

COUNCIL - 17 MARCH 2015

REVIEW OF COMPLAINTS PROCEDURE IN RELATION TO THE MEMBER CODE OF CONDUCT

REPORT OF MONITORING OFFICER

WARDS AFFECTED: ALL WARDS



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. PURPOSE OF REPORT

- 1.1 To seek members approval of the revised procedure for use with complaints received about members and the Code of Conduct

2. RECOMMENDATION

- 2.1 That Council approves the revised procedure for complaints regarding members and the Code of Conduct as attached as Appendix 1.

3. BACKGROUND TO THE REPORT

- 3.1 The current procedure has been in place since 1 July 2012, when it became effective, along with the Code of Conduct.
- 3.2 Since that time, there has been some frustration expressed about how it can be applied in practice. Whilst this may be relative only to the complaints received in that period, members requested that the procedure be reviewed to allow more flexibility for their decisions, particularly where there has been a finding of no breach of the Code of Conduct.
- 3.3 The revised procedure at Appendix 1 has been reviewed and endorsed by the Ethical Governance & Personnel Committee.

4. FINANCIAL IMPLICATIONS [IB]

- 4.1 None.

5. LEGAL IMPLICATIONS [EH]

- 5.1 The Localism Act 2011 required the Council to adopt a Code of Conduct, but the Council has a number of options as to the exact format for the Code, the system to receive and process complaints, the involvement of the Independent Person and whether to have a Committee to oversee this work or not. This is as a result of the Act giving Local Authorities the ability to establish their own local arrangements for handling complaints against councilors.

6. CORPORATE PLAN IMPLICATIONS

- 6.1 As the procedure effects all members, it impacts on all of the Corporate Plan.

7. CONSULTATION

- 7.1 Ethical Governance and Personnel Committee

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 Impact on all Councillors (including Parish) and members of the community.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: None

Contact Officer: Julie Kenny
Executive Member: Councillor Bron Witherford

Appendix 1

PROCEDURE FOR DEALING WITH COMPLAINTS ABOUT THE MEMBER CODE OF CONDUCT

Introduction

- This procedure will be used by the Monitoring Officer and the Ethical Governance and Personnel Committee to deal with complaints that a member or co-opted member of an authority may have failed to comply with the Code of Conduct. References to the Monitoring Officer below also include the Deputy Monitoring Officer.
- The Council has appointed a number of Independent Persons, to assist in the process for dealing with complaints. Independent Persons are consulted during the process by the Monitoring Officer so that an independent view is taken. Members being complained about have the right to consult an Independent Person. The Member should contact the Monitoring Officer and contact details will be provided.
- Complaints must be made in writing. A complaint form will be made available. The complaint form will include provision for complainants to request that their name or details of the complaint should be withheld from the Member. Complaints should be referred to

Monitoring Officer
Hinckley and Bosworth Borough Council
Hinckley Hub
Rugby Road
Hinckley
Leicestershire
LE10 0FR
julie.kenny@hinckley-bosworth.gov.uk

- The Monitoring Officer will arrange for appropriate support to be provided to those complainants requiring assistance to put their complaint in writing, for example where they have a disability or English is not their first language.
- Where appropriate the Monitoring Officer will refer the complaint to the appropriate service or another authority to respond to or deal with the matter informally.
- Where a complaint that a Member has failed to comply with the Code of Conduct is received, the Monitoring Officer will acknowledge receipt of the complaint within 5 working days.
- **Anonymous complaints** – These will only be referred if accompanied by documentary, photographic or other evidence which indicates an exceptionally serious or significant matter which can be satisfactorily dealt with without the need to interview the complainant.
- **Withdrawn complaints** – The Complainant can withdraw the complaint at any time and the matter will only progress where the public interest to take action and the complaint is accompanied by documentary, photographic or other evidence and there is no need to interview the complainant.

