

**Committee: STANDARDS**

**Agenda Item**

**Date: 17 June 2013**

**5**

**Title: REVIEW OF THE PROCEDURE FOR DEALING WITH COMPLAINTS**

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Item for decision

### **Summary**

1. This report is to remind members of the procedure for dealing with complaints and to seek members' views as to whether any changes are desirable.

### **Recommendations**

2. That members determine:
  - (a) Whether a hearing should be necessary when the finding of the investigating officer is that there has been no breach of the Code;
  - (b) If so, whether there should be a procedure for call-in;
  - (c) Whether or not reports that there has not been a breach of the Code of Conduct should be published.

### **Financial Implications**

3. None.

### **Background Papers**

4. None.

### **Impact**

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.

Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

6. Under the Local Government Act 2000 the procedure for dealing with complaints was prescribed by statute. In summary, all complaints had to be referred to a sub-committee of the Standards Committee (an Assessment Sub-Committee) to determine whether the complaint warranted investigation. If the Assessment Sub-Committee declined to refer the matter for investigation the complainant had a right to seek a review of that decision by a differently constituted sub-committee (a Review Sub-Committee). If a decision was taken either by the Assessment Sub-Committee or Review Sub-Committee that the matter should be investigated the investigating officer was required to prepare a report. In that report the investigating officer was obliged to make findings of fact and come to a conclusion as to whether or not there had been a breach of the Code of Conduct. Regardless of the investigating officer's finding that report had to be presented to a sub-committee of the Standards Committee (a Preliminary Hearing Sub-Committee). In the event that the investigating officer had found there had not been a breach of the Code the Preliminary Hearing Sub-Committee had to determine whether to accept that recommendation or whether to require a hearing. In the event that the investigating officer had decided there had been a breach of the Code of Conduct, the Preliminary Hearing Sub-Committee had to determine whether to refer the case to the First Tier Tribunal – Local Government Standards in England or whether the matter should be dealt with at a local hearing.
7. The previous legislation provided that where the Preliminary Hearing Sub-Committee accepted the investigating officer's finding that there had been no breach of the Code of Conduct that the decision was to be published unless the member who was the subject of the complaint requested this should not be done. In practice where the fact of a complaint was widely known, subject members wished it to be published that there had been a finding of no breach. Conversely where the fact of the complaint had not been put in the public domain subject members preferred no publicity.
8. All this has changed by virtue of the procedures previously adopted by the council. Complaints are now considered by the Monitoring Officer in consultation with one of the independent members. If a complaint is passed for investigation, then the investigating officer prepares a report which contains findings of fact and a finding as to whether or not the facts constitute a breach of the Code of Conduct. There is then one hearing for a sub-committee of the Standards Committee to consider the report.
9. The Standards Committee is not bound by the investigating officer's findings of fact or by the conclusion as to whether or not those facts constitute a breach of the Code of Conduct. The Standards Committee is free to come to a different result. However, the Adjudication Panel and First Tier Tribunal have been very critical where Standards Committees have departed from the

findings of an investigating officer without giving clear and cogent reasons for so doing. Although these cases are not strictly applicable to the current standards regime, the principle must be correct and if a Standards Committee were to depart from the findings of an investigating officer without clear and cogent reasons it would be very difficult to defend an application for judicial review from either a disgruntled complainant or member.

10. Under the old regime meetings of Preliminary Hearing Sub-Committees were able to take place in the absence of the press and public. Where there was a finding of no breach of the Code of Conduct it was important that this should be the case as to hold such a meeting in public would defeat the subject member's right of not having the fact of the complaint published.
11. Under the Access to Information laws there is a strong presumption that all meetings of the Standards Sub-Committee should be in public. Whilst there are exceptions which could be applied it would be difficult to justify the application of the public interest test in relation to those holding public office.
12. Members are asked to consider whether any purpose is served by holding a hearing where the finding of the investigating officer is that there has been no breach of the Code of Conduct. It will not in my view be appropriate for the investigating officer to have a final say on this issue. However, this concern can be easily overcome. Once the investigating officer's report has been prepared this can be sent to the complainant and the subject member. This ensures transparency so far as the complainant is concerned. The report can also be circulated to all members of the Standards Committee. Members of the Standards Committee could then have a period of, say, 10 working days during which any member could notify the Monitoring Officer that they wished to the decision to be called-in and considered by a sub-committee of the Standards Committee. If no such request for call-in was made within 10 working days then the decision of the investigating officer that there had been no breach of the Code of Conduct would stand.
13. There are arguments as to whether or not the investigating officer's report ought to have wider publication in such circumstances. On the one hand this would give greater transparency but on the other the public then become aware of information that a complaint has been made against a councillor which may be wholly unjustified. Members will note from above that under the old regime there was a requirement for publicity in such cases although a member had a right to "opt out". Members may consider it more appropriate for a subject member to have a right to "opt in" so that a report concluding that a member has not breached the Code of Conduct is only published at the express request of that member.

## Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
The public lose confidence in the council's standards regime.	2, the public will continue to be fully informed of cases where an investigation has found a member has breached the Code of Conduct and complainants would have a copy of the investigating officer's report in cases where there has been a finding of no breach would enable them to understand the reasons behind the decision.	3, loss of confidence in the standards regime would cause the council to suffer reputational damage.	Members adopt a policy which fairly balances the interest of the public to have information with the interest of councillors who are subject to an investigation but who are nevertheless not found to have breached the Code.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.