

## 10.2 Complaints under a Voluntary Code – Streamlined Process

10.2.1 It is very important that any Voluntary Code and any process of investigation of complaints under the Code is robust, has the support and respect of all Elected Members and that the integrity of the process also gives confidence to complainants and members of the public.

10.2.2 The existing process, as prescribed by Regulations and in guidance by SfE, is a very thorough and fair process but it is a long winded and technical procedure which can take many months. Under the Localism Bill the Council may determine its own procedures for investigation of any complaints under the Voluntary Code and a draft streamlined procedure is set out at Annex C and a flowchart at Annex D, for Member's initial comments.

10.2.3 A brief overview of the suggested process is as follows:

- An initial Gateway Procedure within 2 weeks to decide whether to take no action / refer to the relevant Group Leader for informal action / refer the matter for formal investigation by an external investigator
- No right of appeal or review against this initial decision
- An external investigation by a firm of Solicitors or experienced investigator with a Monitoring Officer background with a final report to be produced within 8 weeks
- The opportunity for the subject member and complainant to comment on any factual inaccuracies in the report
- The report to make final determination on whether there has been a breach and the sanction to be imposed (sanctions are likely to be very limited anyway the Council probably won't be able to suspend or disqualify elected Members)
- The right of appeal by either the subject member or complainant within 14 days of receiving the final report on the findings of breach of the code (but not solely on the sanction)
- The appeal to be determined by a Panel consisting of the Leader, Chief Executive, relevant Group Leader, Independent Chair of Standards Committee advised by the Monitoring officer. No oral hearing or calling of witnesses etc all to be dealt with by written representations and consideration of the report
- No further right of appeal
- All meetings to be in private

10.2.4 It is important to stress that this is very much an initial draft suggesting a very different process to act as a starting point to stimulate debate. There are a number of issues which Members may wish to consider and these are also set out at Annex C.

## Annex C

### Complaints under the New Code - Proposed Streamlined Procedure

1. The Monitoring Officer receives a written complaint and acknowledges receipt.

#### **Initial Assessment / Gateway Procedure**

2. The Monitoring Officer refers the complaint to the four Group Leaders (or their nominees), the Independent Chair and Chief Executive to consider the written complaint within 14 days and determine whether to;
  - **Take no action**
  - **Refer the matter to the relevant Group Leader for informal action**
  - **Refer the matter for formal investigation by an external investigator**
3. Criteria will be developed to assist in determining complaints and ensuring consistency.
4. The initial assessment decision to take no action will be final. Accordingly there will be no right of review for either the complainant or subject member.

#### **External Investigation**

5. The matter will be referred for an independent investigation by a suitably experienced investigative officer, for example from a private firm of solicitors or with a Monitoring Officer background. The investigation should be completed within 8 weeks of the referral.
6. The report of the independent investigator should incorporate the following:-
  - **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
  - **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.
  - **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities

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- **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn and outline of whether the investigating officer considers whether there has been a breach and any aggravating or mitigating facts.
  - **Schedule** - a list of witnesses interviewed and copies of relevant documents
7. A copy of the draft report will be circulated to the subject member and complainant to check for factual accuracy.

### Sanctions

8. The investigating officer will make recommendations as to the appropriate sanction in the report. It is likely that the Council will no longer be able to suspend or disqualify a Member accordingly sanctions will be limited to :-
- **Censure**
  - **Restricted access to Council premises or resources for up to 6 months provided that this does not unduly restrict the ability to perform the functions of a Member**
  - **Submission of a written apology in an approved format**
  - **Specified training**
  - **Conciliation**

### Final Recommendations and Right to Appeal

9. The recommendations contained in the report are final and will be implemented subject to the complainants and subject members right to appeal within 14 days of receiving a final copy of the report. An appeal may only be against a finding of breach of the Code and not against the recommended sanction.
10. Both the complainant and the subject member will be given the opportunity to make written submissions to the Appeal body.

### Appeal and Review

11. Any appeal against the findings in the final report will be considered by the Leader, Chief Executive, relevant Group Leader and Independent Chair of the Standards Committee advised by the Monitoring Officer.
12. The Group will consider the report together with any written representations of the complainant and subject member. There will be

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no requirement for the subject member, complainant or any witnesses to attend. The Group will determine whether they are satisfied with the Investigators recommendation and if any sanction recommended is appropriate.

13. The meeting will be in private and not subject to access to information requirements

14. There will be no further right of appeal

### Issues for Consideration

- a) When the complaint is initially received should the subject member be informed at that stage or only when a decision has been made whether or not to investigate?
- b) Is it appropriate for the Independent Chair/ an Independent Member to be involved in the initial assessment / gateway procedure? Is the elected member involvement appropriate?
- c) Should all meetings be held in private?
- d) Are Members happy that the Independent Investigator circulates the draft report for comment on factual accuracy to the subject member and complainant?
- e) Should the recommendations in the report be final? ie. is there a need for the Council to consider and approve the report internally in any event? ( As required by the current procedure )
- f) Should there be the opportunity to appeal the findings in the report?
- g) Is it appropriate for both the Complainant and subject member to have the right of appeal?
- h) Are Members happy with the proposal that any appeal should be dealt with by way of written representation? Is there a view that there ought to be the opportunity for the investigating officer and the subject member and witnesses to appear and give evidence as is the case now?
- i) Are the members of the group considering the final report appropriate?
- j) Should the final outcome be publicised on the Council's website?

### Proposed Streamlined Procedure for Complaints

