

EAST HERTS COUNCIL

STANDARDS COMMITTEE - 10 DECEMBER 2012

REPORT BY THE MONITORING OFFICER

THE STANDARDS REGIME

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- This report describes the complaints procedure and explains progress on implementing the new standards regime.

RECOMMENDATIONS FOR STANDARDS COMMITTEE: That:

(A)	The Committee notes and approves the Complaints Procedure. The following Members be appointed to the Standards Sub-Committee.

1.0 Background

1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. Council has appointed a Standards Committee and approved a code of conduct together with a complaints procedure. The documents are set out in **Essential Reference Paper B**.

2.0 Report

2.1 **Duty to promote and maintain high standards of conduct**

2.2 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

3.0 Dealing with Misconduct Complaints

3.1 “Arrangements”

3.2 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Parish Council Members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct. Council has adopted a complaints procedure.

4.0 How is the investigation conducted?

4.1 The Council has adopted a procedure for the investigation of misconduct complaints. If the Council decides that a complaint merits further investigation, the Council may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.

4.2 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to the complainant and to the Member concerned. Having received and taken account of any comments which have been made on the draft Investigation Report the Investigating Officer will send his/her final report to the Monitoring Officer.

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

5.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report and, if he is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to the complainant and to the Member concerned and to the Town or Parish Council, where the complaint relates to a Town or Parish Councillor, notifying them that he is satisfied that no further action is required, and give them a copy of the Investigation Final Report. The Monitoring Officer will then report to the Standards Sub Committee which will make a recommendation based on the report.

5.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

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

6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Sub-Committee or in consultation with the Independent Person seek an informal resolution.

6.2 Informal Resolution

6.2.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with the complainant and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Town or Parish Council for information, but will take no further action.

6.3 Hearing

6.3.1 If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor 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 which may conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

6.3.2 At the hearing, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the

Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

- 6.3.3 The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should recommend as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Member an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to recommend in respect of the matter.

7.0 Action in response to a Hearing finding of failure to comply with Code

- 7.1 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively. In practice, this might include the following –

- i. A formal letter to the Councillor found to have breached the code;
- ii. Formal censure by motion;
- iii. Removal by the authority of the Member from Committee(s) subject to statutory and constitutional requirements;
- iv. Press release or other appropriate publicity

8.0 Independent Person(s)

8.1 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

8.2 Functions of the Independent Person

8.3 The functions of the Independent Person(s) are –

- (a) They must be consulted by the Council before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- (b) They may be consulted by the authority in respect of a standards complaint at any other stage; and
- (c) They may be consulted by a Member or co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

8.4 The Independent Person will be invited to attend all meetings of the Standards Committee but will not to be a formal Member of the Committee. He/she will need to be available to be consulted by Members against whom a complaint has been made. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. The Independent Person will also be involved in the local resolution of complaints and in the grant of dispensations.

9.0 Standards Sub-Committee

9.1 Council has agreed to create a Sub-Committee to conduct hearings. The Committee is invited to nominate Members to be on the Sub-Committee.

10.0 Progress on Implementation

10.1 Following the decisions of Council to approve the complaints procedure and adopt a code of conduct, progress has been made

to implement the requirements of the Localism Act.

10.2 Two training sessions have been provided for District Councillors. Town and Parish Councillors were also invited.

11.0 Implications/Consultations

11.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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