



Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Standards Committee
Full Council

8th October 2014
13th November 2014

Standards 'Code' & 'Arrangements' - revisions

Report of the Monitoring Officer

1. PURPOSE OF REPORT

To seek the approval Full Council to the revised "Code" and "Arrangements" for dealing with complaints against Members and co-opted Members under the Localism Act 2011.

2. SUMMARY

The Council adopted a new Code of Conduct (and associated 'Arrangements') on 1st July 2012 pursuant to changes in the law. These were reviewed by Full Council on 19th September 2013 and minor modifications were made. This report reflects on the second full year of operation of the Code and the associated Arrangements, and seeks approval for further changes.

3. RECOMMENDATIONS (OR OPTIONS)

That Full Council accepts the changes to the Code and the Arrangements. The changes were presented to the Standards Committee at its meeting on 8th October 2014 (and subsequently finalised by e-mail) and the amendments attached reflect the changes agreed by Standards Committee

4. REPORT

- 4.1 The proposed amended Code and Arrangements are attached as Appendix A and Appendix B respectively. The changes are highlighted in yellow for ease of reference and the purpose of the changes is explained as follows:

There are four proposed changes to the Code:

- i) Section 2 point J - is amended to reflect the intention to capture improper conduct which not only in fact confers an advantage or a disadvantage upon someone, but “attempts” to do so. It is the motive for the improper conduct which is caught, not the (often arbitrary) effect.
- ii) Section 4 - is amended firstly to remind Members of the obligation to declare interests; and secondly to align the test for the engagement of the DPI rules to the law. The law is clear that a Member’s DPI must be “in” the matter being considered, and not merely “affected by” or “related to” an item of business. The proper threshold is important because acting in breach of the rules on DPIs constitutes not only a breach of the Code of Conduct, but also potentially a criminal offence.
- iii) Section 5B - is amended to highlight the role of “bias/predetermination” in the context of the Nolan Principles. It seeks to capture cases where a Member may not have a declarable “interest” but may still breach the Code by engaging in decision-making.
- iv) Section 7- is amended to remind Members that whilst a breach of the Code of Conduct may not invalidate a decision, that decision may, due to the same breach, make that decision vulnerable to challenge on another ground (such as Judicial Review where bias/predetermination can lead to the setting aside of a decision)

There are nine substantive proposed changes to the Arrangements:

- i) Section C (f) - is amended to add an expectation that Members will cooperate with the application of the Arrangements.
- ii) Section D4 (e) - is amended to distinguish two different and unrelated scenarios in which informal resolution may be appropriate. This reflects the fact that often a Member is happy to apologise or make some other reparation to a complainant even though the threshold for establishing a breach of the Code may not have been reached.
- iii) Section D4 - is further amended to clarify that where a complainant seeks a “review” of the first-stage decision, the Subject Member shall have a right to know of this request and may be called upon by the M.O. and I.P to provide further evidence.
- iv) Section D4 - is further amended to clarify that a recommendation by a Standards Advisory Board that an investigative report be published shall be referred to the main Standards Committee for a decision. Currently there is no procedure governing how such recommendations are to be dealt-with

- v) Appendix 1 is added to clarify when a complaint may be treated as being “vexatious”
- vi) Appendix 2 is added to clarify how a Subject Member may exercise their statutory right to consult with the Independent Person, and what the parameters of such engagement are to be.
- vii) Appendix 3 is added to propose a process for dealing with Subject Members who fail to comply with outcomes for “informal resolution”

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

None

5.2 Legal Implications

The report is concerned throughout with legal implications. The changes are required as a result of experience and reflection upon the operation of the Code and the Arrangements since they were last amended in September 2013.

