

AGENDA
AUDIT AND GOVERNANCE STANDARDS SUB-
COMMITTEE

Date: Wednesday, 13 April 2016

Time: 6.00 pm

Venue: Collingwood Room - Civic Offices

Members:

Councillor T G Knight (Chairman)

Councillor

Councillors Miss T G Harper

D J Norris

Also

Present:

Mr David Basson, Designated Independent Persons



1. Code of Conduct (Pages 1 - 30)

To consider a report by the Monitoring Officer, which contains information, on a matter relating to a Code of Conduct Complaint (exempt).

P GRIMWOOD
Chief Executive Officer

Civic Offices
www.fareham.gov.uk
Date Not Specified

**For further information please contact:
Democratic Services, Civic Offices, Fareham, PO16 7AZ
Tel:01329 236100
democraticservices@fareham.gov.uk**

FAREHAM

BOROUGH COUNCIL

Audit and Governance – Standards Sub-Committee

Date **13 April 2016**

Report of: **Monitoring Officer**

Subject: **Allegation of a Breach of the Members' Code of Conduct**

SUMMARY

This report contains details of an allegation of a breach of the Members' Code of Conduct against Councillor David Whittingham when talking to Council Officers on Monday 21 March 2016.

RECOMMENDATION

That the Standards Sub Committee considers the evidence in the report and after hearing from officers and the member involved as appropriate:

- (a) determines whether or not a breach of the Members' Code of Conduct has taken place;
- (b) subject to the decision at recommendation (a), determines what action(s) should be taken, in accordance with Standards Arrangements, as approved by Council on 21 June 2012; and
- (c) subject to the findings of (a) and (b) above, the Report including the Minute of the decision be no longer treated as exempt information and be open for public inspection.

INTRODUCTION

1. On the morning of Monday 21 March 2016, Councillor Whittingham visited the Civic Offices to talk to officers in a Department about an issue relating to tenants living in Hammond Road who were not on the electoral register.
2. He spoke to Officer A and Officer C who were having a discussion about an issue, when Cllr Whittingham approached them and asked to see XX. Officer B was sitting adjacent to where the ensuing conversation took place.
3. Officer A told Cllr Whittingham that XX was on leave and asked if they could help in the meantime.

THE COMPLAINT

4. On the afternoon of 21 March 2016, the Council's Monitoring Officer received a phone call from the Head of Service asking to meet to discuss an incident which had occurred earlier in the day involving Cllr Whittingham, resulting in the three officers requesting that the issue be taken further as they were very upset about it.
5. On the same afternoon, the Monitoring Officer met with the Head of Service who said that three officers wished to make a formal complaint against Cllr Whittingham due to his alleged racist comments and behaviour that they witnessed earlier in the day, and that they would be prepared to meet the Monitoring Officer and make formal statements relating to the allegations.

THE INVESTIGATION

6. Based on the information received, the Monitoring Officer started to investigate the allegations in accordance with procedure relating to such matters which was approved by Council on 21st June 2012 (attached at Appendix A).
7. Meetings were held and statements taken from Officers A, B and C and Cllr Whittingham. A record of these statements can be found at Appendices B, C, D and E.
8. At the meeting with Councillor Whittingham, the Monitoring Officer put the allegations to him, which were as follows:
 - (a) that during a conversation with Officer A, he was heard to say "I was talking to an Officer earlier and told them that I did not want any foreigners living in my road";
 - (b) that he subsequently said again to Officer A that he did not want any foreigners in his (housing) stock; and
 - (c) shortly afterwards he started talking in an accent that sounded like a person of Indian / Pakistani origin attempting to speak English.
9. Cllr Whittingham responded that he recalled saying in a jocular manner "what are you doing putting immigrants in my ward without my knowledge?" He denied making the statements about not wanting any foreigners in his road or his housing stock. He recalled that when asked by Officer C to clarify what he meant by foreigners, he repeated a telephone conversation he had recently with a

representative of Vodafone. He imitated the Vodafone employee by using an accent that was meant to be Asian /Indian as he recounted the conversation. Following his impersonation, he told officers present that he could not understand a word of what the woman had been saying.

