

Committee: <b>STANDARDS ADVISORY COMMITTEE</b>	Date: <b>24<sup>th</sup> October 2013</b>	Classification: <b>Unrestricted</b>	Report No.	Agenda Item No.
Report Of: <b>Service Head, Democratic Services</b>		Title: <b>Amendments to the Procedure for Dealing with Complaints of a Breach of the Code of Conduct – Decision of the Council Meeting on 18<sup>th</sup> September 2013</b>		
Originating Officer: <b>John Williams</b>		Wards Affected: All		

## 1. SUMMARY

- 1.1 The Standards Advisory Committee on 18<sup>th</sup> June 2013 considered a report of the Assistant Chief Executive (Legal Services) which provided information on the number and nature of complaints received about alleged failures to comply with the Code of Conduct and action taken as a result. The report also recommended revisions to the arrangements for dealing with complaints about Member conduct, based on experience of operating the new arrangements in the year since their introduction.
- 1.2 Following discussion, the Committee agreed a number of amendments to the officer recommendations and submitted the revised proposals to the Council for consideration.
- 1.3 The Council meeting on 18<sup>th</sup> September 2013 considered the Committee's proposals. During debate, a further amendment was moved, proposing a number of additional recommendations and these were agreed by the Council.
- 1.4 This report sets out the matters considered and the amendments agreed. The revised Procedure for Dealing with Complaints of a Breach of the Code of Conduct, incorporating the agreed amendments and adopted by the Council on 18<sup>th</sup> September, is attached at Appendix 'A'.

## 2. RECOMMENDATIONS

- 2.1 That the Committee note the decisions taken by the Council on 18<sup>th</sup> September 2013 and the revised Procedure for Dealing with Complaints of a Breach of the Code of Conduct as attached at Appendix 'A'.

### 3. BACKGROUND

- 3.1 The officer report to the Standards Advisory Committee in June 2013 noted that the new arrangements for dealing with complaints of breach of the Code of Conduct had been in operation for almost a year and that during this time it had become apparent that a number of provisions contained in the new arrangements required revision. In particular:

**Paragraph 8:** This provides that an investigation should be completed within one month of the decision to refer the matter for investigation. However, it had not been possible to complete investigations in this relatively short timescale. It was often the case that Members, officers and other witnesses involved in an investigation had competing diary requirements so that all necessary interviews could be completed within one month. Also the investigator was often required to verify disputed facts and would require time to produce an investigation report. In the circumstances, officers recommended that generally investigations should be completed within three months of the decision to refer a complaint for investigation.

**Paragraph 9:** This provides that the Monitoring Officer may, during the course of the investigation, seek local resolution of the matter to the satisfaction of the complainant before the investigation is concluded. Attempts at local resolution are often most appropriately carried out before a complaint is referred for formal investigation. Officers therefore proposed that this provision be extended to enable the Monitoring Officer (or any deputy of his/hers) to seek local resolution of a complaint before the complaint was referred for investigation but subject to a four week time limit.

**Paragraph 10:** This provides that where an investigation concludes that there is no evidence of failure to comply with the Code, the Monitoring Officer shall within ten working days consult with the Independent Person (IP) and the Investigation & Disciplinary Sub-Committee (IDSC) to confirm that the matter should be closed without further hearing. In practice, this time frame was often too short to obtain mutually convenient dates for consultation with the IP and to enable convenient dates to be obtained for a meeting of the IDSC. Officers therefore proposed that the time frame be extended to four weeks.

#### **Standards Advisory Committee recommendations**

- 3.2 The Committee noted the logistical problems that often arose making it difficult to adhere to the deadlines currently in place. However, they also noted that the investigation of a complaint about Member conduct could be very stressful for the subject of the investigation and therefore should be concluded as quickly as possible.
- 3.3 The Committee therefore agreed an amendment to the officers' proposals and accordingly **recommended** that the Council approve the proposed revisions to arrangements for dealing with complaints about Member conduct, subject to the following:-

- (a) Extension of the timescale for completion of an investigation, once a complaint is referred for investigation, from the current 1 month to 2 months, with the existing provision for a further 1 month extension by the Monitoring Officer under the provisions of paragraph 8 of the current arrangements to remain, providing for a total maximum period of 3 months.

3.4 The Committee further resolved (i) that, given the operational difficulties sometimes encountered in convening an Investigating and Disciplinary Sub-Committee, the recruitment to the current vacancies for co-opted SAC members should be prioritised; and (ii) that the Monitoring Officer (or designated deputy) informally consult the political group leaders, the Mayor and the Speaker of the Council, about streamlining the current arrangements for dealing with complaints about Member conduct to make it resource efficient, within the constraints of the Law and Constitution, with a view to achieving consensus on this; with the outcome to be reported back to the next meeting of the Committee.

#### **4. DECISIONS OF THE COUNCIL**

4.1 The Council considered the recommendations of the Standards Advisory Committee on 18<sup>th</sup> September 2013.

4.2 The Council approved the Committee's recommendations and also considered an amendment which proposed a number of additional recommendations in relation to reporting back to the Committee and notifying the interested parties in cases where there was a delay.