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph Within the Report	References
Equal Opportunities	NO		
Policy	YES		
Sustainable and Environmental	NO		
Crime and Disorder	YES		
Human Rights Act	NO		
Elderly/People on Low Income	NO		
Corporate Parenting	NO		

7. BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972

8. CONSULTATIONS - Standards Committee meeting 8th October 2014

9. REPORT AUTHOR - Kamal Adatia, Monitoring Officer, Tel 0116 454 1401

LEICESTER CITY COUNCIL

CODE OF CONDUCT FOR MEMBERS

1. Application

The Code of Conduct applies to you whenever you are acting in your capacity as a Member (to include co-opted Members and the Elected Mayor) of Leicester City Council, including:

- a. At formal meetings of the Council, its Committees and Sub-Committees, its Executive and Executive Committees
- b. When acting as a representative of the Authority
- c. In taking any decisions as a Member of the Executive or as a Ward Councillor
- d. In discharging your functions as a Ward Councillor
- e. At briefings meetings with officers
- f. At site visits
- g. When corresponding with the Authority other than in a private capacity
- h. At any other time when you conduct the business of your Authority

* The Code therefore applies when performing your duties in meetings, or when acting alone, and it applies whether you are acting inside or outside of the City boundary

2. Principles

The Principles underpinning this Code of Conduct are that you will act with:

- a. Selflessness
- b. Integrity
- c. Objectivity
- d. Accountability
- e. Openness
- f. Honesty
- g. Leadership
- h. Respect for others
- i. A commitment to uphold the law

3. General conduct

You must, therefore:

- a. Respect others and not bully or intimidate any person
- b. Respect the confidentiality of information which you receive as a Member. In addition you must (i) not disclose confidential information to third parties other than in accordance with the law and (ii) not act to prevent a third party gaining access to information to which they are entitled in law
- c. Exercise your own independent judgement, paying due regard to any advice provided to you by the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, and giving reasons for your decisions as required by the law and the reasonable requirements of the Authority
- d. Uphold the law at all times
- e. Uphold and promote the Authority's discharge of its Equality obligations, in particular to (i) eliminate discrimination (ii) promote equality of opportunity (iii) foster good relations
- f. Uphold and promote these principles by leadership and by example, and act in a way that secures and preserves public confidence
- g. Comply with the requirements regarding registration, declaration and participation in the Authority's business where you have a Disclosable Pecuniary Interest (DPI) or "Other Disclosable Interest (ODI)"
- h. When using the Authority's resources, do so in accordance with the Authority's requirements, and not use such resources improperly
- i. Not conduct yourself in a manner which is likely to bring the Authority into disrepute
- j. Not use your position as a Member to improperly confer (or attempt to confer) upon yourself or any other person an advantage or disadvantage, but act only to further the public interest
- k. Not do anything which compromises, or is likely to compromise, the impartiality of those who work for (or work on behalf of) the Authority

(The above list is not exhaustive, and any conduct which breaches the principles set out in section 2 can constitute a breach of this Code)

4. Disclosable Pecuniary Interests (DPIs) (see Table 1 enclosed)

In addition to conducting yourself in accordance with the principles set out in section 2 you must:

- a. Declare any and all DPIs on your Register of Interests.
- b. Ensure that your Register of Interests is kept fully up to date, and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your DPIs

- c. Make a verbal declaration (at the beginning, or as soon as you become aware of your interest) of the existence and nature of any DPI **“in a matter” to be considered at any meeting at which you are present at which an item of business which affects or relates to the subject matter of the interest is under consideration** (unless it is already declared on your Register, in which case you must simply comply with point d. below).
- d. Comply with the statutory requirements to withdraw from participating in respect of any matter in which you have a disclosable pecuniary interest (DPI), by either leaving the room **(where the business is being conducted at a “meeting”)** or by ceasing further participation in the item (where acting alone outside of a meeting)
- The requirements cover not only DPI’s of Members but a DPI of any other “relevant person”, defined as spouse/civil partner, or someone with whom the Member is living as though they were a spouse or civil partner
 - Separate provisions within the law provide for the circumstances in which a Member may seek a “dispensation”, or may ask that the interest be treated as “sensitive”

5. Other Disclosable Interests (ODIs) (pecuniary or non-pecuniary)

Aside from the statutorily defined DPIs, you may have another type of interest in a matter being discussed. These will be of category A. or B. below and you will either:

- disclose that interest (regular ODI), or
- disclose and withdraw from the meeting (prejudicial ODI).

