

Committee: STANDARDS

Agenda Item

Date: 13 October 2014

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Title: REVIEW OF THE PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE

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Item for decision

Summary

1. It is now just over two years since the committee adopted a procedure for dealing with complaints regarding the Code of Conduct. It is therefore appropriate to review the procedure in light of experience gained over that time.

Recommendations

2. That members decide whether to amend the procedure for dealing with complaints.

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
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Situation

6. Prior to July 2012 statutory instruments lay down a rigid procedure for dealing with complaints regarding a breach of the Code of Conduct and hearings arising therefrom. The procedure was over-bureaucratic and led to the system being brought into disrepute. When adopting new procedures regard was had to the old regime but the procedures were streamlined with a view to reducing the delays that were involved.
7. Since the adoption of the new regime the council has received 17 allegations of a breach of the Code of Conduct. Nine of these were not subject to investigation. In five cases, there was a finding of no breach of the Code of Conduct. In two other cases, breaches of the Code of Conduct were found but no action was taken by the committee following a hearing. One further case has resulted in the finding of a breach of the Code of Conduct and at the time of the preparation of this report the committee hearing has not yet taken place.
8. Comments by subject members or their representatives and by complainants have suggested that the current procedures are not perhaps as clear as they should be. I therefore attach a copy of the current procedures with tracked changes for members' consideration. I would comment upon the amendments as follows.
9. In paragraph 5, I have incorporated a minor amendment to show that conversations to consider investigating complaints can take place by telephone.
10. In paragraph 6, I have incorporated an amendment to stress that the Code only applies when members are acting in an official capacity. I do not believe the public readily understand this concept and we have received complaints about the conduct of members in their private capacity where the Code of Conduct clearly does not apply.
11. In paragraph 7b I have made amendment to indicate that a complaint to the Standards Committee should be a last resort. It is not uncommon to receive a complaint that a member has defamed a member of the public or a fellow member. Defamation is a matter for the law courts and not for the Standards Committee.
12. I have inserted a new provision as paragraph 7d. The Adjudication Panel, the First Tier Tribunal and the High Court have all placed a great deal of weight upon the right of freedom of expression under Article 10 of the European Convention on Human Rights. Many allegations of failing to treat somebody with respect will fail because of the protection given by this provision. Where it is clear that this protection would provide a defence there appears little purpose in conducting an investigation.

13. In paragraph 13 the amendments are necessary to reflect the change to the policy adopted by members previously as set out in paragraph 12 where members decide that a hearing would not be necessary merely to receive a report advising the committee that there was no breach of the Code of Conduct.
14. At the most recent hearing the committee had, the subject member was represented by a solicitor who wished to call a large number of witnesses to give live evidence. Under the new Standards regime such an approach would be highly disproportionate. Had the committee agreed to hear evidence from the witnesses who were being proffered it is unlikely that the hearing could have been finished in one day. I am therefore suggesting a procedure which places the emphasis on paperwork with live evidence being given only in exceptional circumstances. As a matter of law, hearsay evidence is always admissible in civil proceedings but the weight given to it will be a matter for the committee conducting the hearing.

Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
A person aggrieved by a decision of the Standards Committee may challenge that decision by judicial review.	1, the consequences of an adverse finding by the Standards Committee are such that it is unlikely to justify the expense of such proceedings.	2, whilst it is unlikely that the council would lose a judicial review in respect of a decision of the Standards Committee properly advised and that the council would be awarded its costs there would nevertheless be some resource used in defending the proceedings and some expenditure would not be covered by the costs award.	That the Standards Committees ensure that hearings are dealt with fairly and proportionately.

- 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.

PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE

1. The Standards Committee can only investigate complaints of a breach of the Code of Conduct by individual members. It cannot investigate complaints against the whole council, the cabinet, committees or council officers.
2. Complaints must be in writing. If a complainant is unable to make a complaint in writing personally council officers will assist. The council will supply a complaints form to assist complainants in making their complaint but its use is not compulsory and a letter or e-mail complaint will suffice.
3. Upon receipt of a complaint an acknowledgement will be sent to the complainant. The subject member will be informed that a complaint has been made and be told the substance of the complaint unless in the opinion of the Monitoring Officer to do so could prejudice a fair investigation.
4. The complainant will be offered the opportunity to advance reasons why his or her name should not be disclosed to the subject member and will be informed that if no response is received within 10 working days the subject member will be informed of the complainant's identity. In the event that the complainant does advance reasons as to why his or her name should not be revealed to the subject member at that time the Monitoring Officer will consult with an independent person. In the event that following such consultation the Monitoring Officer decides that the complainant's identity should be revealed then the complainant will be notified of that decision and will be given a period of 5 working days to decide whether to proceed with the complaint. If the complaint is not withdrawn the subject member will be informed of the complainant's name.
5. The Monitoring Officer or his or her deputy will consult with an independent person with regard to all complaints received. Such consultation may be at a meeting, [by telephone](#) or [in](#) writing. Following such consultation the Monitoring Officer or his or her deputy will take one of the following decisions:-
 - a. To take no action

- b. To take action other than an investigation (e.g. to ascertain whether the subject member may be willing to apologise, undergo training or undergo mediation)
- c. To require an investigation

Whilst the Monitoring Officer is solely responsible for taking the decision, where the independent person has expressed a view that the allegation should be investigated the Monitoring Officer may refer the matter to the Standards Committee if he or she is of a view that an investigation is unnecessary and the Standards Committee will then determine how the allegation should be dealt with.

