



Standards and Constitutional Oversight Committee

7 November 2018

REPORT TITLE:	Arrangements for dealing with complaints against Members
REPORT OF:	Director of Governance and Assurance

REPORT SUMMARY

An extraordinary meeting of the Committee has been called by Members of the Committee in order to discuss the Council's failure to follow the Code of Conduct protocol resulting in unacceptable delays to the standards process.

In 2014 the Council adopted a Members' Code of Conduct and a process for dealing with complaints made under that code following the changes to the ethical standards regime introduced by the Localism Act 2011. Since 2014 there has been experience of dealing with complaints which has highlighted areas for improvement and clarification in the arrangements for dealing with complaints made under the Members' Code of Conduct. In particular, issues have been raised in relation to the timeliness with which complaints have been dealt with under the current protocol. This report seeks authority to adopt a revised procedure for investigating and making decisions in relation to allegations made under the Members' Code of Conduct.

RECOMMENDATION/S

That the Committee

- (a) Considers the current practice and pursuance of the procedure document "Arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct" attached as Appendix A;
- (b) Adopts a revised procedure in line with the example set out as attached at Appendix B subject to the Council's Monitoring Officer, in consultation with the Chair, being authorised to make such changes to the arrangements as are considered necessary for adaption for Wirral BC and for the effective and timely investigation of allegations; and
- (c) That a further report of performance against the revised procedure be brought to the Committee in 12 months' time.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The proposed amendments will improve the clarity of the process and will provide the Standards and Constitutional Oversight Committee and the Monitoring Officer with the opportunity of dealing with complaints in accordance with what is currently felt to be professional best practice. The proposed amendments will streamline the process for dealing with complaints allowing for a faster resolution for suitable matters.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 That the current protocol for dealing with complaints against Members remains unchanged.
- 2.2 That the current protocol for dealing with complaints against Members is changed in some other way, including a version of the examples in Appendix B and/or Appendix C.

3.0 BACKGROUND INFORMATION

- 3.1 The Committee's terms of reference, contained in Article 9 of the Council's Constitution, include to:
 - (vi) establish, amend or revise arrangements under which allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members can be investigated (which shall include but not be limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are considered necessary for the effective and timely investigation of allegations); and
 - (vii) establish, amend or revise arrangements under which decisions on allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Members' Code of Conduct can be made (which shall include but not be limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are considered necessary for effective and timely decision making).
- 3.2 This reflects the Council's duties as imposed by s27 of the Localism Act 2011, which requires the authority to have in place arrangements under which allegations that a Member or co-opted Member of the authority has failed to

comply with the authority's code of conduct can be investigated and arrangements under which decisions on those allegations can be made.

- 3.3 The Council accordingly adopted a published procedure document on the introduction of the Localism Act, entitled "*Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct*", which is attached as Appendix A.
- 3.4 There has now been experience of dealing with complaints under these arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct over several years. A review of the complaints logged under this procedure since 2012, to assess whether the existing structures, processes and practices are conducive to investigating alleged breaches fairly and with due process, has highlighted areas for improvement and clarification. This is particularly the case in relation to the timescales experienced for dealing with complaints, as per the reasoning for the requisition of the extraordinary meeting, where the review's output is that that there has been a failure to comply with the timescales set out in the protocol document in 90% of the cases recorded since 2012.
- 3.5 An output of the review has been to compare the Council's procedure against the procedures adopted by other authorities. In doing so, advice has been sought from external legal practitioners with significant experience of dealing with ethical governance issues in local government and related serious investigations, where an allegation is felt to be so serious or so politically sensitive that the matter cannot be investigated internally or by a neighbouring authority and should be investigated by an appointed law firm. These being Weightmans LLP and Wilkin Chapman LLP. These firms recommended the procedures used by North Lincolnshire Council and Manchester City Council as examples of current good practice in the arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct. Copies of the procedures are set out in Appendix B (NLC) and Appendix C (MCC) attached to this report.
- 3.6 The example arrangements appended differ from this Council's procedures in three important ways.
 - Firstly, they both provide the option for the Monitoring Officer in their discretion to refer complaints to a Panel/Sub-Committee in order to assess more serious or complex allegations and for that Panel/Sub-Committee to take the decision as to whether a formal investigation is merited where he feels it reasonable and appropriate to do so.
 - The second key difference is that neither of the best-example protocols contain a right of appeal, as is currently provided for in Wirral's protocol.
 - Thirdly, there is included a clear set of criteria against which to assess an allegation of breach, including public interest reasons, and that this is published for potential complainants to see.

- 3.7 It is the Monitoring Officer's view that the NLC arrangements, in particular, provides helpful and detailed guidance in relation to the procedure to be followed during the process and hearings of complaints by the Standards Panel, including a straightforward flow-chart for the benefit of Members and the public and a protocol on police matters which can be discussed further with Merseyside Police.
- 3.6 If adopted, it is felt that the proposed amendments brought about by following the NLC example would enable a greater level of Member involvement in the initial assessment and evaluation stage and streamline the process for dealing with minor complaints, allowing for a faster resolution for suitable matters. The amendment to the guidance for using local determination would also provide greater consistency in resolving complaints.
- 3.7 A review of whether the current Code of Conduct remains fit for purpose will be presented to a future Committee. It is worth noting, however, that the Committee on Standards in Public Life is currently undertaking a review of local government ethical standards and is expected to report by the end of 2018. Following receipt of the report of the Committee on Standards in Public Life the Council may then wish to review the Code of Conduct.

4 FINANCIAL IMPLICATIONS

There are no financial implications associated with the adoption of an amended protocol for investigating and making decisions in relation to allegations made under the members' Code of Conduct.

5 LEGAL IMPLICATIONS

The Council must act in accordance with the legislative requirements of Chapter 7 (Standards) of the Localism Act 2011 when dealing with ethical standards.

6 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

There are no resource implications associated with the amendment of the Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct".

7 RELEVANT RISKS

Adopting the amendment of the Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct" will streamline and clarify the process for dealing with allegations allowing for a faster resolution for suitable matters and reduce the risk of delay in the process.

8. EQUALITY IMPLICATIONS

The Code of Conduct and the Protocol document “Arrangements for investigating and making decisions in relation to allegations made under the members’ Code of Conduct” and its implementation must adhere to equality and human rights legislation under the relevant Acts. The amended Protocol document will ensure that these matters are addressed when investigating and making decisions in relation to allegations made under the members’ Code of Conduct.

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APPENDICES

- A:** Wirral Protocol “Arrangements for investigating and making decisions in relation to allegations made under the members’ Code of Conduct”
- B:** Example Protocol (NLC)
- C:** Example Protocol (MCC)