A. Regular ODI

You will have an “Other Disclosable Interest” in an item of business of the Authority where:

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you, or a member of your family or a person with whom you have a close association (see below), to a greater extent than it would affect the majority of Council Tax payers, ratepayers or inhabitants of the Ward or electoral area

- You may need to register such “Other Disclosable Interest” into the Register of Interests operated by the Monitoring Officer
- If you attend a meeting at which any item of business is to be considered and you are aware that you have an “ODI” in that item, you should make verbal declaration of the existence and

nature of that interest at or before the consideration of that item of business, or as soon as the interest becomes apparent

B. Prejudicial ODI

In addition to the above:

Where your ODI is of a nature where a member of the public, who knows the relevant facts, would reasonably think your “other disclosable interest” is so significant that it is likely to prejudice your judgement of the public interest you should disclose and withdraw from participating in respect of that matter

- “close association” is not defined in law but would reasonably include someone with whom you are in regular or irregular contact over a period of time, who is more than an acquaintance, and is someone whom a reasonable member of the public might think you were prepared to favour or disadvantage when discussing a matter that affects them.
- Note that when a Member is acting as a decision-maker (but not in Scrutiny) there is a relationship between “bias/predetermination” and “interests”. Sometimes they will be synonymous [e.g. sitting on Planning Committee for a development that could, if approved, lower the value of your home will (i) certainly constitute a prejudicial ODI; (ii) possibly constitute a DPI; (iii) likely amount to “apparent bias” in common law].

However you might be predetermined over a matter in a way which does not translate into a registerable or a declarable “interest” (e.g. you are a member of Licensing Committee and have an ethical objection to the consumption of alcohol and a closed mind to the granting of any/all Liquor Licensing applications. Whilst this (i) will not constitute a DPI; (ii) may not constitute an ODI; it will (iii) constitute bias in law and breach the Nolan principles of objectivity, openness and upholding the law. You could therefore breach the Code of Conduct even though you strictly had no “interest” to declare/register.

6. Gifts and Hospitality

- a. You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £25 which you have accepted as a member from any person or body other than the authority
- b. The Monitoring Officer will place your notification on a public register of gifts and hospitality
- c. This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose

7. Other

Breaches of this Code will be dealt with under the “Standards Arrangements” as approved by Council on 13.11.14

By virtue of section 28(4) Localism Act 2011 a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with this Code (though this does not mean that the decision cannot be impugned on other legal grounds e.g. judicial review)

Kamal Adatia
City Barrister & Head of Standards
November 2014

Table 1

Categories of DPIs

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>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 M in carrying out duties as a member, or towards the election expenses of M.</p> <p>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).</p>
Contracts	<p>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—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
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	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities</p>

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.

ARRANGEMENTS FOR DEALING WITH STANDARDS COMPLAINTS AT LEICESTER CITY COUNCIL UNDER THE LOCALISM ACT 2011

A. CONTEXT

These “Arrangements” set out how you may make a complaint that an Elected or co-opted Member of this Authority has failed to comply with the Authority’s Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with the Authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “Arrangements” under which allegations that a member or co-opted member of the Authority or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by a Member against whom an allegation has been made

B. THE CODE OF CONDUCT

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority’s website and on request from Reception at the Civic Offices.
<http://www.leicester.gov.uk/councillors-democracy-and-elections/complaints-about-councillors/>

C. PRINCIPLES UNDERLYING THE **NEW SCHEME**

The following principles should underpin Leicester City Council’s Arrangements:

