

CHESHIRE EAST COUNCIL

REPORT TO: AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 24 September 2015
Report of: Head of Legal Services and Monitoring Officer
Subject/Title: Review of standards arrangements for dealing with Code of Conduct complaints
Portfolio Holder: Councillor Paul Findlow

1.0 Report Summary

1.1 The Council on 17 July 2014 approved procedures to be followed when considering a complaint that an elected member of the Council or of a town or parish council within its area has failed to comply with the Council's Member Code of Conduct. This report reviews those arrangements and recommends improvements to them.

2.0 Decision Requested

2.1 That the following recommendations be made to **Council**

(a) That the proposed revised arrangements for dealing with complaints about members who are alleged to have breached their Council's code of conduct for members are recommended to the Council.

(b) That the plain English version of the guidance "How to make a complaint" at **Appendix 3** of this report replaces the current version of that guidance on the council website.

(c) That the amended complaint form set out at **Appendix 2** be adopted.

(d) That the amended overview document set out at **Appendix 4** and the amended hearing procedure set out at **Appendix 5** be adopted.

3.0 Wards Affected

3.1 All wards.

4.0 Local Ward Members

4.1 Not applicable.

5.0 Policy Implications

- 5.1 One of the purposes of this committee is to promote high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted members and other persons acting in a similar capacity). Strong ethical governance, including clear policies and protocols supporting and underpinning the Member Code of Conduct, are critical for the ethical governance of the Council and for public confidence in the Council's decision making processes.

6.0 Financial Implications

- 6.1 There should be no financial implications associated with the recommendations contained in this report.

7.0 Legal Implications

- 7.1 The legislation covered by this report is set out in the Localism Act 2011. The proposed changes to the standards processes and procedures set out in this report are accommodated within the legal framework set out in the Act.

8. Risk Management

- 8.1 The integrity of the standards regime within the councils operating in Cheshire East is important to ensure that the public maintains confidence in the way in which those councils operate and the provision of public services. The Council must have robust processes in place both if it is to safeguard its reputation and the integrity of the Council's corporate governance and decision making processes as a whole.

9.0 Background

- 9.1 At its meeting on 19 July 2012, Council approved the adoption of a new Code of Conduct for elected members of Cheshire East Council together with a procedure relating to the investigation of complaints under the, then, new Code. The Council on 17 July 2014 approved a revised set of documents to be followed when considering a complaint that an elected member of the Council or of a town or parish council within its area has failed to comply with the Council's Member Code of Conduct. The revised procedures were less complex than the previous ones and allowed for complaints that did not warrant investigation to be dealt with more quickly.

- 9.2 In recommending approval of the new procedures to Council in 2014, Audit and Governance Committee decided that the revised arrangements should be reviewed 12 months after implementation. After operating the new procedures there has been a significant increase in the speed with which complaints have been considered. The backlog of cases which existed last year has been cleared and current complaints are being dealt with more efficiently and effectively. The initial assessment of cases, in particular, takes place more quickly and few complaints get beyond the initial assessment phase to be investigated. Dealing with this phase efficiently significantly reduces the overall time taken to deal with a complaint.
- 9.3 This report sets out proposals to further improve the efficiency of the process and add clarification where it is needed. The report considers the two main documents used in the standards process and the complaints form. These are the “*How to make a complaint*” guidance¹ for those wishing to make a complaint which is currently on the council’s website but was not reviewed as part of the decisions made in 2014 and the “*Overview for considering complaints that members have breached the code of conduct*” which was adopted in 2014.

How to make a complaint – Appendix 1

The changes to this document are in tracked changes and additions are in differently coloured text.

- 9.4 Section 3 - It is proposed that the complaint process stipulates that the Monitoring Officer will not consider a complaint unless a complaint form has been received.

The procedure states that complaints must be in writing but it does not specify that a form has to be completed before it can be treated as a code of conduct complaint. Although this approach may appear overly bureaucratic, the advantage of compelling complainants to fill in a form is that, in so doing, they are required to address what the code of conduct actually says and how the member has acted in breach of it. As not all complainants send in a form in the first instance and have to be contacted requesting that they do so, it is suggested that this wording be included in the procedure. This will allow the Monitoring Officer (MO) to insist that only complaints returned on a form are assessed and will help to speed up the initial assessment process. Help would be given to anyone who has a disability or who otherwise needs help to fill in the form.

