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SOUTHEND-ON-SEA CITY COUNCIL

Standards Committee

Date: Tuesday, 28th February, 2023

Time: 6.30 pm

Place: Committee Room 1 - Civic Suite

Contact: Robert Harris

Email: committeesection@southend.gov.uk

A G E N D A

- 1 Apologies for Absence**

- 2 Declarations of Interest**

- 3 Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct for Members (Pages 3 - 18)**
Report of Director of Legal Services and Monitoring Officer

Chair & Members:

Cllr I Shead (Chair), Cllr B Hooper (Vice-Chair), Cllr M Borton, Cllr K Buck, Cllr T Cowdrey, Cllr T Cox, Cllr A Jones, Cllr J Moyies, Cllr D Nelson
Cllr V Cowell, Cllr J Healey (LTC)
J Morgan and J Tetley (Observers)

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Southend-on-Sea City Council
Report of Director of Legal Services and
Monitoring Officer
To
Standards Committee
On
28th February 2023

Report prepared by: Giles Gilbert

Agenda
Item No.
3

Arrangements for dealing with complaints alleging a breach of
the Members' Code of Conduct for Members

Part 1 Public agenda item

1. Purpose of Report

- 1.1 Following the adoption of the new Code of Conduct by Full Council on 24th March 2022, (that commenced in the new Municipal year in May 2022) the Monitoring Officer has reviewed Part 4(i) – Complaints against Members Rules in the Council's Constitution and updated these rules - commonly known as the "Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct for Members". The proposed updated Rules are attached with a view to making a recommendation to Council to adopt the same.

2. Recommendation

- 2.1 That the Council is recommended to approve the new updated version of Part 4(i) – Complaints against Members Rules attached at Appendix 1.

3. Background

- 3.1 The Council adopted a new Members' Code of Conduct on 24th March 2022 following a recommendation from the Standards Committee. At its meeting on 23rd March 2022 the Standards Committee recommended

"That a review of the current Complaints against Members Rules set out in Part 4(i) of the Constitution should commence without delay, overseen by the Standards Committee."

- 3.2 The Monitoring Officer has now undertaken this review and seeks the Standards Committee's comments with a view to seeking Council's approval to the updated Rules.

3.3 The Standards Committee will note that the new Rules are significantly shorter as they do not include the members code of conduct (which is already located in part 5 of the constitution). The “Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct for Members” within the new Rules have closely followed the [Local Government's Association Guidance on Member Model Code of Conduct Complaints Handling](#)

3.4 It is to be noted that the Council has an unusually high number of complaints. The updated Arrangements comply with the LGA's guidance and seeks to ensure that all complaints are dealt with as quickly and as efficiently as possible. The Guidance recommends that complaints ought to be informally resolved wherever possible and it is appropriate to do so. This in turn will ensure that the council's resources are properly concentrated on the most serious complaints.

4. Corporate Implications

4.1 Contribution to Southend 2050.

The 2050 Ambition underpins the collective vision for the future of the City including the development and demonstration of the Council's new Values and Behaviours, including acting with integrity, which are at the heart of the way the Council works together.

4.2 Finance implications

None

4.3 Legal Implications

4.3.1 Under Section 28 of the Localism Act 2011, the Council must have in place “Arrangements”, under which allegations that a Member or co-opted Member of the Council, or of a Committee or Committee of the Council, has failed to comply with the Members' Code of Conduct can be investigated and decisions made on such allegations.

4.3.2 These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of Southend on Sea Borough Council (“the Council”) or Leigh on Sea Town Council (“the Town Council”) has failed to comply with the Members' Code of Conduct (“the Code”), and sets out how the Council will deal with allegations of a failure to comply with the Code.

4.4 People Implications

As set out above

4.5 Property Implications

None

4.6 Consultation

The LGA consulted on the Model Code and have provided updated guidance on the Arrangements.

