

ASHFIELD DISTRICT COUNCIL



Council Offices,
Urban Road,
Kirkby in Ashfield
Nottingham
NG17 8DA

Agenda

Standards and Personnel Appeals Committee

Date: **Monday, 3rd July, 2017**

Time: **6.30 pm**

Venue: **Committee Room, Council Offices, Urban Road,
Kirkby-in-Ashfield**

For any further information please contact:

Alan Maher

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01623 457318

STANDARDS AND PERSONNEL APPEALS COMMITTEE

Membership

Chair:

Councillor Lauren Mitchell

Councillors:

Amanda Brown
Jackie James
Lachlan Morrison
Helen-Ann Smith

Steve Carroll
Cathy Mason
Phil Rostance
Jason Zadrozny

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SUMMONS

You are hereby requested to attend a meeting of the Standards and Personnel Appeals Committee to be held at the time/place and on the date mentioned above for the purpose of transacting the business set out below.



R. Mitchell
Chief Executive

AGENDA

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1. **To receive apologies for absence, if any**
2. **Declarations of Disclosable Pecuniary or Personal Interests and Non-Disclosable Pecuniary/Other Interests**
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5. **Quarterly Complaints Monitoring Report** 17 - 26

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Agenda Item 3

STANDARDS AND PERSONNEL APPEALS COMMITTEE

Meeting held in the Committee Room, Council Offices, Urban Road, Kirkby-in-Ashfield,

on Monday, 27th March, 2017 at 6.30 pm

Present: Councillor Lauren Mitchell in the Chair;

Councillors Cheryl Butler (substitute for Lachlan Morrison), Steve Carroll, Jackie James, Cathy Mason, Helen-Ann Smith and Jason Zadrozny.

Apologies for Absence: Councillors Amanda Brown and Lachlan Morrison.

Officers Present: Ruth Dennis and Alan Maher.

SP.18 Declarations of Disclosable Pecuniary and Non-Disclosable Pecuniary / Other Interests

No Declarations of Interest were received.

SP.19 Minutes

The minutes of the meeting held on Monday 12 December 2016 were approved as a true record.

SP.20 Performance Special Responsibility Allowance (SRA) Guidance - Criteria, Absences - Excused and Unexcused

The Committee was reminded that as part of its review of the Members' Allowances Scheme, the Independent Remuneration Panel (IRP) had recommended that an annual £500 performance related Special Responsibility Allowance (SRA) be established; in conjunction with a reduction in the basic allowance for councillors of the same amount. All Members would be entitled to claim this SRA, if they had attended 70% of their scheduled meetings and compulsory training events.

The Committee was also reminded that the IRP's recommendations had been accepted by Council and that the Performance SRA would come into operation at the start of the new local government year, in May 2017.

At its last meeting, the Committee had raised practical concerns about how the Performance SRA would operate. It had sought clarification about what should be classed as an excused or unexcused absence when calculating whether a Member had attended sufficient meetings or training events to qualify for the SRA.

Members hoped that in practice this would not be a significant problem and that most Councillors would attend more than 70% of meetings or training events. They heard that the latest figures indicated that only 3 Members might not reach the threshold based on their attendance levels during the current year. The Committee was reassured by this.

Members were informed that the Independent Review Panel had been asked to consider these concerns and provide guidance on what criteria should be used to determine excused and unexcused absences. The Panel's guidance was attached to the report to Committee. Members were asked to consider this and, if appropriate, provide any comments before it was considered by Council, on 20 April 2017.

The Committee discussed the report and the IRP's guidance. In particular, Members noted that the IRP had concluded that work commitments do not constitute a legitimate reason for absence, on the grounds that to do so would mean that he or she would be paid twice - once for their work and once for non-attendance at the meeting.

Some Members of the Committee felt that this approach might make it more difficult to attract people to serve on the Council. Specific concern was raised about those emergency service workers who might be required to attend work at short notice, such as police officers or hospital medical staff. The Committee felt that the criteria for determining excused and unexcused absences should reflect this. It was generally felt that a provision for excused absences due to 'exceptional circumstances' ought to be considered by Council.

