

Resources: Legal and Governance

Director of Legal and Governance: Gillian Duckworth
Town Hall SHEFFIELD S1 2HH

Tel: 0114 273 4018

Email: gillian.duckworth@sheffield.gov.uk

Website: www.sheffield.gov.uk



Your Reference:

Our Reference:

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Mr Martin Brighton
(sent by email)

Dear Mr Brighton,

Response to Public Questions at 25 March Council Meeting

It was agreed at the Council Meeting on 25 March 2015 that I would provide you with a written response to the questions you asked at the meeting relating to the new Procedure for Dealing with Complaints Regarding Councillors and Co-opted Members.

I have responded to the written questions you submitted in advance of the meeting, as follows:-

4.1 Why is otherwise unacceptable behaviour tolerated if part of political debate?

The Members' Code of Conduct sets out the standards that are expected of Members of the Council in carrying out their duties and in their relationships with the Council and its officers.

Any complaint alleging that a Member has breached the Code will be considered in accordance with the revised Procedure.

There are a number of factors that would be taken into account in deciding what action could be taken in assessing the complaint and these are set out in paragraph 6.2 of the Procedure. One consideration is whether the conduct occurred during political debate, i.e. a conversation between elected Members. It's possible that language and tone of an exchange between elected members is acceptable whereas the same language and tone expressed to a member of the public would not be. It will very much depend on the particular circumstances of the individual complaint.

4.2 Why is the effect upon reputation to the Council a consideration of not processing a complaint?

All complaints received will be considered in accordance with the revised Procedure.

In assessing a complaint, I will take into account the information submitted by the complainant and Member and the areas outlined in paragraph 6.2 of the Procedure. The degree to which those areas are taken into account will depend on the particular circumstances of the individual complaint. Effect on reputation is one consideration. It's possible that it may be the only reason why action needs to be taken rather than it being a reason to not take action

4.3 Can it be assured that the Independent Person will not be a member of the same political party as the elected member?

In November 2012, Full Council appointed three Independent Persons from outside the Council to assist the Monitoring Officer and the Standards Committee in considering complaints.

As part of the recruitment process, the applicants signed a declaration that they were:-

- not and have not during the past five years been a Member or Officer of the City Council or of any Parish or Town Council within the Authority's area
- not related to, or a close friend of, any Member or Officer of the City Council
- not actively engaged in local party political activity.

Having three Independent Persons enables the Council/Independent Persons to overcome any conflict of interests.

4.4 Who decides which clause of the Code of Conduct is breached when a complaint is raised against an elected member?

Although the complainant is asked to identify which paragraph(s) of the Code they believe have been breached, the role of the Monitoring Officer is to identify potential breaches of the Code.

Where I have, in consultation with the Independent Person, referred a matter for investigation, the letter to the complainant and Member will indicate the relevant paragraph(s) of the Code where there may be a potential breach.

The Investigating Officer would make a finding in their report whether the Member has failed to comply with specific paragraphs of the Code. Where a matter is referred to a Hearing Sub-Committee, the Sub-Committee would decide if there has been a breach of the Code.

4.5 If it is determined that an elected member breaches the code, is the defence of 'he goaded me' an acceptable reason for dismissing the complaint?

Only a Hearing Sub-Committee would determine if a Member has breached the Code.

As part of that hearing, the Sub-Committee would consider the Investigating Officer's report and this would include evidence from the complainant and Member and any other witnesses. The Member and complainant would have the opportunity to attend the hearing and present evidence. It would be for the Sub-Committee to consider that evidence and make findings of fact and decide if there had been a breach of the Code.

4.6 Is it wise to have a complaints process that has no right of appeal ?

Under the previous national Standards regime there was a right of review for the complainant of a decision of the Assessment Sub-Committee not to take any action on a complaint. Also where a Standards Committee found that a Member had failed to comply with the Code, the Member could appeal to the First Tier Tribunal. When that regime was abolished in 2012 those review/appeal arrangements were no longer available.

When the Standards Committee considered the revised Procedure at its meeting on 22 January 2015, it did discuss that the proposal relating to having no right of appeal and recommended to Council that there is no right of appeal for the complainant or Member against a decision of the Monitoring Officer, Consideration Sub-Committee or Hearing Sub-Committee. However, if the complainant feels that the Council has failed to deal with their complaint properly, they can make a complaint to the Local Government Ombudsman and therefore the rules of natural justice are satisfied.

I will be reviewing the operation of the new Procedure in approximately 12 months' time.

I hope this response answers the points you raised in your questions at the Council Meeting.

Yours sincerely,



Gillian Duckworth
Director of Legal & Governance and Monitoring Officer

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