

Committee	STANDARDS COMMITTEE	Item No	
Report Title	REVIEW OF PROCEDURE FOR HANDLING COMPLAINTS OF BREACH OF THE MEMBER CODE OF CONDUCT		
Ward			
Contributors	HEAD OF LAW		
Class	Open	Date	26 March 2014

1 **Summary**

This report sets out the key features of the existing procedure for handling complaints of breach of the Member Code of Conduct (the Code), summarises how it has been applied and asks the Committee members whether they wish to amend the procedure.

2 **Purpose**

The purpose of the report is to ensure that the procedure for investigating complaints of breach of the Code is fit for purpose.

3 **Recommendations**

That the Committee:

- 3.1 note the contents of the procedure for handling complaints of breach of the Code:
- 3.2 note how it has been applied to date: and
- 3.3 consider whether any changes to the procedure are needed, and if so what.

4 **Background**

- 4.1 Prior to the implementation of the Localism Act 2011, the procedure for handling complaints of breach of the Code was largely prescribed in law, and until the Localism Act took effect, the Council's procedure complied with those legal provisions. Many local government commentators considered the legal requirements cumbersome, and research conducted by the now defunct body 'Standards for England' demonstrated that despite the detailed proscriptive and expensive procedure, there were relatively few findings of breach. Where such findings were made, the breach was often not of sufficient gravity to carry a significant sanction.

4.2 With the introduction of the Localism Act 2011, the Government made wide ranging changes to the ethical framework for local authorities. In particular it changed the statutory requirements of the Code, the most significant of which was to make failure to declare a disclosable pecuniary interest, or to participate in a decision notwithstanding a disclosable pecuniary interest, a criminal offence. By contrast, lesser breaches now do not carry any statutory sanction. Local authorities were given the power to build on the statutory minimum elements in its local Code, and to investigate complaints of breach locally. Standards for England, the national body with responsibility for handling the most serious allegations of breach was abolished, and local authorities were given wide discretion to devise their own procedures for handling complaints of breach of the Code.

4.3 On 28 June 2012 the Council agreed the Code which is currently in force in Lewisham, and on the same date the Council agreed the procedure which now appears at Appendix 1. Key features of the procedures are as follows:-

- (a) that complaints be referred to the Monitoring Officer in writing.
- (b) that where the Monitoring Officer thinks it appropriate, she may try to resolve the matter informally by discussion with both the complainant and the member concerned or otherwise.
- (c) where this cannot be achieved or where the Monitoring Officer thinks it appropriate that a formal investigation take place, the Monitoring Officer may investigate the complaint personally or appoint another person to do so on her behalf.
- (d) the Monitoring Officer or the person appointed by her to investigate the complaint will produce a report of their investigation
- (e) Once the Monitoring Officer or the person appointed by her to investigate the complaint has completed their investigation whether or not they are of the view that a breach of the Member Code of Conduct has occurred, they will send a copy of their report and all supporting documentation to the Independent Person .
- (f) the Independent Person will review the documentation sent by the Monitoring Officer and any further documentation received from the member concerned and produce a report for the Standards Committee.
- (g) A sub committee of the Standards Committee will consider the Monitoring Officer report, the report of the Independent Person and any written representations made by the member concerned.
- (h) At their own discretion the sub committee of the Standards Committee may call the member concerned, the Monitoring Officer and/or the person appointed by her to investigate the complaint, and the Independent Person and any other person they deem necessary to

answer their questions should they choose to do so.

- (i) The sub committee of the Standards Committee will make a decision as to whether the Code of Conduct has been breached and if so what action to take in respect of that breach.
- (j) If the allegation is proven, the member will have a right of appeal to another sub committee of the Standards Committee. Their decision will be final.
- (k) if the allegation appears to relate to failure to register or declare disclosable pecuniary interests, or to participation in the consideration of a matter where the member's interest precludes such participation, such breaches may result in prosecution. In appropriate circumstances such matters may be referred to the police at any time, at which point the Council's investigation may cease until the police investigation is complete.

5 The procedure in practice

- 5.1 There have been three allegations of breach since introduction of the existing procedure. All of these allegations were made by a member against another member. Two were made by one member and these refer to closely related incidents – Case A; and the other was also made by a different member against another – Case B.

Case A

- 5.2 The complaint was made in writing. It appeared to the Monitoring Officer (M.O.) that in this case, informal resolution was not appropriate, as the complainant did not agree to it and wanted an investigation to take place. Applying the criteria set out in the procedure by reference to which a decision is made whether or not to investigate, the M.O. decided at initial assessment stage that the complaint was sufficiently serious to warrant investigation and that it was in the public interest to investigate. There was sufficient information on which to commence an investigation.
- 5.3 The M.O. interviewed the member concerned in the presence of a note taker and also interviewed the witnesses. She wrote a report which was forwarded to the Independent Person (I.P.) and the member concerned. The I.P. prepared her report which concurred with that of the M.O.
- 5.4 The member concerned did not attend the Sub-Committee meeting where the matter was considered, though invited to do so. The Sub Committee did not make any finding of breach, but did recommend training for the member concerned and that he should not participate in licensing decisions until he had completed that training. Those recommendations were complied with.

