



Audit and Standards Committee Report

Report of: General Counsel and Monitoring Officer

Date: 23rd November
2023

Subject: Review of the Procedure for Dealing with Standards
Complaints

Author of Report: David Hollis, General Counsel and Monitoring Officer

Summary: This report sets out recommended revisions for the Committee to consider to the current 'Procedure for dealing with Complaints regarding City, Parish and Town Councillors and Co-opted Members.

Recommendations: That the Audit and Standards Committee:

1. Consider and comment upon the proposed changes to the current Complaints Procedure and Code of Conduct.
 2. Note that the Monitoring Officer will present a report to Full Council with the Committee's recommendation to adopt the revised Procedure (to include additional revisions arising from the meeting,) and that the Constitution is amended accordingly; and
 3. Refers the proposed changes to the Procedure to the Parish and Town Councils for consideration and adoption.
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Background Papers:

Report to Audit and Standards Committee on 16th February 2023

<https://democracy.sheffield.gov.uk/documents/s57557/8.%20Review%20of%20Complaints%20Procedure%20Cover%20report%202022.pdf>

Report to Full Council 6th September 2023

<https://democracy.sheffield.gov.uk/documents/s62593/Changes%20to%20the%20Constitution%20-%20Report%20and%20Appendices%20-%2006%20Sept%202023.pdf>

Report to Strategy and Resources Committee 19th June 2023 (with attached Tree Inquiry Report)

[https://democracy.sheffield.gov.uk/documents/s60286/Tree Inquiry Committee Report.pdf](https://democracy.sheffield.gov.uk/documents/s60286/Tree_Inquiry_Committee_Report.pdf)

Annex A to 19th June 2023 report – action plan (attached Annex A Tree response action table)

[https://democracy.sheffield.gov.uk/documents/s60237/Annex A Tree Response action table.pdf](https://democracy.sheffield.gov.uk/documents/s60237/Annex_A_Tree_Response_action_table.pdf)

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
/NO
Legal Implications
YES Cleared by
Equality of Opportunity Implications
NO
Tackling Health Inequalities Implications
NO
Human rights Implications
NO
Environmental and Sustainability implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications

NO
Area(s) affected
None
Is the item a matter which is reserved for approval by the City Council?
YES
Press release
NO

REVIEW OF THE PROCEDURE FOR DEALING WITH STANDARDS COMPLAINTS AND MEMBERS CODE OF CONDUCT

1.0 INTRODUCTION

1.1. The latest version of the Councillor Code of Conduct and the Procedure for Dealing with Standards Complaints “the Procedure” as set out within the Monitoring Officer Protocol (Part 5b of the Constitution) were approved by Full Council 6th September 2023 and copies are attached as Appendix A and Appendix B.

2.0 BACKGROUND

2.1 Minor revisions were made in February 2023 to the Procedure, to “add clarity and reflect current practice”. (See the Report to Audit and Standards Committee report dated 16th February 2023 within the Background Papers.)

2.2. In accordance with Paragraph 12.1 of the Procedure, the Monitoring Officer “will review the Procedure annually, in consultation with the Independent Persons, and submit a report on any proposed changes to the Audit and Standards Committee for considerations, any changes will require final approval at Full Council.”. This is normally done in the latter part of the Municipal Year.

2.3 On 19th June 2023, the Council’s Strategy and Resources Committee agreed a number of actions to respond to the findings and recommendations of Sir Mark Lowcock KCB in his report published 6 March 2023. (See the 19th June 2023 report in the Background documents.) One of the agreed actions, was for the Monitoring Officer to take a report to the Council’s Audit and Standards Committee on whether the standards regime and Councillor Code of Conduct needs updating.

2.4 Therefore this review is being undertaken earlier than normal as a result of that recommendation.

3.0 REVISIONS TO THE CODE OF CONDUCT AND PROCEDURE

3.1 The following proposed revisions to the Procedure, are set out within this part of the report. Where it’s been felt that no relevant revision is required in particular circumstances, then that too has been noted and with reasons given.

3.1.1 Appeals

(i) Currently, paragraph 9.1 of the Procedure provides 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.

Paragraph 9.2 [provides that] If the Complainant feels that the Council has failed to deal with their complaint properly, they can make a complaint to the Local Government and Social Care Ombudsman(LGO) ...”. This is in line with the following LGO guidance.

The Ombudsman does not offer a right of appeal against a council's decision on member conduct complaints, but we can consider if there was fault in the way the council considered the complaint. We will only investigate complaints if there is sufficient injustice to warrant our involvement or we consider it in the public interest to do so.

