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Our Ref:

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Dear Graham

Concerns about the Investigatory & Disciplinary Committee referral process

I am writing this open letter to you to raise my concern about deficiencies in the procedures for handling complaints against the three most senior officers in the Council: the Head of Paid Service (a position held by the Chief Executive Officer, yourself), the Monitoring Officer (Chief Legal Officer) and the s.151 officer (Chief Finance Officer) (together, the **"Senior Officers"**), and their implementation.

These deficiencies are:

1. The lack of a proper referral process to the Investigatory & Disciplinary Committee (**"IDC"**), a councillor committee that hears complaints against the Senior Officers which if upheld could result in dismissal; and
2. A course of decision-making by the current Monitoring Officer which is preventing the IDC from being convened.

1. **The lack of a proper referral process**

The model disciplinary procedure that IDCs should follow is set out in the Joint Negotiating Committee for Local Authority Chief Executives National Salary Framework & Conditions of Service Handbook (Updated 7 September 2022) (**"Model Procedure"**). It allows for a filtering process to take place before the IDC meets to screen out inappropriate complaints. It says:

- "It is for the authority to decide the issues that will engage the Model Procedure."
- "Ideally, procedures need to be in place which can filter out and deal with 'allegations' against the chief executive which are clearly unfounded, or trivial, or can best be dealt with under some other procedure."

- “An authority will need to put into place arrangements that can manage the process. In particular, records should be kept of allegations and investigations and there should be a clear route into the Model Disciplinary Procedure.”
- “Clearly the route for complaints against the council and the chief executive and for issues that might be substantial and require some form of investigation, and possibly formal resolution, is varied.” “If the matter is a grievance from a member of staff directed against the chief executive, it may be appropriate to first deal with it through the Grievance Procedure. Of course, if the matter were a serious complaint against the chief executive’s personal behaviour such as sexual or racial harassment, the matter would be one that would be suitable for an investigation under the Model Disciplinary Procedure.”

Councils are therefore free to “determine their procedures and practical arrangements for the handling of disciplinary action and termination of senior officers’ employment contracts, taking into account the relevant considerations in general employment law” but they need to have a proper procedure in place which engages the Model Procedure at the appropriate time.

The only reference to referral in the Council’s constitution is in Section 8.4 of Part 3A which delegates responsibility for carrying out the IDC filtering process to a Senior Officer who is not subject to the complaint. No procedure for the referral process is included in the constitution, and the Head of Democratic Services and Monitoring Officer have not provided me with a copy of any relevant internal policy or procedure following my requests to do so. Other councils have written referral processes. For example, York Council’s can be viewed here:

<https://democracy.york.gov.uk/documents/s173397/Appendix%2012%20-%20Officer%20Employment%20Procedure%20Rules.pdf>

I have since spoken to a senior HR officer who said there had been zero complaints of this nature until recently and gave the impression that no written process existed as a consequence, resulting in Council officers adopting a reactive approach to recent complaints and deciding on the process as they encountered them, using the Model Procedure as a guide.

The Model Procedure:

- says it “should be followed except in so far as the parties locally agree to vary it”;
- sets the threshold for referral at “clearly unfounded, or trivial, or can best be dealt with under some other procedure”, which is a low bar.
- allows an appointed council officer, typically the Monitoring Officer, to undertake “preliminary initial inquiries” as part of the initial filtering.

However, the Model Procedure does not give officers the authority to investigate or determine complaints that have crossed the filtering threshold. It states: “Where an allegation is made relating to the conduct or capability of the chief executive or there is some other substantial issue and following an initial filtering it is concluded that this requires investigation, the matter will be considered by the IDC.”

I wonder how the HR Officer I spoke to could say with confidence that there were no complaints until recently, given that the Council is six years old. Would he have seen complaints made to the Legal Department that were filtered out? Are records being kept of all allegations and investigations as required by the Model Procedure?

