

Report of the City Solicitor to the meeting of Standards Committee to be held on 11 September 2014

A

Subject: Review of the Procedure for Dealing with Complaints

Summary Statement:

This report asks Standards Committee to review the existing Procedure for Dealing with Complaints alleging a failure to comply with the Members' Code of Conduct.

Suzan Hemingway
City Solicitor

Portfolio:

Report Contact: Suzan Hemingway
Phone: 01274 432496
E-mail: suzan.hemingway@bradford.gov.uk

Overview & Scrutiny Area:



1. SUMMARY

This report asks Standards Committee to review the existing Procedure for Dealing with Complaints alleging a failure to comply with the Members' Code of Conduct.

2. BACKGROUND

- 2.1 On 20 June 2012 the Standards Committee recommended to Council a Procedure for dealing with complaints alleging a failure by a member of Council or of a Town or Parish Council to comply with the Code of Conduct. The procedure is at Appendix A to this report.
- 2.2 Since this time all formal complaints regarding the conduct of Members of Bradford Metropolitan District Council and the Town and Parish Councils within Bradford's district have been dealt with in accordance with this Procedure.
- 2.3 Generally the Procedure has worked well and it has been possible to deal with all complaints at Stage 2. The City Solicitor/Monitoring Officer and the Chair of Standards Committee are grateful for the assistance of both the Group Whips who support the political parties on Bradford Council and to the Clerks and Chairs of the Town and Parish Councils.
- 2.4 There are two issues that have arisen during the application of the Procedure which the City Solicitor/Monitoring Officer would like the Standards Committee to consider.
- 2.5 The first of these issues is the requirement for Members to co-operate with the Complaints Procedure. There have been a few instances where it has been difficult, even with the support of Group Whips, to secure a Member's co-operation in participating in the procedure. Whilst it is accepted that Members can sometimes be extremely unhappy if they are the subject of a complaint, especially in circumstances where they do not feel the complaint is warranted, but it is important that they engage with the Procedure and present a thorough and comprehensive response to the complaint which will then assist the City Solicitor/Monitoring Officer and Chair of Standards Committee to deal with it more effectively.
- 2.6 It is of course possible to simply deal with the complaint without the Member's response or the Member engaging in the process. However that is unlikely to facilitate disposal of the complaint at Stage 2. In the instances where this has occurred, the Group Whips have intervened and eventually the Member has provided the information needed. However this has substantially delayed the disposal of the complaints which is unsatisfactory for the complainant and there is a risk that it will result in an additional complaint in relation to the delay.
- 2.7 One option would be to consider including the requirement to comply and participate in the procedure in the Code of Conduct.

2.8 The Code of Conduct is attached at Appendix B. There is reference to the Procedure for Dealing with Complaints at paragraph 22. It would be possible to include an additional paragraph as follows:

23. If a complaint is submitted to the Monitoring Officer in accordance with the agreed Procedure, you must co-operate fully and comply with the requirements of the Procedure in providing a response to that complaint and engaging when requested by the City Solicitor/Monitoring Officer or the Chair of the Standards Committee.

The Standards Committee are asked to consider this proposed amendment to the Code of Conduct.

2.9 The second issue is in relation to complaints that cannot be resolved at Stage 2 but do not warrant a Stage 3 hearing.

2.10 Members may recall that under the previous statutory regime, complaints could be disposed of as 'no further action' where in the opinion of the Assessment Sub-Committee, the complaint was:

- Malicious/vexacious
- Politically motivated
- Tit for Tat, or
- Not sufficiently serious to warrant further action.

These provisions were not included in the local Code of Conduct.

2.11 Unfortunately it is just this type of complaint where a Member might feel it does not warrant their engagement in the complaints process.

