

<b>Report to:</b>	Standards Committee	<b>Date:</b>	16 September 2016
<b>Report title:</b>	Petition referred by Full Council		
<b>Report from:</b>	Jessica Crowe, Monitoring Officer		
<b>Ward/Areas affected:</b>	Borough wide		
<b>Chair of Committee/Lead Member:</b>	Tony Hazeldine, Independent Chair		
<b>Author(s)/Contact Number(s):</b>	Jessica Crowe, Monitoring Officer, 020 8770 6519		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	2 September 2015

## 1. Summary

- 1.1 To consider a petition referred to the Standards Committee by Full Council.

## 2. Recommendations

- 2.1 That the Committee notes the request to set up an independent inquiry and determines that this is not required for the reasons set out in section 4 of this report
- 2.2 That the Committee agrees to commission a further report on the council's member development programme, setting out how the council is ensuring that all members are fully aware of their obligation to follow the Nolan Principles and to uphold the code of conduct at all times in their behaviour as elected members.

## 3. Background

- 3.1 At the Full Council meeting held on 13 July 2015 Councillor Nick Matthey submitted a petition which has been referred to this committee for consideration. The petition has 495 signatures and the petition prayer is set out below:

We, the undersigned, are concerned citizens and demand a full enquiry by an independent body into the activities of Viridor Credits, Viridor Limited and their relationship with Sutton Council members. We want to know why the Council described the incinerator as an Energy Recovery Facility and hid its true purpose. We want the Viridor incinerator stopped as vital information about its purpose and environmental impact of the incinerator has been withheld or the information was delivered in a misleading fashion. We believe that the London Borough of Sutton has acted contrary to the Nolan principles of ethical standards in public life and has acted against the best interests of residents of Hackbridge and Beddington.



3.2 In accordance with Part 4E of the Council's Constitution, Scheme for dealing with petitions and e-petitions Councillors can present a petition on behalf of petitioners to a meeting of the Council. The scheme sets out how a petition with 495 signatures will be dealt with at a committee meeting: the spokesperson (in this case Cllr Nick Matthey) may talk to the petition for up to 5 minutes and the petition will then be considered. If the petition is about something over which the council has no direct control, consideration will be given to taking the matter up on behalf of the community.

3.3 This Committee's remit is limited to considering matters relating to the promotion and maintenance of high standards of conduct and probity for councillors and other members and to advising the Council on issues in connection with the operation of its Code of Conduct. It cannot take a position on any other policy matters and would need to refer any recommendations for action that go beyond its remit to the appropriate standing committee(s) for their consideration.

#### **4. Issues**

4.1 The petition's main request is for an independent inquiry into Viridor Credits (a charity set up to distribute the Landfill Communities Fund), Viridor Ltd (which is a waste collection and disposal company) and their relationship with Sutton Council members. It has been referred to the Standards Committee as the petitioners argue that the Council has breached the Nolan Principles. There are various pieces of national guidance on when and whether to set up an inquiry of this nature and it is not a simple matter of deciding whether there is public concern about an issue.

4.2 Guidance is provided on independent and public inquiries by Government for central government purposes. The Cabinet Office Inquiries Guidance states that Ministers take a number of factors into account when deciding whether to establish an inquiry, including whether the public interest will be served by an inquiry rather than another form of investigation and whether that public interest will outweigh the costs. A select committee post-legislative scrutiny of the 2005 Inquiries Act quoted the secretary, solicitor and counsel of the Rodney Inquiry, that: "The first principle we believe should underlie the use of public inquiries is that a matter of public concern has been identified which cannot be allayed by lesser means such as investigation by an established regulatory body."

4.3 Local authorities have the power to establish an independent inquiry into their own actions and their relationships with partners and third party organisations if this is reasonable in all the circumstances. There is no prescribed format such an inquiry may take and the Council would need to balance the need for an inquiry in the light of any allegations and evidence available, the cost, and the likelihood that the inquiry could be conducted effectively. An inquiry would normally be conducted with the appointment of a suitable external individual or firm with agreed terms of reference and timescale. The inquiry may include inviting third parties to be interviewed, the investigation of evidence and the drafting of a report which may be published (usually with some redactions where third party confidentiality is raised). The inquiry would not have the power to compel any witnesses to attend, although officers and serving Councillors would generally be in breach of the relevant Codes of Conduct if they did not do so. A



reasonable timescale if any individuals or external organisations are interviewed would be at least four to six months.