4.7 Equalities and Diversity Implications.

The Code emphasises the importance of Councillor responsibility to ensure those with protected characteristics are protected from discrimination. The new Rules ensure a fair and transparent approach to considering any member complaints received.

4.8 Risk Assessment

No issues arising

4.9 Value for Money

No issues arising.

4.10 Community Safety Implications

None

4.11 Environmental Impact

None

5. Background Papers

[Guidance on Member Model Code of Conduct Complaints Handling | Local Government Association](#)

6. Appendices

Appendix 1 – Draft Complaints against Members Rules

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Part 4(i) – Complaints against Members Rules

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DRAFT

Southend-by Sea City Council

Arrangements for dealing with complaints alleging a breach of the [Members' Code of Conduct for Members](#)

Context

1. Under Section 28 of the Localism Act 2011, the Council must have in place “Arrangements”, under which allegations that a Member or co-opted Member of the Council, or of a Committee or Committee of the Council, has failed to comply with the Members’ Code of Conduct can be investigated and decisions made on such allegations.
2. These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of Southend on Sea City Council (“the Council”) or Leigh on Sea Town Council (“the Town Council”) has failed to comply with the Members’ Code of Conduct (“the Code”), and sets out how the Council will deal with allegations of a failure to comply with the Code.
3. Such Arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member or co-opted Member against whom an allegation has been made.

The Code

4. The [Code of Conduct for Members](#) adopted by the Council is available on the Council’s website.
5. The Town Council has also adopted a Members’ Code of Conduct. If you wish to inspect this code you should look to contact the Town Council.

Making a complaint

6. If you wish to make a complaint, please complete the [Complaint form](#) and email it to: monitoringofficer@southend.gov.uk
7. If you are unable to email the complaint please send it to The Monitoring Officer, Southend-on-Sea City Council, Civic Centre, Victoria Avenue, Southend on Sea SS2 6ER.

8. The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering these Arrangements.
9. Please provide all the details requested on the [Complaint form](#). If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request but in the interests of fairness the presumption is that the Member concerned is entitled to know who has made the complaint. If in exceptional circumstances the Monitoring Officer agrees to keep your name and address confidential it will not be disclosed to the Member against whom you make the complaint, without your prior consent. If the Monitoring Officer does not agree, then you can normally decide whether you want to proceed with your complaint without anonymity or otherwise your complaint will be closed.
10. The Council will not investigate anonymous complaints unless the Monitoring Officer considers that there is a strong and clear public interest in doing so.
11. The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.

Will your complaint be investigated?

12. The Monitoring Officer will consider each complaint received and will decide whether it merits formal investigation. This decision will normally be taken within 28 working days of receipt of your complaint. In the event of the Monitoring Officer having a conflict of interest in respect of a complaint, the matter will be dealt with by a Deputy Monitoring Officer, senior lawyer or other arrangements will be made and such further references below to "Monitoring Officer" in the sense of the person handling the complaint shall mean that other person dealing with the complaint.
13. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, takes a proportionate approach to the issue of whether or not a complaint merits investigation bearing in mind the sanctions which can be imposed if a Member is found to be in breach of the Code, and the costs to the Council and, therefore, to the public of undertaking an investigation. The performance of Members in terms of how they represent those in their wards is ultimately a matter for the electorate if a Member seeks re-election.
14. The assessment of a complaint is a two-step process, described by the Committee on Standards in Public Life as the 'can/should' stages – the first stage

being 'can we deal with this complaint?' and the second being 'should we deal with this complaint?'

First step

15. The first step is a jurisdictional test and assesses whether the complaint is:
 - a. against one or more named Members of the Council (or Town Council);
 - b. the named Member was in office at the time of the alleged conduct;
 - c. the complaint relates to matters where the Member was acting as a Member or representative of the Council (or Town Council) and it is not a private matter;
 - d. the complaint, if proven, would be a breach of the Code under which Member was operating at the time of the alleged misconduct.
16. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and no further action will be taken in respect of the complaint. If the complaint falls within all of the above then the complaint will proceed to the next step of assessment.

