

TITLE	Amendments to the Councillor Complaints Handling and Hearings Process
FOR CONSIDERATION BY	Standards Committee on 22 October 2013
WARD	None Specific
STRATEGIC DIRECTOR	Susanne Nelson-Wehrmeyer, Director of Legal and Electoral Services

OUTCOME / BENEFITS TO THE COMMUNITY

A robust and fair Councillor complaints process that is efficient to administer.

RECOMMENDATION

That the Standards Committee recommend the adoption of the proposed changes to the process for considering Councillor Complaints and Hearings Process as set out in Appendix 1 to the Constitution Review Working Group and Council.

SUMMARY OF REPORT

In light of further experience of operating the agreed process for the consideration of complaints against Councillors and hearing process a number of amendments are proposed as set out in Appendix 1.

This includes the streamlining of the process to be followed by the Monitoring Officer in the event of an investigation concluding that a breach of the Code of Conduct has occurred, the deletion of the previous pre-hearing process and simplification of the hearings process itself to reflect common practice in other Council hearings and tribunals.

Background

The current Wokingham Borough Council Code of Conduct, process for the consideration of complaints and hearings process was agreed by the Council in July 2013 in accordance with the changes to the standards and ethical regime for Councillors resulting from the provisions of the Localism Act.

At that time many of the provisions of the previous national Standard Board regime including the prescribed process for hearings were continued into the new system on a pragmatic basis. However, in light of the experience of the operation of the new system and the consideration of a recent complaint that involved a hearing, it is felt necessary to make changes to streamline the process to make it more efficient.

Analysis of Issues

The proposed changes are set out in the attached Appendix 1- (amendments shown in track changes).

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil	Nil	Revenue
Next Financial Year (Year 2)	Nil	Nil	Revenue
Following Financial Year (Year 3)	Nil	Nil	Revenue

Other financial information relevant to the Recommendation/Decision

N/A

List of Background Papers

Localism Act
Section 9 of the Wokingham Borough Council Constitution – Ethics and Corporate Governance.

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9.1.12 Process for Dealing with Misconduct Complaints

9.1.12.1

The Localism Act 2011 requires the Council to adopt arrangements for dealing with complaints of breaches of the Code of Conduct by either Borough Council Members, Town/Parish Council Members or co-opted members of any of these bodies and such complaints can only be dealt with in accordance with such arrangements.

9.1.12.2

The following is the process that will be followed for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

9.1.13 Receipt of Complaint

On receipt of a complaint the Monitoring Officer shall, subject to consultation with the Independent Person and the Chair of the Standards Committee, have delegated authority to decide whether the complaint:

- a) can be resolved informally i.e. by mediation with the two parties before making a decision on whether the complaint merits formal investigation;
- b) requires investigation;
- c) should be referred to the Standards Committee;
- d) no further action should be taken.

9.1.13.1

The Monitoring Officer will inform the complainant, normally within 14 working days of receipt of a complaint, of how the complaint will be dealt with and the reason for that decision.

9.1.13.2

Following receipt of a complaint the Monitoring Officer will inform the relevant Member that a complaint has been received about them and the nature of that complaint as soon as reasonably practical. The name of the complainant will be disclosed to the Member who is the subject of the complaint unless the complaint was made anonymously to the Monitoring Officer or the complainant has requested anonymity. A request for anonymity will only be agreed by the Monitoring Officer if they are satisfied that to do so is overwhelmingly in the public interest and after the view of the Independent Person and the Chair of the Standards Committee have been obtained.

Once a decision has been taken by the Monitoring Officer in consultation with the Independent Person and Chairman of the Standards Committee on what action to take regarding the complaint, the Member and the complainant will be informed of the outcome as soon as possible by the Monitoring Officer in writing.

9.1.13.3 Anonymous Complaints

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations individuals can report their concerns regarding a Member anonymously,

but should be aware that these concerns will carry less weight. Also the disclosure may not be sufficiently detailed to provide a successful investigation.

The Monitoring Officer is authorised, subject to consultation with the Independent Person and the Chair of the Standards Committee, to take any of the actions set out in Rule 9.1.13 in respect of an anonymous complaint.

