

Hoey Ainscough Associates Ltd

Supporting Local Governance

WOKINGHAM BOROUGH COUNCIL PROCESS FOR CONSIDERING CODE OF CONDUCT COMPLAINTS

INTRODUCTION

1. We were asked to carry out a review of the Council's current Process for Considering Code of Conduct Complaints and make any recommendations for change.
2. This review is based on our experience of having supported some 400 authorities on standards-related issues and benchmarking the Wokingham process against existing good practice and the recommendations made by the Committee on Standards in Public Life on the Local Government ethical standards regime.

OVERALL CONCLUSION

3. The Localism Act does not specify how cases are to be handled – it simply says councils must make arrangements for handling complaints (with the principal authority handling parish council complaints) but does not specify how to discharge that duty. The Wokingham process is broadly in line with processes in most authorities and represents good practice in many aspects. In a nutshell the process is broken down into key stages:

- a) Receipt and acknowledgement of a complaint – when a complaint is received by the Council the Monitoring Officer writes to the complainant to acknowledge receipt of the complaint and to provide them with a copy of the complaints process. This is standard practice in most authorities.

The Monitoring Officer also informs the Subject Member of the complaint and asks them for their initial comments on the complaint. Again this is standard practice.

- a) Initial assessment – when a complaint is received by the Council the initial assessment of the complaint is done by the Monitoring Officer (MO) in

consultation with an Independent Person (IP) and the Chairman of the Standards Committee. While some authorities involve the chair of the standards committee at this stage, most only consult an IP. In determining whether a complaint should proceed the MO applies a number of criteria which are set out in the process. This is standard practice in most authorities.

If a complaint meets the criteria the MO then has the discretion to decide what to do with the complaint – that is, to investigate formally, to seek an informal resolution or to take no further action. In doing so he will consult with an Independent Person and the Chairman of the Standards Committee– again this is standard practice apart from the consultation of the Chairman.

The MO also has the discretion to refer the complaint to the Standards Committee for a decision on what action to take. This is standard practice in most authorities.

- b) Informal resolution – where the MO decides that an informal resolution is appropriate the Subject Member can be asked to take part in mediation, make a written apology, attend training and/or correct an entry in the Member’s register of interests. These options are typical of the types of informal action offered by most authorities. If a complaint is resolved informally there is no possibility of the matter being investigated.
 - c) Formal investigation – where a case is sent for formal investigation, the MO will instruct an Investigating Officer (IO) and notify the relevant parties. At the end of the investigation, if the IO decides (and the MO agrees) that no breach has in fact occurred the MO can close the file. If the conclusion is that a breach of the Code may have occurred the MO in consultation with the IP and Chairman of the Standards Committee will decide whether to resolve the matter informally or refer the IO’s report to a Standards Committee Hearings Panel for a local hearing. This is all standard practice apart from the consultation of the Chairman.
 - d) Local hearing – a Panel is convened to hear the case, consider whether there has been a breach and, if so, what if any sanction should be imposed. This is again standard practice.
4. The Wokingham process in its headlines is in line with existing good practice and allows for efficient and proportionate disposal of complaints. We do however have a number of comments on some of the detail within the process which we will set out below. Our main concerns relate to the way the Hearings process is run and also the consultation of the Chairman of the Standards Committee at the earlier stages of the process.

5. We will deal with each of our concerns below and welcome the Standards Committee's view to enable us, as appropriate, to prepare an updated procedure.

The document

6. Our review was based upon the document called 'Process for Considering Code of Conduct Complaints' which is available online but not on the main Council website pages. Instead, there is a link to a document called 'Guidance notes on making a complaint about an elected Councillor's conduct' which is in effect the public face of the process and is primarily written to explain to the public how they can make a complaint and what can happen. While it is helpful to make a simplified version of the process available for the public it would also be helpful and transparent to make the full version of the process readily available to all.
7. **We recommend that the more detailed process document is added to the Council website along with a copy of the Code of Conduct.**

Receipt and acknowledgement of a complaint

8. While acknowledgement of receipt of complaint is standard practice in most authorities, many also set a timescale for sending the acknowledgement such as within 3 working days of receipt of the complaint. Having spoken to the Monitoring Officer we understand that they already work to an internal timescale of acknowledgement of receipt within 3 working days.
9. **We think that it would be helpful to formalise this timescale by adding it to the process.**
10. The Subject Member is told they have a complaint against them and they are asked for their initial comments on the complaint. This is common in most councils and can often be helpful to provide context and give an early indication as to whether a matter could be resolved amicably. However, in many authorities submission of comments by the Subject Member has a timescale attached which helps to keep the process moving and helps to minimise delays. Furthermore, in the Wokingham process the MO has the option to pass any comments received from the Subject Member back to the complainant for clarification. We think that this runs the risk of in effect starting an investigation before the initial assessment decision has been taken and could slow down the process unnecessarily at a very early stage.
11. **We recommend that the Subject Member should be given a timescale within which to provide comments and if no comments are received within that timescale the MO should proceed with their assessment without the comments. Furthermore, we don't think that the MO should**

go back to the complainant for clarification in relation to any comments received by the Subject Member, instead this can form part of the investigation if necessary.

