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Standards Committee

5 February 2020

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON WEDNESDAY, 5TH FEBRUARY, 2020 AT 10.00 AM
IN THE CONNAUGHT ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors Dan Land (Chairman), Maurice Alexander, Peter Harris, Jo Henderson, Graham Steady and Ann Wiggins
In Attendance:	Lisa Hastings (Head of Governance and Legal Services & Monitoring Officer), Ian Ford (Committee Services Manager & Deputy Monitoring Officer) and Debbie Bunce (Legal and Governance Administration Officer)
Also in Attendance:	Clarissa Gosling, David Irvine and Jane Watts (three of the Council's four appointed Independent Persons)

19. ELECTION OF A VICE-CHAIRMAN OF THE COMMITTEE

The Committee gave its consideration to the office of its Vice-Chairman which was vacant following Councillor Amos' replacement as a member of the Committee by Councillor Alexander.

It was moved by Councillor J Henderson, seconded by Councillor Wiggins and:-

RESOLVED that Councillor Steady be elected Vice-Chairman of the Committee for the remainder of the 2019/2020 Municipal Year.

20. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Overton (with no substitute) and Sue Gallone (one of the Council's appointed Independent Persons).

21. MINUTES OF THE LAST MEETING

The Minutes of the last meeting of the Committee held on 2 October 2019 were approved as a correct record and signed by the Chairman.

Further to Minute 15 of the aforementioned Minutes and in regards to the possible provision of a general indemnity cover for Members, Officers and, in particular, the Independent Persons, the Monitoring Officer informed the Committee that the Head of Finance, Revenues and Benefits Services had requested a formal report from the Council's Insurers on the present level of cover and the potential future cover and that an Officer report on this issue would be submitted to the next meeting of the Committee.

22. DECLARATIONS OF INTEREST

There were no declarations of interest made at this time.

23. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were none on this occasion.

24. REPORT OF THE MONITORING OFFICER - A.1 - DISCLOSURE AND BARRING CHECKS FOR ELECTED MEMBERS

The Committee gave consideration to a detailed report of the Monitoring Officer (A.1) which reported the outcome of an investigation into the feasibility of introducing Disclosure and Barring Services (DBS) checks as mandatory for all elected Members (having had regard to the statutory criteria).

The Committee recalled that, at its meeting held on 2 October 2019, it had received a further report of the Monitoring Officer concerning the recommendations within "the Local Government Ethical Standards Report dated January 2019 following a review by the Committee on Standards in Public Life". The Report had set out those recommendations which required legislative changes and those which the Council could adopt through best practice. Following consideration of the report the Committee had resolved that the Monitoring Officer investigate the feasibility of introducing DBS checks as mandatory for all elected Members (having had regard to the statutory criteria) and to report the outcome of such investigation to a future meeting of the Committee.

Members were made aware that, at its meeting held on 23 October 2019, the Human Resources and Council Tax Committee had also requested that the Council gives due consideration as to whether it should conduct DBS Checks on Elected Members.

The Human Resources and Council Tax Committee had determined that it was appropriate for them to consider this matter in the light of its legal duties in respect of safeguarding children and adults with needs for 'care and support', as defined in legislation including the Children Act 2004 and the Care Act 2014. The Human Resources and Council Tax Committee had resolved the following:

"That the Deputy Chief Executive be requested to investigate the appropriateness and practicalities of introducing DBS checks for all Elected Members of Tendring District Council (such as the budgetary and legal ramifications) and that the outcome of such investigations be reported to a future meeting of the Council (having first been submitted to the Standards Committee for its recommendations) for its consideration and determination."

That investigation process had involved:

- a review of the approach taken by other local authorities regarding the introduction of DBS check's for Elected Members;
- engagement with Legal, Financial and Democratic Services regarding the practical implications of introducing such a policy.