9.1.13.4 Town/Parish Complaints

If the complaint relates to a Town/Parish Member the Monitoring Officer will also inform the relevant Town/Parish Council clerk of the complaint and seek the views of the Town/Parish Council clerk before deciding whether the complaint merits formal investigation. The Clerk will also be informed of the Monitoring Officer's decision.

9.1.13.5 Report to the Standards Committee

The Monitoring Officer will provide a report to the Standards Committee, on a quarterly basis, which would contain the following: the number and nature of complaints received; progress on any investigations and associated costs; and identify areas where training or other action might avoid further complaints. However the name(s) of the Member(s) will not be disclosed.

9.1.14 No Breach of Code - Finding on Investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct the Monitoring Officer shall have delegated authority to decide not to take any further action. The Monitoring Officer can, following consultation with the Independent Person and the Chair of the Standards Committee, decide to refer the matter to the Standards Committee if he/she feels that it is appropriate.

Once the no breach of Code finding has been reached the Monitoring Officer will advise the complainant, the Member under investigation and the Town/Parish if applicable that he/she is satisfied that no further action is required and will provide a copy of the Investigating Officer's final report.

Copies of all investigation reports will be provided to the Independent Person and the Chair of the Standards Committee and a summary of each such investigation will be provided to the Standards Committee for information.

9.1.15 Breach of Code - Finding on Investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct the Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards Committee, can:

- a) decide to seek a local resolution to the complaint eg the relevant Member acknowledging their conduct was unacceptable and offering an apology and/or other remedial action e.g. submitting to training and or mediation. ~~This course of action will only be followed if the complainant is satisfied with the outcome.~~ The Monitoring Officer will provide a summary report on the outcome of the investigation and the resolution to the Standards Committee for information. However no names will be disclosed; or:
- b) refer the Investigating Officer's report to a Hearings Panel, constituted from members of the Standards Committee, which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, what action, if any, is to be taken in respect of the Member. The procedure that will be followed by the Hearings Panel is set out below.

9.1.16 Procedure for Local Hearings

9.1.16.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to establish and/or convene the Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three or five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Member then a co-opted Town or Parish Council member of the Standards Committee will also be part of the Hearings Panel. The Independent Person will be able to attend any Hearings Panel and give advice to it.

The purpose of the Hearings Panel is to review, upon the request of the Monitoring Officer and the Chair of the Standards Committee, a complaint that has been received which alleges that either a Member of the Authority/Member of a Town or Parish Council within the Wokingham Borough Council area has failed to comply with the relevant authority's Code of Conduct. The Hearings Panel will usually hear a complaint within two months of the date that the Monitoring Officer received the final investigation report.

9.1.17 Pre-Hearing Process

~~Prior to the hearing being held the Monitoring Officer will write asking the Member who is the subject of the complaint to give his/her response to the Investigating Officer's report in order to identify any areas of contention that may need consideration or further investigation and thereby, if possible, allow them to be resolved before the hearing itself.~~

~~The pre-hearing process should identify:~~

- ~~a) areas where the subject of the complaint disagrees with any of the findings of fact in the investigation report;~~
- ~~b) whether those disagreements are likely to be relevant to any matter the hearing needs to decide; and~~
- ~~c) whether evidence about those disagreements will need to be heard during the hearing.~~

9.1.178 Pre Hearing Process and Date of the Hearing

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the subject of the complaint.

Once the date for the Hearings Panel has been arranged the subject of the complaint will be notified and asked if they:

- a) wish to attend the hearing and can do so on the date notified;
- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to provide written evidence to the hearing;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel will have the final decision on how many witnesses may reasonably be needed.

9.1.189 The Hearing

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

9.1.189.1

The Hearings Panel will be held in private and this will be confirmed at the hearing.

9.1.189.2

The procedure for the Hearings Panel will be as follows:

- a) Confirm the names and status of those attending. If the subject of the complaint is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Member has provided any reasons why they would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Member or adjourn the hearing to another date.
- b) The Investigating Officer, or in his/her absence the Monitoring Officer or their representative, shall present the Investigating Officer's report having particular regard to any points of difference identified by the subject of the complaint and why they have concluded, on the basis of their findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary in order to substantiate his/her findings.
- c) The subject of the complaint will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Hearings Panel and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- e) The subject of the complaint will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the subject of the complaint, and any witnesses, questions relating to the representations made to the Hearings Panel.
- g) Members of the Hearings Panel and the Monitoring Officer will then have the opportunity to ask the subject of the complaint, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The subject of the complaint will then be given the opportunity to sum up
- j)h) The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer be asked to either seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.