10. Cllr Whittingham stated that he did not mean to cause any offence and would be prepared to apologise to the officers concerned. He was informed by the Monitoring Officer that all the evidence would be considered and the Council's Designated Independent Person consulted, prior to him confirming what action, if any, would be taken.
11. The Monitoring Officer subsequently took legal advice from the Solicitor to the Council. The Council's Designated Independent Persons (DIP) was also consulted in accordance with the adopted process. The DIP advised that given the circumstances of the alleged incident, he agreed that it would be appropriate to refer the matter to the Audit and Governance Standards Sub Committee.
12. Having considered the allegation carefully, the Monitoring Officer has concluded that it is serious enough to be taken before the Council's Audit and Governance Standards Sub Committee to determine.
13. This conclusion has been reached after consulting with the Council's Designated Independent Person and taking legal advice. If substantiated, the allegation would constitute a breach of the Council's Member Code of Conduct in respect of part 1, Section 3 of the code: General obligations of Members and Co-opted Members:-

"As a member of Fareham Borough Council, your conduct will address the principles of the Code of Conduct by:"

3.13 "Valuing your colleagues and Officers of The Council and engaging with them in an appropriate manner"

3.14 "Always treating people and organisations with respect and propriety

A full copy of the code is attached at Appendix F.
14. If it is determined that the Code of Conduct has been breached, the actions available to the Standards Sub Committee are as set out in the Member Misconduct Complaints Procedure, Section 8, as set out within Appendix A.

Background Papers:

File of correspondence - NOT FOR PUBLICATION by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

Reference Papers:

Code for Conduct for Members – Fareham Borough Council Constitution Part 5:
Section 1

Member Misconduct Complaints Procedure

Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this Council has failed to comply with the Code of Conduct for Members, and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the Council has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Council to appoint at least 1 Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member against whom an allegation has been made.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the Council’s website and on request from Reception at the Council Offices.

3. Making a complaint

- 3.1 If you wish to make a complaint, please write to:
The Monitoring Officer
Fareham Borough Council
Civic Offices, Civic Way
Fareham
PO16 7AZ

or by email to:

pdoran@fareham.gov.uk

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which

can be downloaded from the authority's website, and is available on request from the Reception at the Civic Offices.

- 3.4 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request for confidentiality and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
- 3.5 The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.7 The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance

4. Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:
 - 4.1.1 Merits no further investigation
 - 4.1.2 Merits further investigation
 - 4.1.3 Should be referred to the Standards Sub Committee
- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria annexed at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.
- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the member or the Council make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5. How is the investigation conducted?

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.3 The Investigating Officer or Monitoring Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report, a final Investigation Report will be prepared by the Investigating Officer or Monitoring Officer as appropriate.

6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if he is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Audit and Governance Standards Sub Committee, or in consultation with the Independent Person seek an informal resolution.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee for information, but will take no further action.

7.1.2 Hearing by the Standards Sub-Committee

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigation Report to Standards Sub-Committee which may conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Standards Sub-Committee take where a member has failed to comply with the Code of Conduct?

8.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may decide:-

8.1.1 No action needs to be taken;

8.1.2 Censure or reprimand the Member.

8.1.3 Report its findings to Council for information;

8.1.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees, Sub-Committees or Panels of the Council;

8.1.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

8.1.6 Instruct the Monitoring Officer to arrange training for the member;

8.1.7 Remove from all outside appointments to which he/she has been appointed or nominated by the authority;

8.1.8 Restrict or remove the use of Council resources or facilities for a specified period of time provided this does not prevent the Member from carrying out their duties as an elected Councillor.

8.2 The Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9. What happens at the end of the hearing?

9.1 At the end of the hearing, the Chair will present the decision of the Governance Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the member, and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10. Who are the Standards Sub-Committee?

10.1 The Standards Sub-Committee comprises a maximum of 3 elected or co-opted Members of the Council, including not more than 1 member of the authority's Executive, and with any elected members drawn from all political groups. Subject

to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

- 10.2 The Independent Person is invited to attend all meetings of the Committee involving the consideration of misconduct allegations and their views are sought and taken into consideration before the Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.
- 10.3 The Independent Person does not have voting rights on the Committee. Their role is an advisory one and they are appointed in accordance with the provisions of the Localism Act.

11. Who is the Independent Person?

- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.2 A person cannot be "independent" if he/she:
- a) Is, or has been within the past 5 years, a member, co-opted member or officer of the authority, save where any transitional provisions permit ; or
 - b) Is a relative or close friend, of a person within paragraph a) above.

For this purpose, a "relative" means:

- i. Spouse or civil partner;
- ii. Living with the other person as husband and wife or as if they were civil partners;
- iii. Grandparent of the other person;
- iv. A lineal descendent of a grandparent of the other person;
- v. A parent, sibling or child of a person within paragraphs i) or ii); or
- vi. A spouse or civil partner of a person within paragraphs iii), iv) or v); or
- vii. Living with a person within paragraphs iii), iv) or v) as husband and wife or as if they were civil partners.