Second step

17. A complaint will only be considered to merit formal investigation if it complies with all the criteria in paragraph 18 or one or more of the criteria in paragraph 19 below. The Monitoring Officer will consult at least one of the Independent Persons before coming to a final decision as to whether or not a complaint should be investigated.
18. The relevant criteria are:
 - a) The complaint contains sufficient evidence to demonstrate a potential breach of the Code;
 - b) The complaint is sufficiently serious that it would be in the public interest to investigate and if the complaint is proven, it is serious enough to warrant any sanction;
 - c) The complaint does not appear to be "tit-for-tat", malicious or politically motivated. Where the complaint is by one Member against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
 - d) The complaint relates to the specific conduct of a Member rather than dissatisfaction with a Council decision
 - e) A substantially similar complaint has not already been submitted and accepted;

- f) A substantially similar complaint has not previously been considered - unless new material evidence has now been submitted;
 - g) The behaviour that is the subject of the complaint has not already been dealt with. For example, the Member complained about has already apologised and/or admitted making an error;
 - h) The complaint has been received within 6 months of the alleged failure to comply with the Code unless there are exceptional circumstances for the delay and the delay does not mean that it would be difficult for a fair investigation to be carried out;
 - i) It is not an anonymous complaint - unless it includes sufficient documentary evidence to show a significant breach of the Code; and
 - j) If the complaint reveals a criminal offence and a complaint has been made to the Police, that the Police investigation and any proceedings have concluded or the Police have confirmed no proceedings will be issued.
19. The relevant criteria referred to in paragraph 17 are:
- a) The complaint reveals a continuing pattern of behaviour that is significantly and unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
 - b) The complaint is made by the Chief Executive or the Monitoring Officer.
20. This decision will normally be taken within 28 working days of receipt of your complaint. The Monitoring Officer will inform you of their decision and the reasons for that decision.
21. In appropriate cases, where the Monitoring Officer has decided in accordance with the criteria set out above that a complaint would merit investigation, the Monitoring Officer may consider whether there are alternative, more appropriate, remedies that should be explored in order to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that their conduct was in breach of the Code and offering an apology, or other remedial action such as correcting the Register of Interests. Where the Member makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint should be investigated.
22. If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police or other regulatory agencies.

How is an investigation conducted?

23. If the Monitoring Officer decides that a complaint merits investigation, they may conduct the investigation but will normally appoint an investigating officer, who may be another senior officer of the Council or an external investigator (“the Investigating Officer”). If a complaint against the Leader of the Council and/or Deputy Leader of the Council merits investigation, then an external investigator will be appointed as the Investigating Officer.
24. The Investigating Officer will decide whether they need to meet or speak to you to understand the detail of your complaint and so that you can explain your understanding of events and suggest what documents they need to see and who needs to be interviewed.
25. The Investigating Officer will normally write to the Member against whom you have complained and provide them with a copy of your complaint. The Member will be asked to provide their explanation of events and to identify what documents need to be seen and who they needs to be interviewed.
26. In exceptional cases, where the Monitoring Officer has decided to keep your identity confidential your name and address will be deleted from the papers given to the Member.
27. At the end of their investigation, the Investigating Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to correct any factual inaccuracies. Having taken account of any comments on the draft Investigation Report, it will be finalised, and the Investigating Officer will send their final report to the Monitoring Officer.

What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

28. The Monitoring Officer will review the Investigating Officer’s report and, if they are satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Member concerned (and to Town Council, where your complaint relates to a Town Councillor) notifying you that they are satisfied that no further action is required. The Monitoring Officer will supply both you and the Member with a copy of the final Investigation Report. There is no right of appeal.