FP Grievance

It appears that the Legal Department went beyond its powers in dismissing a grievance made against you made by a former employee of BCP Futureplaces Ltd, a (now dissolved) council regeneration subsidiary, and thereafter the Council, ("**FP Grievance**") without referring it to a councillor committee.

I have not been supplied with a copy of the FP Grievance, but I understand the nature of the claims made within it are serious enough to have warranted investigation. Indeed, the fact the Legal Department commissioned an Independent Investigator to review them confirms this. In a letter issued to the complainant by the Leader of the Council, Cllr Earl, in response to the complainant's queries about the process applied by the Council, the Leader said that the Monitoring Officer had completed the initial filtering and concluded that the FP Grievance was not "patently frivolous or clearly unfounded".

Why then didn't the Monitoring Officer refer the FP Grievance to the IDC for determination? The full picture regarding the handling of the case by Council officers is not available, partly because the Monitoring Officer has ignored requests to release to the complainant the Terms of Reference of the Independent Investigator who was appointed to review the FP Grievance. However, there have clearly been deficiencies in process:

- The complaints process set out in the Model Procedure is more involved when the complainant is a council employee because it may consist of a two-stage process. In relation to the first stage, the Model Procedure sets out a model grievance procedure in Appendix 7 which gives the complainant the right to have their grievance considered by a Grievance Committee made up of councillors if it is not determined in their favour before then. If the Grievance Committee upholds the complaint, the second stage is initiated by referral to the IDC, which is made up of a different set of councillors. Under section 3.3 of Appendix 7 "it is necessary for Councils annually to establish a Grievance Committee of 3 to 5 members with political proportionality, who are not members of the Investigation and Disciplinary Committee or the Appeal Committee". Under section 2.2 and the flowchart in Appendix 7, a complainant has the right to refer their grievance to the Grievance Committee if the Stage 1 determination is dismissal of the grievance. However, the Council has not established a Grievance Committee and did not and still does not have a proper written process for managing the transition of an employee grievance against one of the Senior Officers from submission of the complaint to referral to the IDC (paragraph 2.1 of the Grievance Policy on the Council's Intranet says that it does not apply to the Senior Officers). The Council is therefore in breach of the Model Procedure's requirement to establish "a clear route into the Model Disciplinary Procedure". When I asked the Director of People and Culture why there was no Grievance Committee, she made it clear that the Council's process was to refer grievances against the Senior Officers straight into the IDC process. This is not necessarily in breach of the Model Procedure as it may be perceived as fast-tracking to a higher committee. However, the Leader's letter implies that a grievance procedure separate from the IDC process was applied by the Monitoring Officer to the FP Grievance. Did the Legal Department not consult the Director of People and Culture and unilaterally embark on a grievance process contrary to the HR Department's expectations or was the FP Grievance initially dealt with through the IDC process and then, on the commencement of the Monitoring Officer's employment at BCP Council, treated as a grievance? The Terms of Reference of the Independent Investigator may reveal the answer, which may be why they are unreasonably being withheld.
- Importantly, the FP Grievance was determined without being considered by either councillor committee when the Model Procedure requires either the Grievance Committee or IDC to make post-referral determinations. It is clear from the flowchart in Appendix 7 that it is the Grievance Committee's responsibility to determine the complaint

at the first stage and thereafter the IDC's responsibility. Council officers do not have the power of determination. However, after the initial filtering, the Legal Department carried out a more detailed investigation which involved the commissioning of an Independent Investigator and the Monitoring Officer, or an officer board which she chaired, determined the grievance without referral to the Grievance Committee or IDC. An appointment of an Independent Investigator to review the FP Grievance is permitted by the Model Procedure at both stages, but only in the context of a councillor board making the final determination.

