

To: Members of the Standards Committee

Councillors Hayfield, Barnett, Jarvis, Stuart, Turley, and A Wright

The Independent Persons appointed under the Localism Act 2011

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STANDARDS COMMITTEE

6 SEPTEMBER 2023

The Standards Committee will meet on Wednesday, 6 September 2023 at **3.30 pm** in The Council Chamber, Council House, South Street, Atherstone, Warks, CV9 1DE.

AGENDA

- 1 **Evacuation Procedure**
- 2 **Apologies for Absence / Members away on official Council business.**
- 3 **Disclosable Pecuniary and Non-Pecuniary Interests**
- 4 **Exclusion of the Public and Press**

To consider, in accordance with Section 100A(4) of the Local Government Act 1972, whether it is in the public interest that the public and press be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by Schedule 12A to the Act.

5 **Review of Monitoring Officer's Decision – Councillors A & B –**
Report of the Head of Legal Services and Monitoring Officer

Summary

This report explains the steps taken in relation to a complaint against two members of a parish council and asks the Committee to decide whether the formal investigation should continue following a change in circumstances for the members concerned.

Please note that the appendices to this report are not published as they contain exempt information.

The Contact Officer for this report is Clive Tobin (719251).

6 **Review of Monitoring Officer's Decision – Councillor C –**
Report of the Head of Legal Services and Monitoring Officer

Summary

This report explains the steps taken in relation to a complaint against a member of a parish council and asks the Committee to consider a request from a complainant that a formal investigation takes place.

Please note that the appendices to this report are not published as they contain exempt information.

The Contact Officer for this report is Clive Tobin (719251).

STEVE MAXEY
Chief Executive

Agenda Item No 4

Standards Committee

6 September 2023

**Report of the
Head of Legal Services &
Monitoring Officer**

Exclusion of the Public and Press

Recommendation to the Board

To consider whether, in accordance with Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.

Agenda Item No 5

Standards Allegation Councillors A & B – Appendices to Report of the Head of Legal Services and Monitoring Officer

Paragraph 1 – Information relating to an individual.

Paragraph 2 – Information likely to reveal the identity of any individual.

Agenda Item No 6

Standards Allegation Councillor C – Appendices to Report of the Head of Legal Services and Monitoring Officer

Paragraph 1 – Information relating to an individual.

Paragraph 2 – Information likely to reveal the identity of any individual.

In relation to the items listed above members should only exclude the public if the public interest in doing so outweighs the public interest in disclosing the information, giving their reasons as to why that is the case.

The Contact Officer for this report is Clive Tobin (719251).

PLEASE NOTE – the appendices to this report are not being published by virtue of paragraphs 1 & 2 Part 1 of Schedule 12A to the Local Government Act 1972

Agenda Item No 5

Standards Committee

6 September 2023

Report of the Head of Legal Services and Monitoring Officer

Review of Decision – Complaint regarding Parish Councillors A & B

1 Summary

- 1.1 This report provides details of a complaint made against two former Members of a Parish Council in North Warwickshire, the decision taken by the Monitoring Officer, the current position in relation to the investigation and requests that Committee reviews whether that investigation should continue.

Recommendation to the Committee

- a) That the Committee notes the Complaint, the Initial View on the Allegations and the Investigation to date; and,**
- b) That the Committee decide whether the investigation should continue having regard to the matters set out in this report.**

2 Consultation

- 2.1 Councillors Hayfield and Andy Wright have been consulted in relation to the content of this report.

3 Report

Allegations of Breach of the Code of Conduct

- 3.1 Members will be aware that all Councils must have a Code of Conduct which regulates the conduct of Members whilst acting in that capacity. This requirement is contained in the Localism Act 2011 (the 2011 Act) which revised the Standards regime for local authorities with effect from 2012.
- 3.2 The 2011 Act also states the following:
- 3.2.1 a Council for a District must have arrangements in place under which written allegations of breaches of its own Code of Conduct and those which apply to

the Parish Councils in its area can be considered and investigated if appropriate (see Appendix A);

- 3.2.2 those arrangements must take account of the views of Independent Persons (IPs) when deciding whether an Allegation should be investigated; and,
- 3.2.3 allegations of breaches of the Code are not to be dealt with other than in accordance with those arrangements.

