

**STANDARDS COMMITTEE**

**DATE:** 20 JANUARY 2020

**TITLE OF REPORT** LOCALISM ACT: SECTION 28(6) – ADJUSTMENTS TO CODE OF CONDUCT ARRANGEMENTS FOR DEALING WITH ALLEGATIONS

**Report of:** Monitoring Officer

**1 PURPOSE OF REPORT**

To consider adjustments to the Council adopted Localism Act 2011 Section 28(6) arrangements for dealing with complaints about Councillor conduct.

**2 OFFICER RECOMMENDATION**

That the Committee considers the adjusted Section 28(6) Arrangements for dealing with Allegations attached at Appendix I and recommends that they be adopted.

**3 BACKGROUND**

3.1 The Localism 2011 Act (Section 28) requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made.

3.2 The current Section 28 provisions (ARRANGEMENTS FOR DEALING WITH ALLEGATIONS) was reviewed in March 2019 and adopted by the District Council in April 2019. However operational experience has suggested that the arrangements need some further minor adjustments. Unfortunately, it would seem that third parties are beginning to misuse the process to bring trivial matters as complaints when they themselves are not the subject of any Code of Conduct issue (i.e. they are unrelated third parties). There is also a concern that “complainants” are using the complaints procedure on social media as a tool to tarnish people before any complaint has been investigated. Finally, there is a need to do a slight adjustment to reflect the Ledbury case (R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) to help Parish and Town Council’s deal with their own complaints internally.

**4 CONCLUSION**

4.1 It is important that the credibility of the important process used to monitor the conduct of Councillors is not undermined by triviality. Neither should it become a casual tool for third parties, through social media for example, to tarnish someone’s reputation before a full and proper investigation and assessment has been carried out. It is also important that complaints are not made ‘by proxy’ where the complainant is not the person primarily affected and is complaining about a secondary impact on them, rather than acting on behalf of or with the person directly affected.

4.2 Members have been asked to convey suggested updates to the Monitoring Officer prior to the meeting to aid collation and discussion at the meeting.

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**APPENDIX**

**Appendix I** – draft Arrangements for Dealing with Allegations (Jan 2020)

APRIL 2019

**LOCALISM ACT 2011 SECTION 28 – CODE OF CONDUCT**  
**ARRANGEMENTS FOR DEALING WITH ALLEGATIONS**  
**[the Arrangements]**



**I. MAKING COMPLAINTS**

Any complaint that a serving Councillor (the Councillor) has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer  
Hart District Council  
Harlington Way  
Fleet  
Hants GU15 4AE

Email to: [enquiries@hart.gov.uk](mailto:enquiries@hart.gov.uk)

All complaints must be made in writing. A form for making complaints is available at: <https://www.hart.gov.uk/Councillor-help-advice>. All complaints require the information to be submitted in compliance with the form.

Complaints about the failure of a councillor to declare a Disclosable Pecuniary Interest (DPI) will not be investigated. The failure to declare a DPI could amount to a criminal offence. When such allegations are made the complainant should make the complaint direct to the Police.

Anonymous complaints will also not be investigated, and neither will complaints where the complainant is not the person primarily affected and is complaining about a secondary impact on them, rather than acting with the express consent of person directly affected.

The Council recognises that everyone has a right to a fair hearing. It expects all parties involved to assist it in its investigations by not prejudging any investigation outcome through premature publication of complaint details both in anticipation of or during the course of its investigation. The Monitoring Officer, in consultation with the Chairman of the Standards Committee, may discontinue an investigation if he/she considers that premature publication of complaint details was unfair to the person being investigated.

**2. INITIAL ACTION BY THE MONITORING OFFICER**

On receiving a complaint, the Monitoring Officer may dismiss it without further action where:

- A. The Monitoring Officer, in consultation with an Independent Person appointed under Section 28 of the Localism Act 2011 (IP) considers that:

- i. insufficient information has been submitted at the outset to demonstrate that there has been a prima facie breach of the Code;
- or
- ii. the complaint is based essentially on hearsay evidence and is not supported at the outset by detailed and verifiable supporting evidence;
- or
- iii. the complaint does not relate to behaviour in the Councillor's official capacity as a member of the respective local authority
- or
- iv. the matter complained about is so trivial that it would not be in the public interest to pursue it further;
- or

v. the complainant is

i. anonymous; or

ii. not the person primarily affected and is complaining about a secondary impact on them, rather than acting with the express consent of the person directly affected (for example is a third party who has not been personally directly or directly affected by the matter or has not been caused any personal injustice) (i.e. did not personally suffer any injustice).

vi. It is considered that any investigations has been prejudged by premature publication of complaint details both in anticipation of or during the course of investigation

~~ii. \_\_\_\_\_~~

~~iii. \_\_\_\_\_ It is considered that any investigations has been prejudged any investigation by premature publication of complaint details both in anticipation of or during the course of its investigation.~~

- B. The person complained about is no longer a serving Councillor of the relevant local authority; or
- C. The matter being complained about happened more than 12 months before the complaint was received; or
- D. The matter or issue being complained about came to the complainant's attention ~~notice~~ more than 6 months before the complaint was received.
- E. The complaint is about personnel matters (such as the complainant's employment or disciplinary issues).

