

# WEST NORTHAMPTONSHIRE COUNCIL

## Democracy and Standards Committee

15 June 2023

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**Report Title**                      **Review of Member Complaints Procedure**

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#### 1. Purpose of Report

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1.1 The purpose of this report is to review and consider possible changes to the Member Complaints Procedure to inform a revised draft to be presented to the next meeting.

#### 2. Executive Summary

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2.1 The recent Democracy and Standards Sub-Committee together with other issues raised by recent complaints has highlighted some issues with the current Member Complaints Procedure.

2.2 The procedure is based on one from a predecessor council and whilst it was brought up to date to reflect recent recommendations in relation to dealing with member conduct, recent use has highlighted issues with the procedure and suggests it is appropriate to review it and bring back a revised draft to the next meeting.

2.3 The purpose of this report is to seek members views on key issues before preparing the draft.

#### 3. Recommendations

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3.1 It is recommended that the Committee:

- a) Consider the issues highlighted by the report and discuss improvements.
- b) Agrees to receive a revised draft of the procedure at its next meeting.

#### 4. Reason for Recommendations

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To ensure that the Council and Monitoring Officer considers complaint against members consistently, and in a way that supports sound decision making.

## **5. Report Background**

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- 5.1 As part of the preparation of the constitution the procedures of the predecessor councils were considered and the procedure that was adopted was based on the procedures of those councils.
- 5.2 Subsequent reviews of the Constitution have focused primarily on the Council Procedure Rules and necessary changes to the Scheme of Delegation to enable the council to conduct its business and adapt to national and local changes.
- 5.3 The procedure for handling complaints has not been applied fully until the recent complaint that went to the Democracy and Standards Hearing Sub Committee. That has highlighted a number of shortcomings with the procedure which suggest it should be reviewed to strengthen it in a number of ways.

### **The Procedure**

- 5.4 When a complaint is received it is referred to the Deputy MO or member of the legal team to review and consider whether there is a case to answer they will consult the independent person who will provide a view usually via email;
- 5.5 Broadly the options available to the MO at this stage are:
  - i. There is evidence of a breach of the code of conduct which is of sufficient significance and in the circumstances, it is in the public interest to investigate the complaint.
  - ii. The complaint does not fall under the relevant Code of Conduct (either because the member was not carrying out their role as a member, or because the MO has no power to investigate)
  - iii. The evidence does not disclose a potential breach of the code of conduct.
  - iv. There is insufficient information to determine whether there is a potential breach.
  - v. It is not in the public interest to investigate.
- 5.6 Whilst the procedure for dealing with complaints set out in the constitution sets out the factors that the MO and IP will take into account when deciding whether to proceed it is set out as an advice to the complainant not as advice to the MO/IP. Paragraph 4.1 - 4.7 sets out the relevant matters but some of these seem to overlap and are not ordered to explain how the MO/IP will reach a decision. It doesn't set out clear criteria based on which the MO can communicate the reasons for their decision.
- 5.7 The MO/Deputy MO has received a number of challenges to our decisions not to investigate some of which have been referred to the ICO and the lack of criteria makes it more difficult to explain to complainants the reasons for deciding not to investigate a complaint.
- 5.8 This section of the Procedure could helpfully be reviewed to better support this process. Paragraph 4.7 States that the initial assessment will be held asap; that the complainant will be informed in writing and that the complainant will be kept informed.

- 5.9 It is apparent that there have been examples of a failure to follow this part of the procedure and some members have complained about not being kept informed and not being sent clear reasons in writing. To improve the process it is suggested that a standard decision record is added to the procedure with the benefit of the criteria this will make it easier for cases to be dealt with quickly for the MO to select the reasons for their decision and explain the rationale more easily and improve consistency.
- 5.10 Standard acknowledgement letters should be used in every case. The procedure should include a maximum period for response (similar to FOI and complaints) ie members will receive a response within 20 working days. If it is not possible to meet that deadline then correspondence will be sent explaining why it is not possible and what the new timeframe is.
- 5.11 Members must be informed that a complaint is made against them. This should also happen within a specified number of days eg 10 which is set out in the procedure and an update sent if for any reason this is not possible (although this is not likely to be the case).
- 5.12 There should be a standard letter to members in relation to this which explains the process to them and also offers them a named contact to talk to if they have concerns.
- 5.13 Members have raised concerns about the lack of support for members through the process. Because of the need for the MO to remain impartial between the complainant and the subject member it is helpful to have a third party (within Democratic Services) named as the member contact. This should be included within the procedure.
- 5.14 During the recent full investigation this was offered only at the point at which the matter was referred to hearing. It is suggested that this should take place much earlier in the process.

#### **Conflicts of Interest.**

- 5.15 The role of the MO and the deputy MO and the IP should all be set out in the procedure with a clear explanation of the situation in which there may be a conflict of interest.

#### **Initial Enquiries**

- 5.16 The deputy can make initial enquiries to determine if there is merit in a complaint. eg if there is a complaint that a member of the council said or did something at a council meeting it is not unreasonable to check whether the member was present at that meeting. If they were not it will save the time and expense of an investigation.
- 5.17 However, the scope of these enquiries should be explained in the procedure. There are some complainants who feel that their complaint was dismissed without proper enquiry. The MO is not obliged to find evidence of a potential breach if it is not apparent on the face of the complaint. It is up to the complainant to illustrate where there is something that warrants investigation not the MO. The initial inquiries are limited and that should be explained within the procedure with examples. Members have also complained that they are not able to put their case at this stage of the procedure. There is a misconception that an investigation is underway and the letter should clearly explain that initial enquiries may not require the

involvement of the subject member particularly if the MO feels that the complaint does not fall within the scope of the code of conduct.

