

Committee: Standards and General Purposes Committee

Date: 13 December 2016

Wards: n/a

Subject: Member Complaints

Lead officer: Paul Evans – Monitoring Officer

Lead member: n/a

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Recommendations:

That the Standards and General Purposes Committee consider complaints made against the Leader of the Council, Cllr Stephen Alambritis and agree the recommendation of the Monitoring Officer and Council's Independent Person that the complaints merit formal investigation.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1** A report to consider complaints made against the Leader of the Council, Cllr Stephen Alambritis and agree the recommendation of the Monitoring Officer and Council's Independent Person that the complaints merit formal investigation.

2 INTRODUCTION AND PROCEDURE

- 2.1** The Council's Constitution sets out the procedure for the consideration of complaints made concerning members conduct further to the Localism Act 2011. A copy of the Council's Code of Conduct and procedure for considering complaints is attached at appendix 1 for ease of reference.
- 2.2** The procedure provides that the Monitoring Officer will review every complaint received to confirm they are made against a serving member and that they are in relation to an alleged breach of the Code of Conduct.
- 2.3** The Monitoring Officer will inform the member against whom a complaint has been made and will give details of the complaint to them.
- 2.4** In order to establish a preliminary view of the circumstances of the complaint and whether there may be a course of action which could be taken to resolve the issues promptly without the need for formal action, the Monitoring Officer may consult or meet with any other relevant persons, which may include the Leader of the Council or Group Leaders, the Chief Executive or any other officers, the complainant and the member against whom the complaint has been made.
- 2.5** The Monitoring Officer will then consult with the Independent Person and decide whether the complaint merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. The complainant and the member against whom the complaint is made will be

informed of the Monitoring Officer's decision and the reasons for that decision.

2.6 In assessing whether a complaint should be investigated the following factors will be taken into consideration:

- *Public interest* – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters.
- *Alternative course of action* – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
- *Member's democratic role* – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation
- *Previous action* - if the complaint has already been subject to a previous investigation or some other action relating to the code of conduct or other
- related process, the matter will ordinarily not be referred for further action
- *Vexatious/repeated complaints* – the Monitoring Officer will not refer for investigation a complaint that is the same or substantially the same as one previously made by the complainant.
- *Timing of the alleged conduct* – if there are significant delays between the incident complained of and the complaint the matter will not ordinarily be considered further unless there are very good reasons for the delay.
- *Ulterior motive* – no further action is likely to be taken if the complaint is considered to be motivated by malice, political motivation or retaliation.

2.7 In appropriate cases the Monitoring Officer, in consultation with the Independent Person, may consider resolution of the complaint without the need for a formal investigation. This may involve:

- the member accepting that his/her conduct was unacceptable and offering
- an apology or other remedial action by the authority
- referring the matter to group leaders or officers
- the member being required to attend training
- the member being required to meet with the Monitoring Officer and/or other
- relevant officers

- or such other action as is considered appropriate by the Monitoring Officer and Independent Person

Matters which might appropriately be dealt with as described in 4.8 above may include:

- Misunderstanding of procedures or protocols
- Misleading, unclear or misunderstood advice from officers
- Lack of experience or training
- A general deterioration of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect.
- Allegations and retaliatory allegations from the same individuals

2.8 As the complaints concern the Leader of the Council it is my view as Monitoring Officer and the view of the Council's Independent Person, Derek Prior, that the circumstances are "exceptional" as provided for in the Council's complaints process, and a decision to formally investigate should properly be referred to the Council's Standards and General Purposes Committee for confirmation

2.9 **BODY OF THE REPORT**

2.10 This report sets out the complaints received, a summary of the views expressed by the complainants and Councillors complained of, and the considerations and conclusions of the Independent Person and Monitoring Officer.

2.11 The Standards and General Purposes Committee is asked to consider the complaints made and agree the recommendation that a formal investigation of the complaints is merited.

2.12 Complaints received

Between 18th October 2016 and 4th November 2016 seven formal complaints were received by the Council concerning a letter and consultation questionnaire in relation to the council tax. The complaints are attached at appendix 2.

The complaints concerned a letter delivered in the St Helier ward attached at appendix 3.