- **Withheld Identity** - As a matter of fairness and natural justice, Members will usually be told who has made a complaint against them and what the complaint is about. In exceptional circumstances the Monitoring Officer will agree to a request that the identity of the complainant should not be disclosed to the Member. The circumstances in which such requests will be agreed are:
 - (a) the complainant has reasonable grounds for believing that they will be at risk of harm (physical, reputational or property) if their identity is disclosed;
 - (b) the complainant is an officer who works closely with the Member and they are afraid of the consequences to their employment if their identity is disclosed;

- **Withheld details** - The Monitoring Officer will consider whether, in exceptional circumstances, not to provide the Member with all or part of the details of the complaint if to provide the information would be against the public interest or prejudice the investigation. The circumstances in which this might be appropriate are:
 - (a) the Member is likely to attempt to intimidate the complainant or witnesses;
 - (b) the Member is likely to attempt to tamper with evidence and this is not outweighed by the fairness to the Member of being able to preserve evidence;
 - (c) the disclosure to the Member of details of the complaint is likely to result in the identity of the complainant becoming apparent and the Monitoring Officer has decided to withhold that information from the Member.

- **Meetings of the Ethical Governance and Personnel Committee** will be arranged upon the usual notice. An agenda for the meeting will be sent to the members of the Committee at least five clear working days before the meeting. Meetings are subject to the provisions of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access. The Committee's decision will be recorded in the form of the minutes.

Dealing with complaints

Stage 1

- 1.1 When a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received, the Monitoring Officer will, subject to paragraphs 2.8 or 2.9, inform the Member within 10 working days giving an outline of the complaint and consider whether an informal resolution is practicable and appropriate. The decision as to whether the complaint is informally resolved will be made by the Monitoring Officer in consultation with the Independent Person.

Stage 2

- 2.2 Where a complaint can not be resolved informally (for whatever reason), the Monitoring Officer will undertake a fact finding exercise, which may include speaking to the subject member and complainant. The Monitoring Officer may consult with one of the Independent Persons before reaching his or her recommendation or decision.
- 2.3 In determining whether to recommend that a complaint merits further action or investigation, the Monitoring Officer will consider:

- (i) whether the complaint is about the conduct of a member or co-opted member of the Borough Council or one of the 27 Parish/Town Councils in the Borough who was in office and the Code of Conduct in force at the time of the alleged conduct;
 - (ii) whether the conduct would, if proven, be a breach of the Code of Conduct;
 - (iii) whether the complaint is sufficiently serious to merit further action.
- 2.4 The fact finding report will contain a summary of the evidence obtained and a recommendation that:
 - (i) the complaint does not merit further action or investigation and the matter meets the list of delegated decisions (see paragraph 2.7) and no further action is required;
 - (ii) the complaint merits referral to the Ethical Governance and Personnel Committee to determine what action to take
- 2.5 Where (i) applies the reasons for the decision not to take further action will be sent to the Complainant, member and if relevant the Town/parish Clerk.
- 2.6 If the complaint or part of the complaint identifies criminal conduct, including offences relating to disclosable pecuniary interests, the Monitoring Officer will refer the complainant to the Police or other appropriate regulatory body with regard to that part of the complaint.
- 2.7 **Delegated Decisions** – The Monitoring Officer can determine that there should be no further action on a complaint, where he or she is satisfied that the matter complained about
 - (i) does not fall under the Code of Conduct
 - (ii) did not occur when the Member was acting as a member
 - (iii) has been resolved informally
 - (iv) has been withdrawn
- 2.8 All other conclusions must be considered by the Ethical Governance and Personnel Committee. A meeting will be arranged and the Committee will consider the fact finding report. The report will include any comments by the Independent Person and a recommendation.
- 2.9 The Committee's decision will be communicated to the complainant, the Member and, if appropriate the parish or town Clerk in writing.
- 2.10 The Ethical Governance and Personnel Committee will come to one of the following decisions in respect of each complaint submitted to it:
 - (i) to refer the complaint to the Monitoring Officer for investigation after taking the view of an Independent Person;
 - (ii) to refer the complaint to the Monitoring Officer for other action, which may include mediation or other dispute resolution techniques;
 - (iii) to refer the complaint to the Police as it identifies a criminal offence;
 - (iv) to take no action in respect of the complaint.

