

## Standards Committee

04 December 2024

### Review of the Procedure for Member Code of Conduct Complaints



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## Report of Helen Bradley, Director of Legal and Democratic Services

### Electoral division(s) affected:

Countywide

### Purpose of the Report

- 1 To consider and approve the proposed changes to the Procedure for Member Code of Conduct Complaints ('the Procedure').

### Executive summary

- 2 The Procedure for Member Code of Conduct Complaints sets out the Council's arrangements in respect of Member Code of Conduct Complaints.
- 3 The Procedure is periodically reviewed by the Standards Committee. The most recent review was presented to the Committee in June 2023.

### Recommendation(s)

- 4 Standards Committee is recommended to:
  - a) Consider the review of the Procedure for Member Code of Conduct Complaints; and
  - b) Adopt the proposed changes to the Procedure for Member Code of Conduct Complaints to Standards Committee with immediate effect;
  - c) Delegate authority to the Director of Legal and Democratic Services, in consultation with the Chair of the Standards Committee, to make minor amends to the Procedure prior to the next review.

## Background

- 5 The Localism Act 2011 requires that the Council have arrangements in place for allegations to be considered that an elected or co-opted Member has failed to comply with the Code of Conduct.
- 6 The Council have had arrangements in place since 2012 which have been periodically updated since its inception. The most recent update to the Procedure was in June 2023 where it was agreed to combined the Local Assessment and Determination Procedures into a single Procedure for Member Code of Conduct Complaints.
- 7 On 7 June 2024 the Standards Committee agreed to add a review of the Procedure for Member Code of Conduct Complaints to the annual work programme for 2024/25, to ensure that the Procedure remains fit for purpose, legally complaint and consistent with best practice.

## Review of the Councils Procedure for Member Code of Conduct Complaints

- 8 In conducting the review, consideration has been given to the Procedures for Member Code of Conduct Complaints in other authorities such as Newcastle City Council, Gateshead Council, Sunderland City Council and Darlington Borough Council. This exercise has demonstrated that the Council's procedures for Member Code of Conduct Complaints are largely consistent.
- 9 The 2024 review of the Procedure shown at **Appendix 3** resulted in the following proposed amendments, which are considered to be relatively minor in nature:
  - a) There have been formatting changes made to the whole document for example, the contents page has been updated and the definitions are now in bold. These changes are intended to make the document more user friendly.
  - b) 'S/he' and 'he/she' have been replaced with 'they' and 'their'. These changes would ensure that the wording of the document is gender neutral, encompasses non-binary and is consistent with the Council's Constitution. In addition, the proposed changes will make the document more accessible and the text more consistent.
  - c) The terms 'Member' and 'Subject Member' are used interchangeably throughout the document. For consistency, it is proposed that 'Subject Member'/ 'Subject Member(s)' is used throughout.

- d) Within the 'Definitions' section it is proposed that Monitoring Officer is defined as including a person deputising on their behalf. The additional wording within the definition is to ensure that it is clear when referring to the Monitoring Officer within the Procedure that it could be a person deputising on their behalf. It is also proposed that the whole Procedure is updated to remove reference to 'including a person deputising on their behalf' if the new definition is approved.
- e) It is proposed that additional wording is added at paragraph 2.3 to reference that only the most serious complaints will be referred for investigation this will align with current practice.
- f) At paragraph 3.3, it is proposed to add the Clerk of a Parish/ Town Council and/ or the relevant Group Leader for County Councillors, as people we will inform that a complaint has been made. This reflects current practice.
- g) It is proposed that the wording at 3.5 is amended to remove (or to ask for it to be considered anonymously) as this is repetitive and will ensure 3.5 is clearer.
- h) It is proposed that paragraphs 3.6 & 3.8 are amended to correct passive language following the removal of he/she.
- i) Where a decision notice contains sensitive information, it is proposed that paragraph 4.11 is amended to state that the Monitoring Officer may decide a decision notice should not be available for public inspection or shared by the parties to the complaint without the Monitoring Officers consent. This is an option that the Monitoring Officer has available to them but will provide clarity to the Complainant or Subject Member.
- j) It is proposed that a new paragraph is added at 4.12 to state that decision notices in relation to complaints against County Councillors will be shared with the relevant Group Leader where appropriate and for Parish and Town Councillors, the relevant Clerk. The addition of informing the Group Leader will ensure that it is consistent with paragraph 4.9, where the Monitoring Officer will notify the Group Leader of the Subject Member of a complaint and its outcome.
- k) For grammatical purposes, it is proposed that the wording at paragraph 5.1 is amended in relation to whether a complaint is suitable to be resolved informally. Minor amendments such as an alternative' from 'alternatively' have been suggested. This does not alter the position of where a complaint cannot be resolved informally but ensures that the wording of the paragraph is clearer.