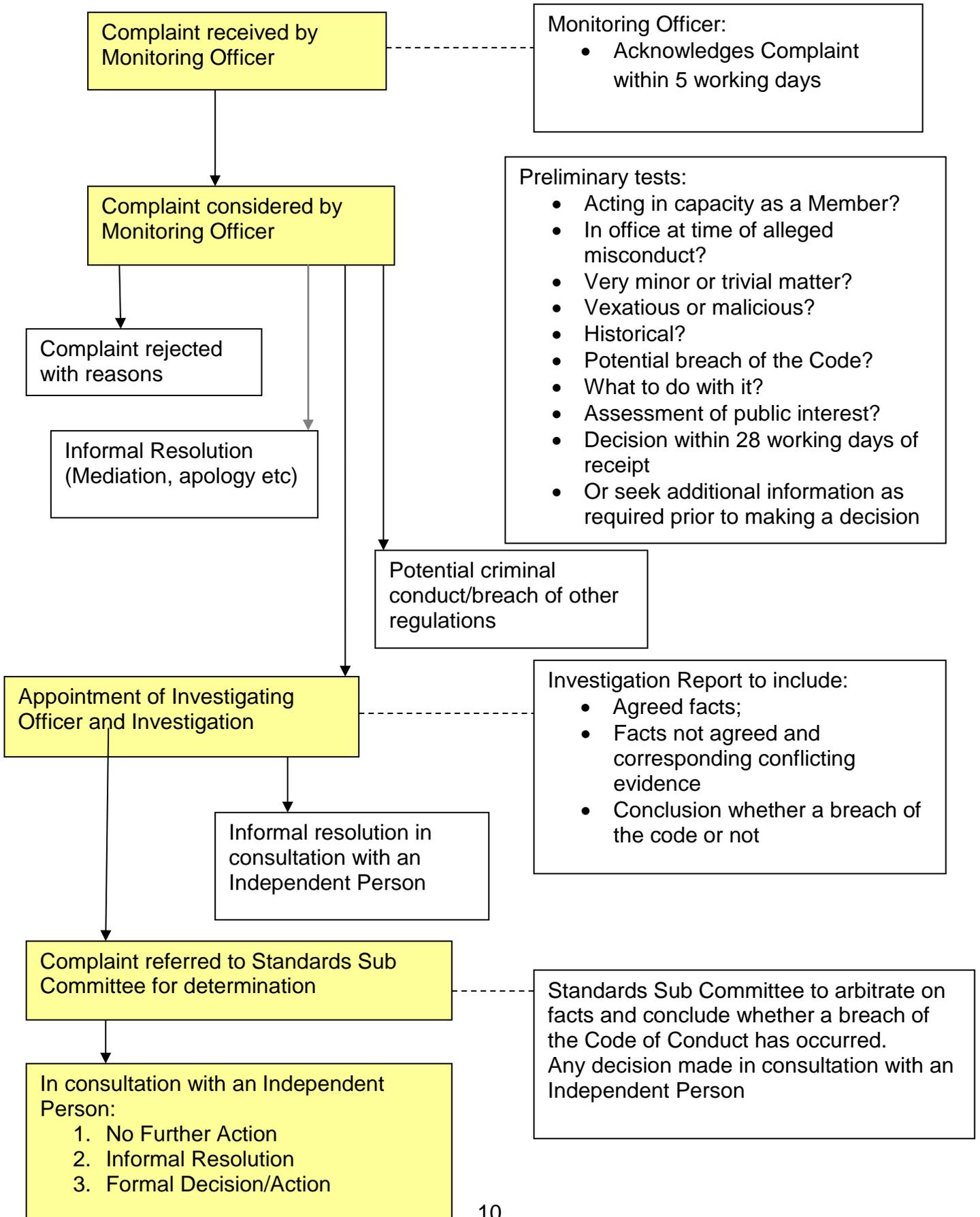
12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

- 13.1 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or the Standards Sub Committee.

Annexe 1 Complaints Procedure Flowchart



Annexe 2

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated, vexatious or trivial; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. it is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Sub Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

