

# WEST NORTHAMPTONSHIRE COUNCIL

## DEMOCRACY AND STANDARDS COMMITTEE

**Date: 15 November 2023**

<b>Report Title</b>	Review of Member Complaints Procedure	
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### List of Appendices

- Review of Member Complaints Procedure Report from Democracy and Standards Committee meeting of 15 June 2023 - (Appendix 1).
- Draft revised Member Complaints Procedure (the "Arrangements") – (Appendix 2)

### **1. Purpose of Report**

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- 1.1 The purpose of this report is to review and consider draft changes made to the Member Complaints Procedure.

### **2. Executive Summary**

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- 2.1 The Democracy and Standards Sub-Committee Hearing that took place in May 2023 (together with other issues raised by recent complaints) have highlighted issues with the current Member Complaints Procedure.
- 2.2 Further to the Democracy and Standards Committee agreeing to review the Arrangements in June 2023, a revised draft has been prepared.
- 2.3 The Arrangements are contained within the Constitution and any changes must be approved by full Council. The purpose of this report is to present the proposed amendments to Democracy and Standards Committee for approval before referral to full Council.

### **3. Recommendations**

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- 3.1 It is recommended that the Democracy and Standards Committee:

- a) Consider and approve the amendments to the revised draft Arrangements at Appendix 2 and refer them to full Council for approval.

#### **4. Reasons for Recommendations**

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- 4.1 To ensure the Arrangements enable the Council and Monitoring Officer to consider complaints against Members consistently, and in a way that supports sound decision making.

#### **5. Report Background**

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- 5.1 The Arrangements have not been reviewed in detail since the Constitution was first adopted by West Northamptonshire Council. The procedure for handling complaints had not been applied fully in practice until a complaint against a Member was investigated and progressed to a Hearing before the Hearings Sub-Committee of the Democracy and Standards Committee in May 2023. That highlighted a number of shortcomings with the procedure which suggest it should be reviewed and amended to strengthen it in a number of ways.

##### **5.2 Draft Changes to the Arrangements**

A summary of the main proposed changes to the Arrangements are set out below. All of the changes are marked onto the Arrangements as tracked changes at Appendix 2.

##### **5.3 Initial assessment criteria**

Greater detail has been written in section 4 of the revised Arrangements to assist the Monitoring Officer (in consultation with the Independent Person) with the criteria they must consider when reaching a decision for an initial assessment.

##### **5.4 Initial contact with the parties – (paragraphs 4.8, 4.9 and 4.10)**

The Complainant will receive an acknowledgement letter shortly after the complaint has been received, and the Subject Member will be notified a complaint has been submitted within 10 working days. Within this letter the Member will be advised how to contact an Independent Person (to seek their views if they wish to), the details of a named contact within the Council's Democratic Services Department, and details of wellbeing support available whilst the complaint is being dealt with. Standard letters will be revised to incorporate the details above. The outcome of the initial assessment will be completed and communicated to all parties as soon as reasonably practicable or within 30 working days.

##### **5.5 Complainants who ask for their name to be withheld – (paragraph 3.5)**

At present the Arrangements state that if a complainant wants to keep their name and address confidential, the Council will not disclose it to the Member against whom they have made a complaint, without their prior consent.

It is proposed that the Arrangements are amended to state that requests from complainants for the Monitoring Officer to withhold their identity so that they remain anonymous to the Member complained about will only be granted in exceptional circumstances. This is so the Monitoring Officer can balance the right of the Member to properly understand the complaint against them and respond

to it, with the rights of the complainant. If a complainant does want to request that their identity is withheld, they must specify the reason for this, and the Monitoring Officer will then contact the complainant in writing to advise whether their request has been granted.

#### 5.6 Roles of individuals involved in the Member Complaint Procedure

The roles of the Monitoring Officer, Deputy Monitoring Officer, Independent Person and Investigating Officer have been documented within an Appendix to the revised Arrangements. As stated in the Arrangements, if it becomes apparent any of these positions have a conflict of interest in relation to the complaint, they will not play any further role in the assessment and alternative arrangements would be made.

#### 5.7 Initial enquires at the initial assessment stage – (paragraph 4.11)

The Arrangements have been amended to make it clear that while the Monitoring Officer can make some initial enquiries at the initial assessment stage, it is not for the MO to gather or analyse information at this stage. Some examples are now given in the Arrangements of the type of initial enquiries the Monitoring Officer might make.

It will be clearly documented in the letter to the Subject Member that the initial assessment is not an investigatory stage, but their comments will be welcomed to assist with the initial assessment. It is stated in the Arrangements that it is the responsibility of the complainant to provide sufficient information to the Monitoring Officer to illustrate how they consider the Code of Conduct has been breached

#### 5.8 Confidentiality – (paragraph 8.3)

Complaints will be handled in strict confidence, until they reach the pre-hearing stage.

The Arrangements have been amended to include a section explaining that there is a presumption that a meeting of the Hearings Sub-Committee will be held in public. The Arrangements explain that the pre-hearing process will consider whether any parts of the hearing need to be held in private or if any parts of the investigation report (or associated documents) should not be published (due to containing confidential or exempt information (as defined in the Local Government Act 1972)). It is noted that the final decision will rest with the Hearings Sub-Committee on the day of the Hearing.

