

Subject:	Review of procedure for dealing with alleged breaches of the Members' code of conduct		
Date of Meeting:	1 May 2014 25 March 2014 - Audit & Standards Committee		
Report of:	Monitoring Officer		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks the Committee's agreement to the proposals of the cross-party working group tasked with reviewing the council's procedure for dealing with alleged breaches of the code of conduct for Members.
- 1.2 The current procedure was introduced in 2012 and, following minor revisions, has needed a more thorough review to address certain issues including those highlighted in a recent case decided by the council's Standards Panel.
- 1.3 On 21 January 2014 Audit & Standards Committee agreed to the formation of a cross-party working group to review the procedure and to report back to the subsequent Committee meeting.

2. RECOMMENDATIONS:

That Audit & Standards Committee—

- 2.1 Subject to recommendation 2.2, agree to the amended procedure for handling alleged breaches of the Members' Code of Conduct, as set out in Appendix 2, based on the proposals of the Standards cross-party working group set out in Appendix 1.
- 2.2 Recommend to Policy & Resources Committee that the Standards Panel's designation be altered from a sub-committee to a panel.
- 2.3 Instruct the Monitoring Officer to co-ordinate a review of the Members' code of conduct later in 2014 and, in consequence of that review, to bring a report with recommendations to the Committee.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 In 2012 the council adopted a new procedure for investigating alleged breaches of the Members' Code of Conduct, following the introduction of new provisions on standards set out in the Localism Act 2011. Since then, the council has made

minor alterations to the investigation procedure and composition of standards hearing panels, but once arrangements had been in place a full year, a more comprehensive review was considered beneficial. In addition, a high profile standards investigation and hearing which concluded in December 2013 highlighted the need for certain aspects of the procedure to be reconsidered.

- 3.2 A cross-party member working group was set up to review the procedure and met three times in January and February 2014. The Group comprised Councillors Lepper, Norman (A), Summers, and Sykes, the council's two Independent Persons (Drs Horne and Meleyal), and was supported by the Monitoring Officer. The Group was chaired by one of the Independent Persons.
- 3.3 Technical specialist input was provided by Hoey Ainscough Associates Ltd, a company with national expertise in local government Standards procedures.
- 3.4 The Group re-affirmed the overriding principles of the procedure as:
 - (i) to engender member and public confidence in the process and outcome;
 - (ii) for hearing panels to reach their finding fairly and independently; and
 - (iii) a presumption of openness in panel hearings.
- 3.5 The Group made 19 proposals for change, set out in full at Appendix 1. The principal items are as follows:

Councillors

- (i) The Subject Member to have access to all documentation relevant to the complaint;
- (ii) On notifying the Subject Member of a complaint, the council should encourage against seeking actively to publicise the matter before the complaint has been considered by the Monitoring Officer and, if applicable, investigated;
- (iii) To require members to co-operate with informal resolution where this process has been agreed;
- (iv) No member to serve on a Standards Panel unless he/she has undergone appropriate training; members of the Audit & Standards Committee (who comprise the pool of Panel members) to have annual training;
- (v) The Panel's decision to be owned collectively by the Panel's elected members.

Openness and Media

- (i) Panels to be chaired by an Independent Person rather than a Councillor;
- (ii) Panel papers to be published in advance of a Hearing, with a media release setting out the procedure and the role of the Independent Person.

Technical

- (i) The subject member's grounds of appeal to the Panel's findings be made more specific;
 - (ii) Adequate security be put in place for all stages of the Panel's hearing;
 - (iii) The procedure to allow sufficient time for the Panel to deliberate the complaint in recess;
 - (iv) A review of the Code of Conduct to be undertaken later in 2014.
- 3.6 The proposals are reflected in the revised Standards procedure set out at Appendix 2.
- 3.7 Although the code of conduct itself was outside the Working Group's terms of reference, the Group did recommend that a stand-alone review of the code be conducted later in 2014.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

Two of the Group's key proposals are that –

- (i) The designation of the Standards Panel be changed from a sub-committee to a panel; and
- (ii) The Panel be chaired by an Independent Person rather than a councillor

Both issues are analysed further below.

Constitutional Status of Standards Panel

- 4.1 The Standards Panel is currently a sub-committee of the Audit & Standards Committee. Technically, only full Council or the parent committee can appoint members to a sub-committee, which makes the process of appointing members to a Panel somewhat inflexible.
- 4.2 One option is to alter the Panel's status from sub-committee to a panel. This would permit officers to approach all trained members of the Audit & Standards Committee whenever a panel need to be formed, enquire as to availability and appoint on a cross-party basis. The attendant risk is that the finding made by a panel appointed this way might be challenged on the basis that, being neither a committee nor sub-committee, it was not legally capable of making a binding decision.
- 4.3 Another option is for the Panel to retain its sub-committee designation, and for –
- (i) full Council (at Annual Council) to appoint a fixed Standards Panel membership, including substitutes. It would be necessary for

Council, subject to the agreement of all members, to disapply the proportionality rules regarding appointments to sub-committees, so that appointments could be made on a non-political basis; or

- (ii) Audit & Standards Committee to appoint a fixed Standards Panel membership, including substitutes; or
- (iii) Audit & Standards Committee to convene each time a Panel needed to be formed, and appoint members to that Panel.