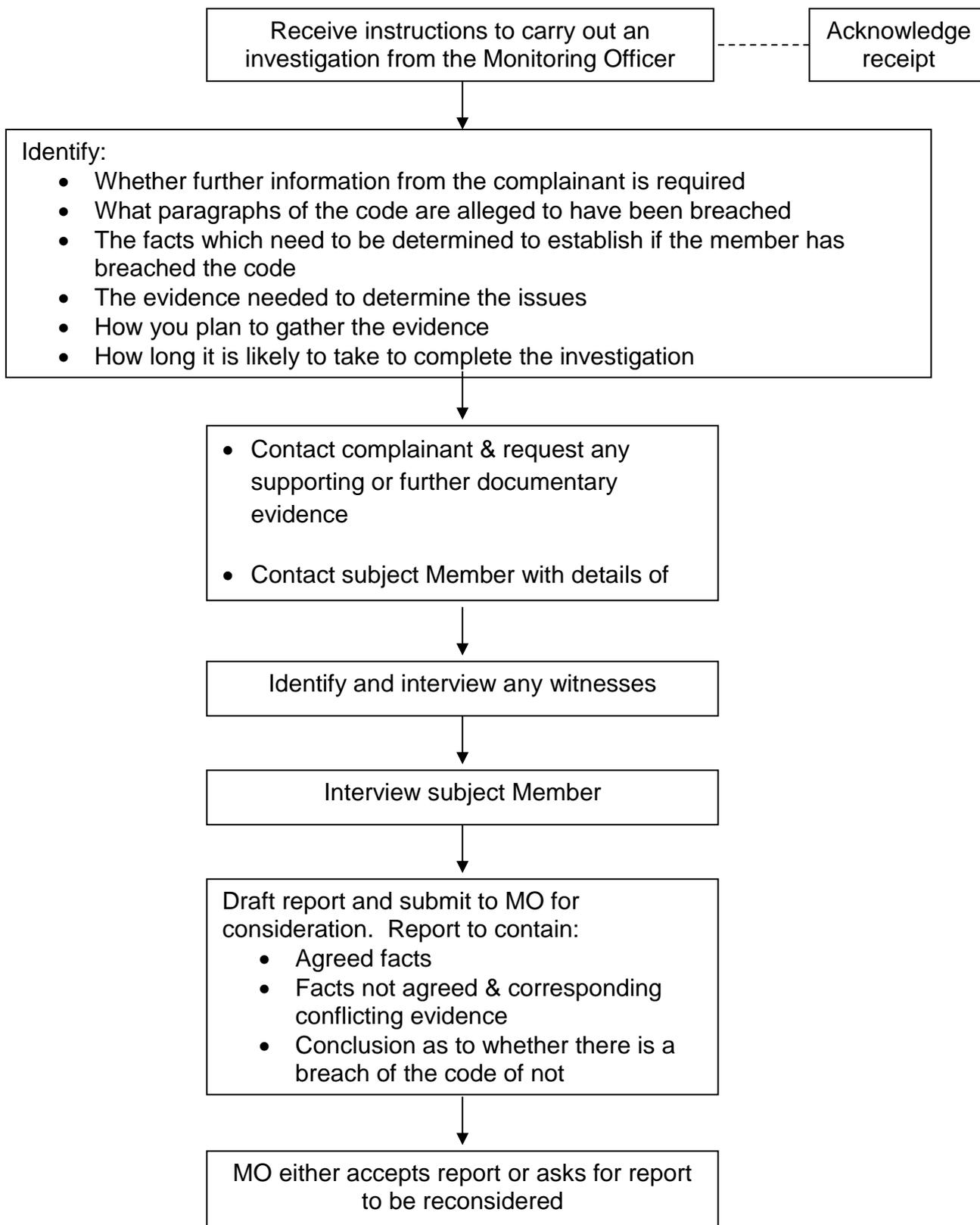
Complaints which may be referred to the Standards Sub Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Sub Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or

4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the complaint is relatively minor.

Annexe 3 INVESTIGATION PROCEDURE



Record of a Meeting with Officer A : 21.03.16

I met with Officer A on the above date following an e-mail they had sent me earlier in the day complaining about an incident that had happened involving Cllr Whittingham.

Officer A told me that he/she was sat at their desk sometime between 11.00 and 11.30 am. talking with Officer C about a couple of cases. Officer B was seated next to them at their desk. There was no-one else within earshot at that time.

Cllr Whittingham appeared and asked where XX was. Officer A stated he was on leave until Wednesday and asked if they could help in the meantime. Cllr Whittingham started talking about the fact that he had paperwork in his hand which related to him wanting to stand again as a councillor in his ward. He said he wasn't stepping down and that this news would shock some people who did not like him. He said that Cllr Davies had been taking round a new councillor and introducing him to the NW Fareham electorate as "Whittingham's replacement" and that this was wrong. He then started talking about Cllr Woodward and the fact that he was no longer a County Councillor because of a "conflict of interest". Officer A said that at this stage, he/she did not know what Cllr Whittingham was talking about.

He then told Officer A there were 3 or 4 tenants living in his road (Hammond Road) who were not registered on the Electoral Roll and asked what they were going to do about it. Officer A responded that people did not always complete their registration forms but was certain Electoral Services would try and sort this out.

"Out of nowhere", Cllr Whittingham then said he was talking with another officer earlier and told them "I don't want any foreigners living in my road." There was a stunned silence and he then said again, "I don't want foreigners living in my stock". Officer A responded with "What?!" and Officer C said "what do you mean, foreigners? People can have lived in this country all their lives". Officer A replied with "absolutely" and said he/she did not like what he was implying.