The Monitoring Officer will inform the complainant and the Councillor accordingly.

Where the complaint is made by a District Councillor, or an Officer employed by the District Council, against another District Councillor, the complaint will be dealt with as an internal grievance as set out in the District Council's Constitution and will not be dealt with further under this process.

Where the complaint is made by a parish/town councillor, or an Officer employed by the respective parish/town council, against a councillor of the same authority, unless the Monitoring Officer considers that -a matter of overriding public interest is identified, the

Monitoring Officer shall use his/her discretion and may refer the complaint to the respective parish/town council to be dealt with as an internal matter of dispute within the parish/town council. It will not then be investigated further by the Monitoring Officer, ~~as a formal complaint.~~The parish/town council may thereafter deal with the complaint as an internal matter and come to the conclusions as set out in Appendix C.

If the Monitoring Officer does not dismiss the complaint on any of the above grounds, the complaint will be acknowledged and the complainant informed of the procedure to be followed. The Monitoring Officer may ask the complainant for further information or clarification.

The Monitoring Officer will (except in exceptional circumstances where the Monitoring Officer considers that it is in the public interest not to do so) send the Councillor complained about a copy of the complaint and invite the Councillor to submit initial written comments within 10 working days.

The Monitoring Officer will also ask the Councillor any specific questions the Monitoring Officer considers will assist the initial assessment of the complaint.

### **3. INITIAL ASSESSMENT OF THE COMPLAINT**

Initial assessment will, if practicable, take place within 20 working days of receipt of the ~~Councillor's written comments under section 2 above~~complaint.

The decision on the initial assessment will be made by the Monitoring Officer, in consultation with an IP.

Before the Monitoring Officer considers the complaint, the Monitoring Officer will send the IP

- a. A copy of the complaint
- b. A copy of the Councillor's comments in response to the complaint (if available)
- c. Any other information in the Monitoring Officer's possession that he/she considers relevant.

The Monitoring Officer's decision on the initial assessment, with reasons, will be given in writing to the Councillor, the complainant, and the Clerk to the Parish/Town Council (if the complaint was about a Parish/Town councillor). ~~within 20 working days.~~

There will be no right of appeal.

The decision will be published on the District Council's web page.

### **4. DECISION OPTIONS AT INITIAL ASSESSMENT**

The Monitoring Officer, in consultation with the IP, may decide to take one of the following options:

- a) To take no action (Appendix A); or
- b) To attempt to resolve the matter informally between the complainant and Councillor, either in writing, by face-to-face meeting, or by any other method the Monitoring Officer considers appropriate. In this case there will be no formal decision as to whether there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved, the options as set out in Appendix A remain open; or
- c) To arrange a hearing before a Panel of 3 members drawn from the Standards Committee at which the Councillor and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Appendix B. The hearing will form a recommendation as to whether the Councillor breached the Code of Conduct and the Monitoring Officer may act upon any such recommendation.

The Monitoring Officer may also make any recommendations he/she considers appropriate to the Council concerned on procedural amendments that might assist Councillors generally to follow the Code of Conduct and promoting standards.

**NO ACTION** will be taken where any of the following apply:

- A. the Monitoring Officer, in consultation with the IP considers that there is no prima facie evidence that the Code has been breached;
- B. taking into account the nature of the allegation, the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that using public funds to examine the matter further would be disproportionate;
- C. the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- D. the conduct complained about has already been the subject of investigation or enquiry by another public body;
- E. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee considers that there is nothing further to be gained by investigating the matter again;
- F. the Monitoring Officer, in consultation with the IP considers that there is not enough information to take the matter further;
- G. the complaint was made anonymously;
- H. the complainant has requested that their identity be withheld from the Councillor, and the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee considers that the matter cannot reasonably be taken further in these circumstances;
- I. The Councillor has apologised for the action that was the subject of the complaint, and the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee considers that this is sufficient to dispose of the complaint;
- J. The Monitoring Officer, in consultation with the IP considers that the complaint is not about an individually named Councillor but is essentially against the action of the Council as a whole or a group of Councillors (such as a political Grouping) and cannot properly be directed against an individual Councillor(s).
- J.K. The Monitoring Officer, in consultation with the Chairman of the Standards Committee considers that premature publication of complaint details was unfair to the person being investigated.