4.4 Given that, on finding a breach of the code of conduct, the only sanctions in the gift of a Standards Panel are formal censure and recommendations (as distinct from a formal, self-standing decision), it is not considered a significant risk that the Panel be constituted as a panel instead of a sub-committee. In terms of flexibility of appointment, there are significant advantages in doing so. It is therefore recommended that the Working Group's proposal to that effect be adopted.

4.5 Despite the Standards Panel functioning as a panel instead of a sub-committee, there would continue to be a presumption of openness in its proceedings. In consequence, the Monitoring Officer's report to the Panel would be published in advance and the hearing held in public, except where it was in the public interest that the report be restricted and the hearing conducted in closed session. In all cases, the Panel's deliberations following the hearing would – as now – always be held in private.

Role of Independent Person

4.6 It is the Working Group's strong wish that, to inspire greater confidence in the independence and transparency of the hearing process, the Standards Panel be chaired by an Independent Person. The Group also proposed that, if the Panel were to drop its sub-committee status, the Independent Person be allowed to vote at hearings. (Sub-committee co-optees such as the Independent Person are by law not permitted to vote, unless the committee is purely advisory).

4.7 Under Standards legislation, the Independent Person is not expressly precluded from chairing or voting at a hearing. However, the principal statutory role of Independent Person is to give his/her views to the authority or to the member whose behaviour is the subject of an allegation. By inference, the actual decision as to whether a member has breached the code of conduct is to be made by other elected members only.

4.8 The options are that the Independent Person:

- (i) neither chairs nor votes on a Standards Panel (as at present);
- (ii) chairs the Panel but does not vote; or
- (iii) chairs and votes on a Panel

4.9 Alternatively, one Independent Person could chair the Panel, and a different Independent Person could participate as statutory consultee (and vote, if appropriate).

- 4.10 Allowing the Independent Person to vote may not be compatible with Parliament's apparent intention to establish that role as someone for elected members to consult before determining an allegation themselves. There are also difficulties associated with an Independent Member voting if, in accordance with one of their other statutory functions, they have previously been consulted by the subject member over the allegation.
- 4.11 Accordingly, it is recommended that the Independent Person chair the Panel but does not vote. Such an arrangement is permissible irrespective of whether the Panel is constituted as a sub-committee or panel.
- 4.12 Configured this way, the Panel would need an odd number of voting members (say 3 or 5) to ensure that any decision of the Panel was a majority decision. The Chair would have no casting vote. In the event that no majority decision could be reached (e.g. where one Panel member felt unable to decide the allegation), the Panel would make no finding and a fresh Panel would be appointed to re-hear the matter.
- 4.13 Even if the Independent Person neither chaired nor voted, it is still recommended that he/she attend the hearing and deliberations in person, in order to hear the parties and witnesses, ask questions and seek clarification, which should lead to more effective advice given to voting members before they reach a finding.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 As mentioned at 3.3 above, the working group's proposals were considered by Hoey Ainscough Associates Ltd. With their knowledge of nationwide best practice on local government standards, they offered external validation and benchmarking. Their observations are incorporated into the proposals and revised procedure set out in the appendices to this report.
- 5.2 The final proposals also incorporate minor amendments agreed by the council's Constitution Working Group.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 The only Working Group proposal with financial consequences is the compulsory annual training of Panel members. However, the cost of these sessions is not expected to be significant and would be covered by the existing revenue budget applicable to the wider programme of Member development.

Finance Officer Consulted: James Hengeveld

Date: 12/03/14

Legal Implications:

- 6.2 The Working Group's proposals are compatible with the statutory framework for local government standards, namely Part 1, chapter 7, of the Localism Act 2011.
- 6.3 Audit & Standards Committee are entitled to develop and adopt its own procedures and protocols. It has authority to agree changes to the

procedure for investigating alleged breaches of standards, but must refer proposed changes to the status of the Standards Panel (i.e. the proposed re-designation from sub-committee to panel) to Policy & Resources Committee.

Lawyer Consulted:

Oliver Dixon

Date: 07/03/14

Equalities Implications:

- 6.4 If adopted, the proposals set out in this report should ensure that the parties to standards panel receive a fair hearing.

Sustainability Implications:

- 6.5 None

Any Other Significant Implications:

- 6.6 None

SUPPORTING DOCUMENTATION

Appendices:

1. Working Group proposals.
2. Revised procedure for dealing with alleged breaches of the Members' code of conduct. (To follow)