director of Public Prosecutions expressing the Committee's dissatisfaction with no action being taken by the Police/CPS in relation to behaviours that fell so short of the conduct expected of Elected Members.

The Director – Monitoring Officer also confirmed that a formal response had been submitted in respect of the consultation by the Committee on Standards in Public Life which was conducting a review of the current Ethical Framework in Local Government. The Council had sought additional and more robust powers and sanctions given that the existing sanctions and powers were considered ineffective when dealing with serious breaches of the Code of Conduct.

The Council had therefore demonstrated that it had been proactive and willing to address issues that it considered undermined public confidence in the Ethical Framework.

Case Reference: MC/05/0717 - Councillor B S Bawa

Allegations concerning land sales to the Councillor when displaced from his home by a Compulsory Purchase Order.

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A draft report had been prepared. Councillor Bawa had requested further information. Due to an inaccuracy in the email to the Monitoring Officer, there had been a delay in the Maxwellisation process being completed. Councillor Bawa would be provided with a copy of the report and given two weeks for Maxwellisation to be undertaken. The report would be finalised thereafter and reported to the next meeting of the Ethical Standards and Member Development Committee in December 2018.

Finding: To be determined.

Case Reference: MC/07/1017(a) - Councillor Eling

A complaint had been received concerning alleged “Whats App” texts published on a local blog site entitled “In the Public Domain”.

The allegations included disclosure of confidential information and inappropriate and disparaging references to individuals.

An independent investigation was undertaken.

Finding: No breach of Code.

Case References: MC/07/1017(b); MC/08/1017; MC/09/1117
- Former Councillor Richard Marshall

Three complaints including a self-referral from (then) Councillor Richard Marshall concerning alleged “Whats App” texts published on a local blog site entitled “In the Public Domain”.

These allegations included disclosure of confidential information and inappropriate and disparaging references to individuals.

Finding: Breach of Code.

Members expressed concern with regard to Elected Members and officers being bullied or intimidated, which was considered to be wholly unacceptable. The Committee expressed deep regret that Elected Members and officers had been subjected to such a degree of disrespect by one Elected Member who had brought the authority into disrepute. The Committee strongly criticised the conduct in question, expressing its dissatisfaction of the behaviour that had been uncovered.

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The Committee acknowledged that there were lessons to be learned from the evidence and this would be further investigated by the Standards Working Group to ensure that witnesses were safe, to prevent bullying of staff and to ensure that policies and procedures were in place.

The complainant, Melanie Dudley, was afforded the opportunity of addressing the Committee. Ms Dudley acknowledged the actions taken by the Council in addressing her complaint and the positive steps taken and to be taken by the Council to ensure lessons were learned. Ms Dudley outlined the impact the conduct of Richard Marshall had upon her.

Complaints subject to proposed local resolution or other resolution

Case Reference: MC/11/1217 - Councillor I Jones

Complaint concerning comments made by Councillor I Jones during his appearance before the Ethical Standards Sub-Committee on 1st December 2017 in relation to a named individual which the complainant stated were both defamatory and untrue.

The Monitoring Officer considered the matter and consulted with the Council's Independent Person. As a result, the Monitoring Officer determined that this was a matter that could be dealt with by informal resolution, namely by way of an apology from Councillor Jones to the complainant. This was because the statement made by Councillor Jones contained unfounded allegations that had no relevance to the Code of Conduct Complaint that the Sub-Committee was dealing with on 1st December 2017 in relation to Councillor Jones' own conduct; and also such comments were made at a public hearing where the complainant was not present and unable to respond.

Councillor I Jones had refused to apologise for the comments made.

Paragraph 8.1 of the arrangements for dealing with standards allegations under the Localism Act 2011 provided that if a member failed to comply with the local resolution within the timescales set, the matter would be referred to the Standards Committee and full Council for information.

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This matter would be referred to the Standards Working Group when considering revisions to the processes and procedures as part of the review of the arrangements for dealing with complaints.

The Committee expressed concern that the failure on the part of Councillor Jones to accept the Monitoring Officer's reasonable offer of local resolution was another example of bringing the Authority into disrepute.

Case Reference: MC/06/0817

Two separate, but related, allegations concerning failure to declare an interest at a Planning Committee in relation to a local company who the Councillor in question had solicited donations from for the benefit of a local organisation.

Following preliminary enquiries the Monitoring Officer, having consulted with the Council's Independent Person, determined that the matter should be dealt with by way of advice to the Member concerned in relation to declarations of interests and no formal investigation was necessary.

Complaints in respect of which no further action is to be taken at the preliminary stage

Case Reference: MC/18/0318

Allegations concerning failure by the subject Councillor to attend a meeting with the complainant at a local school and failure to assist the complainant in relation to various aspects of his complaint concerning the school.

Following preliminary enquiries, the Monitoring Officer, having consulted with the Council's Independent Person, determined that the complaint did not merit formal investigation and no further action was necessary in relation to the complaint.

Case Reference: MC/01/0618

Allegations concerning Committee and Cabinet decision making in 2012, 2013 and 2017 in relation to a Legal Options Agreement concerning a proposed land development.

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Following preliminary enquiries which included consideration of a due diligence exercise undertaken in relation to the history of the matter, and the obtaining of Counsel's advice, the Monitoring Officer, having consulted with the Council's Independent Person, determined that the complaint did not merit formal investigation and no further action was necessary in relation to the complaint.

Case Reference: MC/10/1117 - Former Councillor Marshall and Councillor Eling

There was nexus of fact and law in respect of this complaint which overlapped with complaint references: MC/07/1017, MC/08/1017 and MC/09/11/17.

The complaint principally covered the same evidential material and issues raised in the three separate complaints referred to above.

The Monitoring Officer, in consultation with the Council's Independent Person, determined that no further investigation was necessary and to do so would simply be a duplication of the investigatory work already undertaken and lead to the unnecessary expenditure of Council funds and resources.

The Monitoring Officer was of the view that any public interest in ensuring this complaint had been properly and fairly considered and determined had been achieved through the detailed investigations of the three complaints referred to above.

The Monitoring Officer acknowledged that this complaint included three additional matters which did not fall within the scope of complaints MC/07/1017, MC/08/1017 and MC/09/11/17. These three separate matters were considered in accordance with the arrangements for dealing with complaints and the Monitoring Officer after seeking the views of the Independent Person determined that no further action was required in relation to the same.

Other Complaints

There was one matter currently the subject of a formal investigation in accordance with the arrangements for dealing with standards allegations under the Localism Act 2011 and would be considered further by the Monitoring Officer once the investigation had been concluded.

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Resolved:-

- (1) that the matters arising from the investigations into standards complaints be referred to the Standards Working Group to consider as part of the review of the Council's Arrangements for Dealing with Standards Allegations, in particular procedures in relation to protection of officers and members where they become involved in investigations and actions available to the Committee should a member fail to comply with local resolutions;
- (2) that, in connection with (1) above, a report be submitted to a future meeting of the Ethical Standards and Member Development Committee with the findings of the Standards Working Group in relation to the review of the Council's Arrangements for Dealing with Standards Allegations.

10/18 **Work Programme 2018/19**

The Committee considered the draft work programme for 2018/19.

Resolved that the work programme for 2018/19 be approved and kept under review during the year.

(Meeting ended at 4.09 pm)

This meeting was webcast live and is available to view on the Council's website (<http://sandwell.public-i.tv/core/portal/home>).

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