Things then became even worse when Cllr Whittingham started talking in a silly voice, as if he was an Asian person trying to speak English. At this point Officer B left the room and Officers A and C continued with their previous conversation. Cllr Whittingham moved away from them as it appeared that he finally got the message that Officers A and C did not want to carry on the conversation with him.

Cllr Whittingham then left.

Officer B returned to their desk and talked to Officer A about what had just happened. Officer B was clearly upset. Officer A advised them that they were going to speak with Head of Service about the incident as they were disgusted with the Councillor's behaviour.

Paul Doran
Monitoring Officer

Notes of a meeting with Officer B : 21.03.16

I met with Officer B on the above date following an e-mail they had sent me earlier in the day complaining about an incident that had happened involving Cllr Whittingham.

Officer B told me that between 11.00 and 11.30, Cllr Whittingham had come into the department of the civic offices and was talking to Officers A and C and who were next to where Officer B was sitting at their desk.

Officer B heard Cllr Whittingham talking about his anger that rumours were spreading that he was not going to stand at the local elections in May. He also mentioned that Cllr Woodward had resigned from his cabinet post at Hampshire County Council due to a conflict of interest.

Shortly after this, Officer B heard some comments from Cllr Whittingham that made him/her so upset and angry that he/she left the office for a period of time. Officer B related that Cllr Whittingham had said that "foreigners were living in his area and were not registered as voters"

Officer C questioned what he meant by foreigners and he replied in an odd accent saying "that's what Officer C hears when they are talking to them on the phone"

Officer A asked him what he was doing and what he was trying to imply by his comments and behaviour. Cllr Whittingham then tried to turn things around by suggesting that a member of staff had been making similar comments.

When Officer B returned to their desk 10 minutes later, Cllr Whittingham had gone. Officer A came over and asked how they were, saying that they were disgusted by Cllr Whittingham's behaviour and would speak to his/her head of Service about it.

Officer B told me that he/she was extremely upset and angry about what they had witnessed and believes that someone who voiced such opinions is not fit to be a councillor

Paul Doran
Monitoring Officer

Notes of a meeting with Officer C : 22.03.16

I met with Officer C on the above date to discuss an incident that they had witnessed the previous day involving Cllr Whittingham.

Officer C told me that Cllr Whittingham had come into the department on Monday morning sometime after 11.00, saying that he had been “collecting papers” in Electoral Services. He mentioned that he had three residents in Hammond Road who had not filled in electoral registration forms.

He then made reference to the fact that some of these people were “foreigners”. Officer C asked him what he meant by “foreigners”. Cllr Whittingham then spoke in a mock Indian voice – Officer C was very surprised at this and said “You do realise they could have been born in this country?” He replied by saying “Yeah, yeah, I know, British citizenship”

Officer C then moved away and said to Cllr Whittingham “I think you need to be careful making such statements about people”

Officer C then came back from the photocopier and passed Officer B leaving the office, visibly upset by what Cllr Whittingham had been saying.

Officer C returned to their desk as Cllr Whittingham left the office. Officer C then saw Officer A going over to Officer B’s desk and asking if they wanted this matter taken further and they replied “yes”!

Paul Doran
Monitoring Officer

Notes of a meeting with Cllr Whittingham : 23.03.16

I met with Cllr Whittingham on the above date to discuss with him some allegations from council officers about his conduct when he visited a department on the morning of Monday 21st March 2016.

The allegations were as follows:

1. That during a conversation with Officer A he was heard to say “I was talking to another officer earlier and told her that I don’t want any foreigners living in my road”
2. That he subsequently said again to Officer A that he did not want any foreigners in his (housing) stock
3. Shortly afterwards, he started talking in an accent that sounded like an Indian attempting to speak English.

Cllr Whittingham told me that he had been into Democratic Services earlier in the day and spoke to an Officer about his election nomination form, expressing concern that of the 10 signatures he had, 4 were not on the electoral roll, 3 of whom lived in Hammond Road (where he lives).

He spoke to the Officer specifically about one resident who had lived in Hammond Road for a short period of time but was not on the register. The Officer told him that there may be valid reasons why they were not on the register and that officers in another Department may be able to explain why. Cllr Whittingham then went to that department.

He started talking to Officer A about the issue. Officer C was with her and joined in the conversation. He recounted the conversation he had earlier with another Officer about residents not being on the register.

He then told me that he recalls saying to them in a jocular manner “What are you doing putting immigrants in my ward without my knowledge?” He denies making the statements about not wanting foreigners in his road or his housing stock.

