
Governance and Ethics Committee (Annual Report 2015/16) – Supporting Information

1. Introduction/Background

- 1.1 The Localism Act 2011 was enacted on 15th November 2011 and it made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils.
- 1.2 In order to ensure that the process was working effectively locally it was agreed that the Monitoring Officer would make quarterly reports to Governance and Ethics Committee which set out the number and nature of complaints received and inform Members of any other activity that was taking place around the Code of Conduct regime. It would also provide a means of updating the Committee on the progress of investigations.
- 1.3 It was also agreed that an annual report would be presented to Full Council at the Annual meeting and that the year end report would be circulated to all Town and Parish Councils. The annual report would include the quarter four activity. This report also includes a look forward to the forthcoming Municipal Year.

2. Governance Arrangements

- 2.1 At the Full Council meeting on the 02 July 2015 Members discussed merging the then Standards and Governance and Audit Committees and it was agreed that:
 - The two Committees would be merged to form a Governance and Ethics Committee;
 - A revised set of terms of reference of the Governance and Ethics Committee would be adopted;
 - The membership of the revised Governance and Ethics Committee would comprise ten members (eight District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors);
 - The structure of agendas would be arranged so as to ensure that the Parish Councillors would only need to attend the 'Standards' element of the meeting;
 - The Advisory Panel and Independent Persons would be retained;
 - Members would not be able to sit on both the Advisory Panel and the Governance and Ethics Committee;
 - Authority be delegated to the Monitoring Officer to amend all relevant parts of the Constitution to reflect the new governance structure;
 - The Monitoring Officer would be authorised to appoint three Independent Persons who would be used on a rotational basis on the Initial Assessment Panel and Advisory Panel.
- 2.2 The Advisory Panel (comprising 8 Members: 2 from the Administration, 2 from the main opposition party, 2 parish/town councillors and 2 independent persons) is responsible for dealing with any complaints where evidence of breach of the Code

of Conduct has been identified following an investigation. The Advisory Panel reports its findings to the Governance and Ethics Committee for a formal decision. The Advisory Panel is chaired by an Independent Person.

- 2.3 A revised Code of Conduct was adopted in December 2013. It was agreed that this Code would be reviewed three years later. A small Task Group has been set up to undertake this activity and it is anticipated that any changes will be brought to the 05 July 2016 Council meeting.

3. Independent Persons

- 3.1 Under Section 28 of the Localism Act 2011 the Council also has to ensure it has appointed at least one Independent Person who is consulted before any decision is made to investigate an allegation against any Member of the Council or any Parish Councillor. It was agreed at the Full Council meeting on the 27 September 2012 that the Independent Person may be consulted directly either by the person who has made the complaint or the person the complaint has been made about. Three Independent Persons have therefore been appointed in order to ensure that a conflict situation does not arise.

- 3.2 James Rees, Mike Wall and Lindsey Appleton were appointed as the Council's Independent Persons for the 2015/16 Municipal Year. It is proposed that these Independent Persons be retained for the 2016/17 Municipal Year if they are willing to continue.

- 3.3 A person is not considered to be "independent" if:-

1. They are or have been, within the last five years, an elected or co-opted Member or officer of the Council or of any Parish Council's within this area. This also applies to committees or sub-committees of the various Councils.
2. They are a relative or close friend of a current elected, or co-opted, Member or officer of the Council or any Parish Council within its area, or any elected or co-opted member of any committee or sub-committee.
3. The definition of relative includes the candidate's spouse, civil partner, grandparent, child etc.

- 3.4 In addition The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require provisions to be made relating to the potential dismissal or disciplining of the Head of Paid Service, Monitoring Officer or Section 151 Officer. A panel needs to be set up to advise on matters relating to the dismissal of these Officers. The Act requires at least two Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 to be appointed to the panel. The roles of the Independent Persons have therefore been updated to take cognisance of the legislative change.