#### 5.9 Alternative Resolution – (paragraph 5)

To assist the Monitoring Officer in considering alternative resolution as an option, the revised Arrangements now provide examples of alternative resolution, and reference the guidance produced by the Local Government Association on informal resolution contained within its Guidance on Member Model Code of Conduct Complaints Handling.

#### 5.10 Criminal Matters – (paragraph 4.13)

If the Monitoring Officer identifies any possible criminal conduct or a breach of other regulations by any person, they may refer the matter to the Police or any other relevant regulatory agency for consideration.

The Arrangements have been amended to state that in such cases, the Monitoring Officer (in consultation with the other body) will consider pausing the assessment of the complaint pending

conclusion of any criminal/regulatory investigation, proceedings or process of the other body. They have been further amended to include a summary of the provisions in the Localism Act 2011 which create criminal offences in relation to Disclosable Pecuniary Interests. The Arrangements now also reference the possibility having an agreed Protocol between the Police and the Council that deals with the referral of such matters to the Police.

#### 5.11 Time frames for conduct of an Investigation – (paragraph 6.2)

Initially, the Monitoring Officer will consult with an Independent Person regarding the need for a formal investigation. If it is decided an investigation is required, an Investigating Officer will be appointed and the Monitoring Officer will agree an Investigation Plan with the Investigating Officer. The Arrangements have been amended to state that the agreed Investigation Plan will include a timeframe in which the investigation and draft investigation report must be completed, and the timeframe will differ from case to case depending on matters such as the complexity and number of allegations, the number of Members involved or how quickly key evidence is provided by an outside body. It states that the complainant and the subject Member will be advised of the deadline for conclusion of the investigation. The revisions state that if the Investigating Officer finds that the deadline cannot be met as their investigation progresses, they must seek the written consent of the Monitoring Officer to amend the Investigation Plan to extend the deadline.

#### 5.12 Decision of the Hearings Sub-Committee – (paragraph 10)

An addition to the Arrangements has been made to state that at the conclusion of the Hearing (or as soon as reasonably practicable thereafter and subject to any adjournment), the MO shall prepare a formal decision notice in consultation with the members of the Hearings Sub-Committee. The decision notice will be agreed and signed by all Sub-Committee Members and a copy will be provided to the complainant, the Subject Member, the Investigating Officer, the Independent Person and the Town/Parish Council where the Subject Member is a Town/Parish Councillor. The decision notice will be made available for public inspection the next working day following the end of the Hearing (or as soon as reasonably practicable after the Monitoring Officer has prepared it). The decision will be reported to the next convenient meeting of the Democracy and Standards Committee and of the Council.

#### 5.13 Detailed Procedure Documents – (paragraph 19)

These Arrangements deal with how complaints are handled, but various procedures will sit beneath these Arrangements to address the pre-hearing process, Hearing process, and review Panel process. They will also be accompanied by flowcharts for ease of understanding. It is not proposed the detailed procedures and flowcharts form part of the Arrangements requiring Council approval, but these will sit outside the Arrangements and will be approved by the MO in consultation with the Chair of the Democracy and Standards Committee.

5.14 The Arrangements were originally drafted addressed to the Complainant. The draft Arrangements have been changed so that they are not addressed to any one particular party, because the information contained within them is equally relevant to Subject Members.

## **7. Issues and Choices**

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7.1 Revised draft Arrangements are attached as Appendix 2 for the comment and approval of the Committee, for onward referral to Full Council for approval.

- 7.2 The Committee can choose to accept the proposed amendments, suggest variations to the proposed amendments or not accept the proposed amendments. However, the revised Arrangements have been drafted following good practice and to ensure compliance with legislation.

## **8. Implications (including financial implications)**

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### **8.1 Resources and Financial**

- 8.1.1 There are no financial implications arising directly as a result of amending the Member Complaints Procedure.

### **8.2 Legal**

- 8.2.1 The Localism Act 2011 requires the Council to have a Code that deals with the conduct that is expected of Members and co-opted Members of the authority when they are acting in that capacity.
- 8.2.2 The Council is also required to have in place arrangements under which allegations that the Code of Conduct has been breached can be investigated and under which decisions on allegations can be made. The arrangements adopted by the Council also apply to allegations that Town/Parish Councillors have breached the relevant Town/Parish Council Code of Conduct.
- 8.2.3 The Member Complaints Procedure (the Arrangements) is required to take into account common law and other statute, including the right to access to information and the provisions relating to a fair hearing in the Human Rights Act 1998.

### **8.3 Risk**

- 8.3.1 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.

### **8.4 Consultation**

- 8.4.1 Consultation will be undertaken with this Committee prior to recommendations being submitted to Council.

### **8.5 Consideration by Overview and Scrutiny**

- 8.5.1 Not applicable to this report.

### **8.6 Climate Impact**

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

### **8.7 Community Impact**

- 8.7.1 There are no specific community impacts arising from the report`.

### **8.8 Background Papers**

- 8.8.1 None

**End of report**