It was reported that, prior to 2012, Local Authorities had routinely carried out Criminal Record Bureau (CRB) checks on Elected Members. However, the [Protection of Freedoms Act 2012](#) had created the [Disclosure and Barring Service](#) and a new system of checks. This had included a more restrictive set of criteria to determine when checks could be carried out and on whom. Since 2012, the issue of DBS checking for Councillors had become a policy matter for individual Councils.

The Committee was advised that Standard and Enhanced DBS checks could only be undertaken if the specific role, or the specific activities carried out within the role, were included in the [Rehabilitation of Offenders Act \(ROA\) 1974](#) (Exceptions) Order 1975

(access to standard DBS certificates), and were also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) Regulations (access to enhanced DBS certificates). Those laws only provided eligibility for DBS checks, they did not make them a requirement.

Members were informed that decisions on when and whether to undertake a DBS check were for the relevant employer or regulator to make. If the Council were to consider asking a person to apply for either a standard or enhanced DBS check, as the employer, the Council would be legally responsible for making sure the job role was eligible. There was currently no legal basis on which the Council could currently require or seek either Enhanced or Standard DBS Checks for Elected Members as the role did not constitute a 'named position' eligible for checks, and Ward Councillors did not carry out '[regulated activity](#)' as defined by the Freedom of Information Act 2012.

The Committee was of course aware that some Elected Members may have had DBS checks, albeit in another capacity, for example if they were a School Governor.

It was reported that Elected Members who did not carry out any of the specific educational and/or social service functions but who did attend community events, take surgeries or visit local residents in their own home where they had access to the general public, including children, did not meet the legislative criteria, as outlined above. However, a Basic Check could be requested.

It was further reported that, although the legislative framework allowed discretion on the issue of Basic checks those Basic checks would only show "Unspent Convictions & Cautions" from the Police National Computer (PNC), (i.e. *those that were considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974*). Those checks would not show spent convictions, cautions, warnings, reprimands, other relevant police information, or the children or adults barred list and were therefore often considered to be of limited value. In addition, those Basic DBS checks would also need to be applied for by the individual themselves via the Government Website.

The Committee was aware that its Terms of Reference were to promote and maintain high standards of conduct by Members and Co-opted Members of the authority and to inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints. No concerns had been raised through the determination of Code of Conduct complaints which would give justification to requiring a mandatory scheme of basic DBS checks for elected Members.

Members were informed that, in September 2017, the Department for Communities and Local Government had consulted on proposals to update the disqualification criteria for councillors and Mayors in order to bring it into line with both modern sentencing practice and the values and high standards of behaviours the electorate had a right to expect of the elected Members that represented them.

The Government had considered that there should be consequences when councillors, mayors and London Assembly members fell short of the behaviour expected in an inclusive and tolerant society and where that behaviour had led to a conviction or enforcement action resulting in an individual being subject to one or more of the following:

- the notification requirements set out in the Sexual Offences Act 2003;

- a civil injunction granted under Section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or
- a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.

The Committee was reminded that this Council had responded to the consultation supporting those proposals. Any changes to the disqualification criteria would require changes to primary legislation. In October 2018, the Government had published its response to the outcome of the consultation stating that they would seek to legislate in order to ensure that councils across England would have the power to prevent individuals from standing for election or holding office as local authority members or Mayors.

It was reported that Colchester Borough Council, at the request of its Governance and Audit Committee, had considered whether it should implement Disclosure and Barring Service checks for Elected Members. Their investigation into the matter had included obtaining information on the approach of neighbouring, second tier local authorities, towards DBS checks (*both in October 2017 and February 2018*), to which they had reported, all eight responses had confirmed that no checks (*including Basic Level checks*) were carried out by neighbouring authorities.

Members were advised that a similar exercise had been undertaken by Harlow Council in 2019, they had reported that the following Councils: *Dacorum, Maldon, Castle Point, East Herts, Colchester, Brentwood, Basildon, Welling & Hatfield, Chelmsford, Braintree, Stevenage, Uttlesford and Epping Forest*, had each responded to confirm that they did not carry out DBS checks on Councillors. Following their research, Harlow Council was not proposing to start carrying out DBS checks on its Elected Members.