4. Governance and Ethics Committee

- 4.1 The overall purpose of the Governance and Ethics Committee is to provide effective challenge across the Council and independent assurance on the risk management and governance framework and associated internal control environment to members and the public, independently of the Executive. The Governance and

Ethics Committee is also responsible for receiving the annual Audit Letter and for signing off the Council's final accounts.

4.2 The Committee is charged with promoting and maintaining high standards of conduct throughout the Council. They promote, educate and support Councillors (both District and Parish) in following the highest standards of conduct and ensuring that those standards are fully owned locally.

4.3 The roles and functions of the Governance and Ethics Committee are to:

1. consider and make recommendations to the Council on proposed changes to the Constitution;
2. consider any governance issues emanating from the Government and determine their effect on the Council's business and governance processes;
3. review the effectiveness of the Council's Risk Management arrangements, the control environment and associated Anti Fraud and Corruption arrangements;
4. seek assurance that action is being taken on risk related issues identified by auditors and inspectors;
5. be satisfied that the Council's assurance statements (currently produced annually by all Heads of Service) and the Annual Governance Statement properly reflect the risk environment and any actions required to improve it;
6. be satisfied that any Partnership that the Council enters into has robust Governance and Risk Management arrangements and that any risk to the Council from the Partnership is minimised;
7. approve the Internal Audit Strategy and Plan (to ensure that there is adequate coverage) and monitor performance (assessing whether adequate skills and resources are available to provide an effective function);
8. receive an interim and annual report from the Head of Internal Audit on work undertaken during the year;
9. consider any issues brought to the attention of the Committee, or Chair and Vice-Chair, by the Chief Internal Auditor at any time during the year;
10. consider reports of external audit and inspection agencies;
11. ensure that there are effective relationships between external and internal audit and inspection agencies and other relevant bodies and that the value of the audit process is actively promoted;
12. review the financial statements, including the suitability of accounting policies and treatments, provisions or adjustments;
13. review the external auditors' annual audit letter and any other reports and opinions; monitor management action in response to any issues raised; and comment on the external auditors' planned work program;
14. promote and maintain high standards of conduct by Councillors and co-opted Members;
15. assist the Councillors and co-opted Members to observe the Members' Code of Conduct;

16. advise the Council on the adoption or revision of the Members' Code of Conduct;
17. monitor the operation of the Members' Code of Conduct;
18. advise, train or arrange to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
19. grant dispensations to Councillors and co-opted Members on requirements relating to interests set out in the Members' Code of Conduct;
20. ensure arrangements are in place under which allegations of misconduct in respect of the Members' Code of Conduct can be investigated and to review such arrangements where appropriate;
21. exercise (15) to (20) above in relation to the Parish / Town Councils wholly or mainly in its area and the Members of those Parish / Town Councils.

4.4 During 2015/16 the Governance and Ethics Committee comprised the following Members:

- Steve Ardagh-Walter (Conservative)
- Jeff Beck (*Vice-Chairman*) (Conservative)
- Graham Bridgman (Conservative)
- James Cole (Conservative)
- Rick Jones (Conservative)
- Anthony Pick (Conservative)
- Quentin Webb (*Chairman*) (Conservative)
- Lee Dillon (Liberal Democrat)

- Sheila Ellison (Substitute) (Conservative)
- Tim Metcalfe (Substitute) (Conservative)
- Billy Drummond (Substitute) (Liberal Democrat)

4.5 The Governance and Ethics Committee has a special responsibility to the 56 Town and Parish Councils within the District. It is responsible for ensuring that high standards of conduct are met within the parishes and that all Parish and Town Councillors are aware of their responsibilities under their Codes of Conduct.

4.6 The District Councillors are therefore supported on the Governance and Ethics Committee by two co-opted Parish Councillors who are appointed in a non-voting capacity. During 2015/16 the Governance and Ethics Committee comprised the following Parish Councillors:

- Barry Dickens (co-opted non voting Parish Councillor)
- Chris Bridges (co-opted non voting Parish Councillor)

5. **Advisory Panel**

5.1 The Advisory Panel is responsible for dealing with complaints where evidence of a breach of the Code has been identified by an independent investigator and reports its findings to the Governance and Ethics Committee for formal decision.