- a. There should be simplicity to the scheme so that it is easily understood and transparent
- b. There should be flexibility at every stage of the process for informal resolution and / or robust decisions to be taken about “no further action”.
- c. There should be Member involvement at key stages in the process.
- d. There should be the involvement of Independent Members (IM) and the Independent Person (IP) at key stages of the process.
- e. The Monitoring Officer should have greater powers to deal with complaints relating to the Code of Conduct.
- f. All Members and co-opted Members shall cooperate with the application of these Arrangements, recognising that failure to do so can result in the incurring of wasted costs and reputational damage to the Council.

- g. Rights for complainants to seek a “review” of a decisions at various stages should be limited, consistent with the reduced scope and severity of allowable outcomes that can be imposed under the new regime
- h. At any stage in the process where it is clear that a matter should be referred to the police this should be done and the local investigation should be suspended.

D. THE NEW PROCESS

1. Who may complain?

Complaints must be about Elected Members (to include the Elected Mayor) or co-opted Members and can be made by members of the public, Elected Members or officers of the Council. Where the Monitoring Officer lodges a complaint, it shall be made to the Standards Committee via the Deputy Monitoring Officer

2. To whom must a complaint be made?

Complaints must be made to ~~the Standards Committee c/o~~ the Monitoring Officer by writing to:

The Monitoring Officer
Legal Services Division
Leicester City Council
16 New Walk
Leicester
LE1 6UB

Or e-mail: monitoring-officer@leicester.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the system in respect of complaints of member misconduct on behalf of the Standards Committee

In order to ensure that all of the correct information is available to process the complaint they should preferably be submitted on the model complaint form, which can be downloaded from the authority’s website and is available on request from Reception at the Civic Offices.

The complainant should provide their name and a contact address or e-mail address, so that the Monitoring Officer can acknowledge receipt of the complaint and keep them informed of its progress. If the complainant wishes to keep their name and address confidential this should be discussed with the Monitoring Officer. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

Complaints should be lodged promptly, and normally within 3 months of the alleged breach occurring unless there are good reasons for the Monitoring Officer or Independent Person to accept a complaint lodged outside of this period.

3. How to complain?

Complaints must be made in writing either by letter, e-mail or on-line. Anonymous complaints will not be accepted because of the difficulties they cause with investigation. Appropriate safeguards for employees of the Council wishing to make a standards complaint will be afforded in parallel to those that might apply under the whistle blowing policy. Safeguards will also be in place, at the discretion of the Monitoring Officer, to protect confidential or sensitive information about a complainant, the disclosure of which may cause, or be likely to cause, "serious harm"

The complainant should be encouraged (either through questions on the standard complaint form or through subsequent discussion for clarification) what remedy is sought. This will help to identify informal methods of resolution at the earliest stages.

4. What will happen to the complaint?

The complaint will be acknowledged with the complainant within 5 working days

The complaint will also be notified (by sending a copy of the full complaint) to the subject Member within 5 further working days, save where there are exceptional or legal reasons for the Monitoring Officer agreeing with the complainant that there are elements of it, or the entirety of it, that must be kept confidential at this initial stage

Within 15 further working days the following actions will be taken by the Monitoring Officer, after consultation with the Independent Person:

- a. Revert to the complainant to seek further clarification.
- b. Refer the matter for further fact finding by Monitoring Officer (where further information is needed before deciding what route to follow).
- c. Reject the complaint on the grounds that it is not related to the Code of Conduct, or may be covered by another process
- d. Reject the complaint on the basis that it is (i) trivial or (ii) not in the public interest to pursue or (iii) vexatious (see Appendix 1 attached for definition).
- e. Recommend informal resolution where (i) Code engaged and not breached, but where some gesture of reparation would still be in the interests of fairness; or (ii) Code engaged but low-level breach only has occurred, such as not to warrant formal investigation
- f. Refer the matter for immediate further investigation.
- g. In exceptional cases, refer the matter to the Standards Committee or subcommittee thereof for a decision on a. to f. above on the grounds that the Monitoring Officer feels it would be inappropriate to make the decision himself/herself.

