



Leicester
City Council

WARDS AFFECTED

All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Standards Committee
Full Council

20th June 2017
6th July 2017

Standards 'Arrangements' - revisions

Report of the Monitoring Officer

1. PURPOSE OF REPORT

- 1.1 To seek the approval Full Council to the revised "Arrangements" for dealing with complaints against Members and co-opted Members under the Localism Act 2011, which are found in Part 5 of the Constitution
- 1.2 To seek approval to change the wording in the Standards Committee Terms of Reference (found in Part 3 of the Constitution) such that references to "Standards Advisory Board" or "Board" shall read "subcommittee"

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. They were further reviewed and amended by Full Council on 14th November 2014. This report reflects upon the intervening years and seeks approval for further changes.

3. RECOMMENDATIONS (OR OPTIONS)

That the Standards Committee receives the report and comments upon the proposed changes

That Full Council accepts the changes to the Arrangements.

4. REPORT

4.1 The proposed amended Arrangements are attached as Appendix A.

There are two substantive proposed changes to the Arrangements:

- i) Section D4 (d) – adds a reason for rejection of a complaint where it discloses no breach or potential breach of the Code of Conduct. Previously such complaints had to be re-classified as “trivial”. Such a classification can be inappropriate, for example where someone makes a seemingly grave complaint but where it is plainly unsupported by any evidence or plainly contradicted by other evidence. In these circumstances it is more appropriate for the complaint to be rejected in the new terms set out.
- ii) Section D4 (h) – clarifies a power for the Monitoring Officer and Independent Person to conclude that a complaint needs to be progressed to Standards Advisory Board level without the need to commission an independent investigation. This scenario may arise where there is clear, objective evidence already available of the very incident which gave rise to an allegation and where therefore it is wholly unnecessary to incur the delay and expense of a formal investigation. Equally it could apply to a scenario where a non-trivial breach is alleged and the Subject Member admits the breach of the Code. In these cases the Monitoring Officer will collate those available materials, afford an opportunity to the Subject Member to comment, and pass the “pack” onto the Standards Advisory Board. They will decide whether (i) no further action is required or (ii) a hearing panel should be convened. It is noted that although a broad discretion already exists in the “Arrangements” to tailor procedure to suit the circumstances of a particular case, the current wording around “investigations” implies that all more serious allegations will be formally investigated. The new provision makes it clear that in appropriate cases the investigation can comprise the collation of existing materials together with any explanation offered by the subject Member. It is submitted that in those rare cases where it is appropriate to utilise this provision, it represents an entirely proportionate use of resources without compromising the fairness of the proceedings at all.

There are numerous minor changes to the text as follows:

- iii) Modifying the references to “Investigation” to align with the change cited at point ii) above
- iv) Separating-out the wording in relation to Hearing Panels to make it clearer that this is a separate stage of proceedings
- v) Clarifying that the determinations of Hearing Panels must be endorsed by the main Committee.
- vi) Replacing the wording in the Standards Committee Terms of Reference whereby “Standards Advisory Board” or “Board” shall read “subcommittee”.

The current wording fails to distinguish between the two types of subcommittee that operate under the main Committee and whose task it is to scrutinise and ultimately hear individual cases. These are the Standards Advisory Board and the Hearing Panel. The proposal at iv) above makes this distinction clearer, and this should also be reflected in the Terms of Reference.

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 2014.

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 21st March 2017

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

**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. <https://www.leicester.gov.uk/contact-us/comments-compliments-and-complaints/complaints-about-councillors>

C. PRINCIPLES UNDERLYING THE 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 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 Monitoring Officer by writing to:

The Monitoring Officer
 Legal Services Division
 Leicester City Council
 | 115 Charles Street~~16 New Walk~~
 Leicester
 | LE1 1FZ6UB

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 grounds that it discloses no breach or potential breach of the Code of Conduct**
- e. 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).
- f. 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
- g. Refer the matter for immediate further investigation.
- h. **Refer the matter straight to the Standards Advisory Board where there is (i) clear evidence of a breach of the Code and (ii) it would be disproportionate and unnecessary to commission an investigation under g. above and (iii) informal resolution is not appropriate**
- i. In exceptional cases, refer the matter to the Standards Committee or subcommittee thereof for a decision on a. to h. 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 i. 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. to f. 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 ~~i~~nvestigator will conduct a thorough review within three months. Upon receipt of the ~~i~~nvestigator’s report by the Monitoring Officer (**or by operation of the Monitoring Officer’s own report under route h above**) the matter will be referred 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 (**or Monitoring Officer**) 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 or Monitoring Officer 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’.

Hearing Panel

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 (like the Standards Advisory Board) 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 Hearing Panel is an advisory committee and can only make recommendations to the main Standards Committee in individual cases that it has adjudicated upon. As its findings are advisory, they must be referred to the main Standards Committee for endorsement. This is achieved by way of written report.

The complainant and the subject member would be written to and given reasons for any decision following a formal investigation/hearing, 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

Kamal Adatia
City Barrister & Head of Standards
June 2017~~October 2014~~