

ITEM 4 Review and Revision on the Arrangements for Dealing with Complaints

Report of the Head of Legal and Democratic Services

Recommended:

- 1. That the Arrangements for Dealing with Complaints set out in the Annex be approved.**
- 2. That the Initial Assessment of the Complaint as set out in the Annex be delegated to the Monitoring Officer in consultation with the Chairman of the Employment Appeals and Ethics Sub-Committee.**
- 3. Authority be delegated to the Head of Legal & Democratic Services in consultation with the Chairman of the Employment Appeals and Ethics Sub-Committee to make consequential amendments to the Complaint Form and the guidance notes “Making a Complaint about a Councillor**

Recommended to Council

SUMMARY:

- This report constitutes the review and revision of the Arrangements for Dealing with Complaints (“the Arrangements”).
- The Arrangements describe the procedure by which allegations of breaches of the Code of Conduct are investigated, decided and sanctions duly ordered.
- The report recommends revisions to the Arrangements to better ensure the swift and proportionate determination of such complaints.

1 Introduction

- 1.1 The Localism Act 2011 (“the Act”) changed the ethical framework of local government to dispense with both the Model Code and the Standards Board for England. The Act intended that Members would be given greater liberty to advocate and challenge under a new and apparently less onerous code of conduct.
- 1.2 The Act requires that each Council adopts a code of conduct (“the Code”) which both promotes and maintains high standards of conduct by Members of the Council.

- 1.2.1 The Code must include appropriate requirements and procedures in respect of the registration, and disclosure, of pecuniary interests, and interests other than pecuniary interests.
- 1.2.2 Breach of the Code is a matter for the Council. The Act requires that each Council must have in place Arrangements to manage the investigation and decision-making process in respect of an alleged breach of the Code. However, the failure to declare a disclosable pecuniary interest constitutes a criminal offence and is a matter for investigation by the police and prosecution through the courts.
- 1.3 The Act whilst requiring that Arrangements are in place to deal with complaints, reduces the effective sanctions available to the Council and particularly so regarding complaints relating to Parish Councillors.
- 1.4 The sanctions available are:
 - (a) Where the matter relates to a Borough Councillor, that the Member be censured;
 - (b) Where the matter relates to a Parish or Town Councillor, that it be recommended to the Council concerned that the member be censured (in which case it is a matter for that Parish or Town Council to decide whether to accept such a recommendation);
 - (c) That there shall be whatever publicity regarding the sanction considered appropriate;
 - (d) That it be recommended to the Council that the Member be removed from a specific committee(s).
- 1.5 This report advises Members of proposed changes to the Arrangements in favour of the proportionate and swift determination of complaints.

2 Revision of the Arrangements

- 2.1 The current Arrangements provide for a process of initial assessment of a complaint by the Employment Appeals and Ethics Sub-Committee. There is no finding of fact or determination of the merit of the complaint. The assessment is restricted to an analysis of the complaint against certain criteria found at the Annex to the Arrangements.
- 2.2 The recommended revision to the Arrangements allows for the initial assessment to be undertaken by means of consultation between the Monitoring Officer and the chairman of the Employment Appeals and Ethics Sub-Committee, and where the subject Member has requested, the Independent Person.
- 2.3 The proposed revision adopts the assessment criteria previously approved by Council in 2012, and which enable a swift turnaround of complaints:
 - (a) for which there is no prima facie evidence that the Code has been breached;

- (b) for which the use of public funds to examine the matter further would be disproportionate, having taken into account the nature of the allegation,
- (c) where the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- (d) where the conduct complained about has already been the subject of investigation or enquiry by another public body;
- (e) where the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and that there is nothing further to be gained;
- (f) where there is not enough information to take the matter further;
- (g) where the complaint was made anonymously;
- (h) where the complainant has requested that their identity as complainant be withheld from the member, and so the matter cannot reasonably be taken further in all the circumstances;
- (i) where the member has already apologised for the action that was the subject of the complaint, and which apology is sufficient to dispose of the complaint;
- (j) where the complaint is essentially against the action of the Council or a committee as a whole and cannot properly be directed against an individual member(s).

2.4 The revised procedure is intended to ensure that whilst there can be a full consideration of the complaint with Member participation, that consideration is not delayed by committee process which delay serves only to exacerbate the sense of grievance and anxiety of both complainant and Member alike.

2.5 Complaints which are without evidence, disproportionate, or otherwise fundamentally flawed when assessed against the criteria noted above, will be closed quickly and with little resource required.

2.6 Equally, by achieving a swift initial assessment, those complaints which are supported by evidence, which are proportionate and broadly robust when assessed against the criteria, will proceed without delay to investigation and final assessment by the Sub-Committee.

3 Consultations/Communications

3.1 The report has been considered by the Corporate Portfolio Holder and the Overview and Scrutiny Committee. All Members were consulted and their comments considered in the drafting of this report and the attached Annex.

3.2 At the meeting of OSCOM on 18 March 2015, the committee and Members indicated that they were content with the proposed revision to the Arrangements.

4 Options

- 4.1 The Sub-Committee can decide not to approve the revised Arrangements for Dealing with Complaints and advise Council accordingly. In that case, and subject to the decision of Council, complaints would continue to be managed under the existing Arrangements.
- 4.2 Alternatively, the Sub-Committee could decide to approve the revised Arrangements and advise Council accordingly. In the event that Council decides to adopt the revised Arrangements, complaints would be managed under the revised Arrangements.
- 4.3 The second option is recommended by Officers.
- 4.4 The revision to the Arrangements enables both complainants and Members reasonably to expect the swift assessment of complaints and so is consistent with that fundamental principle of natural justice. Such an expeditious response would enable valid complaints to progress more quickly, by releasing time and resource otherwise taken by complaints which were without evidence, disproportionate or otherwise fundamentally flawed.

5 Resource Implications

- 5.1 There are none save the resource engaged in publishing the revised documents and further training of Members.

6 Legal Implications

- 6.1 The legal implications are as set out above.

7 Other Issues

- 7.1 Wards/Communities Affected
 - 7.1.1 All wards and communities in the Borough are affected

8 Conclusion

- 8.1 An allegation against a Member regarding a breach of the Code is a serious matter for both Member and complainant alike. Nonetheless, there are complaints which for one reason or another are absent of credibility, disproportionate, or otherwise fundamentally flawed. The proposed revision to the Arrangements seeks to ensure that both the subject Member and complainant are advised as soon as possible in the event that the complaint fails against the initial assessment criteria and that complaints which do not fail might then proceed swiftly with all necessary resources required in their investigation and determination.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Test Valley Borough Council- Code of Conduct- 2012			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
Author:	Bill Lynds	Ext:	8401
File Ref:			
Report to:	Employment Appeals and Ethics Sub-Committee	Date:	8 April 2015