



# Report to Standards and General Purposes Committee

**Date:** 2 July 2020

**Reference number:** TBC

**Title:** Complaints Procedures and Protocol on the Role of the Independent Person

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**Ward(s) affected:** none specific

**Recommendations:** The committee is asked to:-

- 1. Note the arrangements for dealing with complaints against councillors.**
- 2. Note the draft Guidance on dealing with Member Complaints and, subject to any comments or amendments, approve the Guidance.**
- 3. Note the draft Protocol on the Role of the Independent Person and, subject to any comments and amendments, approve the Protocol.**

**Reason for decision:** The Guidance and the Protocol provide further detail on the practical application and use of the arrangements in the Council's Constitution for dealing with complaints against Members. This will promote consistency in relation to procedures and decision making across the Council.

## Executive summary

- 1.1 This report seeks comments on the draft Guidance on dealing with Member Complaints and the draft protocol on the Role of the Independent Person.
- 1.2 Following the change to a unitary council there are currently 196 Buckinghamshire Councillors (reducing to 147 after the May 2021 elections) and over 1000 Town and Parish Councillors across the Buckinghamshire Council administrative area.
- 1.3 The Monitoring Officer is responsible for dealing with complaints against councillors but it is expected that the majority of this work will be passed onto Deputy Monitoring

Officers. In the interests of fairness to both complainants and Subject Members a consistent approach in both procedure and decision making is considered best practice. This can be achieved by having more detailed guidance for complaints and clarity on the role of the Independent Person.

## Content of report

### Background

- 1.4 The Localism Act 2011 governs the arrangements for local authorities in respect of ethical standards. This includes the Code of Conduct for Councillors, Registers of Interests and the handling of complaints.
- 1.5 The Standards and General Purposes Committee is responsible for exercising the Council's functions under the Localism Act 2011 in relation to ethical standards and has oversight and responsibility for the Code of Conduct and the Arrangements for Dealing with Standards Complaints.
- 1.6 The Councillor Code of Conduct applicable to the councillors of Buckinghamshire Council is set out in the Council's Constitution at Part H Section 2. The Code of Conduct also includes the requirements for registration of interests. Part H Section 3 contains the Arrangements for Dealing with Complaints against Councillors.
- 1.7 The Code of Conduct was drafted so it would be sufficiently high level to cover any relevant situation and also provide clarity in certain circumstances (eg in relation to interests). This Committee has oversight of the Code but as it is contained within the Constitution any changes must be recommended to full Council.
- 1.8 Whilst there is an overview of the arrangements for dealing with complaints in the Constitution it was considered that as the practical application of the arrangements is an operational matter, they can be subject to circumstances at the time and technology or resources may change their operation, the detailed arrangements would be better dealt with in a guidance document. As such Guidance is not contained within the Constitution it does not need to be approved by the Council making its practical application easier to update where necessary.
- 1.9 The Localism Act provides that a Council must appoint at least one Independent Person (IP) whose views are to be sought and taken into account before the Council makes a decision following the investigation of a complaint that a Member or a Town or Parish Councillor has failed to comply with their Code of Conduct. The Monitoring Officer may also consult an IP when making a decision on how to progress a complaint. Subject Members of a complaint also have the right to consult an IP if a complaint is made about them.

- 1.10 IPs can also be involved in other aspects of a complaint such as whether to agree to keep a complainant's identity confidential. They may also be on a Panel considering the dismissal of a statutory officer and can be consulted about dispensations to be granted to our councillors. They provide an independent balance on decision making in this area.
- 1.11 Due to the importance of the role of the IP and the Guidance on ethical standards it was considered appropriate to have both of these documents approved by the Committee.

#### Code of Conduct

- 1.12 The Code of Conduct is in 3 parts, the first is a general section which includes the scope of the Code and general obligations which give high level obligations. The second and third parts relate to interests, the effect of interests on participation in Council business and registration and disclosure of interests.
- 1.13 Appendix A to the Code of Conduct sets out discloseable pecuniary interests as detailed in Regulations. It also the requirements relating to the registration of gifts and hospitality.

#### Arrangements for Dealing with Complaints against Councillors

- 1.14 The process is split into 4 parts. The first part is an initial assessment which allows the Monitoring Officer to ensure that the complaint comes within the Code of Conduct and/or it is appropriate to progress the complaint.
- 1.15 There are then 3 stages which in summary are (i) obtaining the Subject Member's response to the complaint and checking if this is satisfactory to the complainant (ii) if not stage 2 is formal consideration of the complaint by the Monitoring Officer or allocated Deputy Monitoring Officer to determine if to progress the complaint. Depending on the seriousness of the alleged behaviour this stage may involve consultation with the IP and/or the Chairman of the Standards and General Purposes Committee. (iii) The last stage is investigation and where appropriate a referral to the Sub-Committee who may decide that a formal hearing is necessary.
- 1.16 Each complaint is to be considered on its own merits, however the Referral Criteria list the factors which can be taken into account. These are detailed at paragraph 3.11 of the Arrangements.