It was the conclusion of the Monitoring Officer there was no legal basis on which the Council could currently require or seek either Enhanced or Standard DBS Checks on Elected Members. Although the legislative framework allowed discretion on the issue of Basic Checks, there was no clear case for the introduction of such a measure: Basic checks revealed "Unspent Convictions" only, and were therefore of limited value, and there was no clear framework for the enforcement of such a policy as it was not required in law.

Having considered and discussed the information provided in the Monitoring Officer's report and whether the Council had a Safeguarding Policy, which gave advice and guidance to elected Members in fulfilling their functions and the legal advice provided by the Monitoring Officer:-

It was moved by Councillor Alexander, seconded by Councillor Harris and:-

RESOLVED that the Committee –

- (a) notes the outcome of the investigation into introducing DBS checks as mandatory for all elected Members (having had regard to the statutory criteria);
- (b) endorses that the Council continues with its current approach of not requiring or seeking DBS checks for Elected Members;

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- (c) recommends that should a Tendring District Councillor wish to pursue their own Basic DBS Check, then the cost should be reimbursed to that individual councillor; and
 - (d) requires that a review of the Council's Safeguarding Policy be carried out and reported back to the next meeting of the Committee and that such a review focus on the role and activities of Members in their Ward work and:-
 - (1) whether examples of best practice and guidance can be issued to Members to assist them in handling or avoiding problematical situations; and to
 - (2) investigate what reasonable and practical steps can be taken to ensure that Members have considered and taken on board the contents of the Safeguarding Policy.

25. REPORT OF THE MONITORING OFFICER - A.2 - MANDATORY TRAINING FOR MEMBERS - ANNUAL UPDATE

There was submitted a report (A.2) by the Monitoring Officer which sought to update the Committee, as part of its agreed work programme, on the current position of mandatory training for Members and named substitute Members of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

The report reiterated the Council's decision and constitutional requirement to make relevant training mandatory for Members, and their named substitutes, in respect of their membership on those committees which provided regulatory type functions. The report also detailed training undertaken and attendance to date.

Appendix A to the report provided details of those Members who had attended the new Code of Conduct training in May 2019 (which had previously been reported to the Committee at its meeting held in July 2019). Since then two additional District Councillors had received training which had been delivered at Harwich Town Council in December 2019. The Monitoring Officer confirmed that due to the type of matters considered by the Standards Committee, each topic involved consideration of the relevant factors and in doing so the Committee received a range of information to take into account. When hearings were required to determine the outcome of Members' Code of Conduct complaints a briefing would be held with the Committee beforehand, though no hearings had been undertaken so far in 2019/20.

The Committee was made aware that, in February 2020, the Monitoring Officer would be delivering two training sessions to Parish and Town Councillors. Invites would also be sent to those District Councillors who had yet to receive the required training for this year. The Monitoring Officer informed the Committee that at the first of these training sessions held on 4 February 2020 three additional District Councillors had received Code of Conduct training. This left a total of 11 District Councillors outstanding.

Appendix B to the report provided details of the Planning Committee Mandatory Training for 2019/20. The Committee noted that a range of subjects had been delivered, with concentration on determining applications being included within the post Council elections training for newly elected Members, Appeals and Affordable Housing. Those sessions were essential to understanding the various considerations to be taken into account by the Planning Committee when making decisions on applications. It was reported that a further session was scheduled for 28 January 2020 which would cover

the Planning Inspector's decisions with regard to the planning enforcement appeals at Point Clear, St Osyth. The Monitoring Officer verbally reported at the meeting that all members of the Planning Committee had attended that session.

