

Standards Committee – 22nd January 2018

Process for Review of Complaints

Summary of report:

The report is to provide information to Elected Members in respect of how the Monitoring Officer carries out reviews of complaints under the Arrangements for Dealing with Complaints about elected members under the council code of conduct as approved at council on the 25th June 2012. The review procedure was reviewed and altered slightly in 2015 with the amendments being approved at the annual council.

Background papers:

None

Recommendation:

To note the content of the report

1.0 Background

- 1.1 The Arrangements for Dealing with Complaints against Elected Members was approved by Walsall Council at an extraordinary meeting of the Council on 25 June 2012.
- 1.2 Under the arrangements for dealing with complaints the Monitoring Officer has been given delegated authority to review every complaint brought against elected members under the Council Code of Conduct. The Monitoring Officer will review every complaint, and after consultation with the Council's Independent Person, will take a decision as to whether or not the complaint merits formal investigation. It is envisaged under the current Arrangements that this will normally take 20 working days to determine following receipt of a complaint. This was formerly 10 working days however the process of conducting a review can be quite complex therefore 10 working days did not prove to be practical. It has proven difficult with competing demands on the Monitoring Officer's workload to maintain the 20 working day response; however, it is felt on balance that this limit should remain.

1.3 The review process is set out as follows:

"The Monitoring Officer has statutory responsibility for maintaining the register of elected members' disclosable pecuniary interests, and is responsible for administering the system for managing complaints about elected member conduct.

In order to ensure that the council has all of the relevant information required to process your complaint, please complete and send us the model complaint form,

which can be downloaded from the authority's website, next to the Code of Conduct.

- You will need to provide us with your name, contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of progress.
- The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- The authority will not investigate anonymous complaints, unless there is a clear public interest in doing so.
- It is a requirement of the Act that any complaint or allegation that an elected member has failed to comply with the Council's Code of Conduct must be in writing.
- There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. If you want to request that your name and address be kept confidential, please indicate this in the space provided on the complaint form. If appropriate we will not disclose your name and address to the elected member against whom you made your complaint, without prior consent if there are found to be exceptional circumstances to justify confidentiality.

The Monitoring Officer will review every complaint received, and after consultation with the Independent Person, will take a decision as to whether or not the complaint merits formal investigation. This decision will normally be made within 20 working days of receipt of your complaint. Where the Monitoring Officer has made this decision, he/she will inform you of this and the reasons for the same.

The elected member will be informed of the complaint made against them, and will be asked for information or an explanation about the complaint. Where the Monitoring Officer requires additional information in order to reach a decision, he/she may request further information from you or the elected member.

The Monitoring Officer may seek to resolve the complaint informally at this stage, without the need for a formal investigation. Such informal resolution may involve the elected member accepting that his/her conduct was unacceptable and offering an apology, or other appropriate remedial action suggested by the council. Where the elected member or council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether or not the complaint merits formal investigation. The Monitoring Officer will also consider the cost and the potential outcome of the complaint if it is proven there has been a breach of the Code of Conduct prior to a formal investigation being commenced.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory agencies to investigate the matter.”

- 1.4 There is no right of appeal against the decision that the matter should not be referred for formal investigation and to date no one has questioned this fact. This may in part be due to the fact that full reasons are always given explaining the decision reached. The only right challenge therefore to this type decision may be either by judicial review or complaint to the Local Government Ombudsman. The Monitoring Officer has reviewed a number of other local authorities procedures for investigating complaints and some have an appeal mechanism for this decision, however the majority reviewed do not. There has only been two complaints to the Local Government Ombudsman (LGO) concerning this and the LGO did not criticise the procedure being followed by the council, or uphold the complaint.
- 1.5 Some local authorities that have appeal mechanisms either have a right of appeal to the Chair of the Standards Committee, following consultation with the other Independent Member; to the Chief Executive, in consultation with the Independent Member; or even to a hearing of the Standards Committee itself. As one of the guiding principles of the new regime was to deal with complaints more efficiently and effectively, particularly less serious complaints, this extra step in the procedure may be unnecessary and as there has not been an issue with the procedure so far this has not appeared to affect the fairness of the process. If an appeal process were to be implemented it would add more expense and complexity to the proceedings.
- 1.6 The role of the Independent Persons and support of the Group Leaders are instrumental in the procedure working. The Monitoring Officer continues to have the full support of the group leaders in managing complaints. The Independent Persons provide valuable input in the way in which they comment and suggest amendments to the review of complaint. They add independent integrity to the complaints process.

2.0 Resource and legal considerations:

- 2.1 None directly related to this report. The complaints procedure is being managed within Legal and Democratic Services from existing resources. If there is a considerable increase in complaints or the council receives a very serious and complex complaint, consideration may need to be given to outsourcing some work if the demand cannot be met from existing resources.

3.0 Financial Implications

- 3.1 There can be significant costs incurred in investigations, in one local authority the costs of investigation in twelve months amounted to £65,000.00. In a review of other complaints from other authorities the cost of investigating one complaint was £15,780. This complaint was in relation to inappropriate comments. At another council the cost of investigating 3 allegations was £16,000. One of the reasons for using external consultants to investigate complaints were due to

reasons of impartiality in that this would reduce the risk an officer feeling compromised in investigating a councillor with whom they have regular contact, and any allegations of partiality or bias. Walsall recently appointed an external investigators under the current standards regime to investigate a complaint.

4.0 Performance and Risk Management issues:

4.1 Performance and risk management are a feature of all council functions. It is important that council policies and procedures are reviewed and updated on a regular basis. If the council fails to do this there is an increased risk that the council will be subject to legal challenge or litigation.

4.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the council delivers services.

5.0 Reducing Inequality:

5.1 In maintaining up to date policies and procedures the council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities. It is important that complaints are dealt with in a fair and transparent manner. The Arrangements for dealing with Elected Member complaints are open to all residents and complaints are dealt with on an evidential basis on the merits.

6.0 Consultation:

6.1 There is no requirement to consult on this report.

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