2.12 Having reviewed the complaints process, if the matter is not dealt with at Stage 2 informally by a resolution agreed by those parties or where the Chair of Standards Committee in consultation with the City Solicitor/Monitoring Officer is satisfied that the proposed resolution is sufficient to deal with that complaint, then the complaint must proceed to Stage 3. This would be the case even if the complaint were thought to be malicious/vexatious, politically motivated, tit for tat or trivial.

2.13 There is no provision within the existing Code if the Chair of Standards Committee in consultation with the City Solicitor/Monitoring Officer believes that whilst the complaint has not been resolved, it does not warrant a Standards Committee hearing.

2.14 As stated above, in many cases it is possible for the Group Whips to intervene to bring the matter to a conclusion at Stage 2 even where it is possible that the complaint fits into the category set out in paragraph 2.10. However, this is not always the case and of course does not assist where the complaint relates to a Town or Parish Council where Members are not Grouped and there is no Whip to assist.

- 2.15 Standards Committee Members are asked to consider whether they think it appropriate to include in the Procedure a provision which would allow the Chair of Standards Committee to dismiss a complaint at Stage 2 in circumstances where it is his opinion that the complaint does not warrant further action for the reasons set out in paragraph 2.10 above.

3. OPTIONS

- 3.1 The Standards Committee Members are asked to consider the proposals set out in this report and confirm whether they agree with the recommendations.
- 3.2 The Standards Committee can agree to either, both or none of the proposed amendments.

4. FINANCIAL & RESOURCE APPRAISAL

There are no financial resource implications.

5. LEGAL APPRAISAL

- 5.1 The local Code and the Procedure for Dealing with Complaints is in line with the provisions of the Localism Act 2011 and the regulations made there-under.
- 5.2 Article 14.5 of the Constitution authorises the Monitoring Officer to make minor amendments to the Constitution and related documents where they are improvements. The Monitoring Officer would rely on this delegated authority to make the amendments proposed in this report.

6. OTHER IMPLICATIONS

There are no equality and diversity, sustainability, community safety, Human Rights Act, trade union, ward or greenhouse gas impact implications of this report.

7. NOT FOR PUBLICATION DOCUMENTS

None.

8. RECOMMENDATIONS

- 8.1 That the Standards Committee approve the proposed amendments to the Code of Conduct set out in paragraph 2.8.

8.2 That the Standards Committee approve an amendment to the Procedure for Dealing with Complaints to allow the Chair of Standards Committee and the City Solicitor/Monitoring Officer to determine that no further action will be taken in respect of complaints at Stage 2 which are thought to be malicious/vexatious, politically motivated, tit for tat or not sufficiently serious to warrant further action.

9. REASONS FOR THE RECOMMENDATION

Both of the above recommendations are to improve the efficiency and effectiveness of the Procedure for Dealing with Complaints and ensure complaints are dealt with in a timely manner.

10. APPENDICES

Appendix A – Members' Code of Conduct
Appendix B – Procedure for Dealing with Complaints

12. BACKGROUND DOCUMENTS

None.

City of Bradford Metropolitan District Council**Members' Code of Conduct**

This Code applies to elected Members and voting co-opted Members of City of Bradford Metropolitan District Council in all aspects of their public life. This means that the Council expects Members to follow this Code when they are conducting the work of the Council, representing the Council on any external organisation, and otherwise acting in their official capacity. The Code of Conduct does not apply to what Members do in their purely private and personal lives.

Part One - Standards of Conduct

You must have regard to, and act in accordance with, the following standards of conduct:

1. Selflessness

You should serve only in the public interest, and should never improperly confer an advantage or disadvantage on any person, organisation or group, or any other third party.

2. Honesty and Integrity

You should not place yourself in situations where your honesty and integrity may reasonably be questioned, you should not behave improperly and should avoid the appearance of such behaviour.

3. Objectivity

You must make decisions based on the information before you, having had regard to any professional advice provided to you and in accordance with your view of the public interest.

You should make decisions on merit, this includes when making appointments, awarding contracts, or recommending individuals for awards or other recognition.