- i) ~~If the Hearings Panel are satisfied that they have sufficient evidence to come to a considered conclusion on the matter they will then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigating Officer's report. The Clerk to the Hearings Panel will join the Hearings Panel during its deliberations.~~ k) If the Panel is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the subject of the complaint and any witnesses that might be present will be asked to leave at this point, but the Clerk, Independent Person and Monitoring Officer will remain.
- l) The Panel will then determine the complaint on the balance of probabilities test. If the Panel determine that there has been a failure to follow the Code the Chairman shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Member who has failed to follow the Code of Conduct.

- ~~— The Hearings Panel may at any time return to the main hearing room in order to seek additional evidence from any of the parties or to seek legal advice from the Monitoring Officer, or their representative. If the Hearings Panel requires any further information it may adjourn the hearing and instruct the Investigating Officer or request the subject of the complaint to produce such further evidence within a specified amount of days.~~
- j) ~~Once the Hearings Panel has reached a conclusion on the matter it will return to the main hearing room and the Chairman will state the Panel's principal findings of fact and their determination as to whether the subject of the complaint has failed to comply with the Code of Conduct as set out in the Investigating Officer's report.~~

9.1.2020 Finding of the Hearings Panel

9.1.20.1 Finding of Non Failure to follow the Code of Conduct

If the Hearings Panel determine that the subject of the complaint has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a ~~non failure~~non-failure to follow the Code of Conduct, will be provided to the subject of the complaint, the Investigating Officer, the Monitoring Officer, the Independent Person but will not be published on the Council's website or otherwise disclosed.

9.1.20.2 Finding of Failure to follow the Code of Conduct

~~If the Hearings Panel determine that the subject of the complaint has failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the following process will be followed:~~

- a) ~~The Chairman shall ask the Investigating Officer and/or Monitoring Officer what action they believe should be taken against the Member who has failed to follow the Code of Conduct.~~
- b) ~~The Member will then have the opportunity to respond to the Investigating Officer and/or Monitoring Officers' comments and make any other representations to the Hearings Panel.~~
- c) ~~The members of the Hearings Panel will then have the opportunity to ask questions of the Investigating Officer, Monitoring Officer or Member in order to enable them to make an informed decision.~~
- d) ~~The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.~~
- e) ~~If the Hearings Panel are satisfied that they have sufficient evidence to come to a considered conclusion on the matter they will then retire to another room to consider in private what action, if any, should be taken against the Member. The Clerk to the Hearings Panel will join the Hearings Panel during its deliberations.~~

If the Hearings Panel determine that the subject of the complaint has failed to follow the Code of Conduct then ~~f) — The Hearings Panel can decide to take any of the following actions: against a Member who has failed to follow the Code of Conduct:~~

- ~~ai) — Report its findings to Council (or the relevant Town/Parish Council) for information; Formally censure the relevant Member in writing for their failure to follow the Code of Conduct and/or;~~
- ~~ibi) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council;~~
- ~~ciii) Recommend to the Leader of Council that the Member be removed from the Executive, or removed from particular portfolio responsibilities;~~
- ~~div) Instruct the Monitoring Officer to (or recommend that the relevant Town/Parish Council) arrange training for the Member;~~
- ~~ev) Remove (or recommend to the relevant Town/Parish Council that the Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);~~
- ~~vfi) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or e-mail and internet access;~~
- ~~gvii) Exclude (or recommend that the relevant Town/Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or~~
- ~~hvi) Report its findings to the Crown Prosecution Service in respect of a Member that has been found to have committed an offence under Rule 9.2.13.~~

9.1.20.3 Publication of the Decision

~~g) — Once the Hearings Panel has made a decision on what action is to be taken against the Member it will return to the main hearing room. The Chairman will state the Panel's decision on what action, if any, will be taken against the Member, the principal reasons for the decision and, if applicable, when the action shall take effect.~~

h) — As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel. A copy of the decision notice will be sent to the complainant, the Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, published on the Council's website and the decision will be reported to the next convenient meeting of the Council.