5.2 The District Councillors on the Advisory Panel are representatives of both political groups within the Council and are not appointed in accordance with the

proportionality rules. During 2015/16 the Advisory Panel comprised the following District Councillors:

- Adrian Edwards (Conservative)
- Richard Crumly (Conservative)
- Mollie Lock (Liberal Democrat)
- Alan Macro (Liberal Democrat)

5.3 During the 2015/16 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

- Tony Renouf
- Darren Peace

6. The Monitoring Officer

6.1 In West Berkshire Council the role of the Monitoring Officer is a statutory post and rests with the Head of Legal Services. The Monitoring Officer has a key role in promoting and maintaining standards of conduct.

6.2 As well as acting as legal adviser to the Governance and Ethics Committee and Advisory Panel, the Monitoring Officer carries out the following functions:

- reporting on contraventions or likely contraventions of any enactment or rule of law and reporting on any maladministration or injustice where the Ombudsman has carried out an investigation;
- establishing and maintaining registers of Members' interests and gifts and hospitality;
- maintaining, reviewing and monitoring the Constitution;
- advising Members and Parish Councillors on interpretation of the Code of Conduct;
- conducting or appointing an external investigator to look into allegations of misconduct;
- performing ethical framework functions in relation to Parish Councils;
- acting as the proper officer for access to information;
- undertaking an initial assessment, in consultation with the Independent Person, when complaints relating to alleged breach of the Code of Conduct are received;
- making arrangements for relevant matters to be considered by the Governance and Ethics Committee and Advisory Panel;
- advising whether Executive decisions are within the policy framework; and
- advising on vices issues and maladministration, and in consultation with the Section 151 Officer financial impropriety, probity, and budget and policy issues to all Members.

7. The Work of the Committee 2015 – 2016

7.1 One of the functions of the Governance and Ethics Committee is to oversee the Council's Constitution. The Council is therefore asked to note that since April 2015

Part 2 (Articles of the Constitution), Part 3 (Scheme of Delegation), Part 4 (Council Rules of Procedure), Part 5 (Executive Rules of Procedure), Part 11 (Contract Rules of Procedure), Part 12 (Personnel Rules of Procedure), Appendices F (Protocol for Use of ICT Equipment Supplied to Members) and J (Protocol for Council Representation on Outside Bodies) to Part 13 (Codes and Protocols) and Part 14 (Member Allowances Scheme) have been amended by Full Council.

- 7.2 The Monitoring Officer under his delegated authority has authorised changes to the following parts of the Constitution since April 2015: Appendix A to Parts 5 (Executive Rules of Procedure), 6 (Overview and Scrutiny Rules of Procedure) and 7 (Regulatory and Other Committees Rules of Procedure), Part 1 (Summary and Explanation), Part 2 (Articles of the Constitution), Part 3 (Scheme of Delegation), Part 7 (Regulatory and Other Committees Rules of Procedure) and Part 10 (Finance Rules of Procedure)
- 7.3 The Head of Paid Service under his delegated authority has authorised changes to Part 15 (Management Structure).
- 7.4 Dispensations to speak and vote at Full Council meetings where discussions on the A339/ Fleming Road Junction Compulsory Purchase Order took place were granted to Councillors Howard Bairstow, David Goff, Adrian Edwards, Anthony Pick, Lynne Doherty, Mike Johnson, Jeff Beck, James Fredrickson and Jeanette Clifford by the Committee.
- 7.5 A dispensation to speak and vote at Executive and Council meetings where the 2016/17 budget was discussed was granted to Councillor Lynne Doherty by the Committee. Councillor Marcus Franks was granted a dispensation to speak but not vote at Executive and Council meetings where the 2016/17 budget was discussed. Councillor Lee Dillon was granted a dispensation to speak but not vote at Council meetings where the 2016/17 budget was discussed.
- 7.6 The Monitoring Officer, under delegated authority, granted a dispensation to all West Berkshire Councillors to speak and vote on any items pertaining to Council Tax. This dispensation will remain in place until May 2019.
- 7.7 Training on the Code of Conduct was included in the District Councillor's Member Induction Programme post the May 2015 elections. Additional training was also provided to Town and Parish Councillors on the 17 June 2015 and 13 October 2015.

