



GOVERNANCE COMMITTEE

11 March 2015

Subject Heading:

Members Code of Conduct Complaint Procedure

Report Author and contact details:

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Policy context:

Providing clear guidance to Members – ensure efficient use of Council Resources

Financial summary:

While there are no specific material financial implications, the proposed changes are designed to promote a more efficient use of council resources.

SUMMARY

A report, considered by the Adjudication & Review Committee at its meeting on 4 February 2015 concerning arrangements for dealing with allegations that a Member or a Co-opted Member has failed to comply with the Members' Code of Conduct, has been referred to the Governance Committee for it to consider whether to include the arrangements in the Council's Constitution.

RECOMMENDATIONS

1. That the report be noted and its appendices as presented, be adopted for use by the Council
2. That the Council's Monitoring Officer be authorised to make the necessary changes to the Council's Constitution.

REPORT DETAIL

1. Background

- 1.1 The Localism Act 2011 amended the statutory provision of an ethical framework for local authority Members and Co-opted Members. The primary requirement was that authorities must promote and maintain high standards of conduct and in discharging that duty must adopt a code dealing with the conduct that is expected of Members and Co-opted Members when they are acting in that capacity. This Council has adopted such a code which is in the Council's Constitution and to which each member and Co-opted Member has undertaken to abide.
- 1.2 Section 28 of the Localism Act 2011 provides that in addition to adopting a Code of Conduct pursuant to the revised ethical framework, an Authority must have in place arrangements under which allegations (of breach) can be investigated and arrangements under which decisions on allegations can be made.
- 1.3 The Adjudication and Review Committee has requested a review of the current arrangements which has been undertaken by the Deputy Monitoring Officer together with Democratic Services officers and revised arrangements attached at Appendix 1 are submitted to Committee for consideration.

2. Detailed Provisions

- 2.1 The revised arrangements provide that an allegation of a breach of the Code of Conduct by a Member/Co-opted Member shall be made to the Monitoring Officer who shall make an initial assessment of the validity of the allegation. The Arrangements provide a number of reasons why the Monitoring Officer may determine that the allegation does not merit any further action or endeavour to reach an informal resolution to the satisfaction of the parties.
- 2.2 If none of these reasons apply or an informal resolution is not achievable, the Monitoring Officer shall refer the allegation to an Adjudication and Review Assessment Panel which may either dismiss the allegation or decide that it merits further investigation. In the former case reasons must be given and in the latter the Monitoring Officer is requested to conduct an investigation. The Monitoring Officer may appoint an Investigating Officer.
- 2.3 Following the investigation, an Investigation Report is submitted to the Adjudication and Review Assessment Panel. Depending upon whether the report concludes that there is/is not evidence of failure to comply with the Members' Code of Conduct, the Assessment Panel may dismiss the allegation, remit the report to the Monitoring Officer for

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- further consideration, or refer it on to the Adjudication and Review Hearing Panel to conduct a hearing.
- 2.4 Detailed provisions for how a hearing should be conducted are set out in the arrangements. The Panel will conduct hearings in an inquisitorial manner rather than in an adversarial manner. Members who are not members of the Panel or party to the proceedings may attend hearings but must withdraw when the Panel deliberates upon its determination.
 - 2.5 Where the Panel determines that there has been a breach of the Code of Conduct, the Panel shall then determine the sanction/penalty, if any, following representations from the Member/Co-opted Member who has been found to be in breach.
 - 2.6 Before any decisions are made by the Panel, the Localism Act 2011 requires that the views of the Independent Person be sought and taken into account.
 - 2.7 It is proposed that there is no appeal from the final determination of an allegation at any stage in the process, either by the person making the allegation or the Member/Co-opted Member against whom the allegation is made.
 - 2.8 It would be inappropriate for a person making an allegation to have the capacity to challenge the Monitoring Officer's determination or interpretation of the allegation which could lead to unnecessary disputes. The Monitoring Officer must be assumed to act in good faith and lawfully at all times. An aggrieved person making an allegation could always challenge the Monitoring Officer's decision by way of complaint to the Ombudsman if the person perceived maladministration or by challenge to the court upon an application for Judicial Review if the person perceived that the decision was unlawful.
 - 2.9 Similarly with a determination by the Assessment Panel. If a decision is made to dismiss an allegation for specified reasons the considerations referred to in the previous paragraphs refer equally here. Where a decision is made for an allegation to be investigated, the determination is deferred to a later stage in the process.
 - 2.10 The aspect which is likely to prove to be more controversial is in respect of an appeal from a decision of the Hearings Panel. In line with the arrangements in other authorities (a sample of about 15 other authorities has been reviewed) there is no appeal proposed from a determination of the Hearings Panel. There are a number of reasons for this:
 - 2.10.1 Firstly, a member found to be in breach of the code may seek to appeal the decision regardless of merit in the hope that another Panel of Members might come to a different decision. A Member would have nothing to lose by so doing. From the Council's perspective this would drag out the process for several months and incur additional cost and time in organising what would in effect be a re-run of the hearing.

