



Report to Standards and General Purposes Committee

Date: 24 August 2023

Title: **Member Code of Conduct Complaints –
Hearings Sub-Committee Protocol**

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Recommendations:

- 1) To consider and adopt the protocol in Annex 1 for achieving the composition of a Hearings Sub-Committee;**
- 2) To ask the Monitoring Officer to deliver training for all members of the Committee in the procedures for hearing member code of conduct complaints.**

Reason for decision:

The Committee has oversight of Member Code of Conduct Complaints both for this Council and for parish and town councils. The Council's Constitution envisages that three members of this Committee should form a Hearings Sub-Committee, as necessary, to hear a complaint as Stage 3 of the Council's complaints arrangements. At a previous meeting of the Committee, members expressed a wish to consider a protocol for achieving a balance of representation, making use of particular expertise, while also avoiding potential conflicts of interest.

Executive summary

1.1 This report suggests a protocol within current constitutional arrangements for achieving membership of a Hearings Sub-Committee whenever circumstances require a meeting to be held. Since the Council was established, a Hearings Sub-Committee has only been needed twice. Mostly, and as intended, complaints are resolved at an early stage. The report proposes a protocol that has regard to: the balance of representation of the committee, the importance of harnessing individual expertise and interest, and

achieving a membership that can meet, sustainably, when called upon within the relevant timeframes.

- 1.2 The Council's arrangements envisage that a Hearings Sub-Committee is made up of three members of the whole Committee. As such, the report also suggests that all members of the Committee receive training in holding hearings, so that the full membership is equipped to take part in a hearing if necessary.

The purpose of a Hearings Sub-Committee

- 2.1 The Council has adopted a set of *Arrangements for dealing with complaints against councillors*. All principal councils are required to do this. In Buckinghamshire, this Council has the responsibility for reviewing complaints about Buckinghamshire Councillors and also about parish and town councillors.
- 2.2 The *Arrangements* envisage a three-stage process, following an Initial Assessment by the Monitoring Officer to ensure that the complaint engages the Code. At each stage, the Monitoring Officer can call upon the advice of an Independent Person appointed by this Council. The stages are:
- A) Stage 1 (Informal Resolution): a four-week period within which the Monitoring Officer ascertains whether it is possible to reach an informal resolution without the need for further investigation.
 - B) Stage 2 (determination of whether to investigate further): this stage enables the Monitoring Officer to determine if the matter should be investigated formally or not. The views of the Chair of this Committee and of the Independent Person can be sought by the Monitoring Officer. As a result, the Monitoring Officer can decide to appoint an investigator. If so, the resulting report will be considered by a meeting of the Hearings Sub-Committee.
 - C) Stage 3 (Investigation and Hearing): The investigator's report is received by the Monitoring Officer. A Hearings Sub-Committee is then convened to hear the complaint in the light of the investigator's report. The role of the Sub-Committee is to determine whether a breach of the Code has occurred; and if so, to recommend the sanctions (if any) that should apply. The Independent Person attends the hearing to offer advice but has no involvement in the decision-making or voting. The procedure also envisages that the whole Committee – rather than the Sub-Committee – could hear the complaint if necessary.

Protocol on appointments to the Sub-Committee

Principles

- 3.1 The *Arrangements* approved by Council envisage that a Hearings Sub-Committee will meet whenever needed, the membership consisting of three members of the Standards & General Purposes Committee. The Council's political group leaders have not been asked to make formal appointments to the Sub-Committee given the infrequency of it and given that its actual membership in any given case might need to be adapted to reflect the circumstances of the complaint (including the familiarity of the potential members with the complainant and/or the person complained about).
- 3.2 Nor are the political proportionality rules definitive on this point, given that the numerical entitlement, per political group, does not give any second group a definitive membership. .
- 3.3 It is suggested that several principles could help form the basis of a protocol, to give transparency and procedural clarity to the making of appointments. These principles can then be balanced when considering the specific circumstances of the complaint in question and the timing of it.
- i) Balance of representation: achieving a balance of perspectives and of demography will help members of the Sub-Committee bring to bear a range of experience
 - ii) Expertise and interest: there may be, from time to time, members of the Committee who are particularly interested in this aspect of the Committee's work and who may wish to bring their experience and interest to bear in a dedicated way
 - iii) Ability to commit: the procedural timeframes have some flexibility; but in the interests of fairness and natural justice, there is also a degree of urgency in achieving set dates so that all parties can commit to attendance. Whilst other Sub-Committees of the Council can be timetabled throughout the year, this is not the case with the Hearings Sub-Committee, which is unavoidably linked to the procedural timeframes for each complaint. In the two instances where a hearing occurred in the past two years, the Sub-Committee met twice in each case. A person's availability is a factor
 - iv) Potential conflicts of interest: a member of the Committee should not take part in a hearing if they have a close connection with the complainant or the subject councillor or potential witnesses. Similarly, the complaint may relate to a ward, or a parish, or to a set of issues, with which the councillor is closely associated.

An approach

- 3.4 These principles are not really new. They have underpinned, in practical terms, the Council's *Arrangements* which envisaged hearings being conducted by any three members of this Committee; not necessarily a specific set of three members.

3.5 Annex 1 sets out a draft protocol. It envisages the following:

- i) At the start of each Council Year, and also if the membership of the Committee changes mid-year, all members of the Committee are invited to let the Monitoring Officer and the Chairman of the Committee know if they would be particularly interested in taking part in a Hearings Sub-Committee meeting;
- ii) Training is provided each year to all members of the Committee in the conduct of hearings;
- iii) When the Monitoring Officer is aware that a Hearings Sub-Committee needs to be convened, the Monitoring Officer makes the Chairman of the Committee aware;
- iv) The Monitoring Officer then writes to all members of the Committee to ask if any member is willing and able to take part in the particular hearing based on brief confidential details; asking them to be clear (if so) if they would have any potential conflict of interest based on the case in question
- v) Based on responses, the Monitoring Officer advises the Chairman of expressions of interest. Appointments are then made by the Chairman, having regard to the 'guiding principles' in Annex 1; and in the first instance (conflicts of interest aside) seeking to appoint at least one member from an opposition group to the Sub-Committee
- vi) Appointments are made, ultimately, on the basis of availability, expression of interest, freedom from conflicts of interest and the need to convene a hearing within the appropriate timeframes in the interests of natural justice.

Other options considered

4.1 The Committee could seek to appoint a 'standing' set of members to the Sub-Committee and only change this if any of the three members were conflicted or not free to attend. This would restrict the range of perspectives that could potentially be brought to bear in practice.

Legal and financial implications

5.1 There are no direct financial implications arising from this report.

5.2 The suggested protocol works within the Council's *Arrangements* to achieve a wide and equitable representation for a three-person body.

Next steps and review

6.1 If the Committee agrees the recommendations, the protocol will be circulated formally to all members of the Committee, will be put into practice for the next hearing; and training will be arranged for the whole Committee.

6.2 It is suggested that, if adopted, the protocol should be reviewed annually; for example at the Committee's first full meeting of each council year (usually July).

