

Standards Advisory Committee

You are requested to attend a meeting of the Standards Advisory Committee to be held in Committee Room 2, The Deane House, Belvedere Road, Taunton on 28 March 2017 at 14:30.

Agenda

- 1 Apologies.
- 2 Minutes of the meeting of the Standards Advisory Committee held on 15 March 2016 (attached).
- 3 Public Question Time.
- 4 Declaration of Interests
To receive declarations of Disclosable Pecuniary Interests or personal or prejudicial interests, in accordance with the Code of Conduct, in relation to items on the agenda. Such interests need to be declared even if they have already been recorded in the Register of Interests. The personal interests of Councillors who are County Councillors, Town or Parish Councillors will automatically be recorded in the minutes.
- 5 Raising Standards: Parish Council Health Checks. Presentation by Justin Robinson, County Executive Officer of the Somerset Association of Local Councils.
- 6 Discontent with the current Standards Regime, The Democratic Services Manager to report. A copy of the submission made to the Member of Parliament, Rebecca Pow, on behalf of the Advisory Committee is attached for information together with a draft of a letter which is to be sent to the Secretary of State for Communities and Local Government on behalf of Councils throughout the South-West (attached).

Reporting Officer: Richard Bryant

The following items are likely to be considered after the exclusion of the press and public because of the likelihood that exempt information would otherwise be disclosed relating to the Clause set out below of Schedule 12A of the Local Government Act 1972.

- 7 Complaints against Councillors - Update by the Monitoring Officer. Paragraph 1 - Information which would reveal the identity of an individual.

Reporting Officer: Bruce Lang

Bruce Lang
Assistant Chief Executive

16 May 2017

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under “Public Question Time” is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

Except at meetings of Full Council, where public participation will be restricted to Public Question Time only, if a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council’s Planning Committee and details of the “rules” which apply at these meetings can be found in the leaflet “Having Your Say on Planning Applications”. A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: www.tauntondeane.gov.uk



Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

For further information about the meeting, please contact the Corporate Support Unit on 01823 356414 or email r.bryant@tauntondeane.gov.uk

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Standards Advisory Committee Members:-

Ms L Somerville Williams (Independent Person)
Councillor T Davies
Mrs A Elder
Councillor E Gaines
Councillor G James
Mr M Marshall
Mr L Rogers
Councillor Mrs F Smith-Roberts
Mr B Wilson
Councillor G Wren

Standards Advisory Committee – 15 March 2016

Present: Anne Elder (Chairman)
Councillors Mrs Adkins, Davies and Gaines
Michael Marshall, Bill Sparrow and Bryn Wilson (Parish Council
Representatives), Lynn Rogers (Co-opted independent member of the
Advisory Committee)

Officers: Bruce Lang (Monitoring Officer) and Richard Bryant (Democratic Services
Manager)

Also present: Councillor Aldridge

11. Welcome

The Chairman welcomed Councillor Bill Sparrow to his first meeting of the
Standards Advisory Committee.

12. Apologies

Councillors Miss Smith and Wren, Mr Terry Bowditch (Co-opted independent
member) and Mrs Louise Somerville-Williams (Independent Person).

13. Minutes

The minutes of the meeting of the Standards Advisory Committee held on 7
July 2015 were taken as read and were signed.

14. Declaration of Interests

Mrs Anne Elder, declared personal interests as a Public Governor of the
Taunton and Somerset NHS Trust and as a Member of the House
Management Committee of one of the premises operated by the Royal
Agricultural Benevolent Institution.

15. Protocols between the Monitoring Officer of Taunton Deane Borough Council and the Avon and Somerset Constabulary

The Monitoring Officer, Bruce Lang, reported that two protocols between
Taunton Deane Borough Council and the Avon and Somerset Constabulary
had recently been drafted.

These were intended to cover the reporting of potential criminal offences
arising from the failure to register or declare Disclosable Pecuniary Interests
(DPI) or from speaking and voting where a Member had a DPI and had not

first sought a dispensation.

Although of relevance, one of the protocols covered in some detail the procedures which the Police would be required to follow once a complaint against the non-declaration of a DPI had been received.

The protocol which related most to the Council was generally accepted, although several amendments to the wording were suggested and agreed by the Advisory Committee. Members also felt that the protocols should be cross-referenced with Appendix 3 of the Members' Code of Conduct within the Council's Constitution.

Resolved that:-

- (a) The protocol which detailed the procedures the Police would follow in the future should a complaint be received about the non-declaration of a Disclosable Pecuniary Interest by a Councillor be agreed as submitted; and
- (b) The protocol which related most to Taunton Deane Borough Council – set out in the Appendix to these Minutes – incorporating the changes agreed by the Standards Advisory Committee be approved.