We may also be able to investigate complaints about the way the council has investigated the complaint about parish or town councillors. But we would need to consider what we could ultimately achieve as we could not investigate the actions of the town or parish council itself

(ii) It has been considered if there should be any additional appeal rights.

(iii) Recommendation: for Complainants – for the purpose of clarity, the need to expand upon what is actually meant by “failed to deal with their complaint properly” may be inserted into the Procedure and better reflect the LGO guidance.

(iv) **It is therefore proposed** that paragraph 9.2 will read “...If the Complainant feels that the Council has failed to follow the complaints Procedure (as set out within this Procedure document,) or has taken too long to look into the matter or has acted in a way that is contrary to the law, then they may make a complaint to the Local Government and Social Care Ombudsman ...”

(v) It is not recommended that there is another appeal route. The recent Teignbridge District Council investigation by the Local Government and Social Care Ombudsman was clear that the complaint process must be formal, fully documented and in line with the Human Rights Act 1998 and therefore right of appeal is unnecessary from that perspective and it is suggested the right to make a complaint to the LGO meets the needs of complaint about process.

(vi) **It is therefore recommended** that paragraph 9.1 will read, “ In the event of a finding being made against a Member by the Monitoring Officer, or any Sub-Committee, then that Member may make representations in advance of that decision being taken.”.

3.1.2. “If there is a potential conflict of interest to prevent the Monitoring Officer acting under the protocol”.

(i) It is the practice that in such a situation arising, the Monitoring Officer would simply step back and the matter would be dealt with either by the Council’s Deputy Monitoring Officer or by a Monitoring Officer from another Authority. This accords with fair process

(ii) It is therefore proposed to alter the Procedure to reflect the current practice

3.1.3 Should we slim down our process and so remove one or more levels of our current 3 stage process? This may be considered together with consideration of time-frame for handling complaints.

(i) The LGO recommends that a reasonable time to investigate Member complaints is 12 weeks.

(ii) The time frame of 12 weeks, given the role for both officers and Members' involvement is particularly challenging with our current 3 tier procedure.

(iii) From a review of a number of other Council Member Complaints Procedures, it's apparent that a robust and transparent procedure can be given effect to whilst reducing the process by having just one sub-committee being involved once only in the procedure.

(iv) Our current Procedure provides that there are two ways a matter may be forwarded to the Consideration Sub-Committee:

- a) following an Initial Assessment, if it is felt that the allegation(s) warrant an investigation then, from paragraphs 6.8 onwards, the process requires a report to be compiled by an Investigating Officer and that report will then, (in accordance with paragraph 6.8.6,) be submitted by the Monitoring Officer to the Consideration Sub-Committee.

b) The second way a matter may be forwarded to the Consideration Sub-Committee is pursuant to paragraph 6.9.1. This is where the Monitoring Officer is of the view that there is a breach of the Code, there is no dispute of the facts and therefore there is no need for an investigation.

(v) Also, our procedure here provides "an investigation will be completed within 12 weeks of a referral by the Monitoring Officer. The Consideration Sub-Committee will meet within two months of the final report being submitted from the Monitoring Officer" (Paragraph 6.8.7.)

(vi) No parties are required to attend a Meeting of the Consideration Sub-Committee.

(vii) Paragraph 7.4 sets out what powers the Consideration Sub-Committee have- "a) take no action; or b) ...take such steps as the Sub-Committee considers appropriate to prevent a future breach of the Code ..." They may also "c) refer the matter to a Hearing Sub-Committee."

(viii) Paragraph 8 provides that the Hearing Sub-Committee will meet "within 2 months of a referral by the Consideration Sub-Committee to consider the allegation."

(viii) The powers of the Hearing Sub-Committee, in the event of a finding of a breach of the Code of Conduct, includes everything that is available to the Consideration Sub-Committee, plus, "...a briefing/ information note be issued, that the Member is censured in writing and a copy of the letter is published on the Council's website, take no action, where it is not considered appropriate in the circumstances to impose a sanction.".(Paragraph 8.8.1.0

(x) Both the Consideration Sub-Committee and the Hearing Sub-Committee have Councillors (3 on each plus 1 non-voting co-opted Member on each).

(xi) Both Parties may attend the meeting of the Hearing Sub-Committee and present witnesses.

(xii) **For all the reasons noted above, it is recommended** to remove the role of the Consideration Sub-Committee. Effectively, this means amending the current procedure as follows:

(xiii) Paragraph 6.8.6 - replace reference to the 'Consideration Sub-Committee' with 'Hearing Sub-Committee'.

(xvi) 7 shall be removed in entirety.