Stage 3

- 3.1 Where a complaint has been referred for investigation, the Monitoring Officer, or another person appointed by the Monitoring Officer will be appointed as "Investigator" and conduct an investigation. The Investigator may refer the complaint back to the Monitoring Officer where:
 - (i) as a result of new evidence the Investigator believes that a different decision about whether to begin an investigation would have been taken had that evidence been known;
 - (ii) the Member has died, is seriously ill or has resigned from the relevant authority and the Investigator believes that it is no longer appropriate to continue the investigation.
- 3.2 In these circumstances having consulted the Independent Person the Monitoring Officer may with the Chair of the Ethical Governance and Personnel Committee, decide that no further action be taken. The Complainant, Member and if relevant the Town or Parish Clerk will be informed in writing of the decision.
- 3.3 Following receipt of the investigation report, the Monitoring Officer will send a copy to the complainant and the Member.
- 3.4 If the recommendation of the investigation is that no further action be taken, the report will also be sent to the Independent Person and the Chair of the Ethical Governance and Personnel Committee, who will be asked whether they agree with the recommendation. Where all parties agree, that will be the end of the matter and the Member, Complainant and relevant town or Parish Clerk will be advised of the decision.
- 3.5 Where the Independent Person or Chair do not agree with the recommendation, or where the recommendation is that there has been a breach of the Code of Conduct the report will be considered by the Ethical Governance and Personnel Committee.
- 3.6 In addition to the Investigator's report the Monitoring Officer will provide the views of the Independent Person to the Committee.
- 3.7 The Committee's decision will be communicated to the complainant, the Member and, where the Member is a parish or town councillor, the Clerk by letter.
- 3.8 The Ethical Governance and Personnel Committee will come to one of the following decisions in respect of each investigation report submitted to it:
 - (i) the Member has not breached the code of conduct and no further action is required;
 - (ii) The Member has not breached the code of conduct but there is further action to be taken as agreed with the Monitoring Officer. Further action could include training for the Member.
 - (iii) the Member has breached the code of conduct but has taken appropriate steps to remedy the situation and no further action is required;
 - (iv) the Member has breached the code of conduct and the matter is to be referred to the Monitoring Officer for other action, which may include mediation or other dispute resolution techniques;
 - (v) the Member has a case to answer and the Investigator's report should be referred to the Ethical Governance and Personnel Committee for a hearing.

Stage 4

- 4.1 Where a hearing is required, the Monitoring Officer will undertake a pre-hearing process and prepare a report for the Ethical Governance and Personnel Committee setting out the results of the process.
- 4.2 The object of the pre-hearing process is to enable the hearing to take place fairly and efficiently.
- 4.3 The Monitoring Officer will write to the Member to inform the Member of the date(s) of the hearing and to request him or her to return the following information, within 10 working days:
 - (i) Member's response to the evidence set out in the Investigator's report;
 - (ii) Member's evidence relating to the allegation not previously submitted or identified in the Investigator's report;
 - (iii) Mitigating circumstances desired to be submitted by or on behalf of the Member;
 - (iv) Arrangements for the Committee hearing (witnesses, representation, request for documents or matters to be considered in private, etc.);
 - (v) Details of proposed witnesses to be called; and
 - (vi) Views of the Independent Person sought by the Member
- 4.4 The Monitoring Officer will produce a pack based on the outcome of the pre-hearing process, which will be sent to the Committee, Member and Investigating Officer. It will:
 - (i) collate the paperwork to be presented or submitted to the hearing
 - (ii) identify the main facts of the case that are in dispute;
 - (iii) identify those issues, where appropriate, that are not relevant to the Committee's hearing of the complaint;
 - (iv) set out the views of the Independent Person(s) which have been sought by the Monitoring Officer and the Member (where the Member wishes those to be included);
 - (v) list those witnesses who may be called to give evidence; and
 - (vi) determine what papers (if any) are likely to be considered in the absence of press or public at the hearing and therefore exempted from publication prior to the hearing,