## **PROCEDURE FOR HEARINGS**

### **GENERAL:**

Hearings will where possible be held within 2 months of the initial assessment decision. It will not comprise a public meeting. All parties involved will be expected to respect the confidentiality of the process so that no party is prejudiced by any premature publication of the complaint or complainant details.

The hearing will be before a Panel of 3 members (one of which must be a Parish Councillor) drawn from the Standards Committee. One of the Panel members will be elected Chairman.

An Independent Person [IP] appointed under Section 28 of the Localism Act 2011 may also be present. His/her views may be requested and considered by the Panel, but by law he/she cannot vote.

The Monitoring Officer or deputy Monitoring Officer will be present as advisor to the Panel. There will normally be no requirement to have a separate legal representative present unless the matter is peculiarly complex. It will be for the Monitoring Officer to determine if a legal representative is either appropriate or necessary.

20 working days ~~30 days~~ notice will be given, and both the Councillor and complainant will be invited to appear. They may present their own case, or they may be represented. However, no representative will be allowed to adopt a formal 'advocacy' role, as this can unnerve the other participants and undermine the principle of equal partners in the discussion.

Both parties may bring witnesses (of a number the Panel considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least 10 working days before the hearing. "Character witnesses" who cannot provide specific evidence on the matter complained about will not be permitted. The cost of any attendance/representation must be borne by the parties concerned.

All written evidence will be circulated to the Panel, the IP, the Councillor and the complainant at least 5 working days before the hearing.

Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.

The Monitoring Officer can speak at any time to advise the Panel on technical matters or ask questions of any party.

### **PROCEEDINGS:**

The Chairman will decide the procedure for the hearing and will reinforce the message that there should be no formal presentation of evidence. The format for the hearing is intended to be informal and will be along the following lines:

- I. The complainant can address the Panel and call witnesses (if any).

2. The Panel may ask the complainant and witnesses questions.
3. The Councillor can address the Panel and call witnesses (if any)
4. The Panel may ask the Councillor and witnesses questions.
5. The complainant may make a closing statement.
6. The Councillor may make a closing statement.

Neither the complainant nor the Councillor (or any of their respective representatives if present) will be allowed to cross examine the other party or any of the witnesses – all comments must put them through the Panel.

The complainant and the Councillor will then leave the room to allow the Panel, the Monitoring Officer and the IP (if present) to deliberate and formulate their recommendations.

The Panel's recommendations will be announced orally as soon as possible.

A written report of the hearing and recommendations, with reasons, will be prepared, usually within 10 working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be published on the District Council's web page at <https://www.hart.gov.uk/Councillor-help-advice>

### **OPTIONS OPEN TO THE PANEL:-**

~~To conclude:~~

~~1. The Councillor did not breach the Code of Conduct;~~

~~or~~

~~2. The Council did breach the Code of Conduct, and that:~~

~~i. No action need be taken – reasons to be given;~~

~~or~~

~~ii. The Councillor should be censured; and one or more of the following:~~

~~a. The findings of the Hearing be reported to Full Council [or to the Parish/Town Council] for information;~~

~~b. Recommendation be made to the Monitoring Officer [or recommend that the Parish/Town Council] that training be arranged for The Councillor;~~

~~c. Recommendation be made to Council [or recommend to the Parish/Town Council] that the Councillor be removed from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish/Town Council];~~

~~d. Recommendation be made to Council [or recommend to the Parish/Town Council] that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or~~

~~e. Recommendation be made to Council [or recommend that the Parish/Town Council] that it exclude the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.~~

The Panel may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist Councillors generally to follow the Code of Conduct and promoting standards.

**DECISION OPTIONS OPEN TO A HEARING PANEL (SEE APPENDIX B) Or  
A PARISH/TOWN COUNCIL DEALING WITH A COMPLAINT AS AN  
INTERNAL MATTER IN ACCORDANCE WITH THE SECTION 2  
PROVISIONS**

To conclude:

1 The Councillor did not breach the Code of Conduct;

or

2 The Council did breach the Code of Conduct, and that:

I. No action need be taken – reasons to be given;

or

II. The Councillor should be censured; and one or more of the following:

a. The findings of the Hearing be reported to Full Council [*or to the Parish/Town Council*] for information;

b. Recommendation be made to the Monitoring Officer [*or recommend to ~~that~~ the Parish/Town Council*] that training be arranged for The Councillor;

c. Recommendation be made to Cabinet [*or recommend to the Parish/Town Council*] that the Councillor be removed from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish/Town Council*];

d. Recommendation be made to Full Council [*or recommend to the Parish/Town Council*] that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or

e. Recommendation be made to Full Council [*or recommend ~~to that~~ the Parish/Town Council*] that it exclude the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearing Panel, or any parish/town council, may make any recommendations it considers appropriate on any procedural amendments that might assist Councillors generally to follow the Code of Conduct and promoting standards.