

# **STANDARDS**

## **Arrangements for Complaints of Breach of Code of Conduct**

**11th October 2012**

### **Report of the Monitoring Officer**

#### **PURPOSE OF REPORT**

To enable the Committee to review its arrangements for dealing with allegations of breach of the Code of Conduct.

**This report is public**

#### **RECOMMENDATIONS**

- (1) That the Committee considers the issues set out in the report, and highlighted in bold type, and authorises the Monitoring Officer to amend the “Arrangements“ document in accordance with the views expressed by the Committee at this meeting.
- (2) That the Committee approves the Assessment Criteria appended to this report to form an appendix to the “Arrangements” document.
- (3) That the Committee approves the Investigation Procedure, Pre-Hearing Procedure and Hearings Procedure appended to this report.
- (4) That in the light of the views of the Committee on how it would wish to respond to press inquiries, the Monitoring Officer prepare a Press Protocol and revised Protocol on Publicity for Complaints of Breach of the Code of Conduct for consideration at a future meeting.

#### **1.0 Introduction**

- 1.1 Section 28(7) of the Localism Act 2011 provides that a relevant authority other than a parish council must have in place arrangements under which allegations (of breach of the Code of Conduct) can be investigated, and arrangements under which decisions on allegations can be made.
- 1.2 Prior to the implementation of the new standards regime on the 1st July 2012, the Committee considered at its meetings in January and June 2012 the arrangements for dealing with allegations, and the attached “Arrangements” document was prepared (Appendix 1). The Committee already had investigation, pre-hearing and hearing procedures which were used under the old regime, but these were not updated at that time.
- 1.3 Members will recall that, under the Local Government Act 2000, there was a very rigid procedure to be followed whenever a complaint was received, in that it was necessary to convene an Assessment Sub-Committee to decide whether the complaint should be investigated or no action taken. In the event

of no action, the complainant had a right to request a review which was carried out by a Review Sub-Committee.

- 1.4 It was envisaged that under the new regime, there would be more flexibility in dealing with and seeking to resolve complaints, and for that reason, the "Arrangements" document, as originally drafted was not particularly detailed. However, the complaints that have been received by the Monitoring Officer since the implementation of the new regime have raised a number of issues that are not specifically covered in the current "Arrangements" document. The Monitoring Officer now feels that it would helpful to her, to the Committee, to complainants and to members who are the subject of a complaint, if the "Arrangements" document were more detailed.
- 1.5 The issues that have arisen are set out below, and **bold type** has been used to identify the matters on which the Committee's views are particularly sought. In preparation for this meeting, the Monitoring Officer has amended the "Arrangements" document (Appendix 2). The changes are tracked, and the document is intended to be a working document which will be finalised in the light of the Committee's views.

## **2.0 Proposal Details**

### Arrangements on receipt of a complaint

- 2.1 The arrangements currently provide that once an allegation is received, the Monitoring Officer will seek informal resolution wherever possible. If informal resolution is not possible, the Monitoring Officer will, in consultation with the Independent Person, the Chairman (or Vice-Chairman) of the Standards Committee, and, if appropriate the Chief Executive, determine whether the complaint merits formal investigation, or whether no further action should be taken. The Monitoring Officer may refer particular complaints to the Standards Committee if she feels that it would be inappropriate for her to take the decision. The Monitoring Officer will report to each scheduled Standards Committee meeting on the number and nature of complaints received and decisions taken on them.
- 2.2 The arrangements do not make it clear whether in all cases the member complained of should be advised of the complaint as soon as it is received, and, if so, whether the Monitoring Officer should provide a summary of the complaint or a full copy. On one hand, it could be argued that the member should be able to see the whole complaint; on the other hand, sight of the actual complaint may make informal resolution less likely. Members will recall that under the previous regime a member was not informed of a complaint until the complaint had been assessed. However, it is not possible to seek informal resolution if the member is not advised of the complaint. **The Committee's views are therefore sought as to whether a member should be routinely informed of a complaint when it is received, and, if so, whether the full complaint or a summary should be provided. The Committee might also wish to consider whether the member should be invited to provide an initial response to the complaint at that stage, prior to any decision on whether the complaint should be investigated.**
- 2.3 The City Council is responsible for dealing with complaints that a member of a parish council, acting as such, has failed to comply with the Code of Conduct. **The Committee's views are sought as to whether, when such a complaint is received, the clerk to the parish council should as a matter of course be advised of the complaint, and, if so, in how much detail.**
- 2.4 If the press become aware of a complaint at this initial stage and request

confirmation of, or information about the complaint, it is suggested that the standard response should be that no comment will be made at the pre-assessment stage and that no confirmation will be given as to whether a complaint has been received or not. **The Committee's views on this are sought.**

- 2.5 Members may recall that under the Local Government Act 2000 regime, there was provision for the Assessment Sub-Committee to refer a complaint to Standards for England, and that this applied in particular where the complainant was a senior officer or member of the Council. As indicated above, the current arrangements provide for the Monitoring Officer, following a consultation process, to determine whether or not a complaint is referred for investigation, although she may refer the matter to the Committee if she feels that it would be inappropriate for her to take the decision. The Monitoring Officer is minded that where the complainant is the Chief Executive or a Service Head, or where the complainant or the member complained of is the Leader of the Council, or a Group Leader, she will as a matter of course refer to the Committee the decision as to whether or not the complaint is to be investigated. There may be other circumstances where she considers it inappropriate to make the decision, and will retain the right to refer the matter to the Committee.
- 2.6 Members will recall that under the previous regime, the Standards Committee adopted assessment criteria which were used to assess complaints. The Monitoring Officer considers that it may be helpful to continue to use such criteria, and a draft document is attached at Appendix 3 which, if members agree, could be appended to the "Arrangements" document.
- 2.7 Under the current arrangements, once the decision has been taken either by the Monitoring Officer or the Standards Committee not to refer a complaint for investigation, there is no provision for further consideration of the matter. **The Committee is asked to consider whether, where the decision has been taken by the Monitoring Officer, and that decision is that no action should be taken, that should be the end of the matter, or whether it would wish to consider the complaint itself if the complainant so requests.** The danger of such an approach is that all unsuccessful complainants would be able to use the right of appeal to the Committee, thus removing the current early filtering process for complaints that appear to have no merits.
- 2.8 The current arrangements provide for the Monitoring Officer to report to each scheduled Standards Committee on the number and nature of complaints received and decisions taken on them. Under the previous regime, once a complaint had been assessed by an Assessment Sub-Committee, there was a statutory obligation to publish a summary which included the identity of the member complained of. Those provisions no longer apply. **The Committee is asked therefore to consider whether the report to Committee summarising complaints received and informing the Committee whether or not they were referred for investigation, should be a public report but with the complaints anonymised, or an exempt report with the members complained of and the complainants identified, but for the Committee's benefit only, or whether the public interest requires that in the interests of transparency, information about each complaint including the identity of the member complained of and the complainant should be in a public report.** This may be particularly relevant where a case has been referred for investigation, and the investigation is ongoing. However, even where no action has been taken on a complaint, there are arguments both for and against making public the fact that a complaint has been made against a

named member. There is a need to balance the public interest in openness and transparency with the interests of a member complained of, particularly where a complaint may have no merit.

- 2.9 Before the report referred to in 2.8 above, and as soon as a complaint has been assessed, it is possible that the press may make inquiries if they already have information about the complaint. **The Committee is asked to consider whether it wishes the Monitoring Officer to confirm in response to press inquiries the identity of the member complained of, a summary of the complaint, and whether or not the complaint has been referred for investigation. It would probably be difficult to decline to comment at this stage. The Committee may also wish to consider whether the member complained of should be permitted to make any public comment at the stage. The Council's Protocol under the previous regime prevented members from commenting until after the complaint had been concluded.**

#### Pre-Hearing and Hearing Procedures

- 2.10 The Monitoring Officer has updated the Investigation Procedure, Pre-Hearing Procedure and Hearing to reflect the new standards regime. **The Committee is asked to approve these amended documents (Appendices 4, 5 and 6 respectively).**
- 2.11 Given that the Committee now comprises seven members only, it would seem appropriate for hearing to be dealt with by the full Committee, rather than by a sub-committee as previously, and the Hearing Procedure has been amended to reflect this.

#### **3.0 Details of Consultation**

- 3.1 There has been no consultation

#### **4.0 Options and Options Analysis (including risk assessment)**

- 4.1 The Committee's views are sought on the issues set out above, and will inform the contents of the revised "Arrangements" document.

#### **5.0 Conclusion**

- 5.1 The Committee's views are sought

#### **CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The arrangements for dealing with complaints should reflect the human rights legislation which demands a fair hearing, but should also reflect the need for transparency in the process.

#### **LEGAL IMPLICATIONS**

There are no direct legal implications arising from this report.

#### **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

**OTHER RESOURCE IMPLICATIONS**

**Human Resources:**

None

**Information Services:**

None

**Property:**

None

**Open Spaces:**

None

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Committee.

**BACKGROUND PAPERS**

None

**Contact Officer:** Mrs S Taylor

**Telephone:** 01524 582025

**E-mail:** STaylor@lancaster.gov.uk

**Ref:**