- The Independent Investigator resigned before completing her report. The Monitoring Officer appears to have breached proper process by finalising the report herself. Why did the Independent Investigator resign and why wasn't a replacement commissioned?
- The complainant experienced difficulties in disclosing details of their draft settlement agreement with BCP FuturePlaces Ltd. to the Independent Investigator as the Monitoring Officer did not provide written confirmation that this would not breach the confidentiality clauses within it, even though that company was a wholly owned subsidiary of the Council. This feeds into a broader concern that the Council may be imposing restrictions on former employees in settlement agreements which would prevent them from disclosing details of Council failings, even to councillors. If true, this cannot be in the public interest. An investigation is needed into Council practices regarding non-disclosure agreements.

In her letter to the complainant, the Leader said that she had "taken appropriate steps to appraise [herself] of the relevant history and issues". She set out and justified the procedure that was followed. She then sought to close down the complainant's avenues of redress by requesting them not to contact other councillors. Given the deficiencies raised above, questions need to be asked as to how the Leader arrived at her conclusions and whether it was appropriate for her to send this letter.

The constitution requires the Leader to sit on the IDC. If the FP Grievance and/or the Monitoring Officer Complaint (see below) is eventually considered by the IDC, she would be conflicted and be obliged to withdraw.

Poole Civic Complaint

I believe a complaint which I made recently against the behaviour of Senior Officers in relation to the bringing forward of a paper to Cabinet and Council recommending the sale of Poole Civic Centre ("**Poole Civic Complaint**") was unfairly dismissed. The complaint alleged, amongst other things, that the Senior Officers failed to respond to an instruction by Council to assess potential community uses and did not exercise their personal duty to act to protect the Council's finances. The text of the Monitoring Officer e-mail dismissing the complaint is set out below:

"I acknowledge receipt of your two emails in respect of this matter.

I have carefully considered the content of your emails and have reviewed the report to be considered by Cabinet tomorrow.

I am mindful that the report has been subject to review throughout the council's governance process for draft reports prior to sign off and publication.

Having undertaken this evaluation, I do not accept your emails as valid complaints against the Head of Paid Service, the s151 Officer and the Monitoring Officer.

In my opinion the issues you have raised in your emails relate to service delivery as opposed to the direct actions of one or all of the three statutory officers. The Cabinet is the decision-making body in respect of the future direction for Poole Civic Centre and as such I strongly believe that the issues you raise in your emails, including the possible

deferment of this item to a future date, should be presented by you to Cabinet for their deliberation as part of their decision making.”

In response, firstly, the Monitoring Officer should not have ruled on this complaint as she was one of the officers complained about. The Model Procedure states that councils should have in place mechanisms for dealing with conflicts of interest. However, the constitution is silent as to what should happen where all three senior officers are subject to the same complaint. Some authorities refer the case to the Chair of the IDC in such a case and that would appear to have been the logical solution here, but that option was not pursued.

Secondly, although the Model Procedure says “allegations and complaints that are directed at the chief executive, but are actually complaints about a particular service, should be dealt with through the council’s general complaints procedure”, the Poole Civic Complaint cannot reasonably be considered as a complaint related to service delivery as:

- the disposal of the Civic Centre was an ad hoc asset disposal rather than part of a property management strategy
- the complaint suggested the Senior Officers may have breached their obligations to Full Council and under law by:
 - breaching a legal duty to secure best value when the Council disposes of assets. The sale value for the whole Civic Centre site exceeds the valuation secured by the Council by about £1 million, so nothing seems awry at that level. However, the proposed rental value for the subset of rooms including the Chamber and Mayoral Parlour (referred to as the Vertical Slice) of £451,435 per annum included in the paper would value the Vertical Slice at £5.64 million to £9.03 million. The proposed rent is therefore clearly massively too high. Working backwards from an estimated value of a renovated Vertical Slice of £1 million (£200,000 estimated current value plus £800,000 renovation costs) a commercial rent giving a 7% return (assuming a full repairing lease) would be £70,000 per annum. Officers have therefore held out a lease of the Vertical Slice as a viable option when it would result in the Council paying £3,814,350 above the market rent over ten years;
 - not acting on the requirement of a resolution of Full Council passed on 24th October 2024 that “the viability of retaining the vertical slice in public use incorporating the Poole Mayoralty function and potential community and coroner use be properly considered”;
 - allowing a paper to come to Cabinet and Full Council which was highly selective and deficient in terms of the information it provided to members, was misleading as to the options presented to bidders and failed to address the instructions to them in the October 2024 resolution;
 - either pursuing their own asset disposal strategy and manipulating the paper to facilitate their objective of disposing of the entire Civic Centre or acting on the instructions of the Portfolio Holder or Cabinet in breach of their obligations as officers to ensure proper governance and best value; and
 - allowing the paper to come forward before conclusion of the Community Governance Review, unjustly fettering the discretion of members in relation to their decision-making regarding the future home of the Charter Trustees or any new town council.