- l) It is proposed that the wording at 5.1 is amended to state mediation as opposed to conciliation as this is current practice to what it is commonly referred to.
- m) A new paragraph is proposed to be added at 5.2. The paragraph lists a number of examples of where a Monitoring Officer does not deem informal resolution to be appropriate. These include where the Subject Member(s) maintains that they have not engaged in wrongdoing, where the allegations against the Subject Member(s) are serious, such as accusations of bullying or misusing their position to gain or confer advantage/disadvantage, where the allegations against the Subject Member(s) are numerous and/ or complex, and/ or either the Complainant or the Subject Member do not wish to engage in informal resolution. The examples listed are options that the Monitoring Officer already has available to them but have been listed in the Procedure to provide clarity the Subject Member(s)/ Complainants.
- n) At paragraph 6.1 it is proposed that a minor amendment is made to the second bullet point to refer to the alleged behaviour/ conduct or incident as opposed to 'complaint'. It is also proposed that the word cost is replaced with 'resources required' at the sixth bullet point. These amendments are suggested for grammatical and factual purposes.
- o) An amendment at 6.2 is proposed to reference where the Monitoring Officer decides that a complaint should be referred for investigation. The amendment is suggested for grammatical purposes.
- p) It is proposed to amend paragraph 6.3 to explain that during investigations the Investigating Officer will consider the matters on the balance of probabilities. This is to explain the standard or 'burden of proof' to which the Investigating Officer operates to.
- q) It is proposed that additional wording is added at paragraph 7.1 which notes that the outcome of an assessment will be reported to the Hearing Panel of the Standards Committee. This is not a substantive change but is to reflect that an assessment may also find evidence of a failure to comply with the Code of Conduct.
- r) At paragraph 7.2 it is proposed that a minor amendment is made to 'Investigating Officers report' from 'Investigators Monitoring Officer report'. This is to correct an error in the Procedure where it should read as the Investigating Officers report.

- s) It is proposed that where applicable the Group Leader will be informed of the Hearing Panel's decision at paragraph 7.11 to keep it consistent with the notification of decision notices to complaints.
- t) An amendment at paragraph 7.12 is proposed to change the wording from 'decision maker' to 'panel' to reflect current practice as it is the panel who make the decision.
- u) It is proposed that paragraph 7.14 is amended to state that 'In addition, the Administrative Officer will ask the Subject Member(s) concerned to reply to the report (the reply) within 14 days to indicate whether or not they:'. The wording currently states that the Member will indicate, the amended wording will reflect current practice that a Subject Member responds.
- v) A further amendment at 7.14 (i) is proposed to remove reference to appendices two and three. This is an error in the Procedure as the current Procedure does not contain appendices to it.
- w) It is proposed that wording is amended to correct an error at paragraph 7.16 to note that it is the Monitoring Officer, in consultation with the Chair and if appropriate the Independent Person, will agree the date and time for the hearing. The current Procedure makes reference that it is the Chair who agrees the date and time for the hearing which is inaccurate.
- x) It is proposed that the Parish or Town Clerk, where applicable and/or the relevant Group Leader for County Councillors are added to the list of persons at paragraph 7.34 which relates to the Monitoring Officer giving written notice of a determination and the reasons for such determination from a Standards Hearing. This change will reflect current practice.
- y) A minor amendment is proposed at paragraph 7.35 to change the wording from '6.12' to 'the Code of Conduct'. This has been done to fix an error within the Procedure where 6.12 was referenced within the paragraph but did not make grammatical sense. A further amendment to remove wording at paragraph 7.35 is also proposed. The wording references that the Monitoring Officer will not publish the summary of the finding in any local newspaper, whilst it is unlikely that the Monitoring Officer would do so at a request of a Subject Member, they would be unable to prevent the press from publishing it themselves.
- z) It is proposed that reference to Appendix 2 is removed at 7.39 (b) as the current Procedure does not have an Appendix 2 and is therefore incorrect. It is also proposed that the third category for additional 'exempt information' is added at paragraph 7.39 (b). This

will ensure that the Hearing Panel are aware of all three additional categories (Information which is subject to any obligation of confidentiality, information which relates to matters concerning national security and deliberations of an Audit & Governance Committee (inc sub-committee) established under the provisions of Part3 of the Local Government Act 2000) and will correct an error where the original paragraph referenced three categories but only listed two.

- 10 In accordance with Part 3A of the Council's Constitution, Standards Committee is responsible for approving the arrangements under which allegations of a failure to comply with the Council's Code of Conduct for Members can be investigated and decisions on allegations can be made, pursuant to section 28(6) of the Localism Act 2011.
- 11 Constitution Working Group were invited to consider the proposed amendments and agreed to recommend that the Procedure be adopted by the Standards Committee.
- 12 It is proposed that given the changes to the Procedure are not substantive, the changes should apply to all complaints with immediate effect on adoption by the Standards Committee.
- 13 The proposed amendments are listed in the table at **Appendix 2** and a clean copy of the Procedure can be found at **Appendix 4**.

## **Conclusion**

- 9 The Standards Committee are invited to consider and adopt the revised Procedure.

## **Background papers**

- None

## **Other useful documents**

- None

## **Author(s)**

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council has a duty under section 28 of the Localism Act 2011 to ensure that arrangements are in place under which allegations relating to the Code of Conduct can be investigated and decisions can be made. The Procedure for Member Code of Conduct Complaints ensures that this is complied with.

### **Finance**

No Implications.

### **Consultation**

The report and proposed amendments to the Procedure will be considered by Constitution Working Group prior to being presented to the Standards Committee.

### **Equality and Diversity / Public Sector Equality Duty**

The Council has a legal obligation to ensure that documents which are published on its website are accessible in accordance with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018. The Procedure for Member Code of Conduct Complaints ensures compliance with this obligation.

### **Climate Change**

No Implications.

### **Human Rights**

There are no direct Human Rights implications arising out of the report. However, when considering the Member's Code of Conduct, it is necessary to consider a balance between a Councillor's conduct and complying with Article 10 – Freedom of Expression of the European Convention of Human Rights.

### **Crime and Disorder**

No Implications.

### **Staffing**

No Implications.

### **Accommodation**

No Implications.

**Risk**

No Implications.

**Procurement**

No Implications.



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## Appendix 2: Table of Changes

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**Appendix 3: Procedure for Member Code of Conduct Complaints  
2024 – Tracked changes**

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**Appendix 4: Procedure for Member Code of Conduct Complaints  
2024 – Clean Copy**

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