

Report of the City Solicitor to the meeting of Standards Committee to be held on 24 July 2013

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Subject:

Procedure for Dealing with Complaints at Stage 3

Summary Statement:

The purpose of this report is to provide Members of the Standards Committee with an opportunity to consider how the Complaints Sub-Committee will undertake the consideration of a complaint at Stage 3.

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Improvement Area:



1. Summary

The purpose of this report is to provide Members of the Standards Committee with an opportunity to consider how the Complaints Sub-Committee will undertake the consideration of a complaint at Stage 3.

2. Background

2.1 On 10 July 2012 Council approved a new Code of Conduct for Elected Members and a procedure for dealing with complaints.

In addition, the Standards Committee's role was retained to have responsibility for overseeing the operation of the Code of Conduct and for promoting high standards of conduct.

2.2 The Standards Committee also has role in dealing with complaints made under the new procedure and determining culpability where complaints cannot be resolved informally. This is Stage 3 of the Complaints Procedure. A copy of the Complaints Procedure is attached to this report as Appendix 1.

3. Consideration of Complaints at Stage 3

3.1 Paragraphs 24 – 41 of Appendix 1 sets out the procedure for dealing with complaints at Stage 3. Members need to ensure that the procedure is both accessible and appropriate to provide a consistent, orderly and proportionate process for determining the outcome of a complaint.

Standards Committee are reminded of the limited sanctions available to the Sub-Committee which are set out in paragraph 37. These are:

- A formal letter to the subject member from the Chair of the Standards Committee.
- Formal censure by a motion of Full Council; or
- Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

3.2 Appendix 2 to this report sets out a proposed Running Order for Dealing with Complaints at Stage 3. This will act as a guide for the Sub-Committee to ensure that the determination is reached in an orderly manner. This Running Order can be provided to all participants so there is transparency regarding how the meeting will be conducted.

3.3 Members of Standards Committee are asked to consider the proposed Running Order for the Complaints Sub-Committee for determination of complaints at Stage 3.

4. Financial and Resource Appraisal

The issues raised in this report have no direct financial implications.

5. Legal Appraisal

The provisions set out in this report are to ensure that the Standards Committee determines complaints in a manner that is fair, open and proportionate.

6. Other implications

There are no trade union, equal rights, sustainability, community safety, Human Rights Act implications arising from this report.

7. Not for publication documents

None.

8. Recommendations

It is recommended that:

8.1 The proposed Running Order set out in Appendix 2 is approved.

9. Reason for the Recommendations

To ensure that the Stage 3 complaints are dealt with in a consistent and orderly manner that is fair and accessible.

10. Appendices

Appendix 1 – Procedure for Considering Complaints

Appendix 2 – Running Order for Stage 3 Complaints

Appendix 1

Procedure for considering complaints alleging a failure to comply with the Members' Code of Conduct within the area of City of Bradford Metropolitan District Council

Introduction

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by City of Bradford Metropolitan District Council and the Parish and Town Councils in the District area.
2. The Members' Code of Conduct applies to elected Members and voting co-opted members when they are acting in that capacity. Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' will at first instance be directed to the West Yorkshire Police for their consideration. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.
3. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

Stage 1 - Initial assessment by the Monitoring Officer

4. Complaints must be submitted in writing, must provide substantiated information, and should outline what form of resolution the complainant is seeking. Otherwise the Monitoring Officer should ask the complainant to resubmit their complaint. Ideally the complainant will use the correct complaints form to submit their complaint, but other written complaints will be accepted so long as they contain the relevant information.
5. The Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not.
6. The following types of complaint will not be considered as 'valid complaints' under this procedure:
 - a. Complaints which are submitted anonymously
 - b. Complaints which do not identify a subject Member;
 - c. Complaints which relate to a Member's personal or private life;
 - d. Complaints concerning a failure to respond to a request from a constituent or other individual;
 - e. Complaints which relate to the alleged actions of employees of the