Appendix C to the report detailed the training record for the Licensing and Registration Committee. As usual only one session had been delivered (in June 2019) but it had covered a range of topics. Two additional 1-2-1 training sessions had been delivered to members of that Committee who had either been unable to attend the first session or had been newly appointed to the Committee.

In respect of the Audit Committee the Committee was informed that the Head of Finance, Revenues and Benefits & Section 151 Officer had undertaken general Audit Committee post-election induction training for all members of the Committee prior to its first meeting in the current municipal year.

The Committee was reminded that in order to ensure that the training was successful and the principles had been understood by Members, each session had tended to have a workshop style question and answer session at the end. This style had been adopted by the Licensing and Registration and Planning Committees' training sessions and had worked well for both Members and officers and had encouraged debate.

Members were made aware that the Audit Committee, at its meeting held on 30 January 2020, had decided that a letter should be sent jointly in the names of the Chairmen of the Standards Committee and of the Audit Committee to strongly urge all Members to attend all Members' Briefings and that such letter also:-

- (1) requests feedback from Members as to the reasons why they were unable/unwilling to attend Members' Briefings;
- (2) requests their suggestions on how the organisation of those Briefings could be improved e.g. arranged on different days and/or at different times of the day; and
- (3) inform Members that the letter has been sent because there is concern about the reputational risk to the Council arising from low Member attendance at the Briefings together with the financial cost to the Council of arranging such Briefings.

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Wiggins and:-

RESOLVED that the Committee -

- (a) notes the contents of the report and its Appendices;
- (b) continues to encourage Members of the Planning, Licensing and Registration and Audit Committees to attend organised mandatory training events in order to comply with the requirements of the Council's Constitution;
- (c) requests the Review of the Constitution Portfolio Holder Working Party to investigate whether it would be feasible for the Planning Committee to have a pool of trained Members who could be drawn on to be a substitute Member(s) at a Planning Committee meeting in order to maintain its level of membership and protect the probity of that Committee. Such investigation would be required to focus on, but not be limited to, issues such as:-

- (1) the legal basis of such a pool e.g. the rules of political proportionality; and
 (2) the implications for the Council's Constitution e.g. ensuring that the choice of substitute remained with the relevant Political Group Leader;
- (d) requests Officers to investigate alternative ways of providing Code of Conduct training to Members e.g. via an on-line mechanism, with a view in the longer term to making undergoing training on the Code of Conduct a mandatory requirement for Members; and
- (e) requests that, within the joint letter referred to above, the importance of Members' attendance at Code of Conduct training be included and that the schedule of Member attendance at Code of Conduct training shown in Appendix A be attached to that letter.

26. QUARTERLY UPDATE ON COMPLAINTS

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave an update on cases, without providing any names, and went through it with the Committee.

The Monitoring Officer stated that there were no existing cases but that there were a number of new cases and she gave details as follows:-

New Cases since last update:				
Council	Complainant	Current Status	Final Outcome	Comments
Parish	Member of the Public	Closed	No further action	Related to comments on Facebook made by Chairman of a Parish Council on its behalf – considered a right to respond to Complainant's initial comments on social media regarding the Parish Council's actions. The Parish Council Chairman did not name the individual and a reasonable general response had been issued.

Parish	Member of the Public	Independent Person consulted – Decision Notice to be issued	Pending	Likely to recommend informal resolution to improve relationships within the Parish.
District (x2)	Member of the Public	Complaint to be sent to Councillors concerned to comment on	Pending	Relates to accessibility of Ward Councillors to those who do not have access to the Internet.

The Committee was also made aware that the Monitoring Officer had delivered a refresher session on the Code of Conduct to Harwich Town Council in December 2019 together with further training delivered to a number of Town and Parish Councillors on 4 February 2020. Both had been well-received with positive feedback. A further session had been arranged for 18 February 2020.

It was reported that there had been no requests for dispensations from Members since the last update.

The Committee noted the foregoing.

The meeting was declared closed at 11.45 am

Chairman