In relation to the Poole Civic Complaint, you stated that it was “nowhere near the high bar that should be required of a formal complaint about the three most senior statutory officers of the Council”. This statement is worrying as it suggests that, despite being responsible for determining referrals under clause 8.4 of Part 3A of the constitution, you are unaware of the low referral bar in the Model Procedure. Furthermore, it leaves open the possibility that you have dismissed complaints in the past which should properly have been referred to the IDC. In the absence of a written procedure and with a Head of Paid Service minded to dismiss all but the most serious complaints, it would not be surprising if the Monitoring Officer’s decision making on referrals was inconsistent or pulled towards your favoured “high bar” position.

2. **Prevention of referral of legitimate complaints to the IDC**

Some members of the IDC are concerned that valid complaints may have been filtered out, thereby avoiding the convening of the IDC. The Legal Department also seems to be delaying decisions which could lead to the calling of the IDC:

- The complainant in relation to the FP Grievance filed a complaint against the Monitoring Officer in relation to its handling, including the failure of the Monitoring Officer to acknowledge requests for the disclosure of the Terms of Reference of the Independent Investigator, on 24th June 2025 (“**Monitoring Officer Complaint**”), but no referral decision has yet been made despite the clear breaches in process outlined above;
- A member of the IDC asked the Monitoring Officer to schedule a meeting of the IDC to appoint the committee’s chair, but this was rejected. Chairs need to be in place because the constitution gives members of committees the right to ask the chair to table business. However, the Head of Democratic Responses has responded saying “there is no requirement to convene a meeting to only elect a Chair”. Even if there is no “requirement”, does this invalidate a request to call a meeting for that purpose?
- The same member of the IDC made a second request for the IDC to be called to discuss potential improvements to the referral process including the following changes to the constitution:

“To improve transparency and scrutiny within the process for handling complaints against the Chief Executive Officer, Monitoring Officer and s.151 Officer, amend Section 8 of Part 3A of the Constitution by:

a. Adding a new clause 8.5:

“In the case of a complaint against all relevant Officers, the decision whether to refer the matter to the Investigation and Disciplinary Committee will be delegated to the Chair of the Investigation and Disciplinary Committee.

b. Adding a new clause 8.6:

“The investigating officer or the Chair of the Investigation and Disciplinary Committee, as relevant, may only decide not to refer a matter to the Investigation and Disciplinary Committee if they reasonably conclude that the allegations are unfounded, trivial, or have already been dealt with under some other procedure. Where the investigating officer or Chair decide not to refer a matter to the Investigation and Disciplinary Committee, they shall prepare a written report which shall be supplied to members of the IDC and the complainant setting out the reasons for that decision. In determining whether an allegation is unfounded, the investigating officer or Chair may make internal enquiries within the Council but where allegations require interviews with staff or further

investigation for them to be deemed unfounded, the matter shall be referred to the Investigation and Disciplinary Committee.”

c. Adding a new clause 8.7:

“Where a member of the Investigation and Disciplinary Committee is concerned that a complaint that has not been referred to the Investigation and Disciplinary Committee by the investigating officer or Chair, they may refer it to the Investigation and Disciplinary Committee.”

d. Renumbering clauses 8.5 to 8.7 as 8.8 to 8.10.”

