

GOVERNANCE COMMITTEE

13 OCTOBER 2015

Present :- Councillor Cyril Liddy (Chairman)
Councillors Christopher Arnold, John Elliott, Jo Hayes,
Peter Higgins and Fiona Maclean.

Substitute Members :- Councillor Nick Cope for Councillor Julia Havis and
Councillor Dennis Willetts for Councillor Ben Locker

Also present: Parish Councillor Malcolm Bartier and Independent
Persons Sarah Greatorex and Barbara Pears.

16. Minutes

The minutes of the meeting held on 8 September 2015 were confirmed as a correct record, subject to the word Christchurch being amended to Christ Church.

17. Work Programme

The Committee considered the contents of a report by the Assistant Chief Executive on the Work Programme for the year.

RESOLVED that the contents of the Work Programme be noted.

18. Annual Statement of Accounts 2014-15

The Committee considered a report by the Assistant Chief Executive presenting the audited Statement of Accounts 2014/15.

On 17 September 2015 the Auditor had issued an unqualified opinion that the accounts gave a true and fair view of the Council's financial position as at 31 March 2015 and its income and expenditure for the year then ended. The audit had therefore been formally closed, and the audited accounts were published on the Council's website.

RESOLVED that the publication of the audited Statement of Accounts for 2014/15 be noted and the work undertaken by the Financial Manager's team be acknowledged with the Committee's thanks.

19. Complaint – Councillor Locker

The Committee considered the contents of a report by the Monitoring Officer requesting the Committee to consider a complaint received in relation to Councillor Locker.

Councillor Graham had made a complaint regarding a tweet that had been posted by Councillor Locker on his Twitter account following his receipt of a penalty charge notice for parking in a restricted area. Following a request by the Monitoring Officer, Councillor Locker had deleted his original tweet and published an apology on his Twitter account confirmed that his post had been aimed at the North Essex Parking Partnership (NEPP) as an

organisation rather than at officers. Councillor Graham did not find the apology acceptable which prompted the Monitoring Officer to take advice from the Council's Independent Persons who were appointed under the Localism Act to advise on Member Conduct issues. The Independent Persons agreed that, in view of the language used and that Councillor Locker was a member of the Governance Committee that the complaint should be referred to the Committee in accordance with the Council's Localism Act Arrangements.

The report also included a statement on the complaint from Councillor Locker and a letter from Jordan Newell, a former Parliamentary candidate, to the Committee members.

Under the Localism Act the Council had a duty to promote and maintain high standards of conduct by members and co-opted members of the authority. In order to discharge this duty the council had adopted a Code of Conduct for Members which set out the conduct expected of members and co-opted members of the authority when they were acting in that capacity. Councillor Locker had been elected to the Council in May 2015 and, although the Monitoring Officer had offered all new councillors Code of Conduct training, Councillor Locker had not attended.

The Committee needed to decide whether Councillor Locker's conduct amounted to a breach of the Code of Conduct for Members and if so, after taking advice from the Independent Persons, whether the complaint:

- (a) merited no further investigation
- (b) merited further investigation

The report also gave examples of possible actions available to the Committee in the event it determined that Councillor Locker's conduct was outside of the remit of the Code of Conduct for Members and that no further investigation was merited.

Councillor Graham attended the meeting and, with the consent of the Chairman, addressed the Committee. He explained that he did not consider the apology posted by Councillor Locker to be satisfactory and confirmed his Portfolio Holder responsibilities included the NEPP and, as such, his complaint had not been politically motivated. He voiced his concerns about encouraging abuse of council staff and that Councillor Locker had failed to acknowledge how his tweet may have been interpreted. He also referred to the comments made by Councillor Willetts and Braintree District Councillor Mitchell which, in his view, acknowledged that that the complaint had been justified.

Councillor Locker attended the meeting and, with the consent of the Chairman addressed the Committee. He explained that he had recognized that the language he had used in his tweet had been offensive and he had regretted it. He also considered that his tweet had been sent in his personal capacity and had not been intended as a criticism of an officer. He referred to a further tweet that he had sent in order to emphasise his apology acknowledging he had been at fault and which had been received by all his followers. He had been unaware of the complaint until nine days after it had been made and explained that he would have reached out personally to resolve the matter. He had opted to engage a barrister as initially he did not know the nature of the complaint or the identity of the complainant. His statement to the Committee included details of a legal precedent which supported his assertion that he had acted in his personal capacity and he stated his view that the matter would be overturned if it were considered at a tribunal. He considered he had placed on record a full apology for his inappropriate language and he confirmed he would be far more circumspect in future.