Cllr Whittingham recalled that when asked by Officer C what he meant by foreigners, he repeated a telephone conversation he had recently with a representative of Vodafone. He imitated the Vodafone employee by using an accent that was meant to be Asian / Indian as he recounted the conversation. Following his impersonation, he told the officers present that he could not understand a word of what she was saying.

Cllr Whittingham told me that he was not aware at any time that Officer B was within earshot of the conversation and did not see him walk out of the office. He did say that because Officer C walked away from him, he began to wonder “what he might have said out of context”. He then left the department.

Cllr Whittingham said that he did not mean to cause any offence and would be prepared to apologise to the officers concerned. I told him that I would reflect on the evidence I had and consult with The Council's Designated Independent Person before coming back to confirm what action, if any, would be taken.

Paul Doran
Monitoring Officer

FAREHAM

BOROUGH COUNCIL

CODE OF CONDUCT FOR MEMBERS



December 2015

CODE OF CONDUCT FOR MEMBERS

Part 1: General Provisions and Interpretation

1. Introduction

This Code of Conduct is adopted by the Council pursuant to its statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Council. This Code applies to all Members and Co-opted Members of the Council.

The Code is based on and is consistent with the following principles as referred to in the Localism Act 2011:

- **Selflessness**
- **Integrity**
- **Objectivity**
- **Accountability**
- **Openness**
- **Honesty**
- **Leadership**

In the interests of transparency and openness, and in accordance with the requirements of the Localism Act 2011, the Register of Members' Interests is published on the Council's website, and is available for public inspection at the Council's offices during opening hours.

2. Scope

This Code applies to all Members and Co-opted Members of the Council when acting in their official capacity, or when giving the impression that they are acting as a representative of the Council.

Where a Member or Co-opted Member is a member of more than one local authority, but acting on behalf of Fareham Borough Council, such Member or Co-opted Member is, for the avoidance of doubt, bound by this Code of Conduct.

3. General obligations of Members and Co-opted Members

As a Member of Fareham Borough Council, your conduct will address the principles of the Code of Conduct by:

- 3.1 Representing the needs of residents, and putting their interests first.
- 3.2 Dealing with representations or enquiries from residents, members of communities within the administrative area of Fareham Borough Council and visitors fairly, appropriately and impartially.
- 3.3 Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework,

the interests of the Council's area, or the good governance of the Council in a proper manner.

- 3.4 Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties.
- 3.5 Listening to the interests of all parties, including relevant advice from statutory and other professional officers of the Council, taking all relevant information into consideration, remaining objective and making decisions on merit.
- 3.6 Being accountable for your decisions and co-operating when scrutinised internally and externally.
- 3.7 Contributing to making the Council's decision-making processes as open and transparent as possible.
- 3.8 Restricting access to information when the wider public interest, the Council's Constitution or the law requires it.
- 3.9 Behaving in accordance with all the Council's legal obligations, the Council's policies, protocols and procedures.
- 3.10 Ensuring that when using or authorising the use by others of the resources of the Council that such resources are not used improperly for political purposes.
- 3.11 Having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or otherwise.
- 3.12 Not knowingly doing anything which might cause the Council to breach any legislation.
- 3.13 Valuing your colleagues and Officers of the Council and engaging with them in an appropriate manner.
- 3.14 Always treating all people and organisations with respect and propriety.
- 3.15 Providing leadership through behaving in accordance with these principles.

Part 2: Disclosable Pecuniary Interests

1. Introduction

A disclosable pecuniary interest is an interest falling within the Schedule set out at Paragraph 6 below of:

- 1.1 Yourself, or
- 1.2 Your spouse or civil partner, or someone you are living with as if you were husband and wife or civil partners, where you are aware that the other person has an interest.

2. Interpretation

In the Schedule set out at Paragraph 6 below, the following words or expressions mean as follows:

- 2.1 'the Act' means the Localism Act 2011;
- 2.2 'body in which the relevant person has a beneficial interest' means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
- 2.3 'director' includes a member of a committee of management of an industrial and provident society;
- 2.4 'land' excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone) or jointly with another) to occupy the land or to receive income;
- 2.5 'M' means a member of a relevant authority;
- 2.6 'member' includes a co-opted member;
- 2.7 'relevant authority' means Fareham Borough Council of which M is a member;
- 2.8 'relevant period' means the period of 12 months ending with the day on which M gives a notification for the purposes of Section 30(1) or Section 31(7), as the case may be, of the Act.
- 2.9 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited within a building society.

3. Schedule of disclosable pecuniary interests

Subject	Prescribed description
Employment, office, trade profession or vocation	Any employment, office, trade profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Regulation (Consolidation) Act 1992
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods and services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge); (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either: (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than once class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class..