The letter is from "Your St Helier Labour Councillors" and headed "Urgent: Consultation on Council Tax increase-please read now". It is signed off "Cllr Steven Alambritis – Leader of Merton Council" and is also signed by Cllr Imran Uddin, Cllr Jerome Neil and Cllr Dennis Pearce, the ward

councillors

The letter at the bottom states “printed and promoted by Billie Christie on behalf of Merton Labour councillors, all at 1 Crown Rd, Morden, SM4 5DD” and includes a Labour Party logo

The letter enclosed a questionnaire headed “Urgent – Have Your Say – Council Tax” which asked a series of questions concerning the possible level of Council Tax in the future. The questionnaire asks residents to complete it and include a name and address or responses without these details “will not be able to be included”.

A business reply service response was included using Licence number SEA 8368 and addressed to the “Council Tax and Council Spending Consultation, Consultation Team, 7th Floor, Civic Centre, London Road, Morden, SM4 5Dx.”

The timing of this correspondence is significant as the Council was conducting a consultation exercise “Have your say on council tax and council spending” with consultation forms included in My Merton and online. The consultation material for the Council’s consultation is attached at appendix 4.

The Council consultation included a business reply service licence number RTHA-BRBJ-CKXE and was addressed to “Council Tax and council Spending, Consultation Team, 7th Floor, Merton civic Centre, London Road, Morden, SM4 5DX.”

2.13

The Complaints

The complaints received are attached in full. In summary the complaints made are as follows

1. The Leader of the Council had written to residents whilst there was an on going council consultation exercise. The Leader should be objective and impartial and should not seek to impose his view in a ward that is not his own. The Leader should have ensured a balanced letter which was non discriminatory. It was offensive to disabled people to not mention them. It was an abuse of power to send such a letter at that time
2. The Leader was making it clear that he had made up his own mind and that the results of the consultation could be ignored.
3. The Leaders letter was an intervention in a consultation process paid for by the Council and brings into question the validity of the exercise
4. The letter appears to jeopardise the integrity of the official Council consultation on the level of council tax.
5. Whilst the letter was a matter for the Leader and he is entitled to express his view, the response form is a matter of concern. The form is described as “bogus” and has different questions to the

official Merton form.

6. Residents were required to state their names and addresses.
7. The impression given by the Leader was that the consultation outcome would determine if the council tax was raised. The letter appears to prevent this decision.
8. Residents will think they have taken part in the Council consultation when in fact they have not.
9. Council resources have been used in a non council consultation
10. The Council's public consultation had been undermined as the Leader was party to another consultation exercise and failed to distinguish it from the Council's consultation
11. There was no indication in the Leaders letter that this was not the Council's survey and there would be an assumption any details would only be seen by Council officials
12. The Council consultation was undermined and the Council brought into disrepute by the deceptive manner in which the exercise had been done
13. The Leader had failed to work constructively with partner agencies
14. One complaint was made against the ward councillors Cllr Uddin, Cllr Neil and Cllr Pearce. See complaint from Mrs Townley at appendix 2.

In summary, the complaint is that in a period of public consultation information sent by councillors should be presented in a fair, impartial and objective way. The letter is offensive and discriminatory to disabled people by not mentioning them.

A councillor may hold a view, but in a period of consultation it should not be decisive or fixed.

Councillors have acted far below what would be considered good conduct, during a period of public consultation. Councillors have caused potential to skew public opinion.

2.14 Preliminary consideration

Further to the complaints procedure the Monitoring Officer has spoken with each of the complainants and the Councillors concerned. The complainants repeated their concerns as set out above.

Cllr Alambritis commented as follows.

Mitcham and Morden are a strong party who often correspond with local residents. Cllr Alambritis didn't agree there would be confusion as residents were used to receiving correspondence with a reply paid service. The intention was that people would be responding to the Council with their views on Council tax. The letter clearly stated it was from Cllr Alambritis and councillors from the Labour group.

As soon as the issue of the business reply service had been raised Cllr

Alambritis had given an apology for the oversight and a commitment to reimburse the Council for any costs.

Cllr Alambritis did not consider there had been any attempt to mislead or use council resources in any way. The use of the business reply service was to ensure the Council heard residents views

Don't see it as a Standards issue in particular because an apology had been given and there was no prospect of the Labour Party using Council resources.

Felt there was a duty to liaise with residents and the letter set out the current labour Party thinking on council tax levels. The letter set out all options.

Residents expect to receive communications

There had been no request made of the Councils communications team on how the consultation was going and the Leader was always looking to do something as a Labour Party to liaise with residents. Liaison took place regularly on the budget, hospitals, businesses, and there were regular letters in this kind of format.

There is no way that this was made to look like a council format, it was a labour party letter and people would know that.

The exercise was done to add value, to compliment the Council consultation and to get people participating.

