

# STANDARDS COMMITTEE

16 MARCH 2015

## REPORT OF THE MONITORING OFFICER

### A.1 REVIEW OF INVESTIGATION & HEARING PROCEDURES

(Report prepared by Lisa Hastings)

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

**For the Committee to review the Investigation and Hearing Procedures and discuss any associated matters having conducted two hearings recently and consider further any amendments to the Council's procedures are required or general feedback to Council.**

##### **EXECUTIVE SUMMARY**

In November 2013, the Council approved and adopted, as part of the overall Standards Framework, a Standards Complaints Investigation Procedure (Annex E to the Complaints Procedure), which is attached as **Appendix A** to this report.

The Investigation Procedure is provided to an external investigator when instructed by the Monitoring Officer to conduct an investigation of their behalf.

In March 2014, the Standards Committee approved and adopted Hearing Procedures to supplement the Complaints Procedure (paragraph 7.1.2) and provided a process to be followed by the Committee when conducting a hearing. The procedures are attached as **Appendix B** to this report.

The purpose of the document is to ensure that all parties understand the process which will be followed and to assist the Chairman to conduct a fair and proper hearing. When a hearing is convened, a copy of the procedures is sent out with the Report to the parties. The Procedures follow standard practice in accordance with natural justice.

In January and February 2015, the Standards Committee was convened to conduct two hearings and consider the outcome of investigations into two separate allegations involving District Councillors and decide whether the Members' Code of Conduct had been breached.

During the hearings, feedback was received from the Committee that the format of the second investigator's report was preferred and that this style should be adopted for future use. Generally the procedures and the process worked well however, with every piece of work it is appropriate to review whether any improvements can be made.

The Committee, District Councillors, one of the Complainants, the Independent Person and the Monitoring Officer all sought points of clarification during the process and it is considered appropriate to review those for inclusion within the Council's procedures. These points are summarised as follows:

- The investigation procedure and instructions to the external investigator do not currently impose a timeline and while there was no prejudice to the parties from the

delay in concluding one of the investigations, the instructions should impose a timeline (to be determined for each case) in which to complete the investigation and to ensure that the Councillor, the Complainant and the Monitoring Officer are regularly updated as to progress.

- It is not explicit that during the evidence gathering stage, if any new evidence is provided to the investigator to which the Councillor has not been able to respond to or comment on, this should be provided to the Councillor to do so. This could include any verbal/oral information.
- The Councillor who is the subject of the complaint should be interviewed last, during evidence gathering, to ensure that all the allegations and information obtained are formally put to them to respond to, this includes specifically asking the Councillor concerned to respond to the alleged breaches of the Code of Conduct.
- The investigation report should clearly identify who was interviewed and who supplied information, whether through documentation or verbally.
- At the report stage, a draft report should be sent to the Monitoring Officer at the same time as the complainant and subject member to ensure that the Monitoring Officer is satisfied that all aspects of the complaint have been addressed.
- The hearing procedures refer to the matter being conducted in public however, the Monitoring Officer should highlight at the outset of the investigation to both the complainant and the subject member, that during the investigation the content/evidence is kept confidential however, once a hearing is convened, the report and its content is published and available for both the public and press.

It is recommended that the Monitoring Officer incorporates these amendments into the Investigation Procedure (Annex E of the Complaints Procedure).

The Committee are requested to discuss whether there were any other points which they wished to highlight, including whether the hearing procedure was easy to follow.

## RECOMMENDATION

**That the Standards Committee:**

- (1) Recommend to Council that the suggested changes to the Complaints Procedure, as set out in the content of this report, are agreed together with those highlighted through Members' debate at the meeting and recorded within the minutes.**

## APPENDICES

- Appendix A – Annex E – Investigation Procedure
- Appendix B – Hearing Procedures

## **ANNEX E**

### **STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

#### **1. Planning Stage:**

Upon receipt of an instruction to carry out an investigation the Investigator should :-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Member Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.

#### **2. Evidence Gathering Stage:**

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.

#### **3. Interview Stage:**

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (with complaint, subject member and witnesses).

#### **4. Report Stage:**

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain :-
  - Agreed facts
  - Facts not agreed and corresponding conflicting evidence
  - Conclusions as to whether a breach has occurred.
  - Where a draft report is issued this will be supplied to both the complainant and subject member for comment.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion

**HEARING PROCEDURE (approved March 2014)**

**STANDARDS COMMITTEE &  
TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

This procedure supplements Section 7.1.2 of the Council's Complaints Procedure and a copy will be provided to the both the Complainant and the Member the subject of the Complaint ("Councillor").

All Hearings will be held in Public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in Private. The Council's Monitoring Officer will provide the relevant advice.

Where District Councillors were required to make a decision in respect of a hearing, they have due regard to, and take into account any views expressed by Town and Parish Councillors in reaching their decision.