- 5.18 The procedure should explain through the flowchart above the process that the MO will undertake and make it clear that initial enquiries do not amount to an investigation.

### **Confidentiality**

- 5.19 When a complaint is made it can be very damaging to a member, particularly in the lead up to an election and the process can be misused as a result. Therefore complaints are not made public when they are received. The MO will keep a record of complaints and the action taken and the statistics are reported to the Democracy and Standards Committee but the detail of the members is not shared publicly.
- 5.20 If the case goes to a formal hearing then it is likely that the hearing will be held in public. There are limited circumstances in which a hearing will not be held in public. The current procedure doesn't deal with the publication and confidentiality and it is recommended that a section should be added to the procedure to deal with this.

### **Alternative Resolution**

- 5.21 Since the Localism Act 2011 the powers available to Standards Committees to deal with complaints are limited. There are however other methods for resolving complaints including formal ADR. The procedure refers to the use of ADR but doesn't provide a mechanism or process for using ADR in appropriate cases. This makes it difficult for the MO to consider this option unless there is an agreement on both sides to an informal suggestion.

### **Criminal Matters**

- 5.22 There are circumstances in which the MO should refer a complaint to the police for investigation because they have powers to deal with conduct which is a criminal offence. Since the changes to the regime some MO have been criticised for failing to refer criminal matters to the police. The procedure makes reference to criminal cases but doesn't explain the provisions in the legislation or support the MO/IP to exercise the relevant tests.

### **Investigation**

- 5.23 Whether an internal or external investigator is used, the investigator should receive a formal letter setting out their obligations and explaining the Council's procedure for investigation and the expectations in relation to the procedure. In particular the collection of witness statements and the notification to witnesses of the need to attend a hearing. There are also no time frames in relation to the conduct of the investigation set out in the procedure and it is recommended that the procedure is redrafted to ensure that complaints are given fixed time frames and extensions to investigation should be specifically sought from eg the MO and chair of Democracy and Standards Committee.

- 5.24 The letter to an external investigator should also include the terms of their contract including payments for attendance at hearings and preparation and publication of the evidence and reports. Standard letters should be prepared for this purpose.

### **Hearing**

- 5.25 If an investigation concludes that there is a case to answer the MO in consultation with the IP will decide whether the case should be referred to a hearing.
- 5.26 If that is the case the procedure for the period leading up to a hearing should be clearly set out including details about the publication of the investigating officers report and evidence. The information to be provided by the member and the IO, details of the witnesses and any additional evidence. The Hearing Sub Committee should hold a pre-meeting to agree the timetable for the hearing and establish the process for the sharing of evidence. This will help to smooth and agree the process for preparing for the hearing and help the member to feel that they have an opportunity to have any concerns considered at a preliminary stage.
- 5.27 A formal hearing procedure should be drawn up and published with the agenda for the meeting and for members of the public to know that they can attend observe and the process that will be followed. A sample hearing process will be included as part of the procedure – subject to any changes by the hearing panel in the particular case.

### **Decision**

- 5.28 A standard decision record will be used to support the panel's decision making and record the decision on the day. This decision record will then be signed and agreed by the panel members on the night and be published the following day.
- 5.29 The decision record will be shared with the member, the complainant and the IO and the appeal period will run from the date of the decision is shared with the member.
- 5.30 The procedure for the decision record will be included within the procedure as a separate checklist to ensure that it is provided to the relevant people and that it is prepared and delivered in a timely way.
- 5.31 Whilst the procedure currently provides for this it states that the decision record will not be made public for 20 days after the hearing until the opportunity for appeal is provided. It is not practicable to withhold a record of the decision, which is a matter of interest to the press and public for 20 days. The record should be published immediately with a note to make it clear it is subject to appeal.

### **5.32 Independent Persons**

- 5.33 The procedure currently deals with the number and nature of the IPs but doesn't clearly set out their role. This is particularly the case in relation to the hearing panel. Whilst the IP was consulted in relation to the decision it should be clearly prescribed how this is done and what the role of the IP is at the decision making panel.

## **Conclusion**

- 5.34 This report has highlighted some of the issues with the current procedure but has not considered all matters including the appeal and review process
- 5.35 It is recommended that the members of the panel and other members offer views in relation to matters which should be considered as part of the review and whether the proposed changes above should be incorporated into a revised document to be presented to the next meeting of the committee.

## **6.0 Issues and Choices**

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6.1 The issues and choices are set out in detail above.

## **7.0 Implications (including financial implications)**

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### **7.1 Resources and Financial**

- 7.1.1 There are no financial implications arising directly as a result of the conducting a review of the procedure.

### **7.2 Legal**

- 7.2.1 Every local authority is required to have a Code of Conduct in relation to members and to deal with complaint in relation to members in relation to that code and the code of the parishes within its area.
- 7.2.2 The Member Complaints procedure is required to take into account common law and other statute in relation to the complaints procedure including the right to access to information and the provisions relating to a fair hearing in the Human Rights Act 1998.

### **7.3 Risk**

- 7.3.1 There are no significant risks arising from this report. Reviewing the procedure helps to reduce any risks that could arise as a result of not dealing with complaints fairly and lawfully and helps to manage complaints in relation to the determination process.

### **7.4 Consultation**

- 7.4.1 Consultation will be undertaken with this committee prior to recommendations being submitted to Council. Consultation could also take place with one or more independent person specifically in relation to their role.

### **7.5 Consideration by Overview and Scrutiny**

- 7.5.1 Not applicable to this report.

## **7.6 Climate Impact**

7.6.1 There is no climate impact to consider in relation to the recommendation.

## **7.7 Community Impact**

7.7.1 None specific.

## **8.0 Background Papers**

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8.1 None