- 9.5 Section 3 - Where a complaint is about more than one member the complainant will be asked to explain what each individual has done that they believe breaches the code. The addition of this text (which is present on the complaint form) would assist the Monitoring Officer and Independent Person when considering the complaint and applying the assessment criteria. It is also suggested that a new section be added to the complaint form (**appendix 2, section 4**) to help identify which paragraphs have allegedly been breached.

¹ aka arrangements for dealing with standards allegations under the Localism Act 2011

- 9.6 Section 3 – On occasion, a complaint will be received which names more than one complainant. Corresponding with multiple complainants can be time consuming. It is therefore proposed that a single point of contact be sought and that wording to this effect should be included in the procedure.

It is proposed that the sanctions available as part of the standards procedures are set out at this point in the guide to manage expectations about what the process can achieve.

- 9.7 Section 4 - Complaints have been received which concerned both the behaviour of a councillor (code of conduct) and their actions when carrying out council business. The second element may not engage the code of conduct but might still need dealing with under the corporate complaints procedure. For example if a councillor fails to respond to emails, letters or phone messages about a particular issue this does not engage the code of conduct but may lead to poor service from the council. As the outcome of any corporate review could have a bearing on the matter under consideration by the MO, it has proved useful for the corporate element to be resolved first, the outcome of which has then been considered by the MO and Independent Person during their deliberations. It is suggested that this approach be formally adopted as part of the procedure.
- 9.8 Section 4 - When a form is received, preparatory work often has to be undertaken before the member receives notification of the complaint to ensure that the MO has sufficient information before her to be able to effectively carry out her assessment. As the subject member has the right of response but will not be told about the complaint until they receive formal notification by way of a letter; any delay in issuing this letter shortens the 20 day deadline within which the assessment must take place and has, on occasion, led to either an assessment meeting having to be held before the member's response deadline has expired or the deadline being missed. By changing the calculation of the deadline to the despatch date of the notification letter rather than the date the complaint is received, this would provide the flexibility needed and would enable the deadline to be met more readily.
- 9.9 Section 4 - Where the MO requires additional information in order to complete her initial assessment, she may ask the complainant or subject member for more information; which may extend the assessment period by a maximum of 15 working days. It is suggested that the procedure should formally recognise that the parties are informed as a matter of course when this happens.
- 9.10 Section 4 - The MO does not, as a matter of course, notify a town or parish clerk of a complaint at the initial assessment stage of the process unless information is specifically requested from them, or when deciding what action to take. It is suggested that the wording "whether the complaint merits formal investigation" should be changed to "what action to take" to give the MO more flexibility.

It is also suggested that the outcomes of an initial assessment are included at this point since these do not currently appear anywhere in the document.

- 9.11 Section 5 – The proposed additional wording in this section would clarify the fact that the MO might seek to informally resolve a complaint that she might otherwise be minded to send for investigation but that if an informal resolution is not possible the matter might still be investigated. Also the timescale for an investigation has been added to clarify that it is aimed to complete them within 8 weeks of the decision being made to refer a complaint for investigation. Likewise the timescale for responding to a draft investigation report has been added and the fact that each report will include a finding about whether or not the investigator believes there has been a breach of the code of conduct.
- 9.12 Section 6 – The involvement of the Independent Person has been added for clarity along with the timescale of 15 working days for being notified of a “no breach” finding and the fact that the clerk of a parish council will only be informed if they have previously been involved in the case.
- 9.13 Section 7 – The guidance at paragraph 7.1 refers to an informal resolution step which as currently drafted can be instigated without the need for a hearing. It is recommended that the Independent Person should be consulted about each option available at this point in the process.
- 9.14 Section 7 – It is suggested that the wording in paragraph 7.2 is changed to make it clear that any pre-hearing meeting will normally be held in private without any parties present. This should enable the meetings to take place more quickly and prevent the possibility of the subject member seeking to present their case prematurely.
- 9.15 Section 7 – It is also suggested that this section should include the ability to bring the case to an end where it is in the public interest to do so. If at any point during the investigation or hearing process, the subject member has resigned or lost their seat, is seriously ill or has died, it is suggested that the MO or Hearing Sub-Committee ought to be able to bring the case to an end. Also paragraph 7.2 should explicitly state that the investigation and hearing process are confidential up to the point at which the papers for the hearing become public as part of the hearing process.
- 9.16 Section 8 – At present the range of sanctions appears to include the ability to remove a subject member from outside bodies that the council has appointed him/her to. This power is not included within the terms of reference of the Hearing Sub-Committee by the council’s constitution and is inconsistent with the other sanctioning powers it has which largely consist of the power to make recommendations. Therefore, it is proposed that this power is altered to one of making recommendations to the council which would bring it into line with the other sanctioning powers available.
- 9.17 Section 9 – There has been some uncertainty about how the decisions of the Hearing Sub-Committee should be publicised. The council currently has no area on its website which specifically hosts past decisions. It is suggested that the decision should be made available for public inspection by way of the published minutes since the council is obliged to make these public in any event.