The complainant and the subject Member will receive a letter after expiry of the 5 days indicating which of the above outcomes is to be pursued.

By law the Subject Member has the right to consult with the Independent Person during the course of a complaint. Appendix 2 describes how this right is to be exercised.

Matters referred for fact finding - The Monitoring Officer will undertake this fact finding exercise by inviting the Member to attend for a discussion within 10 working days, or submitting information in writing. After obtaining the subject Member's factual account the Monitoring Officer will engage with the Independent Person (IP) to decide on next steps. The next steps will comprise either of outcomes c. to g. above.

Informal resolution - may incorporate acceptance by the subject Member that their behaviour was unacceptable and the offer of apology to the complainant, or other remedial action at the discretion of the Monitoring Officer (e.g. an offer of training). The outcome of 'informal resolution' does not require approval of the complainant or the subject Member (though the complainant may exercise a right to seek a "review" as per above).

Non-compliance with "informal" outcomes will be dealt with in accordance with Appendix 3 attached.

Review of a complaint - The complainant may seek a "review" of a decision only under outcomes c. d. or e. Such requests must be lodged with the Monitoring Officer within 5 working days of receipt of the outcome letter. Any Review will be undertaken by the Monitoring Officer, this time in consultation with a different Independent Person. The Monitoring Officer will notify the Subject Member of the request for a "review" and the reasons given for it by the complainant. It will be a matter for the Monitoring Officer and the Independent Person if they wish to invite any comment or representations from the Subject Member at this point.

In the case of all outcomes up to and including referral for formal investigation, the Monitoring Officer will report outcomes to the Standards Committee by updating report at each meeting

Formal investigation - should the matter warrant detailed investigation, the Monitoring Officer will appoint an investigating officer. The investigator will conduct a thorough review within three months. Upon receipt of the investigator's report by the Monitoring Officer he/she will refer the matter for further decision to the Standards Committee (acting through its Standards Advisory Board), this time with the mandatory requirement to consult the Independent Person, who may determine:

- no further action
- referral for hearing

The option of 'no further action' may only flow from an investigator's own conclusion that no breach has occurred. If the Investigator finds breaches, then the Board cannot decide, without a hearing, that no breach has occurred and no further action needs to be taken.

The option of 'informal resolution' is not available once a matter has been referred for formal Investigation (and the Investigator finds breaches). Equally, where the Board refer a matter for hearing

in order to establish if breaches have occurred (for example after disagreeing with an Investigator who concludes there have been no breaches) informal resolution will not, at that point, be a viable outcome because the matter has ceased to be dealt with 'informally'.

If the matter is referred for hearing then a Hearing Panel will be convened to hear the evidence, make findings of fact and determine appropriate outcomes. The Hearing Panel is a sub-committee of the Council's Standards Committee. The Independent Person is invited to attend all meetings of the Hearing Panel and his/her views are sought and taken into consideration before the Hearing Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of misconduct.

The complainant and the subject member would be written to and given reasons for any decision following a formal investigation, and no rights of review shall be afforded, save the right to challenge the process by way of Judicial Review or referral to the Local Government Ombudsman if appropriate.

A Standards Advisory Board or a Hearing Panel may make a recommendation to the Standards Committee that an Investigative Report be made public, whether the Report concludes that breaches of the Code of Conduct have been established or not.