What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

29. The Monitoring Officer will review the Investigating Officer's report and will then either seek an informal resolution (in consultation with the Independent Person) or send the matter for a hearing before the Standards Hearing Sub-Committee - ("Sub-Committee"). If a Sub-Committee can not be formed then the Monitoring Officer may summon a hearing of the whole Standards Committee that will sit in its stead.

Informal Resolution

30. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult an Independent Person and with you and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and / or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Town Council if appropriate) for information but no further action will be taken. There is no right of appeal against the Monitoring Officer's decision to resolve the matter by informal resolution.

Hearing

31. If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Sub-Committee. The Sub-Committee will conduct a hearing and then decide whether the Member has failed to comply with the Code of Conduct and if so, whether to take any action.

Process for a hearing

32. Prior to the hearing there will be a pre-hearing to allow matters at the hearing to be dealt with more fairly and economically as it will quickly alert parties to possible areas of difficulty and, if possible, allow them to be resolved before the hearing itself.
33. At the pre-hearing the panel should:
- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing.
 - Consider any additional evidence it considers is required at the hearing.
 - Identify any witnesses it thinks it would want to hear from.

- Decide if witnesses which the subject Member or investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality.
 - Consider whether there are any parts of the hearing that are likely to be held in private or whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material though the final decision will rest with the panel on the day.
 - Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses.
34. The pre-hearing is not a formal meeting so is not held in public and often can be managed through correspondence between the Chair of the Standards Committee and the Monitoring Officer. The merits of the case will not be debated during the pre-hearing.
 35. Following the pre-hearing the Monitoring Officer will write to everyone involved in the complaint at least two weeks before the hearing. This will confirm the date, time and place for the hearing, note whether the subject Member or investigator will be represented at the hearing. It will also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.
 36. The Council has agreed a procedure for hearing complaints, which is attached as Appendix A.
 37. In many cases, the Sub-Committee may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Sub-Committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.
 38. The hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential.
 39. The Sub-Committee may conclude that the Member did not fail to comply with the Code and dismiss the complaint.
 40. Alternatively, the Sub-Committee may conclude that the Member did fail to comply with the Code. In such a case the Sub-Committee will then consider what action, if any, should be taken as a result of the Member's failure to comply with the Code. In doing this, the Sub-Committee will invite representations as to any aggravating or mitigating factors before retiring to consider an appropriate sanction.

What action can the Standards Hearing Sub-Committee take where a Member has failed to comply with the Code of Conduct?

41. The Council has delegated to the Sub-Committee such of its powers to take action in respect of Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Sub-Committee may:
 - a. Issue a formal censure;
 - b. Report its findings in respect of the Member's conduct to council (or the Town Council)
 - c. Recommend to the Member's Group Leader (or deputy Group Leader) that they be removed from any or all Committees or Sub-Committees of the Council; or
 - d. Recommend to the Leader (or deputy Leader) of the Council that the Member be removed from the positions of responsibilities.
 - e. Instruct the Monitoring Officer to arrange training for the Member;
 - f. Recommend to Council that the Member be removed from all outside appointments to which he / she has been appointed or nominated by the Council;
 - g. if relevant recommend to Council that the subject Member be removed from their role as leader of the authority
 - h. if relevant recommend to the secretary or appropriate official of a political group that the Member be removed as group leader or other position of responsibility.
42. The Sub-Committee has no power to suspend or disqualify the Member or to withdraw allowances

What happens at the end of the hearing?

43. At the end of the hearing, the Chair will announce the decision of the Sub-Committee as to whether the Member failed to comply with the Code and as to any sanctions imposed. There is no right of appeal against the decision of the Sub-Committee.
44. As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee and send a copy to you and to the Member (and to the Town Council if appropriate). The decision notice will be available for public inspection. Any finding that there has been a breach of the Code will be reported to the next convenient meeting of the Council.

What is the Standards Hearing Sub-Committee and what are its responsibilities?