The Committee discussed absences due to care commitments. Members were informed that the Panel had clarified the leave which adoptive parents can take. The Committee welcomed this. The IRP guidance also made it clear that caring for dependents under 14 had been specifically excluded as an excuse for absences. In this context, the Committee asked for clarification about whether under the Members' Allowances Scheme Councillors could claim if they had to arrange for adult care cover in order to attend a meeting or training event. The Monitoring Officer, Ruth Dennis, agreed to clarify this.

RESOLVED

- a) That the Committee notes the IRP Guidance as attached to the report;
- b) That the Committee recommends the IRP Guidance to Council for approval with 'exceptional circumstances' (assessed at the discretion of the Monitoring Officer in consultation with the Member's Group Leader, if any) as part of the criteria for excused absences for purposes of the Performance SRA.

Reasons

The performance SRA was approved by Council on 21 July 2016 and is due to become effective from May 2017.

SP.21 Annual Constitution Review

The report to Committee outlined the proposed changes to the Council's Constitution that would be submitted to Annual Council. The Monitoring Officer explained the proposed changes. These included an alteration to the remit of the Overview & Scrutiny Committee to incorporate housing scrutiny. This had previously been agreed by Council in October 2016. She also pointed out that the scheme of delegation would need to be amended to reflect new employee structures and job titles, subject to the implementation of the proposed Corporate Leadership Team (CLT) restructure.

Specific mention was made of a change affecting the Chief Officers Employment Committee. Instead of requiring the whole Committee to participate in employee interviews it was proposed that a Panel be established to do this. Members discussed how this might work and the arrangements for ensuring political proportionality.

Mrs Dennis went on to explain the proposed changes to the Council's Rules of Procedure on questions at Council meetings. She informed the Committee that currently any question judged by the Chief Executive and the Chairman of the Council to be 'vexatious, scurrilous or otherwise improper' could not be asked at the meeting. It was proposed to change this wording in line with best practice to prohibit questions that were 'defamatory, frivolous or offensive'.

The Committee discussed this change. Some concern was expressed that in practice it might be difficult to define these terms and specifically to define what constitutes a frivolous question.

The Committee heard and welcomed the proposal to define the mandatory training that Councillors would have to attend and the frequency for this. As part of the discussion Members considered how training is delivered. There was a consensus that a range of methods should be used, including the use of e-training courses.

Finally, the Committee was informed that it was proposed to amend the Rules of Procedure so that Members could no longer substitute at Planning Committee, Licensing Committee (and its Sub-Committees) and Standards Committee Hearings.

There was an extensive discussion about this proposal. Some Members emphasised the special nature of these 'quasi-judicial' meetings and that those taking the decisions should build-up a body of expertise in the area, which substitute Members could not gain by occasionally attending meetings. Others argued that individual Members who had received the necessary relevant training should be able to make the judgement about whether they felt competent to act as a substitute. They also suggested that this would preclude Councillors who had gained valuable expertise in these areas through their service on other authorities, or who had a particular local perspective, from contributing to the process.

During the discussion it was suggested that a panel or panels of substitute Members could be established who would be able to serve on these bodies. It was noted that other authorities already do this.

The Monitoring Officer agreed to consider the Committee's comments and to reflect them in the proposed changes to the Constitution submitted to Annual Council.

RESOLVED

To note the proposed changes to the Council's Constitution.

Reasons

To ensure that the Council's constitution remains up to date and fit for purpose. The Committee's remit includes making recommendations to Council regarding amendments to the Constitution relating to matters of an ethical governance nature.

SP.22 Annual Ethical Governance Review

Members received a report which summarised the Committee's work programme during the 2016-17. This explained that all of the topics in the programme had been dealt with and that the Committee had achieved this on schedule.