Case law on extent of powers

- 3.3 The High Court held in the case of R (Harvey) v Ledbury Town Council 2018 that a Parish Council has no power to take action in relation to allegations of breaches.
- 3.4 The High Court decision in the case of Hussain v Sandwell 2017 casts doubt on the applicability of the standards regime under the 2011 Act once a person leaves the office of councillor and, it is arguable that there is no longer a 'written allegation' in relation to a councillor at that time. The Court did clearly state however, that a Council for a district has power under the Local Government Act 1972 to investigate allegations of misconduct where a person has left the office of councillor where it is in the interests of good governance and for the benefit of the inhabitants of the area to do so. An investigation may therefore continue however, it will be conducted under a different statutory power.

The Current Allegations

- 3.5 The Council received allegations from two serving Parish Councillors and a former Parish Councillor ('the Complainants') that two other serving Parish Councillors ('the Subject Members') had breached the Code for that Parish Council (see Appendix B). The allegations related primarily to the disposal of a tractor owned by the Parish Council and its replacement with a used van. It was alleged that the Subject Members had not followed the relevant Standing Orders, had failed to undertake appropriate checks in relation to the replacement vehicle and, that the vehicle was itself being sourced via a relative of one of the Subject Members who had failed to declare that relationship. Two of the Complainants also referred themselves under the Code since they wanted to know whether they had acted appropriately by questioning whether Standing Orders had been followed and whether due diligence was being undertaken.
- 3.6 A second complaint was made that the Subject Members had accepted a complaint about the Complainants made by the then parish clerk (who is herself related to one of the Subject Members). This second complaint also stated that the Subject Members then purported to hold a meeting of the Parish Council's HR Committee to consider those complaints in relation to which they (a) failed to invite one of the Complainants who was a member of that Committee to attend the meeting and (b) failed to disclose details of the allegations in the parish clerk's complaint to the Complainants.

- 3.7 In accordance with the Arrangements, the views of the IPs were sought in relation to the first and second complaints, and having received their views, the Monitoring Officer decided that a formal investigation was appropriate in relation to the Subject Members however, he did not consider that an investigation was required in relation to the two complainants who had self-referred.
- 3.8 A third complaint was then received that the one of the Subject Members who was then Chair of the Parish Council had been involved in negotiations between the Parish Council and ACAS in relation to payment of a financial settlement to the parish clerk, who had resigned from her post, without declaring his relationship to her and without authority to act on behalf of the Council. This third complaint also alleged that the Complainants were referred to in, and purportedly bound by, a non-disclosure agreement relating to that financial settlement when the Complainants had not been consulted about the agreement, were not parties to it, and had not been required to give any evidence in relation to the events giving rise to the agreement.
- 3.9 In accordance with the Arrangements the Monitoring Officer prepared a draft of the Initial View which was due to be issued in the run up to the parish and borough elections. At that time, it became clear that one of the Subject Members was not standing for re-election. The Monitoring Officer engaged an external specialist to carry out an investigation in relation to the complaints and discussed this issue with them. Following that discussion, the Monitoring Officer formed the view that, even though the allegations related partly to one person who was not standing for re-election, in accordance with the relevant case law (see paragraphs 3.3 and 3.4 above) an investigation should be undertaken out in relation to both Subject Members, given that the same facts were relevant.
- 3.10 The Initial View was then revised in light of the third allegation and sent to all concerned stating that an investigation would take place. A copy of the revised Initial View is attached as Appendix C. The external specialist commenced the investigation and statements were taken from the Complainants. Both Subject Members (one of whom was re-elected as a Parish Councillor) were contacted and asked to attend interviews. The newly appointed parish clerk was also contacted and has provided various documents which were relevant to the matters under investigation.
- 3.11 The Subject Member who was re-elected declined the invitation to be interviewed and requested that written questions were sent to him so that he could respond in writing. He then refused to answer those questions or participate in the investigation and notified the external investigator and the Monitoring Officer that he was suffering from a serious illness, although little detail has been provided. He then resigned his seat as a parish councillor at the beginning of July.
- 3.12 The Subject Member who was not re-elected also declined the invitation to be interviewed and stated that they too are undergoing tests for a serious illness

which could be lifechanging, although no details have been provided. That Subject Member then refused to participate in the investigation process and would not provide any form of explanation. It should be noted that this Subject Member had previously contacted the Monitoring Officer and alleged that the process was one sided as they had not been able to give their version of events.

