

Standards Committee

5 October 2018



Local Assessment Procedure for Code of Conduct Complaints

Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Purpose of the Report

1. To present a revised draft of the Council's Local Assessment Procedure ("the Procedure") for Code of Conduct complaints following consultation with the Constitution Working Group on 4 September 2018.

Background

2. Under the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a co-opted member) or a member of a Parish Council in its area has failed to follow the relevant Code of Conduct. The Procedure, last amended in May 2016 by a resolution of this Committee, sets out how a complaint against a Member will be dealt with when it is received by the Monitoring Officer.
3. The Procedure is a precursor to the Local Determination Procedure ("the LDP"), which was adopted by Council in July 2016. The LDP sets out the procedure when a complaint is sufficiently serious to warrant referral to a Hearing Panel following an investigation. The Procedure that is the subject of this report relates to the earlier stages, of assessing and, where appropriate, investigating a complaint.
4. The Procedure has been reviewed to ensure consistency with the LDP and to address some recurring issues when assessing complaints. It is enclosed at **Appendix 2**. It is the version presented to the last meeting of this Committee, with further changes since then shown as marked ("tracked").

Proposed Revisions

5. The Procedure now begins with a Definitions section to aid the reader. Minor amendments are made to the Introduction.

6. The section on Initial Notification has been amended to make it clear that the subject Member may be sent a copy of the complaint, rather than just a summary as at present (2.1). Several Members ask to see the complaint in its entirety and there seems no good reason to withhold it from them. Other changes make it absolutely plain that confidentiality cannot be expected or guaranteed (2.2 – 2.4). A further change allows the Monitoring Officer to reject a complaint on its face if it is obvious that the Code was not applicable to the events complained of (2.7).
7. The Initial Assessment section now sets out that where witnesses are identified, they may be contacted as part of the assessment of the complaint (3.4).
8. Where an Investigation is to take place, paragraphs have been added to section 6 to set out the Investigating Officer's role, and what happens on receipt of that person's report by the Monitoring Officer.
9. A number of paragraphs relating to the Hearing Panel have been deleted, because they duplicate the provisions of the LDP.
10. The Complaint Form has been amended to reflect the above changes. Additionally, the Equality monitoring information has been removed. It is unnecessary to collect this personal information from complainants. The law relating to the protection of personal data is clear that information should not be collected unnecessarily. As the Council do not need the Equality information to carry out our functions, we have ceased collecting it. The Committee resolved in June to implement this amendment with immediate effect.
11. Minor changes have been made to the Habitual or Vexatious Complaints Policy at Appendix 2, and an additional criterion has been added to the Assessment Criteria at Appendix 3. This is to say that where a Member has already taken appropriate steps to remedy his or her conduct, further action under the Procedure is unlikely to be warranted.

Views of the Constitution Working Group

12. CWG were generally supportive but asked for some minor changes to be made, which are now reflected in the proposed additional text at paragraphs 2.1 and 3.1. The first is to make it abundantly clear that the subject Member is entitled to receive a full copy of any complaint. The second is to clarify that an assessment may need to be delayed where other agencies need to be involved (for example, where a complaint raises an allegation of criminal offences which require referral to the police).

Conclusion

13. The proposed changes to the Procedure are designed to give greater clarity to the procedure on assessing and investigating complaints.

Recommendation

14. That Standards Committee resolve to adopt the amended Local Assessment Procedure.

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Appendix 1: Implications

Finance - None

Staffing - None

Risk - None

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation - None

Procurement - None

Disability Issues - None

Legal Implications - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. A clear assessment procedure will assist in complying with that duty.