- Council or non-voting co-optees;
- f. Complaints which relate to a decision of an employee or a Committee;
 - g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council;
 - h. Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
 - i. Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action;
7. Complaints which relate to an alleged failure to comply with the rules regarding Disclosable Pecuniary Interests will at first instance be referred to the West Yorkshire Police for investigation with the complainant's agreement. If the Police determine not to take any action in response to the allegation, then the Monitoring Officer, in consultation with the Chair of Standards Committee, will consider whether it is appropriate for the complaint to be considered under this complaints procedure.
 8. Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage. Anonymous complaints which reveal potential fraud or corruption will be referred to Internal Audit for consideration under the Council's adopted Whistle blowing Policy
 9. In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information only.
 10. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly.
 11. In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

Stage 2 - Informal resolution

12. If, following initial assessment, the Monitoring Officer decides that the complaint should be treated as a 'valid complaint' they will write to the complainant and

explain that the matter is to be referred to the subject Member for them to provide a response to the complaint.

13. At the same time the Monitoring Officer will refer the matter to the subject Member and the relevant Group Whip for their consideration. In this correspondence the Monitoring Officer will provide the subject Member with a reasonable timescale within which to respond to the complaint (usually this will be 28 days), and will provide the subject Member with the contact details for the Independent Person.
14. If the subject Member is the Group Whip the complaint will be sent to the Group Leader. In the case of a Parish or Town Council without structured political groups a copy of the complaint will be sent to the Clerk of the Council.
15. The subject Member will be asked to consider whether he/she is prepared to propose an informal resolution of the complaint to be communicated to the complainant.
16. Types of informal resolution might include:
 - a. An explanation by the subject Member of the circumstances surrounding the complaint;
 - b. An apology from the subject Member;
 - c. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
 - d. Offering to engage in a process of mediation or conciliation between the subject Member and the complainant; or
 - e. Any other action capable of resolving the complaint.
17. Before deciding upon a course of action the subject Member may seek guidance from a Group Whip, the Independent Person, and/or the Monitoring Officer.
18. The Independent Person is available to the subject Member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing such guidance will not prevent the Independent Person from giving a view to the Standards Committee about the complaint at a later stage.
19. The Monitoring Officer will inform the complainant of the response and any proposals for resolution of the complaint received from the subject Member and ascertain whether the complainant is able to agree with any proposals.
20. Once the Monitoring Officer has received details of the complainant's position regarding the response from the subject Member he/she will, in consultation with the Chair of the Standards Committee, determine whether the subject Member

(or Group Whip) has appropriately addressed matters which have been raised by the complainant.

21. Where the subject Member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject Member of this decision.
22. Where it has not been possible to appropriately address matters, the complaint will be referred to the Standards Committee for consideration. The Monitoring Officer will notify both the complainant and the subject Member of this decision.
23. There will be no appeal process for decisions taken by the Monitoring Officer and the Chair of the Standards Committee at this stage.

Stage 3 – Standards Committee

24. The Monitoring Officer will prepare a report for consideration by the Complaints Sub - Committee of the Standards Committee (“the Sub – Committee”). This report will include readily obtainable information (such as minutes of meetings or Clerk’s notes), a summary of the complaint and the efforts made to resolve the matter informally.
25. The Monitoring Officer must arrange for a meeting of the Sub - Committee to be convened to consider the Monitoring Officer’s report of the complaint. The Sub – Committee will consider the Monitoring Officer’s report in private but the outcome of their deliberations will be reported to the next meeting of the Standards Committee.
26. The Sub-Committee will be made up of three Members of the Standards Committee, one of whom must be from the same political group as the subject Member (wherever possible), but not all of the Members will be from the same political group. The Chair will be elected from among the membership at the beginning of the meeting, but cannot be from the same political group as the subject Member.
27. The following people will also be invited to attend the Sub-Committee meeting:
 - a. The complainant;
 - b. The subject Member and/or their representative;
 - c. The Group Whip (if relevant); and
 - d. The Independent Person.
28. The Monitoring Officer will also attend the meeting in order to present their report.
29. After initial consideration of the Monitoring Officer’s report, the Sub-Committee will take statements from the following parties (either in person or in written form if the person is unable to attend the meeting):