<b><u>Item No.</u></b>	<b><u>Procedure</u></b>
<b>1</b>	<b><u>Quorum</u></b>  1.1. Three Members must be present throughout the hearing to form a quorum.  1.2. Where the complaint refers to a Town or Parish Councillor a non-voting Town and Parish representative of the Town and Parish Councils' Standards Sub-Committee must be present.  1.3. The Committee or Sub-Committee shall nominate the Chairman for the meeting in accordance with the terms of reference of the relevant Committee.
<b>2</b>	<b><u>Opening</u></b>  2.1 The Chairman explains that:  (i) The hearing has been convened in accordance with the Council's Complaints Procedure and that an investigation has been conducted, the outcome of which is that it is considered there is evidence of a failure to comply with the Members' Code of Conduct.  (ii) The Parties have been aware of the content of the Investigator's Report and this has been circulated to all Members of the Committee.

	<p>(iii) The Monitoring Officer has referred the matter for a hearing either because upon conclusion of the investigation, informal resolution has not been successful or it is not appropriate to do so, for the reasons given within the Committee Report.</p> <p>(iv) Purpose of the Hearing is to consider the Investigators Report, the evidence in support and representations from the Parties. If the Committee or Sub-Committee depart from the recommendation from either the Investigating Officer and/or Monitoring Officer detailed reasons are required and published in the Decision Notice.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p>
<p><b>3</b></p>	<p style="text-align: center;"><b><u>The Complaint</u></b></p> <p>3.1 The Investigating Officer or Monitoring Officer shall be invited to present their report including:</p> <ul style="list-style-type: none"> <li>(i) any documentary evidence or other material;</li> <li>(ii) call such witnesses as considered necessary; and</li> <li>(iii) make representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct</li> </ul> <p>This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>It is only under 3.1 (ii) that the Complainant will take part in the hearing.</p> <p>3.2 The Councillor (or their representative) may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or;</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Councillor’s opportunity to ask questions rising from the Investigators report and not to make a statement.</p> <p>3.3 Members of the Committee or Sub-Committee may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Committee or Sub-Committees’ opportunity to ask questions rising from the Investigators report and not to make statements.</p>
<p><b>4</b></p>	<p style="text-align: center;"><b><u>The Councillor’s case</u></b></p> <p>4.1 The Councillor (or their representative) may:</p>

	<ul style="list-style-type: none"> <li>(i) present their case;</li> <li>(ii) call any witnesses as required by the Councillor or their representative and</li> <li>(iii) make representations as why they consider that they did not fail to comply with the Code of Conduct.</li> </ul> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Committee or Sub-Committee may question the Member and/or any witnesses.</p> <p>In all instances, only questions will be permitted relating to the allegation and the Councillor’s case and no statements should be made.</p>
5	<p style="text-align: center;"><b><u>Summing Up</u></b></p> <p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
6	<p style="text-align: center;"><b><u>Decision</u></b></p> <p>6.1 Members of the Committee or Sub-Committee will deliberate in private to consider the complaint (if required, in consultation with the Independent Person) prior to reaching a decision.</p> <p>6.2 Upon the Committee or Sub-Committee’s return the Chairman will announce the Committee or Sub-Committee’s decision in the following terms:-</p> <ul style="list-style-type: none"> <li>(i) The Councillor has failed to comply with the Code of Conduct; or</li> <li>(ii) The Councillor has not failed to comply with the Code of Conduct</li> </ul> <p>The Committee or Sub-Committee will give detailed reasons for their decision, which will be included within the published Decision Notice.</p> <p>6.3 If the Committee or Sub-Committee decides that the Councillor has failed to comply with the Code of Conduct they will then consider any representations from the Investigator and/or the Councillor as to:</p> <ul style="list-style-type: none"> <li>(i) The appropriate sanction, as set out in Section 8 of the Complaints Procedure.</li> <li>(ii) Based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.</li> </ul>

	<p>6.4 The Committee or Sub-Committee will then deliberate in private to consider what action, if any, should be taken. The Committee or Sub-Committee is required by law to do so in consultation with the Independent Person</p> <p>6.5 On the Committee or Sub-Committee's return the Chairman will announce the Committee or Sub-Committee's decision as to what actions they resolve to take (in relation to a Town or Parish Councillor a recommendation to their Council).</p> <p>6.6 The Committee or Sub-Committee will consider whether it should make any specific recommendations to the Council or in relation to a Town or Parish Councillor to their Council with a view to promoting and maintaining high standards of conduct among Members.</p> <p>6.7 The Chairman will confirm that a full written Decision Notice shall be issued within 7 working days following the hearing and that the Committee or Sub-Committee's findings will be published on the Council's website and reported to the next full Council.</p>
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