Part 3: Registration and Disclosure of Disclosable Pecuniary Interests

1. Obligations

- 1.1 You must, within 28 days of taking office as a Member or Co-opted Member of the Council, notify the Council's Monitoring Officer of any 'disclosable pecuniary interests' as defined by regulations made by the Secretary of State (as set out at Part 2 of this Code), where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
- 1.2 You must also, within 28 days of becoming aware of any new disclosable pecuniary interest, or change thereto, notify the Council's Monitoring Officer of such new or changed interest.
- 1.3 If you have disclosable pecuniary interest included on the Register of Members' Interests, you must disclose this interest at any meeting of the Council, its Committees or the Executive at which you are present and participating in the business. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. You do not need to disclose details of the interest itself.
- 1.4 If a disclosable pecuniary interest has not been entered onto the Council's Register of Interests, then you must also disclose the interest to any meeting of the Council, its Committees or the Executive at which you are present where you have such an interest in any matter being considered. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. You do not need to disclose details of the interest itself. Following disclosure of a disclosable pecuniary interest not on the Council's Register or the subject of pending notification, you must notify the Monitoring Officer of such interest within 28 days, beginning with the date of disclosure.
- 1.5 Unless a dispensation has been granted by the Council, you may not participate in any discussion of, vote on, or discharge of any function related to any matter in which you have a disclosable pecuniary interest. You must as soon as it becomes apparent that you have such an interest (save for in circumstances set out at paragraph 7.6 below) withdraw from the chamber or room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business. If acting as a single Executive member you may not take any further steps in relation to the matter other than for the purpose of arranging for the matter to be dealt with otherwise than by yourself.
- 1.6 Without prejudice to paragraph 7.5 above, where you have a disclosable pecuniary interest in any business of the Council you may, notwithstanding such disclosable pecuniary interest attend such meeting for the purpose of making representations, answering questions or giving evidence relating to such business provided members of the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 4: Registration of Gifts and Hospitality

- 2.1 You must, within 28 days of receipt, notify the Council's Monitoring Officer of any gift or hospitality you receive, if such gift or hospitality has an estimated value of at least £50.

Part 5: Registration and Disclosure of Personal Interests

- 3.1 Without prejudice to requirements contained at Part 3 of this Code in respect of the Registration and Disclosure of Pecuniary Interests, you may in addition notify the Council's Monitoring Officer of any Personal Interests you consider it appropriate to be entered on the Register of Members' Interests.
- 3.2 You have a "personal interest" in an item of business where it relates to or is likely to affect any of the following bodies of which you are a member: a public or charitable body, any body to which you have been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 3.3 You also have a "personal interest" in an item of business where a decision in relation to it might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or person with whom you have a close association, more than other council tax payers, ratepayers or inhabitants of the authority's area.
- 3.4 You shall disclose a "personal interest" at a meeting of the Council, its Committees or the Executive, where you consider that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting.
- 3.5 Disclosure of a personal interest does not affect your ability to participate in discussion or vote on the relevant item, provided it is not also a disclosable pecuniary interest. If you consider, having taken advice in appropriate circumstances, you should not participate in the business being considered, you should leave the chamber or room where the business is being considered, after exercising any right to speak which a member of the public would have.

From: Whittingham, Councillor David
Sent: 05 April 2016 20:39
To: Doran, Paul
Subject: RE: Complaint

Dear Paul

After reading through your report being submitted to the Audit and Governance-Standards Sub-Committee on 13th April 2016 subject: Allegation of a Breach of the Members Code of Conduct. I find it confusing and misinterpreted.

It states;

On page 2 meeting with Cllr Whittingham, the monitoring officer put the allegations to him.

paragraph 8 (A) That during a conversation with officer A, he was heard to say " I was talking to an Officer earlier and told them that I did not want foreigners living in my road.

Paragraph 8 (B) That he subsequently said again to officer A, that he "did not want any foreigners in his (housing) stock".

Paragraph 8 (C) shortly afterwards he started talking in an accent that sounded like a person of Indian/Pakistani origin attempting to speak English.

I will answer the above allegations in due course after explaining what actually happened.

On Sunday 20th march 2016 I had to collect 10 signatures to submit to the council offices on Monday for my application to stand in the Mays elections as an independent councillor.

Out of 18 resident I asked 8 of them to my astonishment were not on the electoral register, 3 in Hammond Road (none of which you stated are "foreigners"). I went to the Hill Park Working Men's Club that dinner time to get the others that had said they would sign the application form for me and found another 5 residents with the same problem. One being a local resident who had moved in to my ward some months ago, also not a "foreigner" as I have been accused of saying.