- 3.13 It should also be noted that, since the investigation commenced one of the Complainants who was re-elected in May has decided to resign their seat. At the time of writing the Parish Council is commencing the process for co-opting Members to both vacant seats since no request was made for an election following publication of a notice of the vacancies.
- 3.14 Unfortunately the clerk who joined the Parish Council shortly after the previous clerk resigned (see paragraph 3.8 above) has also now left the Parish Council. The current Chair of the Parish Council is temporarily appointed as the proper officer of the Council and interviews are shortly to take place for the replacement clerk.
- 3.15 The current Chair has indicated that a rigorous review of governance arrangements is now being undertaken by the Parish Council. The Chair also recently enquired about the current position in relation to the investigation, in response to which a summary of the current position was provided. In reply to that summary, the Chair has stated:
 - 3.15.1 they understand the welfare of the Subject Members is an important consideration,
 - 3.15.2 public trust and confidence in councils is also important,
 - 3.15.3 there is a potential for public fallout whether or not the investigation continues, and,
 - 3.15.4 notwithstanding any fallout from the Committee's decision, the incumbent Membership will have to suffer the impacts and any reputational damage, and
 - 3.15.5 if Committee decide that the investigation should not continue, it would be helpful if a formal communication can be provided to the Parish Council setting out any concerns the Committee has regarding any failings and acknowledging that the new Membership of the Parish Council is committed to improving the safeguards in place.

4 Current Position and options for Committee

- 4.1 The external investigator has indicated that, notwithstanding the failure of the two Subject Members to engage in the process, the investigation has uncovered matters of concern in relation to governance, adherence to financial Standing Orders and a failure to declare an interest. Net expenditure on the replacement vehicle amounted to several thousand pounds and a further sum of public money has been paid to the former clerk (who was related to one of the Subject Members – see paragraph 3.8 above). A copy of the draft findings is attached as Appendix D. As Members will be aware, local authorities have a fiduciary duty to manage public monies in the manner

of a trustee and not thriftlessly. Such expenditure should be subject to full public scrutiny.

- 4.2 Whilst these matters are cause for concern, the Council must also consider the broader public interest of any investigation under the Standards regime and the purpose which it serves. The case law referred to at paragraph 3.4 held that an investigation in relation to conduct of a *former* councillor is justified where it is in the interests of good governance and for the benefit of the inhabitants of the area to do so. This requires a balancing exercise which should take account of:
- 4.2.1 the nature of the allegation and the financial value (if any) of any apparent failing,
 - 4.2.2 the impact of the process on the victim, in this case the victims are the Parish Council as a corporate body and the public they serve,
 - 4.2.3 the impact on those who against whom the allegations are made, namely the Subject Members, and,
 - 4.2.4 the public interest in scrutinising the use of public funds, identifying any failings and, where appropriate, taking any necessary sanctions against those responsible.

A useful comparator is the approach set out in the Code for Crown Prosecutors which states that, just because there is evidence of the commission of an offence, a prosecution will not be appropriate unless it is in the public interest for all concerned.

- 4.3 Whilst the Arrangements allow the Monitoring Officer to decide whether an investigation is appropriate, taking account of the views of the IPs, the Standards Committee retains overall responsibility for ensuring that the Standards regime operates in a fair and transparent manner. For that reason, the Monitoring Officer's view is that Standards Committee should review this case and determine the appropriate course of action. In summary, Members have the following options taking account of the matters set out at 4.2 above:
- 4.3.1 agree that the investigation should continue,
 - 4.3.2 decide that an investigation is no longer in the public interest,
 - 4.3.3 adjourn the meeting in order to obtain further information, or

If Members determine that an investigation is no longer in the public interest, they may also consider any other appropriate means of concluding this matter, e.g., issue a statement explaining why they have come to that view and requiring the Parish Council to formally acknowledge and/or publish this. Members could also require the Borough Council to publish such a statement and formally notify the Subject Members of their view.