- a. The complainant; and
 - b. The subject Member.
30. The Sub-Committee may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
 31. Before reaching a final decision on the complaint, the Sub - Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
 32. If the Sub-Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further information required. However, when doing so the Sub-Committee should consider whether the information will be readily available to the Monitoring Officer.
 33. Once the Sub-Committee is satisfied with the information before it, it must decide the following issues:
 - a. Whether the subject Member has failed to comply with the Members' Code of Conduct;
 - b. Whether further action is warranted; and
 - c. What form of action might be appropriate.
 34. If the complaint relates to a Parish or Town Councillor the Sub-Committee will only make a decision regarding whether the subject Member has failed to comply with the relevant Members' Code of Conduct. This decision, and the reasons for it, will be communicated to the relevant Parish or Town Council in order for it to make a decision as to whether further action is warranted and what form of action would be appropriate.
 35. In all other cases, if the Sub-Committee concludes that, on the balance of probabilities, the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Sub-Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.
 36. If the Sub-Committee concludes that, on the balance of probabilities, the subject Member has failed to comply with the Members' Code of Conduct, the Sub-Committee must go on to consider whether action should be recommended in respect of the subject Member, and what form of action might be appropriate.
 37. The recommendations available to the Sub-Committee are limited to:

- a. A formal letter to the subject Member from the Chair of the Standards Committee;
 - b. Formal censure by a motion of full Council; or
 - c. Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.
38. The Sub-Committee may make a recommendation in relation to one or more of the above sanctions to full Council, the Group Whip or the Chair of the Standards Committee. The Chair will confirm any such recommendations in writing within ten working days of the Sub-Committee meeting.
39. The Sub-Committee may also make general recommendations to the authority with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.
40. Within ten working days of the meeting the Chair of the Sub-Committee will write to the complainant and the subject Member explaining the final decision of the Sub-Committee and detailing any recommendations made.
41. There will be no right of appeal against a decision of the Sub-Committee.

Appendix 2

RUNNING ORDER FOR DETERMINATION OF STAGE 3 COMPLAINTS

This running order is to provide an orderly way of determining a complaint in relation to allegations that a subject member has failed to comply with the Code of Conduct. It is to ensure that the Monitoring Officer's representative, the complainant and the subject member can present information to the Complaints Sub-Committee of the Standards Committee ("the Sub-Committee") and that the Sub-Committee can make a fair and reasonable decision. However it is recognised that on occasions the running order may be varied by the Sub-Committee after consultation with all parties.

- 1 At the beginning of the meeting the Chair of the Sub-Committee will explain the procedure to the parties.
2. The Monitoring Officer's representative will present their report on the complaint.
3. The complainant will have the opportunity to ask questions of the Monitoring Officer's representative.
4. The subject member will have the opportunity to ask questions of the Monitoring Officer's representative.
5. The Independent Person will have the opportunity to ask questions of the Monitoring Officer's representative.
6. The Sub-Committee may ask questions of the Monitoring Officer's representative and can call for further information to clarify matters.
7. The complainant will be given the opportunity to comment on the report presented by the Monitoring Officer's representative.
8. The Monitoring Officer's representative will have the opportunity to ask questions of the complainant.
- 9 The subject member will have the opportunity to ask questions of the complainant.
- 10 The Independent Person will have the opportunity to ask questions of the complainant.
11. The Sub-Committee will have the opportunity to ask questions of the complainant.
12. The subject member will be given the opportunity to comment on the report presented by the Monitoring Officer's representative.
13. The Monitoring Officer's representative will have the opportunity to ask questions of the subject member.
14. The complainant will have the opportunity to ask questions of the subject member.
15. The Independent Person will have the opportunity to ask questions of the subject member.

16. The Sub-Committee will have the opportunity to ask questions of the subject member.
17. If, as a result of questions, new information is brought out all parties will be given an opportunity to comment and, if necessary, an adjournment may be granted.
18. The Monitoring Officer's representative will have the opportunity to sum up.
19. The Independent Person will then be asked to give their view of the complaint.
20. Provided that the Sub-Committee is satisfied that there is no further clarification needed of the information already presented all parties will be asked to withdraw and the Sub-Committee will consider their decision.
21. The decision will be announced orally to all parties. The Sub-Committee will determine if the conduct that is the subject of the complaint constitutes a breach of the Code of Conduct and, where the subject member is a District Councillor, the appropriate sanction to be applied.
22. The decision together with the reasons will be confirmed to all parties in writing within 10 working days of the meeting and will be reported to the next meeting of the Full Standards Committee.

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