

STANDARDS COMMITTEE

3 FEBRUARY 2021

REPORT OF THE MONITORING OFFICER

A.2 COMPLAINTS PROCEDURE

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To undertake a review of the Complaints Procedure and recommend any changes to Full Council for adoption.

EXECUTIVE SUMMARY

The Standards Framework includes the Complaints Procedure (contained within the Members' Constitution Booklet). The Council's statutory duty is to promote and maintain high standards of conduct and building public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven principles of public life.

The current Procedure, attached as Appendix A, was initially adopted by full Council in November 2013 and amended in 2017 following a review and recommended changes from the Standards Committee.

Delegation is given to the Monitoring Officer throughout the Procedure to undertake key elements of the complaints process to maximise independence from the political process.

Through a recent referral to Essex Police, regarding an alleged Disclosable Pecuniary Interest offence under the Localism Act 2011, the Monitoring Officer was requested to confirm the Legal Jurisdiction Criteria Test had been evaluated and met prior to referring the complaint to the Police. The Monitoring Officer was requested to provide assurance that the following applied prior to further Police involvement:

- (a) The alleged conduct took place after the commencement of Section 34 of the Localism Act 2011.
- (b) The Subject Member was a member of the Council at the time of the alleged conduct.
- (c) The Subject Member was acting in an official capacity as a Councillor at the time of the alleged conduct.
- (d) The Subject Member was not acting as a member of another authority at the time of the alleged conduct.
- (e) If the facts are capable of establishment as a matter of evidence, the alleged conduct could be capable of a breach of the Code of Conduct.
- (f) That the complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

In the event, the above assurances are given, the Police will consider commencing a criminal investigation, if crucially part (e) can be established regarding actual evidence, which the Monitoring Officer may be asked to provide.

The test and evaluation is undertaken implicitly by the Monitoring Officer however it is not expressly referred to within the Complaints Procedure. Consequently, it is recommended that paragraph 4.5 of the Complaints Procedure is amended to state:

*“If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, **subject to the necessary Legal Jurisdiction Criteria Test being applied**”.*

No other changes to the Complaints Procedure are recommended however, the Standards Committee may wish to discuss and suggest additional amendments.

RECOMMENDATION

That the Standards Committee recommends to full Council that paragraph 4.5 of the Complaints Procedure contained within Part 6 of the Constitution is amended to include the additional text *“subject to the necessary Legal Jurisdiction Criteria Test being applied”.*

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Complaints Procedure dealing with alleged breaches of the Members’ Code of Conduct forms part of the Council’s Constitution. The Procedure demonstrates effective and positive Governance arrangements and promotes the maintenance of integrity of decision making within the Standards Framework.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any Codes and Protocols are up to date with current policy, legislation, case law, good practice and national guidance. The current Members’ Complaints Procedure was last reviewed in 2018 and it was essential to undertake a further review to ensure it remains up to date. The Local Government and Social Care Ombudsman has determined previously that the Council’s Complaints Procedure is robust and correctly followed.

LEGAL

Section 34 of the Localism Act 2011 creates a number of criminal offences in relation to failure to observe requirements in respect of Disclosable Pecuniary Interests, which fall to the Police to investigate. However, the Monitoring Officer may be required to produce evidence to assist with any enquires or assessment by the Police.

BACKGROUND PAPERS

None

APPENDICES

Appendix A: Tendring District Council Complaints Procedure
