

## **APPENDIX B**

### **Process for dealing with complaints against councillors**

#### **1. General rules**

- 1.1 Complaints older than 6 months at the time of receipt by the Monitoring Officer (MO) will only be considered in exceptional circumstances and if the MO considers that it is in the public interest to investigate the matter.

#### **2. Preliminary Consideration**

- 2.1 Formal complaint received by Monitoring Officer (MO)
- (a) The MO will acknowledge the complaint within 10 working days.
  - (b) The MO will then consider whether the complaint falls within the scope of the process, at what level and whether there is some evidence that there may have been a material breach of the Code of Conduct.

#### **3. Level 1 complaint -**

- 3.1 Complaints about procedural matters, unhappiness with decisions, those which are not Code related, or may be technical very minor breaches will be determined by MO with no or very limited further inquiry and the complainant advised within 20 working days or as soon as possible thereafter
- 3.2 The decisions which could be reached by the Monitoring Officer following consultation with the Independent Person (IP) are
- (a) Not Code related – No further action
  - (b) No finding of whether there has or has not been a breach and further investigation is not merited. No Further Action or limited action (eg, guidance / training) agreed with the subject member.
  - (c) No breach - No further action or limited action (eg, guidance / training) agreed with the subject member.
  - (d) Potential technical or minor breach but insufficient justification under the public interest test to investigate further – No further action or limited action (eg, guidance / training / an apology) agreed with the subject member.
- 3.3 The MO will inform the subject member about the complaint and will inform the subject member and the complainant about the decision.
- 3.4 If the MO receives numerous complaints about a member all of which could be classed as minor or technical then the Monitoring Officer can decide to treat the accumulation as a Level 2 Complaint.
- 3.5 Complaint numbers and conclusions only to be reported to Standards Committee.

#### **4. Level 2 complaint – Initial Assessment**

- 4.1 If a complaint is considered to be beyond Level 1 and therefore potentially a complaint with substance, the subject member will be given a full copy of the complaint and invited to make written representations. These should be received by the MO usually within 20 working days of the member receiving the notification but additional time can be allowed for this stage by the MO.
- 4.2 MO may invite the complainant and other witnesses to provide additional information by way of written invitations to inform an initial assessment.

- 4.3 Following completion of the initial ‘desktop’ assessment of the evidence by the MO, the MO will consult the IP on the conclusion of the assessment and actions proposed. [Note – The current procedure also requires the MO to consult the Chairman of the Standards Committee – this requirement has been removed.](#)
- 4.4 MO will then contact the complainant and the subject member to confirm whether the complaint relates to a breach of the Code of Conduct and what action is proposed, if any.
- 4.5 The decisions which could be reached by the MO are
- (a) No breach - No further action or limited action agreed with the subject member. Possible outcome – advice/ guidance / training provided.
  - (b) Potential Breach - Insufficient evidence to justify further investigation under the public interest test - No Further Action or limited action agreed (e.g. advice / guidance / training provided),
  - (c) Potential Breach – Considered to be potentially serious enough to refer for Investigation at level 3,
  - (d) Potential Breach – Sufficient evidence of a breach to seek the agreement of the subject member to conclusions /actions without further investigation. If subject member does not agree then MO decision to refer to level 3.

## **5. Level 3 – Investigation**

- 5.1 Further investigation will only be undertaken in exceptional circumstances where the complaint is very serious in respect of a potential breach of the Code and where it is considered to be in the public interest to investigate to establish the extent of the potential breach.
- 5.2 Prior to implementing Level 3 the MO will seek the views and advice of the Governance Board on the actions proposed in relation to the complaint.
- 5.3 MO will seek [legal opinion](#) and [advice](#) as necessary to clarify any aspect of the complaint or written evidence obtained. It is expected that this advice will normally be sourced internally within the Council and only in exceptional circumstances will external investigation and advice be sought.
- 5.4 At the end of the investigation, the MO will issue a draft outcomes report and invite comments which must be received within 10 working days. The draft report will be issued to the complainant, the subject member, and the IP. [Note: I have removed the requirement in the current procedure to send copies of the outcomes report to the elected members of the Standards Committee.](#)
- 5.5 Outcome 1 - If the outcomes report reveals no failure to comply with the code or that a minor/technical breach may have occurred or identifies actions that involve giving advice / guidance / training to the subject member as opposed to any sanction as being the appropriate response, then the MO, after consulting with the IP will close the matter and issue his final report to the complainant and the subject member.
- 5.6 Outcome 2 - If the investigation indicates that there may be evidence of a significant breach of the Code then the MO in consultation with the IP will seek a local resolution of the complaint including actions providing all parties agree (acting reasonably). This may involve a restorative justice meeting between the complainant and the subject member, held with a trained mediator as necessary, to agree outcomes and actions.

- 5.7 Under Outcome 2, in the unlikely case that a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will be referred on to the Hearings Panel stage for determination.
- 5.8 In accordance with the MO's decision under 5.7 above, the MO will consult the Leader and request the appointment of a Code of Conduct Hearing Panel under section 6D of Part 1 of the Constitution.

## 6. Hearing Stage

- 6.1 Following the appointment of the Hearing Panel membership by the Leader, the MO will organise a 'case management' meeting involving the Chairman of the Hearing Panel, the subject member, the Monitoring Officer and the County Solicitor to discuss the options for the consideration of the complaint. Note: the previous requirement to also include a co-opted member of the Standards Committee as an adviser on process has been deleted. Following this meeting, the Chairman of the Hearing Panel, in consultation with the Monitoring Officer, will have delegated authority to confirm the scope and content of the hearing panel process. The delegated authority to include agreeing the format of the hearing including whether with the agreement of the subject member there should be a full public hearing with witnesses, etc, or whether it could be dealt with by the Panel meeting in private session to consider written representations.
- 6.2 If a public hearing is considered appropriate, it will be held in public subject to the rules on exempt information and will be conducted on a relatively informal basis. However, both parties will be able to make representations and call a limited number of witnesses to be agreed in advance with the Chairman.
- 6.3 At the conclusion of the process, whether carried out by way of written representations or a public hearing, and following any confidential members' discussion to reach a draft decision, the Panel members will meet in exempt session with the MO, County Solicitor (in order to have access to legal advice), and the IP to formally agree the decision prior to the decision and outcomes being confirmed to the subject member and published. The Panel, will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" should be imposed.