(xvii) Paragraph 8.2 will be deleted.

3.1.4.Sanctions

(i) The current formal sanctions where there is a finding of a breach of the Code of Conduct are set out within paragraph 8.8.1 of the Procedure.

(ii) Currently, they include any of the following :

“-recommending to the Member’s Group Leader and / or Group Whip (or in the case of an un-grouped Members, recommend to Council or to Committees) that he/ she be removed from any or all Committees or Sub-Committees of the Council.

-instructing the Monitoring Officer to arrange training for the Member

-that policies/procedures are amended

-that a briefing/ information note be issued

-that an apology be given

-That the Member is censured in writing and a copy of the letter is published on the Council’s website

-Take no action where it is not considered appropriate in the circumstances to impose a sanction.”

(iii) In addition to the formal noted sanctions, our process also provides for informal mediation and other similar means of informally resolving the dispute which are considered throughout the process. In the majority of cases, informal resolution is always the preferred conclusion.

(iv) There are a number of other possible formal sanctions though which may be considered whilst we are looking at possibly revising the Procedure.

(v)Here are some further possible sanctions for consideration by this Committee:

-removal of a Member from a particular committee. This may only be achieved in consultation with the Group Leader of the Member’s party. This is not deemed practical. **This is not being recommended**, given the reality that there are some un-grouped Members.

-the withdrawal of access to Council premises or facilities (such as IT). But, this could be problematic and would need to be proportionate and must not

interfere unduly with the Member's ability to carry out their duties as a Member and therefore depriving electors of their democratically elected representatives. Organising the practicalities of this so as to ensure reasonableness may prove to be unworkable. Given the practical issues of this, **this is being recommended in one limited aspect, which is around the use of Council IT systems where the alleged breach is related to the sue of those systems.**

(vi) **Further recommendations** are made to provide some consistency or expand the current sanctions as follows

- Make the recommendation to remove from committees or sub-committees a recommendation to Full Council in all cases (not just ungrouped members) and extend the recommendation to external appointments made by Full Council
- Amend Paragraph 8.4 of the Code of Conduct to read 'I comply with any standards investigation, or sanction imposed on me following a finding that I have breached the Code of Conduct, *or any informal resolution by the Monitoring Officer. (italicised words added)*

3.1.5.Complaints by a Member against another Member

(i) There is no separate complaints system available for these types of complaints. Other authorities do have specific provisions such as referring the matter to Group Whips. When such situations arise, the Monitoring Officer with the Independent Person will take an initial view and the current discretion on informal disposal or taking no action (where there is evidence of a breach) is sufficient.

(ii) There is **no recommendation** to change the Procedure.

3.1.6 – Transparency regarding A) recording of Code of Conduct Complaint findings, B) public attending Hearings.

A(1) Where there is a finding of a breach of the Code of Conduct then the identity of the Member concerned may be openly stated in a findings report but subject to safeguards, including issues of data protection.

A(2) It is acknowledged that where there is a finding of a breach of the Code of Conduct by a Member, then that it is very much in the public interest, and so there is a legitimate expectation to publish the full details, including the name of the Member concerned. However, In some instances any report setting out a finding of a breach of the Code of Conduct may inevitably need to be redacted for proper lawful purposes. In some cases, the redaction may also include redacting the name of the offending Member concerned. This could happen where perhaps issues of health and safety were engaged, or if the matter was further referred to the police for their separate investigations.

A(3) Each case needs to be looked at carefully on the facts before publication.

A(4) Consequently, **there is no recommendation** to amend the Procedure

(B) Public attendance at Hearings-

(i) Currently, the protocol states ‘The Sub-Committee will meet in public unless it decides that all or part of the meeting should be held in private in accordance with the Access to Information Procedure Rules in the Council’s Constitution.

(ii) Until a finding of a breach has been made, the Member who has had an allegation made against them is entitled to his right to privacy. Such a Member continues to fulfil the role they were elected to; therefore, making public potential unproven allegations may hinder their role to be undertaken on behalf of their local constituents. This will be taken into account when considering the legal requirements for public access but as each matter will be fact dependant it is not possible for the protocol to set an expectation on how the rules will be invoked in each case.

(iii) Consequently **there is no recommendation** to amend the Procedure.

3.1.7 Gifts and Hospitality – particularly “incidental” gifts.

(i) Paragraph 10.of the Code of Conduct addresses this aspect. Currently, gifts / benefits or hospitality in “excess of £10” during the entire administrative 4 year term – must be notified to the Monitoring Officer in writing within 28 days.

