

Complaints Received by the Monitoring Officer - Update

Monitoring Officer: Ian Clarke, Director (Support Services)
Director: As above
Lead Officer: As above
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Purpose of Report

The Committee is asked to note the report and update of complaints received by the Monitoring Officer since the last meeting of the Standards Committee.

Public Interest

Any complaints about councillors (at District, Town or Parish level) under the code of conduct are considered by the SSDC's Monitoring Officer and the more serious in consultation with the Independent Persons. Although there are now very limited sanctions that can be applied by the Standards Committee should any breach of the code of conduct be found, it is still important that there remains a route by which such concerns can be independently considered.

Recommendation

The Committee is asked to note the report and the verbal update from the Monitoring Officer.

Background

In February 2016 the Council adopted a revised procedure for dealing with complaints about members to reflect both the change in the sanctions available and also to ensure that the approach adopted was more proportionate depending on the nature of the complaint. The broad outline of the current process is as follows:-

Preliminary Stage - The Monitoring Officer will consider whether the complaint falls within the scope of the complaints process, what Level it should be allocated and that there is evidence which would suggest there may have been a material breach of the code.

Level 1 Complaint – If the complaint is about procedural issues or unhappiness with decisions and is not code related or does not contain any evidence of any breach of the code or is technical minor breach of the code then it will be determined at this stage by the Monitoring Officer without further inquiry. The decisions which could be reached by the Monitoring Officer are (i) Not Code (ii) No Further Action – Potential Technical or Minor Breach But Not Proven. The Monitoring Officer will not automatically notify the councillor about the complaint for Level 1 complaints.

Level 2 Complaint - If the complaint doesn't fall within Level 1 then the councillor about whom the complaint relates will be provided with details of the complaint and invited to make representations.

On the completion of the initial assessment the Monitoring Officer will contact the complainant to advise them what action is proposed. Before making that decision, the Monitoring Officer will discuss the complaint with our "Independent Persons". These are individuals who are not councillors and who South Somerset District Council is required by law to appoint to assist it in dealing with complaints

against councillors. The decisions which could be reached by the Monitoring Officer are (i) No Further Action – No Breach (ii) No Further Action – Potential Breach - Not Proven (iii) Other Action – Potential Breach - Not Proven but Action Recommended (e.g. advice and guidance to be given) and (iv) Potential Breach – Refer for Investigation.

Investigation Stage - If the Monitoring Officer considers that the complaint is both very serious in terms of the potential breach of the code and an investigation is warranted in the public interest to establish the facts and the extent of any alleged breach, then an investigation will be carried out. Members should be aware that only very exceptionally will a complaint result in an investigation.

If an allegation relates to a disclosable pecuniary interest then this is a matter for the Police and will be referred to them to deal with. At the end of an investigation, the Standards Committee will have received a copy of the report and may be asked to consider what action should be taken in relation to its findings.

Outcome 1 - If an investigation reveals no failure to comply with the code or a minor/technical breach may have occurred or identifies a training requirement as opposed to any sanction as being the appropriate response then the Monitoring Officer, after consulting with the Independent Persons is authorised to issue guidance to either party, close the matter and issue his report to the complainant and the councillor complained about. The Monitoring Officer has the discretion to refer the matter to this Committee before exercising that power if he considers it appropriate.

Outcome 2 - If the investigation reveals a more significant failure to comply with the code then the Monitoring Officer in consultation with the Independent Person is authorised to seek a local resolution of the complaint. If that is not possible then the outcome of the investigation will either (i) be reported to a Hearings Panel for a local hearing (Note: the Hearings Panel will consist of three elected members from the Standards Committee who determine whether there has been a breach of the Code of Conduct and if so what sanction, if any, should be imposed) or (ii) form the basis of an Investigation Outcome Report which will be both published and issued to all parties and set out the nature of the complaint, the outcome of any investigation, the local resolution suggested by the Monitoring Officer and the response from the parties to this. The decision whether to proceed with either option (i) or (ii) above rests with the Monitoring Officer who will consult with the Independent Persons before deciding and will have regard to the relative costs involved and which option best serves the public interest.

Hearing Stage - If a hearing is required it will be held in public and both parties will be able to make representations and call witnesses. At the end of the Hearing, the Hearings Panel, after consulting with the Independent Person 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.

Whilst there is no right of appeal against the decisions of the Monitoring Officer, Standards Committee or Hearings Panel, any person affected by this process is still entitled to complain to the Local Government Ombudsman or challenge any decision through the Courts by way of Judicial Review.

Ultimately the procedure the Council has adopted is designed to be proportionate, timely, cost effective and fair to both sides. Its overriding objectives are to seek to provide pragmatic local solutions to local problems unless that proves to be impossible and also to avoid costly and time consuming investigations except for the very most serious of cases where an investigation is very clearly in the public interest.

Latest Position

Since the last meeting of the Standards Committee, the Monitoring Officer has received over 50 complaints the overwhelming majority of which are in relation to town/parish councillors or their council as a whole. Mostly the complaints are about “other matters” as opposed to issues which would engage

the code of conduct. These are usually about the behavior of local councils and their members, the failure to comply with processes and procedures and councils making decisions to which the complainant objects! As a rule these have been dealt with outside of this process as they have been classed as Level 1 “Not Code” at the outset.

Whilst the number may seem quite large, members will be reassured to note that the complaints, whilst they can be voluminous in terms of the “evidence” provided on occasion, they are generally quite minor/trivial in nature and not usually about our own SSDC members. However it does demonstrate that the absence of a Local Government Ombudsman equivalent for town and parish councils does create a situation where members of the public who are unhappy with their local council are inevitably left with no option but to complain to SSDC. Whilst we can and do give advice and guidance to our town and parish councils they do not fall under our jurisdiction other than in relation to the code of conduct, so we are limited in what we can do and the complainants on occasions do find that hard to accept.

Financial Implications

There are no financial implications of this report.

Council Plan Implications

None

Carbon Emissions and Climate Change Implications

None from this report.

Equality and Diversity Implications

Any printed material relating to the process for complaining about the conduct of members is available in large type and other languages as required. The guidance material and complaint form is regularly reviewed and the Monitoring Officer checks how well the form is completed when used and also records any issues raised with him about the accessibility of the forms and process.

Other Implications

There are no other implications. The processes referred to in this report have been carried out having regard to the current guidance, relevant regulations, the obligations under the Data Protection Act 1998, The Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.

Background Papers: *None other than author’s own case papers used to compile the report.*