Councillors are entitled to have a say and to get their message across. It was an oversight that the reply paid slip had been used and this had been addressed with an apology and an offer to reimburse the Council.

Cllr Alambritis stated the letter was his responsibility.

Cllr Uddin, Cllr Pearce and Cllr Neil accepted that the letter in their name could have been more appropriately written although they did consider that councils were able to communicate with local residents. They were of the view that the letter promoted engagement with the councils consultation exercise and did not appear to be aware that a council business reply service had been used.

2.15 Considerations of Monitoring Officer and The Independent Person.

Further to the complaints process the Monitoring officer and The Independent Person have met to consider if the complaints merit formal investigation.

The provisions of the Code of conduct and the council's protocol on the use of resources which could have been breached are considered to be the following:

The Code of Conduct

Paragraph 1.3

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the

following principles to achieve best value for our residents and maintain public confidence in this authority.

And 2.7 Leadership

- Holders of public office should promote and support these principles by leadership and example.

The Council's protocol on the use of resources

provides at paragraph 7.2

7.2 The Council's facilities are not available for ward-wide mail shots, the distribution of leaflets or the posting of general information to constituents other than in the circumstances described above. They are also not available for posting any material which could not lawfully be printed by the Council. In considering those issues members should seek the views of officers above there is doubt.

To date the Council have received 2942 business replies for the forms received under licence number SEA 8368, at a cost of 0.38p per item totals £1,117.96p. Royal Mail's invoicing cycle runs about three weeks behind the delivery, it is not possible to give a precise figure in terms of actual expenditure to date.

As soon as it became clear that this was a Council business reply service the Leader immediately gave an apology and has given a commitment that any cost to the Council will be reimbursed.

Having considered the complaints made and views of the relevant councillors the shared view of the Monitoring Officer and The Independent Person is that the complaints in respect of Cllr Steven Alambritis do merit formal investigation as they are reasonably considered to be serious matters.

We were of the view that councillors are entitled to correspond with residents setting out their own views on matters, even if this is in a consultation period. This is something which residents are used to and is an accepted part of local politics. Our view is that the letter written to residents, and signed by the Leader and Councillors, by itself, is part and parcel of local politics. Other examples are available of political parties writing leaflets to residents in the same period and no complaints have been made.

The letter is however accompanied by a consultation form and a Council business reply service mailer. The documents together have resulted in the complaints being made because they provide a link between the "political" letter and political considerations, and possible confusion with a non political council consultation on the same subject. 3000 people have posted a letter to the Council using Council resources further to a political exercise.

We consider the complaints merit formal investigation for the following reasons

1. The "consultation" exercise carried out by the Leader did not present

a clear picture to the public that the exercise was a party political exercise and as a result, can be considered to have diminished public confidence in the Council's own consultation process and the Council to carry on business.

2. The use of Council resources through a pre paid business reply service addressed to the Council's Communications team by the Leader and political party will cost the Council in excess of £1000. This is notwithstanding that an apology has been provided and a commitment to reimburse the Council made.
3. The data management issues created by the collection of personal data and delivery to the Council and the impact this could have on public confidence in the Council.

We do not consider that the complaint in respect of Cllr Uddin, Cllr Neil and Cllr Pearce merit formal investigation primarily because there is no suggestion that they were responsible for the correspondence. Rather they appear to have offered their support to the Leader and party. It is considered that the Councillors receive advice on the use of Council resources and political correspondence.

3. ALTERNATIVE OPTIONS

- 3.1 The Standards and General Purposes Committee can decide that a formal investigation of the complaints is not merited in the circumstances further to the criteria set out above. The Committee should set out any reasons for such a decision if members are so minded.

4. CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 Consultation has been undertaken with complainants, members involved and the Council's Independent Person in the production of this report.

5. TIMETABLE

- 5.1 If the committee decide to confirm that a formal investigation is required, the Council's complaints process estimates a three month period for this to be undertaken.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 A formal investigation and hearing before the Standards and General Purposes Committee of a complaint would result in costs of between £5,000 and £10,000 to be paid from the Monitoring Officer's budget.

7. LEGAL AND STATUTORY IMPLICATIONS

- 7.1 The Council's complaints process is set out in the Constitution and complies with the provisions of the Localism act 2011.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 The Council's complaints hearing process complies with the requirements of natural justice as required by the Human Rights and equalities legislation.

9. CRIME AND DISORDER IMPLICATIONS

9.1 n/a

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1 n/a

11. BACKGROUND PAPERS

11.1 None.

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