

MEETING OF THE COUNCIL

18 MAY 2021

REPORT OF THE MONITORING OFFICER

A.2 REVIEW OF THE COMPLAINTS PROCEDURE

(Report prepared by Ian Ford)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consider the recommended change to the Complaints Procedure (contained within Part 6 of the Council's Constitution) put forward by the Standards Committee.

EXECUTIVE SUMMARY

The Standards Committee, at its meeting held on 3 February 2021 (Minute 13 refers) gave consideration to a report of the Monitoring Officer (A.2) in relation to undertaking a review of the Complaints Procedure and to recommend any changes to Full Council for adoption.

The Committee was aware that the Standards Framework included the Complaints Procedure (contained within the Members' Constitution Booklet) and that the Council's statutory duty was 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, which was attached as Appendix A to the Monitoring Officer's report, had been initially adopted by full Council in November 2013 and subsequently amended in 2017 following a review and recommended changes from the Standards Committee. The Monitoring Officer had delegated authority throughout the Procedure to undertake key elements of the complaints process in order to maximise independence from the political process.

At the meeting of the Standards Committee the Monitoring Officer explained that the Local Government Ombudsman had looked at this Council's Complaints Procedure on a couple of occasions when a complainant who had been dissatisfied with the outcome of a complaint had gone to the Ombudsman for a further review. In all instances the Ombudsman had said that this Council's procedures were robust and, if followed correctly, the Ombudsman would not look into the outcome of the complaint if the procedure had been correctly. Therefore, it was important that the Procedure was made as clear as possible to anyone using it.

Through a recent referral to Essex Police, regarding an alleged Disclosable Pecuniary Interest offence under the Localism Act 2011, the Monitoring Officer had been requested to confirm the Legal Jurisdiction Criteria Test had been evaluated and met prior to referring the complaint to the Police. The Monitoring Officer had been requested to provide assurance that the following had been 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 that the above assurances could be made, the Police would consider commencing a criminal investigation, if crucially part (e) could be established regarding actual evidence, which the Monitoring Officer might be asked to provide.

The aforementioned test and evaluation had been undertaken implicitly by the Monitoring Officer however, it was not expressly referred to within the Complaints Procedure. Consequently, it the Monitoring Officer had recommended to the Standards Committee that paragraph 4.5 of the Complaints Procedure be 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 were recommended by the Monitoring Officer at that time.

Having considered and discussed the information provided in the Monitoring Officer’s report the Standards Committee had decided to recommend to full Council that paragraph 4.5 of the Complaints Procedure contained within Part 6 of the Constitution be amended to include the additional text “subject to the necessary Legal Jurisdiction Criteria Test being applied”.

RECOMMENDATION(S)

That paragraph 4.5 of the Complaints Procedure contained within Part 6 of the Constitution be amended to include the additional text: “subject to the necessary Legal Jurisdiction Criteria Test being applied.”

BACKGROUND PAPERS FOR THE DECISION

Report of the Monitoring Officer (A.2 – Review of the Complaints Procedure) to the Standards Committee on 3 February 2021.