- 6. Not all complaints will be passed for action. The subject of the complaint must have been a member of the council at the time the facts alleged occurred. [The Code of Conduct must also apply to the acts complained of. Members are only bound by the Code of Conduct when they are conducting the business of the council \(including acting as a councillor\) or when they are acting, claiming to act or give the impression that they are acting as a representative of the council. Conduct by members in their private capacity does not engage the Code of Conduct.](#) The complaint, if proved, must also be capable of amounting to a breach of the Code of Conduct. No findings of fact are made at this stage. The decision as to whether to investigate a complaint is made on the assumption that the facts as alleged are true. Findings of fact are only made after an investigation and report to a sub-committee.
- 7. Even when the aforementioned conditions are satisfied this does not necessarily mean that a case will be passed for action. There is a balance to be struck between the desirability of ensuring that issues regarding the Code of Conduct are dealt with appropriately against the costs involved of carrying out an investigation and hearing. The Standards Committee are of the view that there is little public benefit in investigating allegations which are not sufficiently serious, politically motivated, malicious or vexatious. In reaching a decision whether to refer a case for action the following criteria will be applied:-
 - a. Complaints which are not supported by sufficient information are unlikely to be referred.

- b. If the complaint has been or should be investigated or dealt with elsewhere further action is unlikely to be justified.
 - c. Stale complaints are unlikely to be referred. The Standards Committee expects that complainants would normally make their complaint within six months of the relevant facts coming to light.
 - ~~e.~~d. Regard will be had to the very high degree of protection given to freedom of expression by Article 10 of the European Convention on Human Rights
 - ~~d.~~e. Where a member who is the subject of a complaint has acknowledged the breach of the Code and made a sincere apology the complaint is unlikely to be referred unless it is considered that such apology would be insufficient.
8. Where a case is accepted for investigation the Monitoring Officer will arrange for an investigation to be carried out.
 9. At the conclusion of the investigation the investigating officer may prepare a draft report which he sends to the complainant and the subject member for comment. The investigating officer may or may not amend the report in the light of representations received. Alternatively the investigating officer may in his or her sole discretion proceed to a final report.
 10. In the final report the investigating officer will set the facts which have been agreed and any conflicting evidence he has received from the complainant, the subject member and any witnesses. The investigating officer will make any findings of fact and state whether in his or her opinion the facts as found constitute a breach of the Code of Conduct.
 11. Where there has been a finding on no breach of the Code of Conduct the report shall be circulated to all members of the Standards Committee. Any member shall be entitled to make a request to the Monitoring Officer that a meeting of the Standards Committee be convened for the purpose of a hearing to consider the report. If no member of the Standards Committee requests a hearing within 10 working days of the report being circulated the findings of the investigating officer become final and the decision stands.

12. In the event that a member of the Standards Committee does request a hearing the hearing the public and press shall be excluded from the hearing under s.100I and paragraphs 1 and 2 Schedule 12A Local Government Act 1972 unless the subject member requests otherwise it being generally considered in the public interest to apply the exemption as the member's right to privacy until such time as the findings of the investigating officer have been reversed outweigh the public interest in making the information available.

13. Where the investigating officer finds that there has been a breach of the Code of Conduct or where a member of the Standards Committee has requested a hearing under paragraph 12 above there will be a hearing to consider the complaint and the investigating officer's report. ~~The~~ Unless paragraph 12 above applies the hearing will normally be held in public.

14. The procedure for a hearing will be as follows:

- a. The investigating officer will usually have interviewed all relevant witnesses and a summary of their evidence will appear in the report
- b. Live evidence will therefore not usually be given at the hearing
- c. The subject member may apply for permission to call live rebuttal evidence. The Monitoring Officer (or his or her deputy if the Monitoring Officer carried out the investigation) shall determine with the Chairman of the Standards Committee (or another voting member of the Standards Committee in the absence of the Chairman) whether live witness evidence will be permitted.
- d. Any request for permission to call live evidence shall be in writing, state the name of the witness concerned and give a summary of the evidence the witness is likely to give.
- e. Where a witness has given evidence which is referred to in the investigating officer's report and the subject member wishes that person to be subject to cross examination at the hearing the subject member may request the investigating officer to endeavour to arrange for that witness's attendance. The subject member should however be aware that witnesses cannot be required to attend Standards Committee hearings. Further the investigating officer may decide not to request the witness to attend. In either event the evidence is admissible but when

evidence is in dispute and is no subject to cross examination the Committee will need to determine what weight to give to it.

~~*f. The complainant and others may be invited to attend and give evidence.~~ The subject member will have the opportunity of attending and addressing the hearing and calling evidence if having first been given permission to do so.

~~13.15.~~ 15. Having received evidence and hearing submissions the Committee will announce its findings of fact, its findings as to whether there has been a breach of the Code of Conduct and what sanction (if any) should apply.

~~14.16.~~ 16. The range of sanctions available is:-

- a. To find that no further action is required.
- b. To censure the member (this is the only sanction available if the member is no longer a councillor at the date of the hearing)
- c. To recommend that a member's access to council premises or the use of council resources be restricted providing that such restrictions do not prevent the member performing his functions as a councillor
- d. To recommend that the member makes a written apology in a form acceptable to the Standards Committee.
- e. To recommend that the member undertakes specified training.
- f. To recommend that the member undertakes specified conciliation or mediation.
- g. To recommend that the member be removed from a committee or committees of the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- h. To recommend that the member be removed from an outside body or bodies to which the member has been appointed by the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- i. To recommend that the member be removed from the Cabinet (this can only be done by the Leader of the Council)

j. To require the decision of the Standards Committee to be published.

~~15-17.~~ 17. A finding that there has been no breach of the Code of Conduct (whether by the investigating officer or by the Standards Committee) shall only be published if the subject member requests that this should be done.