- 4.4 It is important to consider both whether there is prima facie evidence of wrong-doing that requires an independent investigation and also whether an inquiry set up by the council is the best and most reasonable mechanism for doing so.
- 4.5 The link that is alleged to exist between the three entities referred to in the petition arises from a grant made by the Viridor Credits to Holy Trinity Church in Wallington, a church in which a number of former Sutton elected members are active members of the congregation. The allegation is that these members may have engineered the appointment of Viridor by the South London Waste Partnership (SLWP) as the provider of an Energy Recovery Facility in Beddington, following a procurement process run by SLWP in 2011, in return for a grant by the Viridor Credits to the Holy Trinity Church.
- 4.6 This is a serious allegation and if true would not simply involve a breach of the Nolan Principles. If there was any evidence that the allegation was founded, the council would immediately refer the matter to the police as it would more properly be a matter for them to investigate.
- 4.7 The first issue to consider, therefore, is whether there is any prima facie evidence of wrong-doing, either to refer the matter to the police or to consider setting up an inquiry. The allegation referred to in the petition is that a former council member, Mr John Drage, is a congregation member at Holy Trinity Church and also a personal friend of the former Chief Executive of Viridor Ltd, Colin Drummond, and that this connection led to the grant to the church and, in return, the awarding of the contract to Viridor by the South London Waste Partnership. It is alleged that there was a breach of the Code of Conduct because then Cllr Drage did not declare this friendship as a personal interest at the meeting of SLWP on 22 September 2011 which determined that Viridor would be the preferred bidder and the meeting of Sutton's Executive on 7 November 2011 which ratified that decision. It is known publicly that this friendship existed because in 2012 when Cllr Drage spoke at Sutton's planning committee on the planning application for the ERF, he did declare a personal interest. His publicly stated reason for not declaring it earlier is that the friendship (which was an old one, based on his wife having known Mr Drummond at university 40 years earlier) had fallen into abeyance and he did not regard it as a significant relationship - or in the language of the Code of Conduct at the time, a "person with whom you have a close association". By 2012, it had been renewed, following Mr Drummond inviting the couple to a formal dinner, which Cllr Drage also declared publicly in the hospitality register.
- 4.8 As far as the Council is aware, no council member (or indeed, officer) had any involvement in the decision-making by Viridor Credits over the grant to Holy Trinity Church. In relation to Council nominations to the local body that considers applications for Viridor Landfill Communities Fund grants and makes recommendations to the main board, Mr Drage was appointed to this body after he stepped down as a councillor, in 2014. He has been asked about this and states that he had no communication from the Viridor Credits Board while he was the Council's nominee between May 2014 and May 2015, and the organisation itself states that it has no knowledge of him. He has therefore not participated in making any recommendations in



respect of making any grants. He has also categorically stated that he had no role in his church applying for and gaining this grant other than pointing out to them that they fell within the boundaries to be eligible for Landfill Communities Fund grants.