16. Monitoring Officer's Update

Mr Lang reported on three matters:-

- (1) **Training** – Following the Borough and Parish Elections last May, a number of Code of Conduct training sessions had been held primarily for the newly elected Councillors. The four sessions held had been reasonably well attended with most Parish Councils within Taunton Deane being represented at one of the sessions.

Despite the training provided occasional queries from Parishes were still received which were either dealt with internally or referred to the Somerset Association of Local Councils.

- (2) **Formal Complaints** – One complaint had recently been received although there was some doubt as to its validity. Mr Lang was currently investigating this matter.
- (3) **Audit of Register of Interests** – The South West Audit Partnership (SWAP) had recently undertaken an audit of the Council's Declarations of Interests, Gifts and Hospitality. SWAP had stated that it was able to offer reasonable assurance as most of the areas reviewed were found to be adequately controlled.

It was confirmed that the majority of the Declarations of Interest for the Taunton Deane Members had been posted on the Council's website.

There were a small number of Councillors who were required to update their Register of Interest Forms. Once this had been done, the website would be further updated. Noted that work was also underway to publish the Declarations of Interest made by all of the Town and Parish Councillors on the website.

Resolved that the report be noted.

17. Proposed meeting with Rebecca Pow, the Member of Parliament for the Taunton Constituency to discuss the current Standards Regime

Reference Minute No. 9/2015 the Democratic Services Manager, Richard Bryant, reported that arrangements had now been made for the local Member of Parliament, Rebecca Pow, to meet with the Standards Advisory Committee on Friday, 29 April 2016 at 2 p.m. at The Deane House.

It was agreed that the meeting should be held on an 'informal' basis in one of the smaller Committee Rooms with the intention of drawing to Ms Pow's attention the dissatisfaction the Advisory Committee had with the current Standards Regime.

It was further agreed that the Advisory Committee's concerns should be communicated to Ms Pow before the meeting so she had some knowledge of the particular issues Members wished to highlight which she could perhaps raise with the Local Government Minister.

Resolved that the report be noted.

18. Date of next meeting

The next meeting of the Advisory Committee would be held on Tuesday, 24 May 2015 at 2.30 p.m. in the John Meikle Room at The Deane House.

(The meeting ended at 4.05 p.m.)

Appendix to the Minutes

PROTOCOL BETWEEN THE MONITORING OFFICER OF TAUNTON DEANE BOROUGH COUNCIL AND THE AVON AND SOMERSET CONSTABULARY

Purpose

To agree a protocol for the reporting of potential criminal offences arising from the failure to register or declare Disclosable Pecuniary Interests (DPI) or from speaking and voting where a Member has a DPI and has not first sought a dispensation.

References to the Monitoring Officer also include the Deputy Monitoring Officer where the Monitoring Officer is absent or unable to act. In these circumstances the Deputy Monitoring Officer has full power to undertake the Monitoring Officer role.

Introduction

Section 34 of The Localism Act 2011 created a criminal offence where a Member or co-opted Member fails, without reasonable excuse, to comply with the requirements of the Act to register or declare DPIs or takes part in Council business at meetings or when acting alone when prevented from doing so. If found guilty of such an offence the penalty can be a fine (under the current levels) of up to £5,000 and a disqualification from holding office for up to five years.

The Code of Conduct

Taunton Deane Borough Council adopted a new Code of Conduct at Full Council on 17 July, 2012. The Code incorporates the legislation and provides, at Appendix 3, that it is a criminal offence to:-

- Fail to notify the Monitoring Officer of any DPI within 28 days of election;
- Fail to disclose a DPI at a meeting if it is not on the Register;
- Fail to notify the Monitoring Officer within 28 days of a DPI that is not on the register that you have disclosed at a meeting;
- Participate in any discussion or vote on a matter in which you have a DPI;
- As a Cabinet member discharging a function acting alone, and having a DPI in such a matter, failing to notify the Monitoring Officer of the DPI within 28 days of the interest,
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting.

The Process

If the Monitoring Officer becomes aware, either via a complaint made under the Council Arrangements, or via any other means he/she will first gather together all

relevant documentation for consideration. Having ascertained that no dispensations have been granted, if he/she is of the opinion that there is evidence of such a breach of the Code he / she will then consult the Chairman or Vice-Chairman of the Standards Advisory Committee confidentially for his / her opinion. No contact will be made with the subject member against whom the complaint is made as this may prejudice any investigation the Police may wish to undertake or subsequent prosecution. In addition the Monitoring Officer and the Chairman or Vice-Chairman will be unable to assist or advise the subject Member against whom the complaint is made.