- 4.4 Since the 2011 Act requires that the views of the Independent Persons should be considered when deciding whether to investigate or continue to investigate an allegation (even where it would be undertaken based on the Sandwell Judgment referred to above) two Independent Persons have been invited to attend the Committee meeting to give their views. Only two IPs are invited

because, should Committee decide that the investigation should continue, it would need to meet again to consider whether any action is appropriate in relation to the Subject Members, at which time the views of IPs will again be required. This would allow different IPs to attend any later meeting and consider the matter afresh without risk of being influenced by the previous discussions of Committee.

5 Report Implications

5.1 Finance and Value for Money Implications

5.1.1 To date the Council has spent approximately £10,977.50 (excluding VAT) has been spent on the external investigators. A significant proportion of this expenditure was incurred because of the investigator preparing for an interview with one of the Subject Members which he then declined to attend, asking for written questions. Further time and expense were spent on preparing written questions as requested, which he then also declined to answer. These costs are met from existing budgets.

5.2 Safer Communities Implications

5.2.1 There are no Safer Communities implication in relation to the proposals in this report.

5.3 Legal and Human Rights Implications

5.3.1 The legal implications are mainly set out in the body of this report. In addition, Members are asked to note the following:

5.3.2 an allegation in relation to the conduct of a current member can only be dealt with under the Standards regime (see 3.3 above) meaning that the Parish Council HR Committee had no jurisdiction to consider an allegation that the Complainants had been bullying the clerk,

5.3.3 whilst the starting point is that all local authority meetings should be in public unless there is a good and lawful reason otherwise and, it is always ultimately a matter for Members to determine having regard to the public interest, it is commonly the practice for the public to be excluded from meetings at which Standards Committees determine whether it is appropriate for investigation to be commenced or continued; the rationale being that the publication of details can (a) lead people to conclude that a breach *has* occurred, and (b) there is a possibility that any investigation would be undermined if information were made public whilst it is ongoing.

5.4 Environment and Sustainability Implications

5.4.1 There are no Environmental and Sustainability implications to the proposals in this report.

5.5 Human Resources Implications

5.5.1 There are no Human Resources implications to the proposals in this report.

5.6 Risk Management Implications

5.6.1 There are no Risk Management implications to the proposals in this report.

5.7 Equalities Implications

5.7.1 There are no Equalities implications in relation to the proposals in this report.

5.8 Links to Council's Priorities

5.8.1 Good governance in decision making supports the Council's Priority of Responsible Financial and Resource Management which, in its role under the Standards regime, extends to ensuring that members of Parish Councils also adhere to such standards.

The Contact Officer for this report is Clive Tobin (719351).

Local Government Act 1972 Section 100D

Background Paper No	Author	Nature of Background Paper	Date
1	Complainants	Complaints received in relation to the Subject Members	Various from June to December 2022

PLEASE NOTE – the appendices to this report are not being published by virtue of paragraphs 1 & 2 Part 1 of Schedule 12A to the Local Government Act 1972

Agenda Item No 6

Standards Committee

6 September 2023

Report of the Head of Legal Services and Monitoring Officer

Review of Decision – Complaint regarding Parish Councillors

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1 Summary

- 1.1 This report provides details of a complaint made against a current member and a former member of a Parish Council in North Warwickshire, the decision taken by the Monitoring Officer, and a request for review by the Complainant.

Recommendation to the Committee

- a) That the Committee considers the Complaint, the Initial View on the Allegations and the Complainant’s request for a review of the decision in the Initial Complaint; and,**
- b) That the Committee decide whether to confirm the decision in the Initial View or whether an investigation should be undertaken in relation to the Allegations.**

2 Consultation

- 2.1 Councillors Hayfield and Andy Wright have been consulted in relation to the content of this report.

