

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting: 26th June 2014
Report of: Head of Legal Services and Monitoring Officer
Subject/Title: Arrangements review of processes for considering complaints that members have breached the Code of Conduct

1.0 Report Summary

- 1.1 This report proposes amended arrangements for considering complaints that members may have breached the Code of Conduct.

2.0 Recommendations

That members recommend to Council:

- 2.1 the revised arrangements for dealing with standards allegations under the Localism Act 2011 at Appendix 1 of the report.

3.0 Reasons for Recommendations

- 3.1 The procedure the Council adopted for dealing with complaints against members and investigations on 19th July 2012 has been in operation since that date. A review has been undertaken by a working group of the Audit and Governance Committee to assess how the arrangements were working and to consider any improvements in line with best practice.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Strong Ethical Governance, including clear policies and protocols supporting and underpinning the Code of Conduct, are critical for the ethical governance of the Council and for public confidence in the Council's decision making processes.

7.0 Financial Implications (Authorised by the Chief Operating Officer)

- 7.1 Costs in relation to any investigations, particularly external investigations, and hearings are dependent upon the number of complaints received, however it is anticipated that these costs will be met from existing resources.

8.0 Legal Implications (Authorised by the Head of Legal Services)

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime were brought into effect from 1st July 2012. The Act required that the Council adopted a Code of Conduct and had in place effective procedures to enable the investigation of any complaints or allegations that a Member had breached of the Code of Conduct. The Borough Council remains responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct. The proposed arrangements comply with the statutory requirements.

9.0 Risk Management

- 9.1 The Council must have robust processes in place both from a reputational management viewpoint and to safeguard the integrity of the Council's Corporate Governance and Decision making processes as a whole.

10.0 Background and Options

- 10.1 Under the Localism Act 2011 the Council has a statutory duty to promote and maintain high standards of conduct by both its Elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct expected of Members whenever they act in their capacity as an Elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member may be in breach of the Code of Conduct.

- 10.2 At its meeting on 19 July 2012 Full 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 new Code.

10.3 Review Findings

The review of the arrangements for assessing and investigating member complaints has shown that the main criticisms of the current system for both subject members and complainants are of delay and complexity.

- 10.4 In abolishing the previous standards regime Parliament's intention was to reduce the time and expense that Authorities spent in dealing with low level complaints. The aim was for a local hearings process to be used for only the most serious complaints.

- 10.5 The design of any system must take account of the fact that the Borough Council must administer the complaints process for 106 Town and Parish Councils in addition to the Borough Council itself. It is therefore essential that there is a good filter process to ensure that complaints are dealt with appropriately according to the assessment criteria.
- 10.6 By introducing a local resolution process the Council recognises the wish to deal with matters swiftly and informally whilst taking member complaints seriously.
- 10.7 In practice the feedback and commentary show that the local resolution process has become too formal and slow. The local resolution process has instead taken on all the complexity of a local hearing process which was not the original intention. Commendably members sought to own the complaints process and play an active role in overseeing strong ethical governance.
- 10.8 Some of the delay in resolving the complaints has been the need to convene the Initial Assessment Panels.

10.9 Initial Assessment

The changes that are proposed are that the initial assessment of complaints should be undertaken by the Monitoring Officer in consultation with an Independent Person. That assessment, against the criteria set out in Appendix 1 should take account of any comments received from the subject member.

10.10 Informal Resolution

The emphasis, wherever possible, will be placed on the Monitoring Officer dealing with complaints in a timely manner. Where complaints do not raise serious issues the Monitoring Officer will seek informal resolution rather than refer them for investigation.

- 10.11 Consistent with her duty to uphold standards of conduct, the Monitoring Officer will seek the simplest and most cost-effective way of resolving the issue. This informal resolution process will not include a public hearing.

10.12 Local Hearings

A local hearing process is set out in the Appendix and will follow a full investigation. An investigation could be undertaken by an appropriately trained senior officer of this or another Council, or by an external investigator.

- 10.13 It is intended that there should not be an appeal process at any stage of the process. The principals of Natural Justice are not affected as

ultimately a complainant or subject member could seek resolution from the Local Government Ombudsman or ultimately through the Court.

- 10.14 It is anticipated that all local hearings will be conducted in public.
- 10.15 In the interests of fairness and natural justice, if an appeal process is provided following any part of the complaint procedure it should be affordable to both the subject member and the complainant. For example a complainant could seek to have a no breach finding returned in the same way as a subject member.
- 10.16 The legal advice to Authorities has consistently been not to introduce an appeal process as this would need to be based on strict criteria which would be very difficult to administer and would again build in complexity and delay.
- 10.17 Unlike the judicial system it would be almost impossible to ensure sufficient rigour to deny a right of appeal to either a subject member or complainant. The effect would be to build in two hearings which would replicate the problems experienced to date but at a different part of the process.
- 10.18 Although each Authority is responsible for designing and adopting its own process for dealing with complaints, it is telling to note that there are limited examples of any appeals process. Those that exist afford the same right of appeal to both a subject member and complainant.
- 10.19 For these reasons it is not recommended to members to build in any appeals. The emphasis should be on running a fair process that members can have confidence in.

11.0 Access to Information

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

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