5. Outcomes

The Hearing Panel may make recommendations to the Standards Committee for:

- a. Censure or reprimand the Member by letter
- b. Press release of findings
- c. Report findings to Council for information (with or without a subsequent motion of censure being proposed by Council)
- d. Recommendation to Group (or Full Council in the case of ungrouped Members) of removal from Committees/subcommittees of Council
- e. Recommendation to Elected Mayor that the Member be removed from The Executive, or from particular portfolio responsibilities
- f. Recommendation that the Member be removed from outside bodies to which they have been appointed by the Council
- g. Withdrawal of facilities provided to the Member by the Council
- h. Excluding the Member from the Council's offices or other premises (with the exception of accessing meetings of Council, Committees and subcommittees)
- i. Instructing the Monitoring Officer to arrange training for the Member

6. Revision of these arrangements

The Council may by resolution agree to amend these arrangements at any time, and delegates to the Monitoring Officer and/or Chair of the Standards Committee the right to depart from these arrangements where he/she considers it is necessary to do so in order to secure effective and fair consideration of any matter

Vexatious Complaints – Member Misconduct process

Standards complaints are to be handled in accordance with the 'Arrangements for dealing with Standards Complaints at Leicester City Council'. This procedure was brought in following the new standards regime introduced by Chapter 7 of the Localism Act 2011.

One of the initial actions open to the Monitoring Officer (MO), after consultation with the Independent Person (IP), is to reject the complaint 'on the basis that it is:

*"... i) trivial or ii) not in the public interest to pursue or iii) **vexatious...**"*

No definition is provided within our Arrangements of 'vexatious'. The Localism Act and associated guidance make it clear that it is for the local authority to decide how they will investigate allegations for breach of conduct code and handle complaints. They do not specify what those arrangements must be.

Wherever possible, every effort should be made to find out what someone is complaining about, to investigate and respond. However, on occasion, complaints will be made that clearly do not substantiate claims or even justify further investigation. These types of complaints can be termed "vexatious complaints". It is important that the complaints procedure is correctly implemented and all elements of a complaint are considered as even repeated or vexatious complaints may have issues that contain some genuine substance.

It is important to note that it is the complaint itself that must be judged vexatious, oppressive or an abuse, not the complainant. Consideration of this ground should therefore focus primarily on the current complaint. The complainant's past complaint history may, however, be taken into account where it is relevant to show that the current complaint is vexatious, oppressive or an abuse.

The MO and IP should be able to demonstrate with evidence a reasonable belief that the complaint is vexatious, oppressive or an abuse of process before deciding to disapply the Standards process. Some assessment of the complaint will be required in order to demonstrate this.

- The LGO defines unreasonable and unreasonably persistent complainants as:
"those complainants who, because of the nature or frequency of their contacts with an organisation, hinder the organisation's consideration of their, or other people's complaints"
- Examples of unacceptable or vexatious behaviour, as defined by the LGO, include any action or series of actions which are perceived by the staff member to be *"deceitful, abusive, offensive, threatening"* whether they are delivered verbally or in writing or a combination of the two.

For the purposes of the Member misconduct processes the definition of 'vexatious' should include both limbs described above (that is, those that constitute unreasonable interpersonal behaviour as

well as those that constitute unreasonable abuse of the system). Both represent behaviour which can potentially frustrate the proper application of the Standards regime in the interests of the wider public.

The following (non-exhaustive list) factors will be taken into account by the MO and IP when considering whether to classify a complaint as vexatious:

- Refusing to specify the grounds of a complaint, despite offers of assistance;
- Refusing to co-operate with the complaints investigation process;
- Refusing to accept that certain issues are not within the scope of the Complaints Procedure (e.g. substantive Planning Approval decisions);
- Insistence on the complaint being dealt with in ways which are incompatible with the Arrangements or with good practice;
- Demanding special treatment / immediate repeatedly;
- Politically motivated complaints
- Changing the basis of the complaint as the investigation proceeds;
- Denying or changing statements made at an earlier stage;
- Introducing trivial or irrelevant new information at a later stage;
- Raising numerous, detailed but unimportant questions; insisting they are all answered;
- Covertly recording meetings and conversations;
- Submitting falsified documents from themselves or others;
- Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue;
- Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous Council staff, or detailed letters every few days, and expecting immediate responses;
- Submitting repeat complaints with minor additions/variations that the complainant insists make these 'new' complaints;
- Repeatedly arguing points with no new evidence
- Refusing to accept the decision as to how the complaint shall be progressed

Process:

More usually, consideration of designating a complaint as vexatious will arise at the early stages of receipt of a complaint. However, this should not impede the MO and IP from considering whether the designation of "vexatious" should apply at a later stage in any complaint.

Whenever the issue is raised, the IP and the MO must discuss the designation and reach a unanimous view. Exceptionally, where they cannot do so the second IP may be consulted and a majority view shall prevail.

The designation of a complaint as "vexatious" will be recorded with brief reasons given and communicated to the complainant and the Subject Member, with a right of "review" afforded as per the Arrangements.

Protocol on the role of the Independent Person - meeting with Elected Members.

This Protocol aims to set out the arrangements to be followed in the event that an Elected Member whom it is alleged has committed a breach of the Code of Conduct for Councillors seeks a meeting with the Independent Person (I.P.)

Background

Section 28(7) Localism Act 2011 states:

- (7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—
 - (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
 - (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation,

The Parliamentary record (Hansard) reveals that one reason for a Member subject of a complaint seeking the views of the IP can be to express their concern about pressures that they might be facing from other Elected Members. The subject Member can raise with the IP their concerns about the conduct of other members in regards to the relevant complaint. This is addressed at point (ix) below.

The new “Arrangements” for dealing with complaints about the conduct of Councillors was established on 1 July 2012 and the principles of the new arrangements included:

- simplicity and transparency
- involvement of the I.P. at key stages of the process
- greater powers for the Monitoring Officer to deal with complaints relating to the Code of Conduct.

The right to “seek the views” of the IP therefore applies to any Elected Member who is the subject of a complaint. They may do this at any stage of the process except where a matter is referred to the police.

This right is separate to the right of the complainant to seek a “Review” of their complaint in the following circumstances as set out in our “Arrangements”:

- *rejection on grounds that complaint is not related to Code of Conduct, or is covered by another process*
- *rejection on grounds of being (i) trivial or (ii) not in the public interest to pursue or (iii) vexatious or*
- *recommendation of informal resolution*

Such requests must be lodged with the Monitoring Officer within 5 working days of receipt of the outcome letter. Any Review will be undertaken by the Monitoring Officer, this time in consultation with a different Independent Person

The experience gained during the first year of the new Standards regime shows that Elected Members have in most cases been willing to accept the views of the Monitoring Officer (M.O.) and I.P. where informal resolution is the outcome. This outcome often involves offering to explain more fully the reason for adopting a course of action, offering an apology and/or offering a way forward.

However in any matter, whether it is proposed to be dealt with by informal resolution; is being “reviewed” or is one that proceeds to full investigation, the subject Member has a right to “*seek the views*” of the I.P. It is important that this engagement is defined and moderated so as to guard against:

- the Subject Member attempting to unduly influence the progress of the investigation by, for example, trying to explain “off the record” to the I.P. what they think of the complaint or how it should be resolved
- the Subject Member trying to compromise the independence of the I.P. by, for example trying to tell them things “in confidence” which are highly material to the investigation
- the Subject Member having false expectations of the purpose of exercising their right to seek the I.P.’s views
- the complainant being disadvantaged by the Subject Member’s exercise of their statutory right to seek the views of the I.P.

This Protocol therefore sets out the terms of engagement of such interaction, such as to promote transparency and preserve confidence in the Standards regime.

Arrangements for a meeting between the duly appointed IP and an Elected Member subject of a complaint:

- i. A Subject Member shall only be entitled to “seek the views” of the I.P. allocated to their complaint.
- ii. The right to speak with the I.P. will not apply where a decision has already been taken (and communicated) to dismiss the complaint. In such circumstances the Monitoring Officer can be approached to discuss any “lessons learned”
- iii. The right to speak with the I.P. will not apply where a complaint has been referred to the Police
- iv. The Subject Member shall make any request to “seek the views” of the I.P. through, and only through, the M.O. Where a Subject Member directly approaches the I.P., the I.P. will refer them back to the M.O. without further engagement
- v. The M.O. will arrange the meeting between the Subject Member and the I.P. at a date and time convenient to both, and on Council premises
- vi. The meeting shall be between the Subject Member and the I.P. only. No other attendees shall be permitted.
- vii. The I.P. will explain, at the outset the nature of their role at the meeting which is to answer questions about the investigative process, explain the types of questions that they will be addressing/have addressed before reaching an outcome and reiterate that they will NOT at that meeting express a concluded or tentative view on any of those matters
- viii. The purpose of the meeting will be for the Subject Member to better understand the investigative process and the reasons why the I.P. and M.O. have reached a particular outcome. It is NOT an opportunity for the Subject Member to attempt to exhort the I.P. to change their mind or to present “evidence” to them. I.P.s do not conduct “investigations” or “fact finding” exercises. These are done by the M.O. in cases that are not referred for formal investigation, or by the independent Investigator in cases referred for investigation.

- ix. The meeting may also be used by the subject Member as an opportunity to raise with the IP concerns they may have about any pressures that they might be facing from other Elected Members by virtue of the fact that these other Members know about the complaint. Whilst the IP may not have direct powers to intervene in such circumstances, they might be able to discuss with the MO any intervention (from the MO) to try to preserve the integrity of the complaints process (such as the MO talking to the other Members or their political parties)
- x. The I.P. will report back to the M.O. after the meeting a summary of the discussion.
- xi. If the I.P. takes notes of the meeting these will be as an aide memoire for the I.P. only and will not act as a formal minute. The Subject member is free to make their own notes
- xii. If the Subject member, contrary to this Protocol, submits information or evidence that is material to the handling of the complaint, this information or evidence will be shared by the I.P. with the M.O. (and an Investigator where one is appointed) and acted upon appropriately.
- xiii. There will only be one such meeting per complaint, save in exceptional circumstances which are to be approved by the MO and the IP.

Procedure for dealing with subject (Elected) Member who fails to act upon an outcome of “informal resolution”

The Council’s “Code of Conduct” and associated “Arrangements” govern the principles and processes to be applied when a standards complaint is made alleging misconduct by an Elected Member. To date, most complaints have been resolved by “informal resolution”, an outcome which is applied in circumstances where a potentially valid complaint is made, but where it is not deemed to be in the interests of justice to proceed to a full investigation and where instead a fair and proportionate outcome can be achieved by some other action (often an apology, coupled with an offer to revisit the original topic i.e. a Ward issue). It is the judgement of the Monitoring Officer and Independent Person as to whether to conclude that “informal resolution” is appropriate (with or without the consent of the complainant and subject member).

The Standards Committee, at its meeting on 10th April 2014 endorsed the following process for dealing with cases where a Subject Member fails to co-operate with such a recommendation:

- Step 1 – The Subject Member shall be invited to a meeting with the Chair of Standards Committee, the relevant Independent Person and the Monitoring Officer to explain their reasons for non-compliance

- Step 2 – If compliance is not forthcoming after Step 1, the Chair of Standards Committee and the Monitoring Officer may refer the matter for further action (e.g. for the Subject Member’s political Group to take any action it deems appropriate)

- Step 3 – In addition to or as an alternative to Step 2 above, the Subject Member’s non-compliance may be treated as a fresh potential breach of the Code of Conduct and a new complaint lodged, this time with the Monitoring Officer as the complainant (and with the Deputy Monitoring Officer handling the complaint). There will be no direct involvement of the original complainant into this separate complaint.

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