3 Report

Allegations of Breach of the Code of Conduct

- 3.1 Members will be aware that all Councils must have a Code of Conduct which regulates the conduct of members whilst acting in that capacity. This requirement is contained in the Localism Act 2011 (the 2011 Act) which revised the Standards regime for local authorities with effect from 2012.
- 3.2 The 2011 Act also states the following:
- 3.2.1 a Council for a District must have arrangements in place under which written allegations of breaches of its own Code of Conduct and those which apply to the Parish Councils in its area can be considered and investigated if appropriate (see Appendix A);

- 3.2.2 those arrangements must take account of the views of Independent Persons when deciding whether an Allegation should be investigated; and,
- 3.2.3 allegations of breaches of the Code are not to be dealt with other than in accordance with those arrangements.

Case law on extent of powers

- 3.3 The High Court held in the case of R (Harvey) v Ledbury Town Council 2018 that a Parish Council has no power to take action in relation to allegations of breaches.
- 3.4 The High Court decision in the case of Hussain v Sandwell 2017 casts doubt on the applicability of the standards regime under the 2011 Act once a person leaves the office of councillor and, it is arguable that there is no longer a 'written allegation' in relation to a councillor at that time. The Court did clearly state however, that a Council for a district has power under the Local Government Act 1972 to investigate allegations of misconduct where a person has left the office of councillor where it is in the interests of good governance and for the benefit of the inhabitants of the area to do so. An investigation may therefore continue however, it will be conducted under a different statutory power.

The Current Allegations

- 3.5 The Council received several allegations that two serving Parish Councillors had breached the Code for that Parish Council (see Appendix B). In accordance with the Arrangements, the views of the Independent Persons were sought and having done so, the Monitoring Officer took the view that an investigation was appropriate.
- 3.6 In accordance with the Arrangements the Monitoring Officer prepared a draft of the Initial View which was due to be issued in the run up to the parish and borough elections. At that time, it became clear that one of the Parish Councillors was not standing for re-election. By coincidence at that time the Council had engaged an external specialist to carry out an investigation in relation to a separate matter (which is currently ongoing) and the Monitoring Officer took the opportunity to discuss this matter with them. Following that discussion, the Monitoring Officer formed the view that, since the allegations primarily related to the person who was not standing for re-election, rather than investigate the allegation, it was more appropriate to offer advice to the Parish Council as to how they may avoid a similar problem arising in the future. The Initial View was therefore sent out to all concerned stating that no formal investigation would take place, setting out the advice concerned and stating that the fact that the person was no longer to be a member of the Council was a factor in deciding on that course of action. A copy of the Initial View is attached as Appendix C.

- 3.7 Having received the initial view, one of the complainants has asked that the Council reconsider the initial view in line with the Arrangements, a function carried out by the Standards Committee – see Appendix D.
- 3.8 At the time of receiving this request, it was noted that following the election there was a vacancy on the Parish Council which was not filled. The former Parish Councillor who had decided not to stand for re-election then put themselves forward as a potential co-optee. This had the potential to change the public interest as to whether there should be an investigation since, if co-opted, the person concerned could potentially repeat the alleged behaviour. There was therefore a delay in acting further to see whether the person was co-opted. The person was not successful however, the complainant has indicated that they still wish the matter to be reviewed.

Current Position

- 3.9 Since the 2011 Act requires that the views of the Independent Persons should be taken into account when deciding whether to investigate an allegation, even though any investigation would now be undertaken on the basis of the Sandwell Judgment referred to above, it is considered appropriate to invite the Independent Persons to attend the meeting to give their views.

4 Report Implications

4.1 Finance and Value for Money Implications

- 4.1.1 There are no resources implications in relation to the proposals in this report.

4.2 Safer Communities Implications

- 4.2.1 There are no Safer Communities implication in relation to the proposals in this report.

4.3 Legal and Human Rights Implications

- 4.3.1 The legal implications are mainly set out in the body of this report.

4.4 Environment and Sustainability Implications

- 4.4.1 There are no Environmental and Sustainability implications to the proposals in this report.

4.5 Human Resources Implications

- 4.5.1 There are no Human Resources implications to the proposals in this report.

4.6 Risk Management Implications

- 4.6.1 There are no Risk Management implications to the proposals in this report.

4.7 Equalities Implications

4.7.1 There are no Equalities implications in relation to the proposals in this report

4.8 Links to Council's Priorities

4.8.1 Good governance in decision making supports the Council's Priority of Responsible Financial and Resource Management.

The Contact Officer for this report is Clive Tobin (719251).

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date