#### Guidance on Dealing with Member Complaints

- 1.17 The draft Guidance is attached as Appendix 1. It is guidance for complainants on how to make a complaint and includes the practical aspects of how it will progress. The

draft Guidance is being used as a basis to progress current complaints apart from the forms as detailed.

- 1.18 The Guidance includes the forms which are to be used (annexes 1A and 1B of the Guidance). There are two forms, one for a complaint against Buckinghamshire Councillors and the second for complaints against a Town or Parish Councillor. The Council's website currently requires a temporary form to be used, however once approved these forms will be made available for use as soon as possible.
- 1.19 The Guidance also sets out how a complaint will be dealt as well as more detail on the process and procedures such as confidentiality and the procedures for investigations, hearings and committees.
- 1.20 Amendments to the Guidance are reserved to the Committee but the Chairman of the Hearings Sub-Committee may, following consultation with the IP depart from the detailed procedures where appropriate.
- 1.21 It is considered that the Guidance will supplement and explain the Arrangements detailed in the Constitution. The Committee's views on the Guidance are sought and subject to those views it is recommended that the Guidance is approved to ensure consistency of approach and fairness across the Council.

#### Protocol on the Role of the Independent Person

- 1.22 As detailed above, IPs may be consulted by the Monitoring Officer. They may also be consulted by an investigator or be asked to provide their views to the Committee or Sub-Committee if the complaint progresses. They may also be consulted by the Subject Member.
- 1.23 The Protocol sets out the role of the IP in each of these scenarios as well as setting out other matters which they may be involved in.
- 1.24 The Protocol also sets out rights which are given to the IPs including addressing full Council with any concerns as well as rights of access to Council premises and information. The relationship between the IPs and this Committee is also clearly set out.
- 1.25 Three IPs have been appointed. Two training sessions with the IPs have taken place and a third session dealing with procedures is scheduled for 23 June. The draft Protocol will be discussed as part of that session and any comments from the IPs will be provided to the meeting.

- 1.26 The Protocol provides clarity to both the IPs and Subject Members on their role and their rights as an IP. Views of the Committee on the Protocol are therefore also sought and, subject to such views, it is recommended that the Protocol is approved.

### Other options considered

- 1.27 Not having the Guidance would allow much more flexibility in procedure and progression of complaints. However this will leave the Council open to further complaints about unfairness both procedurally and in relation to decisions from original complainants and Subject Members, especially given that a number of different officers are likely to be decision makers.
- 1.28 A Protocol is not a statutory requirement and if it was not implemented there would be no starting point in the event of future queries and could result in confusion for all involved with associated delay and frustration whilst the particular issue is sorted out.

### Legal and financial implications

- 1.29 It is a statutory requirement for the Council to have arrangements in place to deal with complaints against Councillors and to appoint IPs. The statutory requirements have been complied with. The contents of this report relate to documents and procedures which will supplement and assist in the practical applications of the arrangements and the role that IPs will undertake.
- 1.30 There will be a cost in officer time in dealing with complaints against Councillors, which will be met from within the existing Deputy Chief Executive and Legal Services budget. It is however anticipated that the Guidance and the Protocol will help to make the practices and procedures in this area as efficient as possible.

### Corporate implications

- 1.31 The Guidance and Protocol will help Buckinghamshire Council provide a fair and transparent complaints process to support high standards of conducts by all councillors within the Buckinghamshire Council area.

### Consultation and communication

- 1.32 The IPs will be consulted on the Protocol and the Guidance, once approved, will be available and/or provided to complainants and Subject Members where appropriate.

## Next steps and review

If approved the Guidance will continue to be followed. Both documents will be reviewed as part of the arrangements for dealing with complaints and the Code of Conduct.

## Background papers

*Buckinghamshire Council Constitution:*

<https://buckinghamshire.moderngov.co.uk/documents/s5397/Buckinghamshire%20Council%20Constitution.pdf>

*(Part H Section 2 – Code of Conduct)*

*(Part H Section 3 – Arrangements for Dealing with Complaints against Councillors)*

## Your questions and views (for key decisions)

If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone 01296 382343 or email [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk)