

# **STANDARDS**

## **Review of Procedures for Dealing with Complaints of Breach of Code of Conduct 10th October 2013**

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

#### **PURPOSE OF REPORT**

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

**This report is public**

#### **RECOMMENDATIONS**

- (1) That when a member is invited to comment on a complaint, the member be advised that:**
  - (a) comments received on the complaint will not routinely be passed to the complainant;**
  - (b) that the member would be consulted should the complainant request a copy of the comments; and**
  - (c) that when submitting comments, the member should be mindful that there may in some circumstances be a legal requirement to disclose the comments under data protection or freedom of information legislation.**

#### **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. The Committee's arrangements were last reviewed in October 2012.
- 1.2 One of the changes in procedure under the new standards regime has been that the member complained of is now informed of the details of the complaint when it is received, and is invited to make comments prior to the complaint being assessed and the decision being taken as to whether the complaint should be referred for investigation or no further action taken.
- 1.3 When lodging a complaint, the complainant is advised that the complaint will be seen by the member complained of, and that, unless there are exceptional circumstances, the member will be made aware of the identity of the complainant.
- 1.4 It has come to the Monitoring Officer's attention, however, that the Committee has not specifically considered whether or not the member's response to the

complaint will be provided to the complainant if so requested. The Monitoring Officer has taken the view that it is not appropriate for the response to be shared as a matter of course with the complainant. The response may contain personal data relating to the member, to the complainant, or to third parties and this would be protected under the Data Protection Act 1998. However, in the event of a request being made by the complainant or by any other person for sight of the response, whether under the Data Protection Act or under the Freedom of Information Act 2000, the specific request would have to be considered, and a view taken as to what information should be disclosed and what information should be withheld under the relevant legislation. In some cases, notwithstanding the views of the member, there may be a legal requirement to disclose the information

- 1.5 The Monitoring Officer considers that it would be helpful, when a member is invited to comment on a complaint, for the member to be advised as follows:
- that comments received on the complaint will not routinely be passed to the complainant;
  - that the member would in any event be consulted should the complainant request a copy of the comments;
  - but that, when submitting comments, the member should be mindful that there may be a legal requirement to disclose the comments under data protection or freedom of information legislation, and that this is particularly so if the comments contain personal data relating to the complainant.

## **2.0 Details of Consultation**

- 2.1 There has been no consultation

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

- 4.1 The Committee's views are sought on the Monitoring Officer's proposal. The alternative option is not to provide advice to the member complained of as to the possibility of the complainant requesting a copy of the member's comments on the complaint. The Monitoring Officer is of the view that it would be preferable to advise the member in advance, so that the member is aware, when submitting any comments, of the possibility of the complainant requesting a copy.

## **4.0 Conclusion**

- 4.1 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 for the member complained of. Whilst there is a need for transparency in the process from the complainant's point of view, the relevant legislation will determine whether information should be disclosed, and, under the Freedom of Information Act, a balancing of the public interest may be required.

### **LEGAL IMPLICATIONS**

The legal implications are included in the main body of the 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

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