4.3 Following debate, the amendment was agreed and the Council **resolved** as follows:-

1. That the proposed revisions to arrangements for dealing with complaints about Member conduct set out [in the] Standards Advisory Committee's report to the Council be approved subject to (a) below:-
  - (a) Extension of the timescale for completion of an investigation, once a complaint is referred for investigation, from the current 1 month to 2 months, with the existing provision for a further 1 month extension by the Monitoring Officer under the provisions of paragraph 8 of the current arrangements to remain, providing for a total maximum period of 3 months.
2. That at each of its meetings, a report be presented to the Standards Committee listing all complaints which have exceeded the two month period since referral for investigation and that this report include details of the length of time elapsed since referral and the reasons for the delay to a resolution. This report would include all complaints which exceeded the two month period since the Committee last met as well as those previously reported to the Committee which remain unresolved in excess of the two month period.

3. In cases where the Monitoring Officer exercises their power to extend the time period of investigations into complaints from 2 months to 3 months, a report on the reasons for this is presented to the Standards Committee for noting.
4. Also in cases where the Monitoring Officer exercises their power to extend the time period of investigations into complaints from 2 months to 3 months a letter is to be sent to the complainant and the subject or subjects of the investigation notifying them of the extension and the reasons for this.

4.4 A copy of the procedure, revised in accordance with the above decisions, is attached at Appendix 'A' (amended sections in bold and underlined)

## **5. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

5.1 There are no immediate financial implications arising out of this report.

## **6. LEGAL SERVICES COMMENTS**

6.1 This Heads of Legal Services and the Interim Monitoring Officer have been consulted on the contents of this report which incorporates legal comments.

6.2 It is a requirement of the Localism Act 2011 that the full Council approve the arrangements for dealing with complaints about an alleged breach of the Code of conduct for Members.

## **7. RISK MANAGEMENT IMPLICATIONS**

7.1 The revisions to the procedure for dealing with complaints will reduce the risk of delay to the process whilst also reducing the risk of challenge to decisions arising from that process.

## **8. ONE TOWER HAMLETS CONSIDERATIONS**

8.1 There are no specific implications for One Tower Hamlets arising from this report.

## **9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

9.1 This report has no immediate implications for the Council's policy of strategic action for a greener environment.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 This report has no immediate implications for Crime and Disorder.

## **11. EFFICIENCY STATEMENT**

11.1 This report is not concerned with proposed expenditure, the use of resources or reviewing/changing service delivery and an efficiency statement is not therefore required.

## 12. APPENDICES

Appendix A – revised Procedure for Dealing with Complaints of a Breach of the Code of Conduct,

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### LOCAL GOVERNMENT ACT 1972 (AS AMENDED) SECTION 100D BACKGROUND PAPERS USED IN THE PREPARATION OF THIS REPORT

Brief description of "background paper"	Tick if copy supplied	If not supplied, name and telephone number of holder
None	n/a	n/a

**LONDON BOROUGH OF TOWER HAMLETS**

**ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF BREACH OF THE  
CODE OF CONDUCT FOR MEMBERS**

**Effective 1<sup>st</sup> July 2012. Arrangements agreed by the Council on 18<sup>th</sup> June 2012  
and subsequently revised by the Council on 18<sup>th</sup> September 2013.**

1. The Monitoring Officer shall be the Proper Officer to receive complaints of any failure by the Mayor, a Councillor or a co-opted member to comply with the Code of Conduct for Members. On receipt of a complaint the Monitoring Officer shall within three working days inform the subject member of the substance of the complaint on a confidential basis.
2. The Monitoring Officer shall ensure that the Council appoints at least one Independent Person and at least one reserve Independent Person.
3. Complainants must provide their name and postal address when submitting a complaint. Anonymous complaints will not be considered unless in exceptional circumstances where the Monitoring Officer decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is capable of investigation without the need to ascertain the complainant's identity.
4. The Monitoring Officer shall, after consultation with the Independent Person and within ten working days of receiving the complaint (so far as practicable), determine whether a complaint merits formal investigation and arrange for such investigation. In making this determination the Monitoring Officer may at his/her discretion also consult other persons including Counsel.
5. In determining whether to refer a complaint for investigation, the Monitoring Officer may take into account how long has elapsed since the event(s) complained about took place and if this is more than one year, then a complaint will be rejected as out of time unless the complainant demonstrates that there are good reasons for the delay such as fresh evidence not available at the earlier date or only recently discovered.
6. The Monitoring Officer may refer a complaint of failure to comply with the Code to the Standards Advisory Committee or its sub-committee to recommend whether or not the complaint requires investigation where s/he feel that it is inappropriate for him/her to take the decision without seeking their advice. Where the Monitoring Officer considers that a complaint should not be subject to investigation, s/he shall convene an Investigation and Disciplinary Sub-Committee of the Standards Advisory Committee which shall make the final decision on the matter.