(ii) Some discussion has arisen regarding “incidental gifts”. For example, where a donor provides some hospitality in excess of £10 then, it is for the Member to determine whether or not to refuse such a gift / hospitality in the first instance. There may be occasion where to refuse such a gift may cause personal or perhaps cultural offence to the donor.

(iii) In such situations it is always for the Member to decide how to deal with the gift at that time. If the Member decides to accept the gift (which may be in excess of £10, then it is recommended that the Member always ensures that they inform the Monitoring officer in writing within 28 days of the donation / gift. The basis for this being the need to ensure complete unequivocal impartiality in decision making by all Members, and the perception thereof.

(iv) Paragraph 10 of the Code of Conduct does not currently cover the situation just described; namely where the Member believes that to refuse the gift/ donation may be offensive to the donor.

(v) **Recommendation** the Code of Conduct is updated to address this omission within paragraph 10.

3.1.8 Where a Complaint is withdrawn:

(i) Paragraph 4.5 provides that “the Complainant can withdraw their complaint at any time...” In such circumstances, the Monitoring Officer currently has the discretion to pursue any of the issues within the complaint. (Para. 4.6.)

(ii) A Monitoring Officer who has had sight of a complaint that has been withdrawn by a complainant, may nonetheless continue with the complaint if in the opinion of the Monitoring Officer, there is / are some substantial

concerns raised. These concerns would be such as to cause the Monitoring Officer to form the view that it is in the public interest to continue with the complaint, albeit without the pursuit of the Complainant.

(iii) **It is recommended** to amend Paragraph 4.6, to make it clear the Monitoring Officer will in those circumstances make their own written complaint to meet the legal requirement and to support and maintain the high standards required of the Council's elected Members.

3.1.9 The Monitoring Officer will make a formal written Complaint in limited circumstances.

(i) Complaints against Members should be made in writing. (Pursuant to paragraph 4.1) There may however be circumstances where a complainant is not in a position to, or feels unable to make a complaint. In such exceptional circumstances it seems reasonable for the Monitoring Officer to make a formal complaint in their name if of the view that it is in the public interest to proceed with the complaint. In doing so they will have mind to the ability of the subject member to answer the complaint and fairly present their case.

(ii) **It is recommended to amend** the Procedure which currently has no limit on the Monitoring Officer making a complaint is updated by inserting a new paragraph before paragraph 4.2. to state the Monitoring Officer will only make a complaint in the circumstances above or where they are the subject or witness to the behaviour complained of.

3.1.9 “totting up” the number of informal complaints and consequences thereof;

(i) Consideration has been given to what should happen if a number of complaints, albeit concluded with little or no consequence, are made against an individual Member. Should there perhaps be a system of accumulative consequences?

This type of situation is always for the Monitoring Officer to consider when looking at the entire context of a complaint(s). To create a system of “*totting-up*” is artificial, and in fact would appear to be, in the view of the Monitoring Officer, a bit “mechanistic”.

(ii) Accordingly, **there is no recommendation** to amend the Procedure to address a “*totting up*” of complaints.

4.0 LEGAL IMPLICATIONS

4.1 As the Code of Conduct and Procedure are included in the Constitution, any changes require approval of Full Council. Any revisions made to the Procedure would also need to be approved by the Parish and Town Councils.

4.2 Section 27 of the Localism Act 2011 provides a duty to promote and maintain high standards of conduct. “(1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members

of the authority. (2) In discharging its duty under subsection (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.”

4.3 Section 28 of the Localism Act provides that a relevant authority must “secure a code ...which is consistent with [the “Nolan principles”] ... a) selflessness, b) integrity, c) objectivity, d) accountability, e) openness, f) honesty, g) leadership.”

4.4 Pursuant to s. 28,of the 2011 Act, a relevant authority must have in place “a) arrangements under which allegations that a member or co-opted member of the authority has failed to comply with the authority’s code of conduct can be investigated, and
b) arrangements under which decisions on allegations can be made...”

5.0 FINANCIAL IMPLICATIONS

5.1 There are no specific financial implications arising from this report.

6.0 EQUALITIES IMPLICATIONS

6.1. There are no specific equalities implications arising from this report.

7.0 RECOMMENDATIONS

That the Audit and Standards Committee

1. Consider and comment upon the proposed changes to the current Complaints Procedure and Code of Conduct;
2. Agree to the Monitoring Officer presenting a report to Full Council with the recommendation that it agrees to adopt the revised Procedure (to include additional revisions arising from the meeting,) and that the Constitution is amended accordingly; and
3. Refers the proposed changes to the Procedure to the Parish and Town Councils for consideration and adoption.

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