8. Register of Interests

- 8.1 All elected Members of the West Berkshire Council and all Town and Parish Councils have completed and submitted their Register of Interest forms. District Councillors are reminded to review their interests on a regular basis and Parish Councils are reminded via their Clerks to complete and return Declarations of Interest forms to the Monitoring Officer in order that compliance with the Localism Act 2011 is maintained. The Council is under a duty to ensure that details of Parish Councillors interests are on the District Council's website in accordance with the Act.

9. Local Assessment of Complaints

Quarter 1 (April to June 2015)

- 9.1 During Quarter 1 of 2015/16 (April –June 2015) one formal complaint was received by the Monitoring Officer. The complaint (NPC3/15) was later withdrawn by the complainant.
- 9.2 In terms of existing complaints the Deputy Monitoring Officer, in consultation with the Independent Person, had concluded during quarter 2 of 2014/15 that a potential breach of the Code of Conduct might have occurred in relation to NPC4/14 and the matter was referred to an independent investigator to investigate. The initial findings of the investigator were reported to the Advisory Panel on the 23 March 2015. New information came to light after the agenda was published and as a result of this the Panel agreed to defer consideration of that item until the matter could be more fully investigated.
- 9.3 During Quarters 3 and 4 of 2014/15 two further, but related complaints (to NPC4/14), were received by the Monitoring Officer. The Monitoring Officer in consultation with the Independent Person concluded that in respect of both NPC5/14 and NPC1/15 the matters should also be referred for investigation. It was later agreed that all three complaints should be subject to a single investigation.

Quarter 2 (July to September 2015)

- 9.4 Fifteen formal complaints were received by the Monitoring Officer. Fourteen of the complaints related to District Councillors (NDC1/15, NDC2/15, NDC3/15, NDC4/15, NDC5/15, NDC6/15, NDC7/15, NDC8/15, NDC9/15, NDC10/15, NDC11/15, NDC12/15, NDC13/15, NDC14/15). All of the complaints related to planning matters. Following the initial assessment of these complaints it was determined by the Monitoring Officer in consultation with the Independent Person that no breaches had been identified and that no further action needed to be taken.
- 9.5 In order to try and prevent a recurrence of these complaints in respect of NDC1/15 to NDC6/15 the Monitoring Officer wrote to the subject members outlining the procedures surrounding declarations of interest at meetings and where appropriate to be mindful of conduct at site visits. In respect of complaint NDC7/15 the subject member was asked to write a letter of explanation to the complainant. This has been done. The Monitoring Officer wrote to the subject member of complaint NDC9/15 about appropriate conduct at meetings. In the case of NDC10/15 the Monitoring Officer wrote to the subject member about conduct at planning site visits.
- 9.6 One complaint was received about a parish councillor (NPC4/15). Due to the complex and longstanding nature of this issue it was decided that it would be appropriate for an independent investigator to look at the facts in so far as they were relevant to this particular complaint.
- 9.7 The findings of the investigator in relation to complaints NPC4/14, NPC5/14 and NPC1/15 were considered by the Advisory Panel on the 13th August 2015. The Advisory Panel, after a lengthy discussion, concurred with the investigator's finding that that no breach of the authority's Code of Conduct had occurred and therefore no further action should be taken in regards to NPC4/14 and NPC1/15. However they

concluded that in relation to NPC5/14 they would recommend to the Governance and Ethics Committee that there had been a breach of the Code of Conduct.