Discussion took place regarding the capacity in which Councillor Locker had been acting

and as to whether any action needed to be imposed. Matters of particular consideration related to:

- Councillor Locker's future membership of the Governance Committee;
- The maintenance of high standards of conduct by members of the Governance Committee;
- The difficult job undertaken by the Civil Enforcement Officers and the instances of violence and abuse experienced by them whilst performing their duties;
- The position of Councillors generally and those other members of the Governance Committee in relation to up to date Code of Conduct training;
- The need to consider an additional requirement for Code of Conduct training in the same way that Licensing and Planning training are deemed to be requirements to membership of the Licensing and Planning Committees;
- The potential for Group leaders to be given the responsibility for ensuring Group members comply with corporate training requirements;
- Councillor Locker's full apology given in his representation to the meeting;
- The justifiable grounds for the complaint made by Councillor Graham;
- Councillor Locker's confirmation that he had intended no criticism of the Civil Enforcement Officers.

RESOLVED (UNANIMOUSLY) that-

- (i) Councillor Locker had not acted in his capacity as a Councillor;
- (ii) Councillor Locker be required to undertake training in the Code of Conduct from the Monitoring Officer within a period of 28 days from the date of this meeting;
- (iii) Other Councillors elected in 2015 as well as members of this Committee who had also not attended Code of Conduct training also be invited to do so by the Monitoring Officer within a period of 28 days from the date of this meeting;
- (iv) The Monitoring Officer be requested to report back on Councillors' Code of Conduct training status at the Committee's meeting on 24 November 2015;
- (v) Attendance on at least one Code of Conduct training session be a requirement for future membership of the Governance Committee.

20. Local Government Ombudsman – Annual Review 2014-15

The Committee considered a report from the Monitoring Officer providing details of the Local Government Ombudsman's Annual Review for 2014/15.

It was explained that there had been no findings of maladministration against the Council and no formal reports had been issued. The total number of complaints in the year was 30 compared to 22 in the previous year.

RESOLVED that the contents of the Local Government Ombudsman's Annual Review letter for 2014/15 be noted.

21. Review of the Council's Ethical Governance Policies

The Committee considered a report by the Monitoring Officer providing details of the revised policies relating to:

- Anti-Fraud and corruption
- Whistleblowing
- Anti-Money Laundering
- Covert Surveillance
- Corporate Information Security

- Data Protection

The report also included the Council's Ethical Governance Statement 2015/16.

The Council was committed to maintaining the highest standards of governance and to ensuring that all activities are conducted ethically, honestly, openly and accountably so as to protect public safety and public money. A varied range of policies and procedures formed the Corporate Governance framework. In addition, the Ethical Governance policies set out the standards of conduct and integrity that it expected from staff, elected members, suppliers, partners, volunteers and the public.

In February 2012 full Council adopted a statement of intent in relation to both Ethical and Corporate Governance which gave a high organisational commitment to zero tolerance of fraud, corruption and bribery. The Ethical Governance policies were also adopted as part of the Council's policy framework.

The policies had been reviewed to ensure that they remained fit for purpose and no changes were proposed apart from the Information Security Policy which has been updated to include reference to employees being required to inform Corporate ICT of any suspected breaches or incidents and for users to adhere to the password policy.

The Monitoring Officer also pointed out that the statutory responsibility for investigating and prosecuting housing benefit fraud cases had transferred to the Department of Work and Pensions, accordingly the Council requires a Sanctions Policy with all fraud cases now being pursued by the Department of Work and Pensions.

Discussion from the Panel members was in relation to:

- The references in the Anti-Fraud and Corruption Policy to HM Customs and Excise which needed to be updated to HM Revenue and Customs
- The safeguarding measures in place to protect users of the Whistleblowing Policy and whether staff felt adequately protected as a result
- The reference in the Whistleblowing Policy to the Governance Committee which needed to be listed separately to the contact points outside the Council
- Details of the financial limits attached to the Anti-Money Laundering Policy
- The need for the Data Protection Policy to include a section relating to Councillors being party to the Data Protection Act.

In response to a question from Malcolm Bartier about the Council's publication of third party email addresses on the Council website and the potential for this practice to contravene the Data Protection Regulations, the Monitoring officer assured the Committee that no contravention had taken place and the Council's online security measures were rigorous and robust but he would refer the concern to the Council's online team for consideration.

RECOMMENDED to Council that –

- (i) Subject to the amendments listed below:
 - (a) Reference to HM Customs and Excise in the Anti-Fraud and Corruption Policy being updated;
 - (b) Reference to the Governance Committee in the Whistleblowing Policy being listed separately;
 - (c) A section about Councillors being party to the Data Protection Act to be included in the Data Protection Policy,

the following policies be approved for inclusion in the Council's Policy Framework:

- Anti-Fraud and Corruption
- Whistleblowing
- Anti-Money Laundering
- Covert Surveillance
- Corporate Information Security
- Data Protection

(ii) The contents of the Ethical Governance Statement 2015/16 be noted.

22. Review of Members' Code of Conduct and the Council's Arrangements

The Committee considered a report by the Monitoring Officer reviewing the Members' Code of Conduct and the Council's 'Arrangements'.