- 4.9 The committee will be aware that when determining whether to investigate a complaint that there has been an alleged breach of the Code of Conduct, the Monitoring Officer is required under the current standards regime to consult the Independent Person and to consider a number of criteria, including whether the member concerned is a current member of Sutton Council. No formal complaint under the Code of Conduct has been made in relation to the matter referred to in the petition about any current or former member of Sutton Council.
- 4.10 Other than former Cllr Drage's non declaration of a relationship with Mr Drummond in 2011 (and his explanation of this set out above), no evidence has been provided to substantiate the claims of improper decision-making that may have been in breach of the Nolan Principles in relation to any links between Viridor Credits, Viridor Ltd and Sutton Council members.
- 4.11 It has been suggested that the council should set up an inquiry to find evidence to substantiate the allegations. The difficulty with this proposal is that Viridor Credits, Viridor Ltd and Holy Trinity Church are entirely independent entities over which the Council has no jurisdiction. Similarly a number of the individuals involved are no longer council members and the council therefore has no powers over them as private citizens. There are no statutory grounds on which the Council can compel any of these bodies or people to give evidence to an inquiry. The Council cannot require witnesses to give evidence under oath for example, as government-instituted inquiries can; nor can it require persons and papers to appear before or be submitted to any of its bodies as Select Committees in Parliament can. An inquiry set up by the Council would therefore be of limited value in attempting to produce any evidence to back up the allegations of wrong-doing.
- 4.12 Thirdly the committee may wish to consider that there are a number of other bodies, such as regulators which in the government's view are more appropriate to investigate whether there is a serious issue of public concern, before an independent inquiry is considered. If there are concerns about how funds have been distributed by Viridor Credits, an organisation called ENTRUST was set up in 1996 to regulate the original Landfill Tax Credits Scheme (now Landfill Communities Fund) on behalf of HM Revenue and Customs. ENTRUST oversees the distribution of funds under the LCF and is thus the regulator set up for the explicit purpose of determining whether grants have been properly or improperly made.
- 4.13 Viridor Credits itself is an independent charity (registered charity number: 1096538) set up to administer distribution of the Landfill Communities Fund and is wholly separate from Viridor Ltd. It is regulated by the Charity Commission, which has a remit to investigate any complaints about charity malpractice or breaches of charitable law.
- 4.14 If the concerns are with the actions of the Holy Trinity Church, although this is not mentioned directly in the petition, again the oversight for this institution does not lie with the council - indeed there are strict separations between secular and religious regulation. The Church of England website advises that serious complaints about members of their clergy or churches should be made in writing to the Diocesan Bishop.



- 4.15 It can therefore be seen that there are a number of regulators who do have jurisdiction over the external bodies mentioned in the petition and are better placed than the council to carry out any inquiries into whether there has been malpractice.
- 4.16 In relation to the further allegation in the petition that the true purpose and environmental impact of the ERF (described in the petition as an incinerator) has been hidden or misrepresented, the Council strongly refutes this. The Council has never knowingly provided any inaccurate information about the purpose or the environmental impacts of the Energy Recovery Facility, either through publication or omission. We are aware that there are often very strong opposing views about facilities such as the Beddington ERF and respect the right of individual residents and others to disagree with the decision (taken by all four of the councils who are members of the South London Waste Partnership) to set up the ERF. However, the Council is obliged - and has always sought - to take balanced decisions in the long-term overall interests of the borough and its citizens. Issues relating to the environmental impact of the facility were thoroughly tested through the planning process, which itself was fully tested through an exhaustive judicial process which ultimately dismissed all the grounds for appeal against the decision to grant permission. The hearings in the court proceedings were carried out in public and the judgment is available.
- 4.17 This Committee's remit does not include determination of environmental policy. However, the following background is provided for the Committee's information to facilitate its consideration of the issues raised by the petition. The Department of Environment, Food and Rural Affairs' definition of Energy from Waste, which is what the Beddington ERF will do, is that it is the process of creating energy, usually in the form of electricity or heat, but also potentially biofuels, from the thermal treatment of a waste source via technologies such as incineration, anaerobic digestion, gasification or pyrolysis. Energy Recovery Facility is the commonly used term for facilities like the one in Beddington which will use non-hazardous residual (post-recycling) waste as fuel to generate energy. There are over 20 such facilities already operating in the UK and hundreds more across Europe.
- 4.18 Each year the four councils in the SLWP handle in the region of 300,000 tonnes of residual and recyclable waste, with residual waste sent to the landfill site at Beddington. Replacing the Beddington landfill site with the ERF forms part of the aims of the four councils to improve the environment by reducing the amount of residual waste that goes to landfill. Landfill produces very damaging greenhouse gases such as methane, which is 24 times stronger than carbon dioxide (CO<sub>2</sub>), and contributes more towards global warming than vehicle emissions. As a result, in 2018 when residual waste from the SLWP is treated at the ERF instead of being land filled, CO<sub>2</sub> emissions will reduce by 128,000 tonnes each year.
- 4.19 The ERF is not an incinerator that burns waste and does nothing else. It will be designed to produce 26 megawatts of electricity a year for the national grid – enough to power the facility itself plus 30,000 homes. The ERF will also have all the internal technology needed to create 20 MW of heat energy a year, which has the potential to provide low-carbon heat (or non-fossil-fuel sourced heat) to local developments.