Case B

5.5 The complainant referred an allegation to the M.O. about another member that referred to the action of, and messages sent by the member concerned in a private capacity whilst not on Council business. The M.O. conducted very preliminary enquiries in order to be able to apply the criteria for initial assessment. In the course of those preliminary enquiries, it transpired that the person with capacity to consent to the action and message had given it and so the basis for the complaint fell away. The M.O. informed the complainant of this fact.

6 Other authorities

6.1 Officers have conducted some research into a sample of the procedures used elsewhere. There is no set pattern and there is a wide range of practice. For example, some authorities have introduced procedures that are very bureaucratic, and tantamount to an adversarial court hearing in all cases coming before the committee. In others, the procedures appear to be ill defined and ad hoc. Some do not publicise their procedures

6.2 A small number of authorities involve their Independent Person at the initial assessment stage in the decision whether to investigate. This is not an approach which officers would recommend as it is open to the criticism that by forming an opinion at that early stage, (particularly if it is to proceed to investigate), the Independent Person cannot be truly independent if and when a Monitoring Officer report is submitted for their review. For this reason it is not proposed that this be adopted in Lewisham.

6.3 Officers are of the view that the procedure in Lewisham seems generally to strike the right balance. The principles underlying the procedure in Lewisham are that it be fair, simple, flexible and easily understood by all involved in it. Officers would advise against a more rigid or complicated procedure which is not only likely to be more cumbersome, but also resource intensive. That said there is no room for complacency and there are a number of areas in which the committee is invited to consider whether amendment might be appropriate.

7 Suggestions for possible amendment to the procedure

7.1 Currently, there is no reference in the procedure to the standard of proof required for a finding of breach of the code to be made out. Though the standard would clearly be on a balance of probabilities (as opposed to beyond reasonable doubt as in criminal cases) this may not be understood by everybody involved in the process. It is suggested that it would be a useful addition to make the procedure clearer to everybody. If this is accepted, the procedure could be amended as set out in Appendix 2 at para 15

7.2 It would also focus the mind of those involved in the process if more time limits were explicit in the procedure for steps in the process. Whilst it is important to allow flexibility where investigation is protracted or where

circumstances are particularly complicated, it might be sensible to provide timings that normally apply, so that if possible, slippage can be avoided. If the committee endorses this approach then the procedure could be amended as set out in Appendix 2 paragraph 3 and 15.

- 7.3 It is not explicit in the procedure that the Sub-Committee may make recommendations for other action, despite the fact that they make no finding of breach, as in Case A. Clearly in some cases, though member action may be ill-advised, it may fall short of a formal breach of the Code. In such circumstances, it would be sensible for there to be no doubt that it is within the Sub-Committee's powers to require other action (e.g. training, changes to procedures) despite not making any finding of breach. Were the committee to consider this appropriate, the amendments set out in Schedule 2 Paragraph 18 could be made.
- 7.4 Apart from the changes referred to in paragraphs 7.1 – 7.3 above, officers suggest that because experience of use of the procedure is limited because there has not been a lot of referrals under the procedure, and to date particular problems have not emerged, that members of the Committee might want to bring this matter back for review in 12-18 months to see whether significant amendments are required at that stage

8. Financial Implications

There are no specific financial implications arising from this report.

9. Legal Implications

- 9.1 The arrangements for handling complaints of breach of the Code are consistent with the duties and powers in the Localism Act 2011.
- 9.2 It is noteworthy that for breaches of the Code which do not relate to those for which prosecution is a sanction, there are no special sanctions available to the Council or its Standards Committee. They will be limited to censure, publicity, and in very limited circumstances certain other actions.
- 9.3 Article 6 of the European Convention on Human Rights incorporated into national law by the Human Rights Act 1998 enshrines the right to a fair hearing. Officers advise that this requirement is met by the procedure for handling allegations of breach as it stands which also fulfils the requirement for any hearing to comply with the rules of natural justice. If amendments are made as set out in Appendix 2, this would remain the case.
- 9.4. Members are reminded of their duty under the public sector equality duty set out in Section 149 of the Equality Act 2010 to have regard to the need to eliminate discrimination and promote good relations between those with protected characteristics and those without such characteristics. Officers have not identified any specific equalities implications arising from this report.

10. Crime and Disorder Implications

- 10.1 There are no specific crime and disorder implications, save to note that it is a criminal offence not to declare disclosable interests in the Register of Members' Interests. Participation in consideration of a matter in which a member has a disclosable interest is also liable to prosecution.
- 10.2 The entire Code and the procedure to handle complaints of breach are designed to promote ethical behaviour of the highest standard, to promote public confidence and reduce the prospect of improper behaviour.

11. **Environmental Implications**

There are no specific implications arising.

For further information about this report please **contact Kath Nicholson**, Head of Law on 0208 314 7648