Members were informed by the Monitoring Officer that despite carrying out two recruitment exercises it had not proved possible to attract applicants to serve as co-opted Members of the Committee. There was agreement that the Committee should continue to try and appoint co-opted Members, but that new ways of achieving this goal ought to be adopted. In particular, the Committee suggested that members of the Citizens Panel could be approached and encouraged to take on the role. Mrs Dennis agreed to investigate this.

The Committee then had a preliminary discussion about the topics that should be included in the 2017-18 work programme. Members agreed to contact Mrs Dennis with suggestions for suitable topics.

The report also summarised the number of Member Complaints that had been received and how this had changed compared to previous years.

RESOLVED

- a) That the Committee notes the progress made in relation to the agreed work plan;
- b) That the option of recruiting co-opted Members to serve on the Committee from the Citizens Panel be explored;
- c) That the Committee considers work items to be included in next year's agreed work plan and forwards any suggestions to the Monitoring Officer;
- d) That the Committee notes the number and types of Member Complaints received during the year as summarised in the report.

Reasons

To enable the Committee to carry out its role in monitoring ethical governance.

SP.23 Annual Review of the Whistleblowing Policy

The Monitoring Officer reported that the bi-annual review of the Council's Whistleblowing Policy had taken place. The policy had been found to be fit for purpose and no substantive changes to it had been recommended. In this context, Members noted that there had been two complaints under the policy last year. No complaints have been received to date during 2017.

RESOLVED

That the Committee notes the review of the Whistleblowing policy and how it has operated in the preceding 12 months.

Reasons

To ensure the Committee is adequately informed to enable it to monitor the operation of the Whistleblowing Policy in accordance with the Committee's terms of reference.

SP.24 Quarterly Complaints Monitoring Report

The report to Committee provided information on complaints of alleged Member misconduct and the progress that had been made in assessing them, for the period 3 December 2016 to 17 March 2017. Members were informed that Complaint AD2016-01 was now subject of an in-house investigation in order to avoid external costs. They were also informed that ADC 2016-03 had been dealt with informally. The Committee heard that two new complaints involving District Councillors had been received and three complaints involving Parish Councillors.

Members discussed the timescale for resolving disputes. The Committee heard that more legal officers were now being trained to deal with these complaints, which would hopefully speed up the process.

RESOLVED

That the Committee notes the updated position in respect of Members' Code of Conduct Complaints for the period 3 December 2016 to 17 March 2017.

The meeting closed at 7.50 pm

Chairman.

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	3 JULY 2017
Heading:	STANDARDS AND PERSONNEL APPEALS COMMITTEE – WORK PLAN – 2017-2018		
Portfolio Holder:	N/A		
Ward/s:	N/A		
Key Decision:	NO		
Subject To Call-In:	NO		

Purpose Of Report

This report asks Members of the Committee to consider and approve the attached Work Plan for the Committee for the next municipal year.

Recommendation(s)

The Committee is requested to consider and approve the Standards and Personnel Appeals Committee Work Plan for 2017-2018.

Reasons For Recommendation(s)

To reflect good practice.

Alternative Options Considered (With Reasons Why Not Adopted)

The Committee may consider adding or deleting work items and may consider if the timeframe for completion of tasks needs amending.

Detailed Information

The draft work plan for the Standards and Personnel Appeals Committee for the municipal year 2017-2018 is attached at Appendix 1 to the report.

The Committee is asked to consider the draft plan for approval.

Implications

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

There are no significant legal issues associated with the approval of the work plan. Legal issues in relation to specific pieces of work will be considered at that time.

Finance:

This report is effective from 03/07/2017 and has the following financial implications:

Budget Area	Implication
General Fund – Revenue Budget	None. There are no financial implications associated with approving the work plan. Any financial issues in relation to specific pieces of work will be considered at that time.
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Human Resources / Equality and Diversity:

There are no HR or equality and diversity implications associated with this report.

Other Implications:

None.