- 4.20 Energy Recovery Facilities burn waste at high temperatures under carefully controlled conditions. The process is extremely efficient, robust and safe. Emissions are treated to meet required standards under the stringent European Industrial Emissions Directive, which is strictly enforced and monitored by the Environment Agency. The process also produces bottom ash (the bulk of remaining materials after combustion), which can be recycled for use as aggregate material in the construction industry; metals, which are recycled; and Air Pollution Control residue (APCr), which is either recycled or safely disposed of at licensed facilities.
- 4.21 The above information comes from Sutton Council's website. The Council is committed to putting as much information as it can into the public domain and is working with the other boroughs in the SLWP and Viridor to ensure the company meets its obligations to keep residents fully and accurately informed as works on the site and facility progress.
- 4.22 The concerns raised by the petitioners illustrate the importance of all members thinking carefully about their obligations to declare interests under the Code of Conduct, whether these are the disclosable pecuniary interests specified in the Localism Act or the other interests to be declared as set out in the Council's Code of Conduct in accordance with members' Nolan Principles obligations. The Committee may wish to consider assuring themselves of the actions that the Council is taking to ensure all members are and remain reminded of these obligations.
- 4.23 There are items elsewhere on the Committee's agenda which demonstrate that the Council continues actively to review and promote the operation of the Code of Conduct and to uphold standards of good governance. It is suggested that the Committee may also wish to commission a report on the member development programme overall, with a particular focus on members' awareness of the code of conduct and the importance of good and ethical governance and decision-making.

## **5. Options Considered**

- 5.1 If the Committee determines that an independent inquiry is required in all the circumstances the Committee can decide to make such a recommendation to the Strategy and Resources Committee which has the delegated authority to establish such an inquiry. The inquiry would be carried out by an appropriate individual or respected firm engaged by the Council with terms of reference agreed by the Strategy and Resources Committee. The timescale can be estimated at four to six months and the cost would be in the region of thirty to fifty thousand pounds.
- 5.2 An independent inquiry as requested by the petition is not recommended due to the likelihood that it would not be able to uncover any further information that is not already in the public domain and the fact that alternative regulators and remedies to address the issues raised already exist and are better placed to investigate the issues raised. Many issues surrounding the ERF have already been exhaustively reviewed and investigated during the judicial review process and it is unlikely that a council-commissioned inquiry could uncover further information beyond that which has been fully tested in the courts.
- 5.3 In relation to those matters under Sutton Council's and this Committee's jurisdiction, namely ensuring that Sutton members and officers conform to the highest ethical standards, the Council



is strongly committed to this. No complaints have been brought against any serving Council members in relation to the issues raised in the petition, but there is a clear process that exists to do so, which this Committee keeps carefully under review. There are reports elsewhere on this agenda demonstrating the Council's commitment to continually improving its ethical standards and processes. The committee is asked to endorse the recommendations in this report to remind all serving members of their obligation under the code of conduct to abide by the Nolan Principles and ensure the maintenance of high standards of conduct and behaviour, through the Council's member development programme.

## 6. Impacts and Implications

### Financial

- 6.1 The cost of an independent inquiry as requested by the petitioners is estimated at £30,000-£50,000. This cost is not budgeted and therefore would have to be met from savings in other budgets, from reserves or from a combination of the two. This information is provided to ensure that the Committee has comprehensive information on the potential impact of a decision to set up an inquiry. The decision should be based on all the considerations set out in this report and the potential cost of an inquiry is expected to have only minor significance.

### Legal

- 6.2 The legal implications are set out in the report.

## 7. Appendices and Background Documents

Appendix Letter	Title
None	

Background Documents
Petition submitted to Full Council on 13 July 2015 by Councillor Nick Matthey.

Audit Trail		
Version	Final	Date: 2 September 2015
Consultation with other officers		
Officer	Comments Sought	Comments checked by
Finance	Yes	Phil Butlin, Executive Head of Finance
Legal	Yes	Paul Evans, Head of South London Legal Partnership