12. For a parish or town council case the process says that the MO will also seek the clerk's views at this stage. As it currently stands it is not clear what the clerk is being asked to comment on nor what weight is to be given to those comments.

13. We think this needs clarifying to say that the clerk's view is being sought on factual matters (for example was the councillor present at the meeting complained about) rather than matters of opinion.

Initial assessment

14. The initial assessment of the complaint and the decision as to what action to take in respect of it are carried out by the MO in consultation with an IP and the Chairman of the Standards Committee. We think that it is healthy for the MO to consult another person when taking these decisions, however, in our view consultation with the IP should be sufficient. The IP is by definition independent of the Council and can offer an impartial view of the matter, free from suspicion of political influence. Furthermore, this stage of the process should be completed quickly and efficiently and the more people involved, the longer it will take.

15. We recommend that the MO should only consult the IP when taking the initial assessment decision and deciding on a course of action.

Informal resolution

16. In line with the vast majority of authorities Wokingham offers the option of resolving complaints informally, both instead of a formal investigation or after an investigation has taken place when the Investigating Officer has decided that a breach of the Code may have occurred and the MO thinks that it would be best dealt with through informal resolution rather than going to a hearing. We think that the option of informal resolution is sensible and helpful. Where informal resolution has been taken at the earlier stage the process is silent on what happens if the action is deemed to have failed, however, the guidance notes on making a complaint available from the Council website state that if a complaint is resolved informally there is no possibility of the matter being investigated. We can envisage circumstances where informal resolution may not be successful such as where a Subject Member refused to apologise. Therefore it can be helpful to reserve the option to refer a complaint for investigation where informal resolution has been deemed to have failed.

17. We recommend that the MO should be able to refer a complaint for investigation where they consider that informal resolution has failed. They should consult the IP when taking this decision.

18. In cases where informal resolution has followed an investigation and finding of breach of the Code by the Investigating Officer the process states that the Subject Member's name will not be disclosed. While we can understand why that might be appropriate where informal resolution has taken place instead of an investigation as no finding of fact has been made in respect of the alleged breach, in cases where a breach has been found through investigation we think that it is important that the Subject Member's name is disclosed in the interests of transparency and justice.

19. We recommend that the Subject Member's name is disclosed where the Investigating Officer has found a breach of the Code following an investigation and the case has been referred for informal resolution.

Hearings

20. We have two areas we want to address in the hearings process, these are set out below:

Confidentiality and political proportionality

21. The process says '*The Hearings Panel will be held in private*'. In our view it is unlawful to have such a blanket statement.

22. Any decision-making body of a council (including any committee set up in order to discharge standards functions under the Localism Act) is to be considered an 'ordinary committee' of the authority. That means for the Panel (as it has decision-making powers in that it can find a breach and impose or recommend a sanction) the same rules apply to it as apply to all other committees of the authority which do not have specific statutory rules applying to them. (An example of a 'statutory committee' was a standards committee under the previous national standards framework as such a committee was mandatory by law and certain rules relating to its constitution, including access to information provisions, had been specified by law but those rules were repealed by the Localism Act).

23. As an 'ordinary committee' there are two particular rules which apply. The first is that the committee must reflect the political balance of the council as a whole unless the council as a body or the parent committee of a sub-committee has resolved to waive that requirement (the so-called 'proportionality rules').

24. The second is that the committee is subject to local government access to information provisions. These are procedural rules set out in law which say that a committee must meet in public but that certain items can be taken in closed session if the information is covered by one or more category of 'exempt information'.
25. If information is deemed to be 'exempt information' the committee must vote on whether the matter be dealt with in private and can decide in actual fact still to hold the meeting in public if they believe it is nevertheless in the public interest to do so.
26. That decision on whether or not to hold the Hearing in closed session must therefore be considered on a case-by-case basis and not as a blanket exemption as set out in the process.
27. The Panel should consider as their first item of business whether or not to hold the meeting in public.
28. That has a number of implications. As the presumption has to be that the meeting will be in public it would need advertising in advance and if appropriate the papers would need to be made available in advance as with other Council meetings unless the officer recommendation was clearly that the matter was to be considered exempt information.
29. The general presumption in most places in our experience has been that a hearing is open to the public. This is on the basis that hearing a case against an elected member would be considered to be in the public interest, particularly given the Government's stated view that the major sanction against any councillor found guilty of wrongdoing is the court of public opinion or the ballot box. How can the public be expected to make an informed decision if they have not been presented with all the evidence?
30. In order to be exempt the matter must fall within one of a small number of categories within legislation. Given the stated public interest you would expect a high threshold to be placed on when a standards issue is dealt with in private – for example, there is a real risk to somebody involved were certain information to come into the public domain, or information disclosed could prejudice other matters.
31. **It is our view that there should not be a blanket presumption towards closed hearings but that each meeting must consider the facts on its merits at the start of proceedings.**
32. **We also note that the process says nothing about the required 'political proportionality' of the Panel. We think the Standards Committee should**

consider whether political proportionality should apply or whether they wish to pass a resolution to waive proportionality of the sub-committee.

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