

## **Committee: Standards and General Purposes**

**Date: 28 June 2021**

Wards: All

### **Subject: Member Complaints Process**

Lead officer: Louise Round

Lead member: Councillor Tobin Byers

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#### **Recommendations:**

- A. To recommend to Full Council the amended process for dealing with complaints against councillors set out in Appendix A (and shown in tracked change form in Appendix B);
  - B. Subject to the agreement of Full Council to the amended process, to agree to appoint a Hearings Subcommittee at the next meeting of this committee.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. At its meeting in March 2021, the Committee agreed a revised code of conduct for members based on the model code drawn up by the Local Government Association. This was following consideration of the draft code by the cross party working group which was set up last year to oversee a review of the Council's constitution. The revised code is being considered by full Council on 7 July.
- 1.2. Under section 28(6) of the Localism Act 2011, the Council is obliged to adopt a procedure for dealing with complaints that councillors have breached the code of conduct. The Act does not specify the detail of any such procedure, beyond requiring that the arrangements include the appointment of an independent person whose views must be sought before making a final decision on any allegation which has been investigated. The Council has appointed two independent persons and they have both been members of the working group. The group has reviewed the current procedure and have recommended some changes which are reflected in appendix A. Most of the changes are simply drafting amendments to make the document clearer but there are a number more substantive points which are set out below.

## **2 DETAILS**

### *Capacity (paragraph 4.2)*

- 2.1. The new proposed code of conduct will only apply to conduct by a councillor when acting in that capacity or claiming to act in that capacity or giving the

impression they are acting in that capacity. This reflects the provisions of the Localism Act. The complaints process has been amended to make this clear because as currently drafted that limitation on its application is not expressly stated.

*Filter Process (paragraphs 4.4 – 4.11)*

- 2.1.1 Under the existing procedure, when a complaint is received the Monitoring Officer will carry out an initial assessment to decide whether or not code is triggered by the complaint and if so, whether it should be referred for formal investigation. Such an investigation would be carried out either by a member of the South London Legal Partnership, or in appropriate cases by an independent external investigator. Even if the Monitoring Officer concludes that if the facts alleged are found to be true they might amount to a breach of the code, this does not automatically mean that the matter will proceed to the investigation stage. Paragraph 4.8 of the procedure sets out a number of factors to be taken into account by the Monitoring Officer in reaching a decision on whether to investigate.
- 2.1.2 These include considering whether an investigation is proportionate and in the public interest, the availability of alternative means of resolving the complaint, the timing of any complaint and whether the conduct complained of is something which would more appropriately be judged by the electorate at the next election.
- 2.1.3 Some additional wording is being suggested to clarify some of the existing criteria and these are shown on the tracked changes version of the procedure at Appendix B. For the existing criterion which relates to complaints which are substantially similar to one which has previously been dealt with, additional wording is being suggested to exclude complaints from investigation where they are already subject to a separate process. On the question of timing, wording has been included to provide that cases relating to conduct which happened more than three months previously will not normally be investigated unless there is good reason for the delay.
- 2.1.4 Two new criteria are being proposed as follows:
- (i) Subject-matter – complaints which are really about Council services, its policies or performance will be referred to the relevant service area in accordance with the Council’s complaints procedure;
  - (ii) Member complaints – Complaints by Members against another Member will not usually be investigated if the Monitoring Officer considers that the complaint is of a kind which could be more appropriately addressed through political group processes, political party complaints procedures or informal mediation.

2.1.5 The first proposed change is self-explanatory but the second was the subject of some debate at the working group who recognised that ideally complaints between members should be resolved through discussions between and within the political groups but felt that it would be wrong to have an absolute bar on using the formal complaint processes for such issues. They also argued that there may be cases where complaints originate from one member but relate to matters other than the conduct of one member towards another member, for instance a failure to declare an interest, or misuse of council resources. Members should not be precluded from making complaints about such matters and this is reflected in the wording.

2.1.6 There was also some discussion about whether complaints by officers against members should be excluded from this process and dealt with under the member/officer protocol set out in part 5C of the constitution. This suggestion was welcomed in principle but at the moment the member/officer protocol does not cover the question of complaints by officers and so it was agreed that this suggestion should be revisited in conjunction with a refresh of the member/officer protocol.

*Consultation with Independent Person (paragraph 4.5)*

2.1.7 Under the current procedure, the Monitoring Officer is required to consult the Independent Person when considering the filter criteria in deciding whether to proceed to an investigation or to seek an informal resolution. This is not a legal requirement and the working group agreed that this should not be an absolute requirement at this stage, although the discretion to consult is retained. The Monitoring Officer is required to consult the Independent Person if she is minded to refer the matter for formal investigation.

*Hearings (paragraph 7)*

2.1.8 If an investigation is undertaken and the outcome of that investigation is that there is no breach of the code of conduct, then there is no requirement for a hearing and the matter is simply reported to the Standards and General Purposes Committee for information. However, if the conclusion of the investigating officer is that there has been a breach then the process currently requires that the report is submitted to the Standards and General Purposes Committee to decide whether there should be a hearing. The working group agreed that this stage should be omitted as it is hard to see how the committee could do anything other than refer the matter to a hearing unless it sought to challenge the contents of the report. If it did that, it would effectively be conducting a hearing in any event in which case any further hearing would either be superfluous or at risk of challenge if any of the same members who had first considered the matter were to be involved in the hearing. If this recommendation is accepted, on receipt of a report concluding that there had been a breach, the matter would proceed straight to a hearing.

2.1.9 The current process includes provision to appoint a subcommittee to deal with a hearing but this is on a case by case basis. The working group agreed that the nature of hearings would be such as to be more appropriately dealt with by a smaller group of members than the full complement of the Standards and General Purposes Committee. Therefore the default position should be a hearing by a hearings subcommittee. There would still be power for the full committee to conduct hearings but this would be by exception.

2.1.10 If this approach is agreed, it would be sensible to appoint a hearings subcommittee on a standing basis, given that matters may be referred straight to hearing as describe above, rather than have to convene a full meeting of the committee to appoint a subcommittee on a case by case basis. Accordingly, if full council agrees this proposed change, the next meeting of this Committee should appoint a hearings subcommittee. Such a subcommittee will be subject to the proportionality requirements contained in the Local Government and Housing Act 1989. The subcommittee does not have to be drawn from among the membership of its parent committee.

#### *Hearings Procedure*

2.1.11 The procedure for dealing with hearings is set out in the schedule to the complaints process. Some minor drafting changes have been made to this but the only actual change to the process is to give the chair of the hearing the power to vary the order of proceedings, in particular to combine the two stages of making findings of fact and considering whether the facts as found amount to a breach of the Code of Conduct.

### **3 ALTERNATIVE OPTIONS**

3.1. The Committee could choose not to accept the recommended changes although these were considered to be an improvement on the processes as currently drafted for the reasons set out in this report.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1. The changes proposed in this report have been the subject of consultation with the cross party working group and the Council's two independent persons.

### **5 TIMETABLE**

5.1. If the Committee agrees the proposals set out in this report, they will be submitted for adoption by full Council on 7 July, together with other proposed constitutional changes and the new code of conduct. Committee would then be asked to establish a hearings subcommittee at its meeting on 22 July,

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

6.1. There are no financial implications arising from this report.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

7.1. The statutory framework governing member conduct is set out in the Localism Act 2011 and the proposals contained in this report are compliant with it.

**8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1. None

**9 CRIME AND DISORDER IMPLICATIONS**

9.1. None

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

None

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