Background Papers

None

Report Author and Contact Officer

Ruth Dennis

Director of Legal and Governance (Monitoring Officer)

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Standards and Personnel Appeals Committee Work Plan – 2017/2018

Proposed Work Item	Timeframe
1. Quarterly Complaint Update <ul style="list-style-type: none"> A report to committee to keep it updated in respect of new and ongoing complaints made relating to the conduct of Members. 	July 2017 October 2017 December 2017 March 2018
2. Review of the Members' Code of Conduct Complaints Process <ul style="list-style-type: none"> The LGA Peer Challenge suggested a review of the complaints process to address politically motivated and trivial complaints. 	December 2017
3. Review of Politically Restricted Posts <ul style="list-style-type: none"> It is good practice to ensure the list is kept up to date – it is advisable to review the list following Management restructures since the list was last reviewed in March 2016 	December 2017
4. Review of Co-opted Members and Independent Person Arrangements	March 2018
5. Whistleblowing Policy <ul style="list-style-type: none"> Annual report to consider amendments (if required) to the policy and to monitor the application of the policy 	March 2018
6. Annual Review <ul style="list-style-type: none"> Report to consider the work of the Committee over the year compared to the Work Programme To consider an overview of the ethical governance of the Council 	March 2018
7. Constitution Review <ul style="list-style-type: none"> Consideration of proposed amendments to the Constitution for recommendation to Council 	March 2018

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Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	3 JULY 2017
Heading:	QUARTERLY COMPLAINTS MONITORING REPORT		
Portfolio Holder:	N/A		
Ward/s:	N/A		
Key Decision:	NO		
Subject To Call-In:	NO		

Purpose Of Report

This report provides an update in respect of Members' Code of Conduct complaints.

Recommendation(s)

The Committee is requested to note the updated position in respect of Members' Code of Conduct complaints as set out in the Appendix for the period commencing on 17 March 2017 to 23 June 2017.

Reasons For Recommendation(s)

To reflect good practice. To enable Members to monitor the volume and progress of complaints.

Alternative Options Considered (With Reasons Why Not Adopted)

No alternative options are considered appropriate.

Detailed Information

This report outlines in the Appendix the number of complaints of alleged Member misconduct which have been received since the last update, how many are outstanding and a summary of those closed since the last update.

The complaint ADC2016-01 has been investigated and a draft report has been sent to the Independent Person for his consideration before sending to the relevant parties for comment.

Since the last update there have been 9 new complaints. Two of these relate to District Councillors, 7 related to Selston Parish Councillors. These are all awaiting assessment.

Since the last update, 2 complaints have been concluded with no action being taken and 3 have been dealt with by taking other action.

There have been a high number of parish related complaints over the past 6 months. Work is underway with Selston Parish Council to understand the root cause of this and to identify ways the District Council can assist the Parish. A number of these complaints relate to issues or perceived issues with the use of Facebook by Parish Councillors.

The Committee previously asked the Monitoring Officer to consider if the District Council can seek to recover the costs of dealing with the Parish complaints from the Parish Council. Having researched this, it is clear from section 28(6)(b) of the Localism Act 2011 and the judgment in *John Taylor v Honiton Town Council [2016] EWHC 3307 (Admin) (21 December 2016)* that a principal authority is under a duty to investigate and decide upon alleged breaches of a parish council's code of conduct for members. Ashfield District Council is the principal authority in relation to Selston and Annesley & Felley Parish Councils.

Although local authorities have a specific power to charge for discretionary services under section 93 of the LGA 2003, the power does not apply where there is a duty to provide a service. The funding for these duties generally comes from local and national taxation unless there is an express power to charge in other legislation (e.g. fees for planning applications under s303 TCPA 1990). Chapter 7 of the Localism Act (Standards) does not provide any such power to charge. Given this, the District Council does not have the power to charge the Parish Council for the time taken dealing with Member Complaints about Parish Councillors.

Implications

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

Legal issues are dealt with in the body of the report.