- 9.18 Between paragraphs 9 and 10, a heading has been inserted entitled “Informative Notes” to differentiate the information in paragraph 10 onwards from the actual process outlined in paragraphs 1-9 of the document. This has meant that the information in Paragraph 12 containing details about procedural issues has been moved to paragraphs 3 and 8 and the reference in paragraph 12 to the selection of a chairman for the Hearing Sub-committee has been moved to paragraph 10 which deals with information about that sub-committee.
- 9.19 The current guidance is worded in fairly administrative language. Therefore a plain English version of the guidance is attached as **Appendix 3** and it is recommended that it replace the current version.

Overview for considering complaints that members have breached the code of conduct – Appendix 4

- 9.20 This overview document was approved by the Council on 17 July 2014. The document has been amended to take account of the changes set out and proposed above. The content of paragraph 7.1 of Appendix 1 is not reflected in the current version of the overview document. Appendix 4 has been amended to ensure that it now is (paragraph 9). This paragraph allows the MO to informally resolve a case even where an investigation has found that the subject member is in breach of the code. This allows the MO to deal with appropriate cases quickly and efficiently.
- 9.21 The MO has delegated power, in consultation with the Independent Person and the Chair of the Audit and Governance Committee or in his/her absence the Vice Chair of Audit and Governance, to approve a departure from the standards arrangements when she considers it is expedient to do so to secure the effective and fair consideration of any matter. An addition is recommended to the start of the document to allow the MO to depart from the procedure in consultation with the Chairman of the Hearing Sub-Committee rather than the Chairman or Vice Chairman of the Audit and Governance Committee once a hearing is contemplated. The Chairman of the sub-committee is the person with responsibility for running the hearing effectively, therefore it makes sense for that person to be consulted rather than the Chairman of the main committee.
- 9.22 At present there is no retention period specified for documents relating to a case. The recommendation is that the period for both no breach cases and for cases where a breach of the code was found should be the same as the document retention process for committee papers which is 6 years. The minutes of the Hearing Sub-Committee would be kept in the same way as the minutes of other council decision-making bodies.

Hearing Procedure – Appendix 5

- 9.23 The hearing procedure approved by the Council on 17 July 2014 has been amended. It is recommended that it include a pre-hearing process section which will enable issues in dispute to be identified and clarified before the hearing; relevant witnesses and documents to be identified and directions issued about how the hearing should be conducted. The apparently absolute requirement to hold a hearing within 3 months of the Investigator's report being issued has been amended to reflect the reality of the situation which is that the timescale is a target timescale.
- 9.24 A provision has been added so that if at any point during the hearing process, the subject member has resigned or lost their seat, is seriously ill or has died; the sub-committee will only refer the matter for a hearing, or continue with a hearing which is already underway, if it considers it is in the public interest to do so. This provision is already applicable in any event as part of the overall standards process but it makes sense to refer to it in the hearing process too.
- 9.25 The proposed hearing process document showing substantive amendments to the current document in red is attached as **Appendix 5**.

10.0 Access to Information

- 10.1 The background papers relating to this report can be inspected by contacting the report writer:

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