If the Monitoring Officer concludes that there is evidence of a breach he / she must report the matter to the Police and send all relevant documentation to them. The Monitoring Officer does not have any discretion in this instance and it will be for the Police to conduct whatever investigation they consider appropriate. The Monitoring Officer must contact the Police to inform them of the situation before sending the documentation.

Similarly if the Police receive a complaint from a member of the public they will inform the Monitoring Officer of the receipt of that complaint.

The Monitoring Officer and / or the Chairman or Vice-Chairman will make themselves available for interview as witnesses in any subsequent court processes should this be required by the Police or Crown Prosecution Service (CPS).

The Monitoring Officer will maintain regular contact with the Police to obtain updates on the progress of their investigation.

The Monitoring Officer will report the matter and any progress in the investigation confidentially to the Standards Advisory Committee, unless the matter concerns a member of that Committee when only the Chairman will be informed. If the matter concerns the Chairman of that Committee no report will be made until after the Police have interviewed the Chairman and the CPS have agreed for the matter to be disclosed.

Once the Police have completed their investigation and a decision has been made by the CPS the process will be as follows:-

- If a prosecution proceeds the Monitoring Officer will take no further action apart from updating the Standards Advisory Committee on its progress; and
- If the CPS decides not to proceed with a prosecution the Monitoring Officer will then process the complaint through the Council's Arrangements for dealing with such complaints. It is accepted that the CPS require a higher standard of proof (beyond reasonable doubt) for criminal prosecution whereas the local process need only consider the balance of probabilities and therefore whilst there may not be a criminal offence there still may be a breach of the Code of Conduct. In the event that the Council pursues the matter further in terms of a Code of Conduct breach, it will inform the Police of their decision.

The key points raised by Members' of Taunton Deane Borough Council's Standards Advisory Committee at the meeting with Rebecca Pow MP held on Friday, 29 April 2016 as to their dissatisfaction with the Standards Regime introduced by the Localism Act 2011

- **Sanctions**

Prior to the introduction of the Localism Act, the Council's Standards Committee had access to a range of sanctions which could be applied in respect of a Councillor who had breached the Council's Code of Conduct. In the most extreme cases, a sanction whereby the offending Councillor could be suspended for up to six months was available to the Committee.

The current arrangements still allow a range of sanctions but they are considered to be so weak as not to provide any real deterrent to a Councillor who knows his intended actions will breach the Code of Conduct. Similarly, someone who wishes to make a complaint against a Councillor could easily be deterred from doing so when they become aware of the 'soft' sanctions that are now available to the Standards Committee and decide that making a complaint is effectively a waste of time.

- **Politically Based Standards Committees**

The decision requiring Standards Committees to become a politically based Committee is regarded as a retrograde step.

Before the Localism Act, Taunton Deane's Standards Committee was made up of three Councillors, five independent members and three Parish Council representatives. The Chairman of the Committee was always one of the independent members. This enabled the Committee to operate in a truly independent way without any political 'slant'.

When the new Standards Regime was introduced in 2012, Taunton Deane's Standards Committee comprised five Councillors – two each from the two main political groups and one other. At the time, the Council decided that it did not want to lose all the experience of its previous Committee so decided to co-opt three of the former independent members and two Parish Council representatives as 'non-voting' Members of the Committee.

The negative effect of the politicisation of the Committee was soon demonstrated when a complaint against a Councillor was determined via a hearing. With one Councillor unable to attend the hearing, the four Councillors left happened to be from the two leading political groups. Despite

the fact that there was no doubt that the Code of Conduct had been breached by the subject Councillor, when the time came to decide whether sanctions should be imposed, the two Councillors from the same political group as the subject Councillor voted against – and it required the Chairman’s casting vote to ensure that sanctions (from the very limited range now available) were duly imposed.

As well as the above example, the new Committee ‘set-up’ soon led to issues from the co-opted members who felt that they had no real influence in the Committee’s deliberations and discussions without the right to vote.

Having considered this matter, the Council decided that the Committee should be re-constituted as a Standards Advisory Committee which meant that all Members had an equal standing.....although all decisions had to be referred to Full Council.

- **The Independent Person Role**

Whilst the introduction of the role of Independent Person is understood, the restriction on existing independent members being able to apply for that role is not.

The Council has had several independent members on its Standards Committee for many years. With all of the knowledge/experience and respect that has been built up over that time with the Councillors here at Taunton Deane, surely to exclude them from consideration as the Council’s Independent Person is surely not right.