- 9.8 The Governance and Ethics Committee met on the 3rd September 2015 to consider the complaint. After carefully considering both the written evidence submitted and the oral evidence given at the hearing, the Committee found that in respect of NPC5/14 Mr Uduwera-Perera (the subject member) had breached Newbury Town Council's Code of Conduct by failing to treat others with respect and behaving in an intimidatory and/or bullying manner.
- 9.9 A formal public notice setting out the findings was published on both Newbury Town Council and West Berkshire Council's website and a public notice was placed in the Newbury Weekly News.

Quarter 3 (October to December 2015)

- 9.10 One formal complaint was received by the Monitoring Officer. This complaint related to a Parish Councillor (NPC5/15). Following the initial assessment of this complaint it was determined by the Monitoring Officer in consultation with the Independent Person that no breach had been identified and that no further action needed to be taken.

Quarter 4 (January to March 2016)

- 9.11 Nine formal complaints were received by the Monitoring Officer. Seven of these complaints (NPC1/16, NPC2/16, NPC3/16, NPC4/16, NPC5/16, NPC6/16 and NPC7/16) pertained to Parish Councillors and two to District Councillors (NDC1/16 and NDC2/16). A further complaint was also received but the complainant had decided not to pursue the complaint.
- 9.12 In respect of complaints NPC1/16, NPC2/16, NPC4/16, NPC7/16, NDC1/16 and NDC2/16, at the Initial Assessment, it was agreed that no further action should be taken. In respect of NPC3/16 and NPC5/16 it was agreed that some other form of action should be taken. A decision around keeping the identity of the complainant confidential in respect of NPC6/16 is still awaited.
- 9.13 The Advisory Panel met on the 11 February 2016 to consider NPC4/15. They concurred with the findings of the Investigator that the Parish Council's Code of Conduct had been breached and agreed to refer a recommendation to the Governance and Ethics Committee who would make a final determination on this matter.
- 9.14 The Advisory Panel recommended that if the Governance and Ethics Committee concurred with the finding that a breach of the Code of Conduct has occurred the Panel would recommend that the following sanctions be applied:
1. A formal letter be sent from the Chairman of the Governance and Ethics Committee to the Subject Member about the impact his language and tone was having.
 2. A Public Notice be placed in a local newspaper and on the Council's website
 3. The Monitoring Officer write to the Parish Council to recommend that the Subject Member be sent on an 'enhancement of interpersonal

communications’ course, funded by the Parish Council, before resuming any duties on the Parish Council Committees.

9.15 A special meeting of the Governance and Ethics Committee took place on the 14 March 2016. After carefully considering both the written evidence submitted and the oral evidence given at the hearing, the Committee found that in respect of NPC4/15 Councillor Christopher Lewis had breached paragraph 3.1 of Stratfield Mortimer Parish Council Code of Conduct.

9.16 The Committee decided that a letter should be sent to the Subject Member, Councillor Christopher Lewis by the Chairman of the Governance and Ethics Committee of West Berkshire Council. The letter would also advise the Subject Member that he needed to reflect on the tone of his letters and that the way that he presented his arguments could be perceived by others. The Committee noted the recommendations of the Advisory Panel as to sanctions, but felt that the above sanction was both appropriate and proportionate in the circumstances of this case.

10. Year on Year Comparison of Complaints

10.1 Table 1 Number of District and Parish Councillor Complaints Received 2009/10 to 2015/16

	09/10	10/11	11/12	12/13	13/14	14/15	15/16
District Councillors	4	4	5	8	2	2	16
Parish Councillors	7	5	6	10	5	7	10
Total	11	9	11	18	7	9	26

10.2 There has been a significant increase in the number of complaints received during 2015/16.

Table 2 Action Taken on Complaints Received 2009/10 to 2015/16

	09/10	10/11	11/12	12/13	13/14	14/15	15/16
No Further Action	1	3	6	11	3	2	21
Other Action	5	2	3	2	1	3	2
Investigation	5	4	2	2	0	3	1
Withdrawn/ not progressed	0	0	0	3	3	1	1
Outcome awaited	0	0	0	0	0	0	1
Total	11	9	11	18	7	9	26