- 2.10.2 Secondly, it would prove difficult if not impossible to establish an Appeal Panel. The Adjudication and Review Committee is comprised of 10 Members. 3 have taken part in the Initial Assessment Panel. The same 3 may form the Assessment Panel for consideration of the Investigation Report but if that is not possible another 3 Members may be called upon. A further 3 Members would comprise the Hearing Panel. If up to 9 Members have participated by the time the Hearing Panel has made its decision there would be an insufficient number of Members who have not had any involvement to form an Appeal Panel.
- 2.11 If the Adjudication and Review Panel could not determine an Appeal because of Members who have already participated, the only place for an Appeal to be heard would be at full Council. It is wholly inappropriate for a matter of this nature to be considered by full Council which due to the political nature of its considerations is not best suited to the determination of a quasi-judicial matter. Moreover, with the withdrawal of those Members who have already participated together with the Member against whom the allegation was made, full Council would be a much reduced forum which could affect the political balance. Whilst political balance should not play a part in matters of this nature, it would be unrealistic to imagine that it could be set-aside totally in the context of full Council. However, that inability to set aside political considerations would render any decision more likely to challenge and potentially much harder to defend.
- 2.12 For the foregoing reasons it is considered that the arrangements are more robust and the Council better protected by having no appeals to determinations within the process. External scrutineers in the form of the form of the Local Government Ombudsman or the High Court are in a much better and independent position to review any determination.

IMPLICATIONS AND RISKS

Legal implications and risks:

1. Section 28 of the Localism Act 2011 provides that an Authority must revise its existing Code of Conduct having regard to the statutory changes to the ethical framework whereby an authority fulfils its statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members. The Council has revised its code in the light of those matters and the Member's Code of Conduct forms part of the Council's Constitution. All Members and Co-opted Members have signed an undertaking to conduct themselves in accordance with the Code.
2. The Section also provides that an Authority must have in place arrangements under which allegations (of failure to comply with the Code of Conduct) can be investigated and arrangements under which decisions on

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allegations can be made. The Arrangements attached at Appendix 1 meet these criteria.

3. Additionally, an authority is required to appoint at least one Independent Person whose views are sought and taken into account by the Authority before it makes its decision on an allegation that it has decided to investigate. Further that the views of the Independent Person may be sought in relation to an allegation in circumstances other than the foregoing, and by a Member/Co-opted Member who is the subject of the allegation. The Council has appointed appropriate Independent Persons and the Arrangements attached at Appendix 1 make provision for all the statutory requirements to be met.

Financial implications and risks:

This report proposes a revised set of arrangements for dealing with allegations that a Member or a Co-opted Member has failed to comply with the Members Code of Conduct. The proposed changes seek to, amongst other things, streamline procedure, and this should lead to a more efficient use of Council resources. There are no other specific material finance comments.

Human Resources implications and risks:

There are no HR implications or risks arising directly as a result of this report. The Council's Monitoring Officer is fully aware of their statutory obligations and responsibilities with regard to dealing with any allegations against Members.

Equalities implications and risks:

The Public Sector Equality Duty says that public bodies must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups.

The Council has the duty to act, and is committed to all the above in its recruitment and employment practices and the provision and procurement of its services. This can also apply to elected members if they do something in a discriminatory manner when undertaking council business.

It is advisable that elected members undertake equality & diversity training to ensure that they do not act discriminatory while undertaking council business.

Individuals involved in Member Code of Conduct Complaints Procedure should receive Equality & Diversity Training to ensure the Council and its elected comply with the Equality Act, especially when it is equality related breaches of Members Code of Conduct. This should include elected and co-opted members, as well as the Monitoring Officer.

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Reasonable adjustments should be made for disabled elected members to ensure they can fully participate in the member Code of Conduct Complaints Procedure.

BACKGROUND PAPERS

None