- **Code of Conduct**

Neither the Members of the Standards Committee nor the Monitoring Officer can understand why the version of the Code of Conduct which had universally been adopted by the County Council, all District Councils and all Town and Parish Councils was effectively scrapped leaving each authority to decide whether it wanted to adopt another ‘model’ code or modify this to their own requirements.

In the past, the universal version of the Code of Conduct meant certainty and consistency especially when dealing with a complaint against a Parish Councillor. Now though, when such a complaint is investigated the Code adopted by the Parish Council concerned has to be thoroughly checked to ensure that the alleged breach is covered by its Code!

- **Disclosable Pecuniary Interests**

The introduction of Disclosable Pecuniary Interests (DPI) is also considered to be a retrograde step.

Prior to the Localism Act being introduced a Councillor with a Prejudicial Interest was able to speak, give evidence or answer questions before leaving the room for the debate and vote.

However, the Act now makes it a criminal offence for Councillors to participate in a meeting in any way if they have a DPI and they are therefore unable to represent their constituents properly.

It is also felt that the possibility of a Councillor facing criminal charges for not declaring a DPI is 'overkill' and that the sanctions which were previously available were sufficient to ensure that the non-declaration of interests did not happen.

There is anecdotal evidence too that some potential candidates for the Local Elections in Taunton Deane last year were put off by the notion that they could end up with a criminal record !

Draft

Secretary of State for
Communities and Local
Government
Eland House
Bressenden Place
LONDON SW1E 5DU

Dear Sir

Local Authorities and the Standards regime

I am writing to you to relay some concerns raised by Standards Committees across Somerset about the current Standards regime.

The concern is in relation to the limits on sanctions that Councils can now apply against councillors. The Committee finds it disappointing that there is no middle ground between the criminal sanctions for Disclosable Pecuniary Interest transgressions and the relatively tame sanctions available to the council for other transgressions. The Standards Committee do not consider the latter to provide a sufficient deterrent to poor behaviour by councillors.

The Committee would welcome the availability of sanctions with some teeth such as suspension. These are sanctions that were available to the committee before 2012 and as you will recall, the First Tier Tribunal also had the ability to disqualify members where their poor behaviour was sufficiently serious.

An example of the lack of teeth is demonstrated by a scenario where a member carries out a serious pattern of bullying against a Council officer within two months of being elected. Even if they are found to be in breach of the Code of Conduct, no action can be taken to suspend or disqualify them. It is recognised that the public can vote with their feet through the ballot box. However, where, as in this scenario, a Councillor makes a serious transgression early in their term of office, the public have to wait almost four years to vote them out at the next election.

It is considered that the ability to suspend councillors for short periods for more serious transgressions would provide an effective local deterrent to poor conduct together with the ability to defer the suspension subject to good behaviour. The Committee would ask, therefore, that you increase the range of sanctions available to local standards committees.

Another issue of concern is the fact that criminal acts in a Members personal life cannot be taken into account. For example, where a member committed benefit fraud, his Council, a District Council responsible for administering benefits, was unable to suspend or disqualify him. It is therefore felt appropriate for a Standards Committee to be able to take into account behaviour of a councillor in

his private life where this amounts to criminal behaviour. The Committee would therefore ask that you amend the legislation so that criminal activity in a members personal life can be taken into account.

We are also disappointed by the inability for the Independent Person to be a co-opted member of the Committee. Similarly, the Committee are disappointed that in order to co-opt a Parish Representative onto the Committee as a voting member, a Joint Committee has to be set up with Town and Parish Councils. In our experience this is something that Towns and Parishes do not wish to pursue. We see the role of co-opted members of committees as providing effective balance to the councillor representation on the committee in wider discussions on matters such as member conduct and member /officer relations. The Committee would ask, therefore, that Standards Committees be given the power to co-opt Independent Persons and Parish Representatives on to the Committee as full voting members of the Committee.

I hope you will give serious consideration to these suggestions and I look forward to receiving your reply which I will pass on to the Standards Committees across Somerset.

Yours sincerely

Cllr John Woodman, Standards Committee Chair, Sedgemoor District Council

Cllr Jeremy Christopher, Leader., Teignbridge District Council

Cllr Anna Groskop, Standards Committee Chair, South Somerset District Council

Cllr Alan Gloak, Standards Committee Chair, Somerset County Council

Peter Bradshaw, Standards Committee Chair, Mendip District Council

David Thomas, Standards Committee Chair, Torbay District Council

Tim Evans, Standards Committee Chair, West Somerset Council

Anne Elder, Chair

West Devon & South Hams

Cornwall County Council

North Devon District Council

Torriford Council