Table 3 Outcome of Items Investigated 2009/10 to 2015/16

	09/10	10/11	11/12	12/13	13/14	14/15	15/16
Breach	2	1	2	0	0	1	1
No Breach	3	3	0	2	0	2	0
Total	5	4	2	2	0	3	1

10.3 During the 2015/16 Financial Year two investigations were completed conducted by external investigators. The first related to NPC4/14, NPC5/14 and NPC1/15 (reflected in the 2014/15 statistics) and the second to NPC4/15. While both these complaints pertained to Parish Councils the cost to the Council of undertaking this work was £12,789.00. The payments were funded from the Head of Legal Services' Disbursement budget. There is currently no scope within the legislation to seek compensation from the parish councils. It is likely that if the current trend continues these costs will result in an ever increasing pressure on this budget. It has not been possible to identify internal resources to undertake this work.

11. Gifts and Hospitality

11.1 Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 of the Constitution (Codes and Protocols) states that 'Regular updates of declarations will be reported to the Governance and Ethics Committee as part of the quarterly performance monitoring reports'. A copy of the register for 2015/16 is therefore attached at Appendix B to this report..

11.2 In essence Members are required to:

- Register with the Monitoring Officer within 28 days every individual gift or item of hospitality, offered or received in their capacity as a Councillor, worth over £25 in value;
- Prior to accepting any hospitality with a value of £25 or more to seek authorisation from the Monitoring Officer;
- Be aware of serial givers or repeat offers of hospitality;
- Be aware that failure to comply with the rules is a breach of the Members' Code of Conduct and could lead to a complaint being reported to the Monitoring Officer or the Governance and Ethics Committee;
- Be aware that the press and public have the right to inspect Members' gift and hospitality declaration forms;
- Ensure that where the spouse/partner of the Member is also a recipient of any gifts or hospitality the combined value is also recorded by the Monitoring Officer in accordance with procedures.

12. Conclusion

12.1 2015/16 following the elections in May 2015 brought a number of new Councillors to the Authority all of whom attended the induction training of the Code of Conduct. This also acted as a reminder to re-elected Councillors and provided a useful base for the new municipal year. Training was also provided to Parishes throughout the year again fulfilling the one of the many functions of the Committee to ensure that standards of conduct were maintained across the district.

12.2 The increase in complaints during the year whilst unusual when compared to relatively little activity of previous years is explained by multiple member complaints

relating to one meeting. This was addressed effectively by the actions of the Monitoring Officer in consultation with the Independent Persons. A number of the complaints also arose at a time when elections were approaching which could have had a bearing on the increase although there is no evidence to confirm that was the case.

12.3 The Independent Persons continue to fulfil a very useful function as regards the ethical framework and have contributed a good deal of outside knowledge and common sense the decision making process. Their views will be considered during the forthcoming revisions to the Code of Conduct referred elsewhere on this agenda.

Background Papers:

- Reports to Council 10 May 2012 and Special Council on the 16 July 2012
- New Terms of Reference for the Governance and Ethics Committee and Advisory Panel;
- A new Code of Conduct for West Berkshire District Councillors (Full Council December 2013).
- Quarter 1, 2 and Quarter 3 of 2015/16 Monitoring Officer's Reports to the Standards Committee
- Localism Act 2011

Subject to Call-In:

Yes: No:

The item is due to be referred to Council for final approval



Wards affected:

All

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

MEC – Become an even more effective Council

The proposals contained in this report will help to achieve the following Council Strategy priority:

MEC1 – Become an even more effective Council

Officer details:

Name: David Holling
Job Title: Head of Legal Services (Monitoring Officer)
Tel No: 01635 519422
E-mail Address: dholling@westberks.gov.uk