Finance:

This report is effective from 23/06/2017 and has the following financial implications:

Budget Area	Implication
General Fund – Revenue Budget	The Authority incurs costs in investigating complaints of alleged Member misconduct, and these charges are

	borne by the General Fund. The Council investigates complaints in house as far as possible to reduce costs; where complaints need to be investigated externally these costs are expected to be contained within existing budgets.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Human Resources / Equality and Diversity:

There are no HR or Equality and Diversity implications associated with this monitoring report.

Other Implications:

None

Background Papers

None

Report Author and Contact Officer

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QUARTERLY UPDATE OF COMPLAINTS FROM 17 MARCH 2017 TO 23 JUNE 2017

ASHFIELD DISTRICT COUNCIL

REFERENCE	DATE COMPLAINT RECEIVED BY MONITORING OFFICER	COMPLAINANT TYPE	COMPLAINT ABOUT A DISTRICT OR PARISH COUNCILLOR	ALLEGED BREACH	LOCAL ASSESSMENT DECISION (MONITORING OFFICER IN CONSULTATION WITH INDEPENDENT PERSON)	DATE OF ASSESSMENT DECISION
ADC2016-01	6 April 2016	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct. 2.3 Bullying	Considered alternative options prior to assessment. Assessed in consultation with the Independent Person. Referred for investigation. Investigation complete. Draft report has been sent to the Independent Person for his comments before sending to parties for comments.	2 December 2016
ADC2016-03	22 December 2016	District Councillor	Public	2.2 Contrary to high standards of conduct. 2.7 Disrepute	Gathered outline information No further action – insufficient evidence of a	28 March 2017

					potential breach of the Code, not in the public interest to investigate further.	
ADC2017-01	2 February 2017	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Gathered outline information Witnesses interviewed. Dealt with by taking other action.	11 May 2017
ADC2017-02	27 April 2017	Member of the public and Parish Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	
ADC2017-03	5 March 2017 and 26 May 2017	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	

SELSTON PARISH COUNCIL

REFERENCE	DATE COMPLAINT RECEIVED BY MONITORING OFFICER	COMPLAINANT TYPE	COMPLAINT ABOUT A DISTRICT OR PARISH COUNCILLOR	ALLEGED BREACH	LOCAL ASSESSMENT DECISION (MONITORING OFFICER IN CONSULTATION WITH INDEPENDENT PERSON)	DATE OF ASSESSMENT DECISION
SPC2016-01	30 November 2016	Parish Councillor	Parish Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Dealt with by taking other action.	17 March 2017
SPC2017-01	16 January 2017	Parish Councillor	Public	2.1 Respect 2.2 Contrary to high standards of conduct.	Gathered outline information No further action – insufficient evidence of a potential breach of the Code, not in the public interest to investigate further.	17 March 2017
SPC2017-02	16 January 2017	Parish Councillor	Public	2.1 Respect 2.2 Contrary to high standards of conduct.	Gathered outline information Dealt with by taking other action.	3 March 2017

SPC 2017-03	24 March 2017	Public and Parish Councillor	Parish Councillor	6 Using your position to gain an advantage 9 Failing to declare an interest	Awaiting assessment Gathering outline information	
SPC2017-04	28 March 2017	Public	Parish Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	
SPC2017-05		Public	Parish Councillor		An initial outline complaint was made via Facebook but this did not contain sufficient information. Awaiting further information from the complainant before ascertaining if this is a formal complaint and the details.	
SPC2017-06	13 May 2017	Parish Councillor	Parish Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	
SPC2017-07	27 April 2017	Public	Parish Councillor	2.1 Respect	Awaiting assessment	

				2.2 Contrary to high standards of conduct.	Gathering outline information	
SPC2017-08	22 May 2017	Public	Parish Councillor	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	
SPC2017-09	24 May 2017	Public	2 x Parish Councillors	2.1 Respect 2.2 Contrary to high standards of conduct.	Awaiting assessment Gathering outline information	

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