Committees clearly have the right to meet to review the processes by which they operate and suggest changes in the constitution to the Audit & Governance Committee, but the councillor is still awaiting a response. I would remind you that officers have a duty to “co-operate with all reasonable requests from Councillors and endeavour to give timely responses to enquiries from Councillors”.

The member of the IDC has not yet received a response to her request for this meeting.

I believe this evidence suggests that the Monitoring Officer has been acting and is continuing to act beyond her powers with the effect of avoiding referral of complaints to, and consideration of legitimate business by, the IDC.

The failure to establish a Grievance Committee and/or call the IDC form part of a pattern of behaviour by Council officers which distances councillors from Council operations and reduces their ability to scrutinise them and influence the development of strategy. I have previously raised this issue publicly when officers brought forward a paper to remove councillors from the boards of Council-owned companies. I pointed out that this was being done contrary to best practice and accused senior officers of a “power grab”, which prompted the Leader to dismiss me from my role as Lead Member for Regeneration. I maintain, though, that reducing the ability of councillors to collaborate with officers in the development of projects and strategy and scrutinise operational matters gives greater scope for officers to develop their own agendas, make poor decisions and operate inefficiently and prevents officers from benefiting from the broader experience of councillors. Hopefully, the new CEO will be more respectful of councillors and take a more open and collaborative approach.

The Monitoring Officer Complaint alleges the investigation carried out into allegations of misconduct by you was carried out improperly. Therefore, if the IDC were to find merit in it, the underlying complaint against you would have to be looked into again. Given your imminent retirement and the need to provide a supportive and stable platform for the new CEO to operate from, it is important that the referral process is reformed and that concerns about the handling of previous complaints be properly considered. The Legal Department’s failures to respond may be due to workload pressures, but they reflect poorly on the Council and may generate suspicion that the department is trying to avoid their consideration before your employment contract ends. I am sure you would not want to leave the Council while concerns as to the handling of complaints regarding your behaviour remain. I would therefore suggest that you and the other Senior Officers expedite the decision over the Monitoring Officer Complaint and schedule the IDC to consider it and the defects in the referral process.

I would like to make it clear that I am not taking a position on the validity of the FP Grievance, other than its apparent crossing of the referral threshold. I am not making allegations against you personally in this letter other than in respect of your management responsibilities to put in place proper processes and see that they are followed and to promote a good working relationship between councillors and officers.

I appreciate that the Protocol for Councillor/Officer Relations states that councillors should “not comment publicly on individual staff issues or perceived capability of individual staff” and

“ensure that all communication between them and Officers, including written communication, does not bring the Council into disrepute, or lead to the breakdown of mutual trust, respect and courtesy in Officer/Councillor relations”. I have therefore thought very hard before issuing this letter. However, there is no constitutional means of challenging the actions of the Monitoring Officer other than through the complaint process which I perceive the Monitoring Officer to be mismanaging. I am therefore caught in a Catch 22 position.

The concerns I have raised herein are of sufficient seriousness to warrant public disclosure. The Senior Officers have enormous power. They have been delegated responsibility for operations by Full Council and are therefore responsible for managing over 5,000 employees, spending over £300 million per annum and ensuring proper governance. Councils are very hierarchical, which makes it hard for their employees to complain against people who are senior to them. Councillors' ability to monitor operations is very limited. From a governance perspective, it is therefore very important that a proper complaints process exists which gives confidence to councillors, employees, commercial partners and the public. Rather than bringing the Council into disrepute, I view this letter as providing an opportunity for clarification of the facts, reform of processes and improvement of the public image of this beleaguered Council.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Howell', with a stylized, cursive script.

Councillor Mark Howell

Councillor for Poole Town Ward