

Standards Committee 9 January 2018

REVIEW OF THE MEMBER CONDUCT COMPLAINTS PROCEDURE

Officer contact: Julie Openshaw District Solicitor and Monitoring Officer 01494 421252 julie.openshaw@wycomber.gov.uk

Wards affected: All

PROPOSED DECISION and RECOMMENDATION TO COUNCIL

To consider the report and determine what, if any, changes to the Member Standards Complaints procedure to recommend to Council for approval; recommendations for consideration, and if agreed for approval by Full Council, are set out in Paragraph 11 below.

Reason for Decision

The Member Standards Complaints process has now been in place since July 2012. The Code of Conduct, adopted at the same time, has been reviewed and amended in the meantime. Member comments on the operation of the system in relation to some of the complaints recently submitted under the process suggest that now is a suitable time to review how the complaints process works, and whether any amendments to it should be made.

Corporate Implications

1. The current Member Code of Conduct and Member Conduct Complaints system were adopted with effect from July 2012, to comply with the provisions of the Localism Act 2011. With the abolition of the national Model Code, and Standards for England, formerly known as the Standards Board (which before July 2012 oversaw the administration of complaints), a number of suggested Codes and draft complaints processes that were Localism Act-compliant emerged nationally for Councils to consider for adoption as their models. WDC opted, along with a number of other Councils nationally, for the draft produced by Peter Keith-Lucas, a prominent solicitor and former Monitoring Officer with specialist experience in the area of Member ethics and standards. Any amendments to the complaints system must continue to meet the broad objectives set out in the Localism Act which are outlined in the report.
2. Sections 27 and 28 of the Localism Act 2011 place a duty on the Council to promote and maintain high standards of conduct by its members and co-opted members; in discharging this duty, it must adopt a code dealing with conduct expected of those members when acting in that capacity. The Code must when viewed as a whole must be consistent with the following principles (“the Nolan Principles”):
 - Selflessness;
 - Integrity;
 - Objectivity;

- Accountability;
- Openness;
- Honesty;
- Leadership.

Executive Summary

3. This report outlines the history of the current Code of Conduct and member conduct complaints system, summarises recent member comments on the operation of the system, and invites Standards Committee to review the system and make a recommendation to Council.

Sustainable Community Strategy/Council Priorities - Implications

4. Reviewing the member conduct complaints system helps to promote the Council's commitment in the Corporate Plan (including the emerging refreshed Plan) to ensure its business is conducted in accordance the law and proper standards, and principles of good governance.

Background and Issues

5. The current Member Code of Conduct and Complaints Procedure have been in place since July 2012, when the former Standards regime was abolished, and replacement arrangements were brought into force by the Localism Act 2011. The Council remains under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members and to have a Code of Conduct consistent with the Nolan Principles. Amongst other things, the 2011 Act repealed Section 55 of the Local Government Act 2000 which provided for a statutory Standards Committee.
6. Prior to adoption of the current Code and system, Standards Committee gave extensive consideration at its meetings of 27 March 2012 and 27 June 2012 to the options which were available. On recommendation from Standards Committee, and following consultation with all Group Leaders, full Council chose to retain a voluntary freestanding Standards Committee, and to adopt the Code of Conduct and Complaint process which had been drafted by Peter Keith-Lucas. This option was also selected by a number of other local authorities across the country and the Complaint process is attached at Appendix 1.
7. In short, the current complaints process consists of 3 main stages, preceded by a "pre-Stage 1" stage.
8. At "pre-Stage 1", the Monitoring Officer has discretion to decline to process the application because one or more of the criteria for dismissal is met (see Appendix 1). In practice, this is only invoked rarely. The duty on the Council to promote high standards of conduct, coupled with the need to ensure public confidence in the complaints system, suggests that complaints should be dismissed at the very

outset, and not progressed, only where there is a very clear indication that one of more of the “early dismissal” criteria applies.

9. Stage 1 involves sending the complaint to the Subject Member for information and response, and was introduced to address a general criticism of the previous regime, i.e. that Members were not told of the existence of a complaint against them sufficiently quickly, and they therefore did not have a proper opportunity to consider it early enough, and possibly offer remedial action in order to support a speedy process; moreover, it was possible that they could be embarrassed by learning of a complaint informally before they could be formally notified.
10. Under the current process, where complainants remain dissatisfied with the Stage 1 response, they can request Stage 2 to be invoked. This involves the Monitoring Officer consulting with an Independent Person to decide whether or not the matter should be referred for formal investigation, taking into account the Referral Criteria (see Appendix 1).
11. Stage 3 of the process deals with the setting up of a hearing following investigation. Since at least March 2014, no case has been formally investigated.
12. The following points have been raised for consideration by members. Some points have been grouped together because of similarity and for ease of reference, and addressed together. In each case, explanations are offered in response, together with recommendations for consideration. Appendix 1, which is the current document, also shows the recommended amendments in bold red text.
 1. *The Complainant can be anonymous, in the sense of requesting not to be identified to the Subject Member, which because the Subject Member is known to, and named by the Complainant, can be viewed as unfair.*

Whilst the system allows for the complaint to have their identity withheld from the subject member, this is considered to be proportionate, to allow for the possible situation where an allegation relates to e.g. bullying or harassment. The Complainant’s name and address will have been supplied to the Monitoring Officer so they are not truly anonymous. The Complainant will be advised that although their details are not provided in the first instance, the further a matter was to proceed, the more difficult it would be to maintain anonymity, and a point may be reached where this was no longer possible, in which case if the Complainant insisted on continued anonymity, the impossibility in continuing to maintain it could become a ground for halting the progress of the complaint. Although a complaint need not necessarily be about bullying or harassment for the Complainant to be able to ask to remain anonymous, there is also an assumption that elected Members, on assuming a role in public life, accept an increased susceptibility to complaints and a higher profile role than a member of the public. Where complaints are completely anonymous, the process already provides that they are not taken forward at all.