45. The duty to consider complaints has been delegated to the Sub-Committee. The Sub-Committee comprises of 3 Members drawn from the Council's Standards Committee. If the Member complained about is a Member of the Town Council, then a Member of the Town Council will sit in as a non-voting Co-opted Member.
46. The Standards Committee has 9 Members and is made up on a politically proportional basis.

Who is an Independent Person?

47. The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post and has been appointed by the Council. There are a number of statutory restrictions on who may be appointed. For example, a person cannot be appointed as an independent person if they are or, have been within the past 5 years, a Member, co-opted Member or officer of the Council.
48. An Independent Person will be invited to attend meetings of the Committee and their views are sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code and as to any action to be taken following a finding of failure to comply with the Code.
49. The Independent Persons are invited to attend all meetings of the Standards Committee and an Independent Person will be invited to attend the Sub-Committee. An Independent Person's views are sought and taken into consideration before the Sub-Committee takes any decision on whether a Member's conduct constitutes a failure to comply with the Code.

Appeal

50. There is no right of appeal against a decision on a Code of Conduct complaint.

Revision of these Arrangements

51. The Council by resolution has delegated to the Chair of the Sub-Committee the right, in consultation with the Monitoring Officer, to depart from these Arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Appendix A

Standards Hearing Sub-Committee Procedure

Quorum

1. Three Members must be present throughout the hearing to form a quorum.
2. Where the complaint refers to a Leigh-on-Sea Town Councillor a non-voting Town Council Member of the Standards Committee may be present.

Introductions

3. Chair welcomes those in attendance.
4. Chair Introduce Members of Committee
5. Chair Introduces the Legal Adviser and Independent Person to the Committee briefly explaining their roles.
6. Chair asks the Member and their representative, legal adviser or friend and the Investigating Officer (IO) to introduce themselves.
7. Chair will explain that the hearing will be inquisitorial and informal but will try and follow the following structure.

Proposed procedure

Preliminary issues

- (i) Determination as to whether to exclude the press and public
- (ii) Resolution of any procedural issues or dispute
- (iii) Identification and narrowing of any disputes of fact:

The investigating Officer's report & evidence

- (iv) IO presents report
- (v) Member/Representative to ask questions (of IO) via the Chair
- (vi) Committee to ask questions
- (vii) Independent Person to ask questions
- (viii) IO calls any evidence (and witnesses)
- (ix) Member/Representative asks questions (of Witnesses) via Chair
- (x) Independent Person to ask questions
- (xi) Committee to ask questions

Member's case

- (xii) Member/Representative presents their evidence (and witnesses)
- (xiii) IO asks questions (of Member /Witnesses) via Chair
- (xiv) Independent Person to ask questions
- (xv) Committee to ask questions

Closing submissions

- (i) Independent Person invited to make representations on findings of fact and code of conduct
- (ii) IO invited to make representations on findings of facts and code of conduct
- (iii) Member/representative invited to make representations on findings of fact and code of conduct
- (iv) Committee adjourns.
- (v) On return, Chair to announce Committee's findings of fact and whether facts lead to conclusion that there has been a failure to comply with the Code of Conduct. Chair to announce Committee decision as to whether Member is considered to have breached Code

Determination of sanction where appropriate

- (i) Independent Person submissions on what action Committee should take
 - (ii) IO submissions on what action Committee should take
 - (iii) Member/Representative submissions on what action Committee should take
 - (iv) Committee adjourns
 - (v) On return, Chair to announce Committee decision as to what action, if any, it considers should be taken and what, if any, other recommendations it considers it should make to the Member's authority.
8. The Sub-Committee will consider whether it should make any recommendations to the Council (or in relation to a Town Councillor to the Town Council) with a view to promoting high standards of conduct among Members.
 9. The Chair will confirm that a full written decision shall be issued within 7 working days following the hearing and that it will be sent to the Member and Complainant.
 10. The aim will be to make decisions concerning findings of fact, breach and sanction on same day, but if this is not possible the parties will be advised when these are expected to be made.