

# Agenda Item 8.

<b>TITLE</b>	<b>Revised Process for the Consideration of Code of Conduct Complaints</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 29 July 2015
<b>WARD</b>	None Specific
<b>DIRECTOR</b>	Andrew Moulton, Head of Governance and Improvement

<b>OUTCOME / BENEFITS TO THE COMMUNITY</b>
--

To have a clear and open Councillor complaints process
--

<b>RECOMMENDATION</b>
-----------------------

To recommend the revised complaints process at para 9.1.13 to 9.1.16 of the Constitution to the Constitution Review Working Group for adoption by the Council.
--

<b>SUMMARY OF REPORT</b>
--------------------------

To review what was requested at the last Standards Committee with regard to the complaints process, to make changes to the current draft and to report back on information received since then.
---

## **Background**

1. At the last Committee meeting, Members expressed a concern that Members who are found to be in breach of the code, but who are dealt with via the informal process by the Monitoring Officer, should not have their names published. Paragraph 9.1.14.2 has therefore been altered to reflect this concern.
2. Members also asked that Members be notified as soon as possible when a complaint is received against them. Paragraph 9.1.13.2 has been amended slightly to provide that Members be informed as soon as possible once a complaint has been received against them.
3. There were some typographical errors in the draft complaints process and these have been addressed.
4. Members also asked that officers look into provision of an appeal process and this was done by making enquiries of other unitary authorities, and also seeking advice from Paul Hoey, who is an expert on Members Code of Conduct matters.

## **Analysis of Issues**

The first problem with having an appeals process is that the Government, in repealing the old framework and introducing the new one via the Localism Act 2011, specifically omitted a statutory appeals process. The thought behind this was that Councils wanted a 'light touch' process, and in accordance with that, removed the more serious sanctions such as suspending a Councillor for a period of time. The idea, therefore, of an appeal in the current regime goes against the spirit of the legislation.

None of the other Unitary authorities have an appeal mechanism, for the reasons described above, and we could not find that there was one for Berkshire Fire and Rescue. However, some non unitary authorities did attempt an appeal mechanism against a Monitoring officer decision. We are told by Paul Hoey that he has yet to come across a single case where their Standards Committee disagreed with the Monitoring Officer's decision. He further reported that he had seen councils remove their appeals process because it was adding nothing to the process and merely delaying matters. He recommended instead that Standard Committees do an annual audit of all MO decisions, with more facts than is presently being reported to this Committee, so that they can reassure themselves that the MO took a reasonable decision and that the process was being applied correctly. This would be done in a way that would not raise false expectations of any prospective complainant (whether a Subject Member or a complainant), but simply to make sure the system was running as it should be. If the Standards Committee had any concerns, they could adjust the process in some way.

Another issue with having an appeal mechanism is that if a Subject Member is found not to be in breach of the Code, and an appeal is received, that Subject Member will be left uncertain for possibly a month or two until the appeal is determined. This

may cause unnecessary stress to Subject Members. Such stress would not, arguably be caused to a complainant in the same way. This does not 'sit' well with the Government's wish to have a lighter complaints process.

Finally, there will be an added cost to the Code of Conduct process in terms of more officer time, reports, time spent by panel members at another hearing, as well as the time incurred by a Subject Member.

If this Committee does, despite these arguments against an appeal mechanism, wish to have one designed into the complaints process, it should be designed in a way that is as simple as possible. The following is a suggested procedure:

- a) That someone independent of the original process review the application for appeal, and make a decision whether there is merit in having an appeal, or alternatively determine that there are no grounds for an appeal. Only a Breach or No Breach decision should be open to appeal, the sanction should not be open to appeal
- b) That if there is a decision that the matter should go forward to appeal, that only the issues which are disputed are looked into.
- c) That a separate panel of three members holds a hearing to look into those disputed matters.

#### **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)	0	0	0
Next Financial Year (Year 2)	0	0	0
Following Financial Year (Year 3)	0	0	0

#### **Other financial information relevant to the Recommendation/Decision**

None

#### **Cross-Council Implications** (how does this decision impact on other Council services, including properties and priorities?)

None

#### **Reasons for considering the report in Part 2**

<b>List of Background Papers</b>
----------------------------------

Draft of para. 9.1.13 of the constitution (the complaints process)
--

<b>Contact</b> Mary Severin, Deputy Monitoring Officer	<b>Service</b> Governance and Democratic Services
<b>Telephone No</b> 0118 974 6539	<b>Email</b> mary.severin@wokingham.gov.uk
<b>Date</b> 20 <sup>th</sup> July 2015	<b>Version No.</b> 1