Hearings by the Ethical Governance and Personnel Committee

- 4.6 Hearings are not a court. Evidence will not be taken on oath and persons attending the hearing will not be expected to stand. The Committee is quasi-judicial and the principles of natural justice will be applied. All comments or questions must be put through, the Chair. The Committee will reach its decisions on the balance of probabilities based on the evidence presented to it.
- 4.7 The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. The Committee may take legal advice, in private if necessary, from its legal adviser. The substance of any legal advice given to the Committee should be shared with the Member.
- 4.8 The Committee Chair will:
 - (i) introduce those present;
 - (ii) establish that the hearing is quorate
 - (iii) deal with any disclosures of interest;

- (iv) ensure that the participants understand the procedure to be followed;
 - (iv) ensure that the Member, if unaccompanied, was made aware that he or she could have been represented.
 - (vi) ensure that any issues of confidentiality are dealt with
- 4.9 If the Member is not present, the Committee will consider any indication from the Member that he/she would not be present and any reasons provided. The Committee will then determine whether to hold the hearing in the absence of the Member or adjourn the hearing.
- 4.10 The Investigator will act as a facilitator introducing any witnesses to give evidence on the areas in dispute only. The Member and/or his/her representative may ask questions of the investigating officer and any witnesses. The Committee may ask questions of the investigating officer and any witnesses.
- 4.11 The Member and/or his/her representative will put his/her case and may call witnesses. The Committee may ask questions of the Member and any witnesses.
- 4.12 The Committee will withdraw to consider the case and come to a decision in private. The Legal Advisor (if present) and the officer recording the proceedings will remain with the Committee. The Chair will announce the Ethical Governance and Personnel Committee's decision in respect to the material facts and whether they amounted to a breach of the code of conduct.
- 4.13 If the Committee finds against the Member, he/she will be asked if he/she wishes to make any submissions before the Committee considers whether to impose a sanction. The Committee may impose one or more of the following sanctions:
- (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
 - (ii) censure the Member;
 - (iii) make recommendations to full Council of either the Borough or Parish Council;
 - (iv) make recommendations to the relevant Group Leader or Whip
 - (v) recommend that the Member undertake other action such as training or issue an apology.
- 4.16 The Ethical Governance and Personnel Committee will announce its decision on the day. The Committee's decision and reasons will be recorded in the form of the minutes of its meeting and communicated to the relevant parties in writing. The Committee will issue its full written decision and reasons within 10 working days of the end of the hearing.
- 4.17 The written decision will be provided to the Member, the complainant, the Investigator and where applicable the Parish/Town Clerk. The written decision will, if a finding has been made that the Member had failed to comply with the Code of Conduct, provide information as to the Member's right to appeal against the finding.
- 4.18 Where the Committee has determined that the Member failed to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Committee's findings and the Member's right to appeal in a local newspaper and on the Borough Council's website.
- 4.19 Where the Committee has determined that the Member did not fail to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a

notice of the Committee's findings in a local newspaper and on the Borough Council's website unless the Member requests that no notice is published.

Appeals

- 4.20 If the Committee finds against the Member, the Member may ask for that decision to be reviewed by the Borough Council's Appeals Panel. A request for a review must be made in writing, giving the grounds for the appeal, to the Monitoring Officer within 10 working days of the date of the written notification of the Committee's decision.
- 4.21 The appeal will normally be heard within 20 working days. The appeal will be conducted by the Appeals Panel and they will follow the procedure set out above. They will only consider material relevant to the grounds for the review request set out by the Member.