On Monday 21st April 2016 I visited the council offices and went up to the 6th floor to ask why those residents were not on the electoral registrar. Meeting with an Officer in Democratic Services I explained my concerns, I was with this Officer for about 30 minutes discussing my findings. That Officer told me of some of the reasons why this could happen and one of the reasons given was that some time illegal immigrants may be housed and would not go on to the electoral registrar straight away and could not answer to why I have 8 long term residents not listed.

I told the Officer that being the councillor for the last 4 years in the North West Ward of Fareham I know of a great number of residents on the waiting list for some considerable time, some living with family and others over crowded. To house illegal immigrants in the my ward would not go down to well with the residents if this happened. The Officer told me to ask xxx department on the yyy floor if they could explain about the 8 residents, I thanked the Officer for helping and proceeded to xxx on floor yyy.

I saw officers A and C talking, I said good morning to them both. I asked if XX was in the office, Officer A told me he was not and could they help, I explained that I had just been to see an Officer in Democratic Services with regards to my findings and that they told me to ask another department, I explained about the 8 residents that were not on the electoral register with one in particular (which

was a great concern to me). Officer A told me that a letter had been sent out to them and the reason why they were not listed was because they did not know their National Insurance Number which had to be submitted. I told her that I would contact him and get it.

I then went on to tell them that the Officer did not know why some of my residents were not on the register. Then the Officer also explained to me about why sometimes there may be an occasion to house illegal immigrants family where upon Officer C said 'That's that Officer's opinion' and told me that the Officer should not have said that. I did not find anything wrong in that Officer's explanations, I told them both what I said to that Officer regarding being a councillor for the past 4 years in the North West Ward. Knowing we do not have the housing stock to rehouse many who are already waiting and that there were a lot of residents living in the ward on the waiting list still waiting to be housed. In my opinion it would not be ideal to house an illegal immigrant family in the ward. This is where I felt that officer A and officer C have misinterpreted what I said which is laid out on page 2 paragraph 8 (A) "not wanting foreigners living in my road", also page 2 paragraph 8 (B) "not wanting foreigners in my housing stock".

Later in our conversation I was explaining that I repeatedly get telephone calls one of which was from either Vodafone or Santander with regards to my billing. I tried to mimic the callers voice to officer s A and C and I must admit not very well in an Asian voice. I told the two officers that I could not understand a word the caller was saying, unaware to me that officer B was in ear shot behind me. In no way did my interpretation, which may I add how else can you interpret an accent, (whether it being Asian, Welsh or even English for that matter), nor the comments I made on that day have any racial malice or meaning behind them.

After reading the report that has been sent to me and looking at appendix B, C and D from meeting 21st march 2016, none of the corresponding statements are reflective with one another. Looking at the phrases I had said along with the replies from my colleagues, I must have been having a separate conversation with them all. The story that seems to have been fabricated has the same draft but the details are conflicting;

You need only look at the dialogue of the office staff that does not marry up. Something that was obviously so disturbing I'm sure would have been fresh in the memories of the people that were participating in the conversation.

Also I would like to add that stated from my meeting with monitoring officer Mr Paul Doran on march 23rd 2016 it said "I did stress the council takes any allegations of potential racist behaviour very seriously and Cllr Whittingham said that he understood this".

There was never a time during this meeting did Paul or I mention racial behaviour, hence why I asked for a full report of proceedings against me, so I could see what charges were actually being brought against me.

Item 3.13 "Valuing your colleagues and officers of the council and engaging with them in an appropriate manner".

Item 3.14 "Always treating all people and organisations with respect and propriety".

I was in no way disrespectful to anyone personally nor did I diminish the reputation or value of anyone of my colleagues in the council offices. As everyone knows I hold the staff in the civic offices

with the utmost respect and humility. As with item 3.14. I did not state that the person I spoke to on the phone was any less of an equal than myself or any other person, nor did I slander the reputation of an organisation.

This is a serious misinterpretation of my wording (as some of the statements from my colleagues has suggested). There is no way that I would ever be this disrespectful of another human being, and I would also like to add that with my current campaign to extend my position as a councillor underway I would no way wish to tarnish my reputation, both with my colleagues or my residents, with the election date just around the corner.

I feel a simple misinterpretation has become a larger situation, with the possible outcome of damaging my image and character. This in turn can and most likely will have huge repercussions on my continuing campaign. I would also like to add that my judge, jury and execution will be determined by the party who have already stated that they do not wish me to continue my services with them in the forthcoming election and would benefit from me losing votes which could possibly lose me a further term I am certain I would retain.

It is due to the statements I have made above that I will not be attending the meeting dated 13th march 2016 and would like you to submit this statement/document to the audit and governance standards subcommittee as my defence during the forthcoming hearing.

Could I take a moment to apologise to the staff involved and wish to state once more that I was not malicious or racist in any way.

Kind regard

Cllr David. M. Whittingham