RECOMMENDATION:

No action required.

2. *Complaints do not receive enough scrutiny at the outset for triviality, nuisance or frivolity. There is currently no facility for the Monitoring Officer to dismiss a complaint at pre-Stage 1 (i.e. before it is accepted as a complaint and sent to the member) where there is some obvious discriminatory motive on the part of a complainant which would be unlawful.*

Complaints already receive scrutiny at the outset, based on the pre-Stage 1 criteria (see Appendix 1). Few cases are rejected at this stage; however, in order to maintain public confidence in the member conduct complaints system, this is to be expected, as it is intended to “weed out” only the most inappropriate or irrelevant complaints, and most complaints clearly meet at least the basic criteria to proceed to Stage 1. The list of pre-Stage 1 criteria adopted by WDC (mirroring that adopted by a number of other Councils) is fairly comprehensive but owing to the lateness of the new legislation being confirmed, may not have been able to have the ideal degree of scrutiny in 2012. With the benefit of operation of the system over the past 5 years, it would be good practice to include an additional category, designed to “weed out” any cases where the complainant’s motive is manifestly and obviously discriminatory.

RECOMMENDATIONS:

- (i) **That a new criterion be added to Paragraph 4. “What happens Next?” as follows:**

“(h) the subject matter of the complaint reveals any manifest and/or obvious discriminatory motive on the part of the Complainant within the meaning of the Equality Act 2010 in making the complaint”.

- (ii) **That criterion (g) in Paragraph 4 be amended to insert the additional wording in italics below, so (g) will read:**

“the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation *or service complaint* and there is nothing further to be gained.”

3. *There is no verbal discussion with the member before the complaint becomes formal. Communication with members is very formal, and can come as an unwelcome shock “out of the blue”. Members lack an effective point of contact whom they can contact to find out more about how the process will work. Although it is accepted that the Monitoring Office’s role needs to display impartiality as far as possible once a complaint has been made, and this can preclude detailed discussion with the Monitoring Officer about the facts of the case, it would be useful to have a contact point who is knowledgeable about process, yet not directly involved in it.*

The process is necessarily designed in such a way as to show impartiality between external complainants and elected members by employed officers, as far as is possible with any internal process. Following the change in the law to abolish Standards for England and the general trend under the current legislation to have an internal process, which is as light-touch as possible, it is inevitable that there will be some disagreement from time to time as to where the balance should properly be struck, and the public perception must also be firmly borne in mind. The process requires the member to be immediately informed, in writing, because a key criticism of the pre-2012 process was that early steps in the process could result in it being some time before a member realised that a complaint had been made against them, and they did not always have the opportunity to respond to it swiftly. Contact with both Complainant and Subject Member already outlines the process and gives timescales. Notwithstanding this, it is accepted that the receipt of a complaint can be stressful and worrying for Members. The Monitoring Officer can still be consulted for advice on process, but if Members feel more comfortable consulting an officer not directly involved in the complaints process, but with appropriate knowledge, arrangements can be made for this.

RECOMMENDATION:

That the Head of Democratic Legal and Policy Services nominate a “member contact” officer who has no direct involvement with the complaints process and whom members can contact for support and advice on the process. In the first instance this will probably be the Democratic Services Manager, and the complaints process document be amended to reflect this.

4. *It is impossible to prove a negative.*

This proposition may well be correct, though it may well be a universal issue to all complaints or investigatory processes. The complaints system, by requiring scrutiny by the Monitoring Officer in consultation with an Independent Person, before a matter could proceed to a formal investigation, which is a key stage, means that a considerable bar has to be reached in order to merit an investigation (there have been none since March 2014) and the amount (or lack) of evidence would be a key factor to take into account.

RECOMMENDATION:

No action required.

5. *The 20 working day deadline for members to respond to the initial complaint can give the impression that the reply is expected to take this period to reply, rather than being a longstop date.*

This deadline was presumably intended to allow Members enough time to respond to a complaint, even where they were on holiday, or otherwise busy. It is of course possible for the Subject Member to reply sooner, and this helps move the process forward.

RECOMMENDATION:

That correspondence with Members makes it particularly clear in future that the 20-working day reference is a long stop date, and that they should respond as soon as possible and in any event within 20 working days.

13. As well as points noted by Members, it is also noted that paragraph 9 of the Complaint process still makes reference, when explaining who is an Independent Person, to the transitional provisions up until July 2013, which are now obsolete. It is proposed that this wording be amended accordingly to remove the unnecessary wording, and this is also shown in red bold text.

Options

14. The recommendations set out in the report are not obligatory, and need not be approved; no action, or different action, could instead be taken. However, if any other course of action other than those recommended is desired, it is recommended that the Monitoring Officer be provided with the opportunity to further consider these and present a further report to Standards Committee to allow for further consideration.

Next Steps

15. If Standards Committee agrees, the recommendations will be presented to Full Council for approval, and incorporated into the Member Complaints system and actioned in future complaint cases

Background Papers

None.