Andrew Weavers, the Monitoring Officer explained that the Localism Act 2011 had made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. The Act required that local authorities adopt a code of conduct consistent with the seven Nolan Principles of public life and that Principal Authorities put in place 'Arrangements' to deal with allegations that Councillors had failed to comply with the Members' Code of Conduct. Principal Authorities were also required to appoint at least one Independent Person who would be consulted as part of the Council's 'Arrangements'.

Council had formally adopted the Council's Members' Code of Conduct and its 'Arrangements' in June 2012 and in May 2013 Barbara Pears and Sarah Greatorex had been appointed as the Council's Independent Persons for a term of four years. All the Town and Parish Council's in the Borough had adopted the Borough Council's Code. The Localism Act also required the Council to adopt 'arrangements' for dealing with allegations that Councillors had failed to comply with the Code. As at the date of the report there had been no such allegations or referrals. There was also a more streamlined approach to dealing with councillor complaints compared to the previous regime. The arrangements had been used on several occasions. All allegations are received by the Monitoring Officer who makes an assessment of the merits of the complaint in consultation with the Independent Person.

The opportunity had also been taken to refresh the Member/Officer Protocol which was a guide to good working relationships between Members and Officers, to define the respective roles of Members and Officers and provide some principles governing conduct. As a result the Protocol had benefitted from an update of some of the terminology and better consistency with the current Council structures. One specific addition had been proposed in relation to social media, making it clear that both Members and Officers should not use social media to criticise or undermine respect for the other and that they must comply with the Council's Social Media Policy at all times.

The Monitoring officer explained that a copy of a letter had been received from Will Quince MP to the Secretary of State for Communities and Local Government indicating his view that the proposed change to the Member/Officer Protocol in relation to social media was inappropriate as it made no distinction between posts made in a private or personal capacity.

In response to Councillor Hayes' concerns that the view of the MP did not accord with the Nolan Principles, the Monitoring Officer confirmed that the Localism Act had made it clear that the Code of Conduct only applied to Councillors when they were acting in their official

capacity.

RESOLVED (SEVEN voted FOR and ONE voted AGAINST) that -

- (i) The review of the Members' Code of Conduct and the Council's 'Arrangements' be approved
- (ii) The updated Member / Officer Protocol be agreed for inclusion in the Council's Constitution subject to Paragraph 10(4) being amended to read:
'Members, when acting in their official capacity, should not use social media to criticise or undermine respect for Officers. Officers should not use social media to criticise or undermine respect for Members. Members and Officers must comply with the Council's Social Media Policy at all times.'

23. Gifts and Hospitality // Review of Guidance for Councillors and Policy for Officers

The Committee considered a report by the Monitoring Officer giving details of the revised guidance and policy relating to Gifts and Hospitality.

It was explained that when the Council had adopted the Members' Code of Conduct it had retained the requirement to include registration and declaration of gifts and hospitality of the value of £50 and above as part of the Members' Register of Interests. These were published on the Council's website as an integral part of the Committee Management Information System (CMIS). In addition, Officers were required, as part of their terms and conditions of employment, to register any gifts and hospitality received in a register which is maintained by each Head of Service.

The Monitoring Officer confirmed that the Code only applied to gifts made to councillors when acting in their official capacity and, as such, did not extend to gifts from family members.

Particular clarification was also sought in relation to events referred to as 'civic' nights whereby all councillors were invited to an annual performance at, for example, the Mercury Theatre and whether there was a requirement for attendance at such events to be registered.

RESOLVED that, in the light of the question about 'civic' night hospitality and to allow for the submission of further advice from the Monitoring Officer, the consideration of the revised guidance and policy relating to Gifts and Hospitality be deferred to the Governance Committee meeting on 19 January 2016.

24. Review of Local Code of Corporate Governance

The Committee considered a report by the Monitoring Officer giving details of the updated Local Code of Corporate Governance for 2015/16.

The Local Code of Corporate Governance had been developed to ensure that the Council complied with the principles set out in the CIPFA/SOLACE guidance. The Code was reviewed annually, to ensure that the Council was still satisfying the principles, and formed part of the Council's Policy Framework.

The guidance identified six Core Principles against which local authorities should review their existing corporate governance arrangements and develop and maintain a local code of governance. These were:

- Focusing on the purpose of the Council and outcomes for the community and creating and implementing a vision for the local area;
- Members and officers working together to achieve a common purpose with clearly defined functions and roles;
- Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour;
- Taking informed and transparent decisions which are subject to effective scrutiny and managing risk;
- Developing the capacity and capability of members and officers to be effective; and
- Engaging with local people and other stakeholders to ensure robust public accountability.

The Local Code, and the Councils compliance with the principles, had been reviewed and Updated to include the following changes:

- The new Strategic Plan 2015 – 2018
- Borough Investment for All (BIFA)
- Introduction of the Leader's Listening Sessions

RECOMMENDED to Council that the updated Local Code of Corporate Governance for 2015/16 be approved for inclusion in the Council's Policy Framework.