

# POLICY AND RESOURCES COMMITTEE

29 January 2024

## PART I

### PROPOSED AMENDMENT TO THE CONSTITUTION ON STANDARDS PROCEDURE

#### 1. Summary

The Council's current Member complaints procedure is briefly set out in Part 2, Article 9 of the constitution. It is not a detailed procedure and moreover parts of it are not in accordance with LGA good practice and therefore it is at risk of successful challenge. It is recommended that the Council adopts a LGA compliant full standards procedure.

#### 1 Details

1.1 The Council's current arrangements for handling Member standards complaints are very brief (they are summarised in Article 9) and do not accord with LGA good practice specifically stage 2 of the current process which provides for informal resolution of a complaint by Group Leaders. This is not in accordance with LGA good practice or good practice in other authorities. Below is the link to the relevant LGA guidance:

<https://www.local.gov.uk/publications/guidance-member-model-code-conduct-complaints-handling>

1.2 In summary, the LGA guidance recommends:

1.3 i) an initial jurisdiction test by the Monitoring Officer ('MO') to assess whether the complaint is: against one or more named councillors of the authority or of a parish council the authority is responsible for; the named councillor was in office at the time of the alleged conduct; the complaint relates to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter; the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.

1.4 ii) an initial assessment of the complaint by the MO involving the Independent Person which takes into account non-exclusive factors such as: does the complaint contain sufficient evidence to demonstrate a potential breach of the Code? Are there alternative, more appropriate, remedies that should be explored first? Where the complaint is by one councillor 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; Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction; Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration; Whether a substantially similar complaint has been

submitted and accepted; Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint; Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting; Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual? And is it about someone who is no longer a councillor or who is seriously ill?

- 1.5 iii) an option for informal resolution where appropriate.
- 1.6 iv) full investigation of the complaint whereby an investigator will interview relevant witnesses and prepare a comprehensive report advising whether there is a potential breach of the Code that should be referred to a standards hearing.
- 1.7 In practice, Member involvement in the process tends to be at the standards hearing if the complaint progresses to that stage. Some authorities have an Assessments Committee that undertakes the decision making at the initial assessment stage, in all or some cases where the MO considers it appropriate.
- 1.8 It is recommended that Council adopts a full standards arrangements procedure as set out in Annex 1 which reflects LGA good practice. This document was co-drafted by the external consultants advising on the constitution and the Monitoring Officer. It is proposed that this would be inserted at the end of Part 4 'Rules of Procedure'. Consequential revisions to Article 9 are set out in Annex 2.

### **Options and Reasons for Recommendation**

- 2.1 There are three options. The recommended option is for the Council to accept the recommendations in this report by adopting the draft standards procedure in Annex 1 and revising Article 9 as detailed in Annex 2. This will ensure the authority is operating a standards procedure that meets good practice and LGA guidance.
- 2.2 The second option is do nothing. This is not recommended as it means the authority is left with a standards procedure that does not meet good practice and is potentially challengeable with the risk of an adverse finding by the ombudsman or Courts.
- 2.3 The third option is to request Officers to amend the draft standards procedure at annex 1 or to draft an entirely different standards procedure. Members may consider minor revisions to annex 1 are appropriate, however it is not recommended that an entirely different standards procedure is adopted as the draft procedure in Annex 1 meets good practice and LGA guidance.

### **3 Policy/Budget Reference and Implications**

- 3.1 There are no direct policy or budget implications. Full Council will be required to approve the proposed amendments to the constitution.

## **4 Financial Implications**

- 4.1 There are no direct financial implications. The external consultants' costs are part of the wider review of the constitution. The proposed standards procedure will not result in additional costs.

## **5 Legal Implications**

- 5.1 The Localism Act 2011 ('the Act'), section 27 imposes a duty on the authority to promote and maintain high standards of conduct by members and to adopt a Member code of conduct. Section 28 of the Act sets out what must be in the code of conduct including adherence to the Nolan principles and pecuniary interests.
- 5.2 Sub-section 27(4) of the Act provides that: 'A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6)...' Sub-section 27(6) of the Act provides: 'A relevant authority other than a parish council must have in place (a) arrangements under which allegations can be investigated, and (b) arrangements under which decisions on allegations can be made.'
- 5.3 The draft standards procedure at Annex 1, if adopted, will become the arrangements under which allegations can be investigated, and under which decisions on allegations can be made.

## **6 Staffing Implications**

None, as existing Officer resources will continue to handle Member code of conduct complaints.

## **7 Equal Opportunities Implications**

There are no equal opportunities implications. It is a legal requirement to have arrangements for handling Member standards complaints.

## **8 Climate Change and Sustainability Implications**

- 8.1 There are no climate or sustainability implications.

## **9 Communications and Website Implications**

- 9.1 If proposed amendments to the constitution are approved the constitution website page will be updated.

## **10 Risk and Health & Safety Implications**

- 10.1 The risk management implications of this report are detailed below.

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
A standards procedure that is compliant with good practice and LGA guidance is not adopted	Potential successful challenge to the procedure resulting in adverse decision of the Ombudsman and/or Courts	Adopt a procedure that is compliant with good practice and LGA guidance	Tolerate	4-6

10.2 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

<b>Very Likely</b> ----- <b>Likelihood</b> ----- <b>Remote</b>	<b>Low</b> 4	<b>High</b> 8	<b>Very High</b> 12	<b>Very High</b> 16
	<b>Low</b> 3	<b>Medium</b> 6	<b>High</b> 9	<b>Very High</b> 12
	<b>Low</b> 2	<b>Low</b> 4	<b>Medium</b> 6	<b>High</b> 8
	<b>Low</b> 1	<b>Low</b> 2	<b>Low</b> 3	<b>Low</b> 4
	<b>Impact</b>			
	<b>Low</b> ----->	<b>Unacceptable</b>		

**11 Recommendation**

11.1 That the Committee recommends to full Council:

- i) The adoption of the draft standards procedure at Annex 1.
- ii) The revisions to Part 2, Article 9 of the constitution at Annex 2.

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**Data Quality**

Data sources: NA

Data checked by:

Stephen Rix

Data rating:

<b>1</b>	<b>Poor</b>	
<b>2</b>	<b>Sufficient</b>	<b>X</b>
<b>3</b>	<b>High</b>	

**Background Papers**

None

**Appendices**

Annex 1 – Draft standards procedure

Annex 2 – Proposed revisions to Part 2, Article 9 of the constitution