4. Accountability

You are accountable to the public for your decisions and actions and the manner in which you carry out your duties. You must co-operate fully and honestly with any scrutiny appropriate to your office.

You should not undertake any action which would bring the Council, your position, or the position of Members generally, into disrepute.

5. Openness

You must be as open as possible about your actions and those of the authority, and should be prepared to give reasons for those actions.

6. Leadership

You must promote and maintain high standards of conduct by supporting these principles by leadership and by example, and should act in a way that secures or preserves the confidence of others.

You must have due regard to the impartiality and integrity of the authority's statutory officers and its other employees.

Part Two – Registration and disclosure of interests

Registration of Interests

7. Within 28 days of your election or co-option, you must notify the Monitoring Officer of any ‘disclosable pecuniary interests’ which you have at that time
8. Where you are re-elected or re-appointed, notification is only required of any new disclosable pecuniary interests within 28 days of your election or co-option.
9. You must keep your Register of Interests entry up to date by notifying the Monitoring Officer of any changes to your disclosable pecuniary interests within 28 days of the change occurring, or you becoming aware of the change.
10. A ‘disclosable pecuniary interest’ is an interest defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out in the table below.

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a member of a relevant authority in carrying out duties as a member, or towards the election expenses of a member of a relevant authority. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 ⁽¹⁾ .
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

⁽¹⁾ 1992 c. 52.

Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to the member of the relevant authority's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to the member of the relevant authority's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

11. A pecuniary interest is a 'disclosable pecuniary interest' in relation to you if it is of a type described above, and either:

- (a) it is an interest of yourself, or
- (b) it is an interest of –

- (i) your spouse or civil partner,
- (ii) a person with whom you are living as husband and wife, or
- (iii) a person with whom you are living as if they were civil partners, and that you are aware that the other person has the interest.

12. You are also required to notify the Monitoring Officer of any gifts or hospitality with an estimated value of at least [£50] which you receive in your role as a member of Council. You must inform the Monitoring Office of any such gifts of hospitality within 28 days of receiving them so that the details can be entered into the Register of Interests.

Sensitive Interests

- 13 If the nature of an interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation, the interest must not be included in any published version of the Register of Interests, or be entered into any copy of the register that is made available for public inspection.

Disclosure of Disclosable Pecuniary Interests at Meetings

- 14 The following provisions apply if you are present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority, and you are aware that you have a disclosable pecuniary interest in a matter to be considered, or being considered, at the meeting.
- 15 If the interest is not entered in the authority's Register of Interests, you must disclose the interest to the meeting (unless the interest is a sensitive interest).
- 16 If the interest is not entered in the authority's Register of Interests and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.
- 17 Where the interest does appear in the Register of Interests, you must bring the interest to the attention of the meeting (unless the interest is a sensitive interest).
- 18 You may not:
 - (a) participate, or participate further, in any discussion of the matter at the meeting,
 - (b) participate in any vote, or further vote, taken on the matter at the meeting (unless the Member has requested and been granted a relevant dispensation by the Standards and Conduct Committee), or
 - (c) remain in the room during the discussion or vote on the matter.
- 19 Where you have a disclosable pecuniary interest in a matter to be considered at a meeting, you may attend the meeting but only for the purposes of making representations, answering questions or giving evidence relating to the matter, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. Once you have finished, or the meeting decides you have finished, you must leave the room and may not remain in the room during the discussion or vote on the matter.

Disclosure of other Interests at Meetings

- 20 Where you are present at a meeting of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and identify any other interests which you feel should be declared in the public interest, such interests may be declared to the meeting.
- 21 In such circumstances you must consider whether your continued participation in the matter relating to your interest would be reasonable in the circumstances, particularly if the interest may give rise to a perception of a conflict of interests in the matter under discussion.

Allegations of a Failure to Comply with Code of Conduct

- 22 All complaints alleging a failure to comply with this Code will be considered in accordance with a procedure agreed by full Council.

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.