7. The Monitoring Officer will report quarterly (or less frequently if there are no complaints to report) to the Standards Advisory Committee on the number and nature of complaints received and action taken as a result. This will include details of complaints that did not require investigation so that the Committee can exercise its oversight role.
8. If a complaint of failure to comply with the Code is referred for investigation the Monitoring Officer shall appoint an investigator or complete the investigation him/herself. Such investigation should be completed within **two** months of the decision to refer the matter for investigation. The Monitoring Officer may extend this period by up to a further month where s/he feels it is necessary to ensure an adequate investigation.
- 8A. In cases where the Monitoring Officer exercises their power to extend the time period of investigations into complaints from two months to three months, a report on the reasons for this is presented to the Standards Advisory Committee for noting and a letter is to be sent to the complainant(s) and subject(s) of the investigation notifying them of the extension and the reasons for this. The Monitoring Officer will also at each meeting of the Standards Advisory Committee present a report listing all complaints which have exceeded the two month referral for investigation with details of the length of time elapsed and the reasons for the delay. This report will include all complaints which have exceeded the two month investigation period since the last meeting of the Advisory Committee as well as those complaints previously reported to the Advisory Committee which remain outstanding in excess of the two month investigation period.**
9. The Monitoring Officer **or his/her deputy** may, **either before a complaint is referred for investigation or** during the course of the investigation, seek local resolution of the matter to the satisfaction of the complainant before the investigation is concluded. **Where the Monitoring Officer or deputy attempts to reach a local resolution before a complaint is referred for investigation, such attempts shall be subject to a four week time limit.**
10. Where any investigation into a complaint of breach of the Code finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall **within four weeks** of receipt of the investigation report, consult with the Independent Person and the Standards Advisory Committee Investigations and Disciplinary Sub-Committee to confirm their agreement that the matter shall be closed without further hearing. If the Sub-Committee agree then the matter is closed. The Monitoring Officer shall provide a copy of the report and findings of the investigation which shall be kept confidential to the complainant and to the member concerned and shall report the matter as part of the quarterly report to the Standards Advisory Committee for information.
11. Where the investigation finds evidence of a failure to comply with the Code of conduct, the Monitoring Officer in consultation with the Independent Person, may seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Advisory

Committee in due course. Where such local resolution is not appropriate or not possible the Monitoring Officer shall report the investigation findings to a Hearings Sub-Committee of the Standards Advisory Committee for local hearing and recommendations. The Hearings Sub-Committee will be convened within one month of the Monitoring Officer receiving the investigation report. The Hearings Sub-Committee may sit in private after advice from the Monitoring Officer.

12. The Hearings Sub-Committee will advise the Monitoring Officer whether or not they consider there has been a breach of the Code and if they consider sanction is appropriate having heard the matter shall request that the Monitoring Officer prepare a report to Full Council setting out the details of the investigation, hearing and proposed sanction which may include any of the following:-
  - Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - Recommend to the Mayor that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
  - Recommend the Monitoring Officer to arrange training for the member (subject to the Members agreement);
  - Recommend remove as from all outside appointments to which the Member has been appointed or nominated;
  - Recommend withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
  - Recommend excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive Committee and Sub-Committee meetings (as appropriate);
  - Recommend the member to contact the Council via specified point(s) of contact;
  - Write to the member with their advice on the Members conduct.
13. In determining any recommended sanction the Sub-Committee may take into account any previous breach by the member concerned and/or their compliance with any previous sanction applied.
14. Where a subject member feels that a recommended sanction would cause him/her undue hardship or prevent him/her from undertaking ward duties, that Member may make representations to the Council meeting that will consider the recommendations of the Hearings Sub-Committee on the relevant complaint. Any such representations shall be notified to the Monitoring Officer within five working days of the Hearing Sub-Committee meeting.
15. The recommendations of the Hearings Sub-Committee shall be published in a local newspaper in the Public Notices Section and on the Council's website as well as in the minutes of the meeting. The content of any notice to be



published shall be subject to agreement by the Chair of the Hearings Sub-Committee. Following publication, a link to the notice shall remain on the front page of the Council's website for a period of one month or such other position and/or period as the Hearings Sub-Committee may recommend. The Monitoring Officer shall draft further guidance on the detailed procedures for publication of decisions as necessary.

16. A member who is the subject of a finding by the Standards Advisory Committee that he/she has breached the code may appeal against that finding and/or against any sanction applied. A complainant who is dissatisfied with the outcome of his/her complaint may appeal against that outcome. Any appeal under this section shall be notified in writing to the Monitoring Officer within 15 working days of the Hearings Sub-Committee recommendation being notified to the member or complainant and the Monitoring Officer shall arrange for the appeal to be heard by a Hearings (Appeal) Sub-Committee of the Standards Advisory Committee within 15 working days of receipt of the appeal. The decision of the Hearings Sub-Committee shall not be published, nor any sanctions applied, until the period allowed for an appeal has expired.
17. An appeal under 15 above may be made on grounds of either fact or defective procedure. The appellant must state the grounds on which the appeal is made and must provide specific reasons and any further information to support his/her appeal.
18. The Sub-Committee to hear any appeal under 15 above shall not include any member of the Hearings Sub-Committee that considered the investigation of the matter in question.
19. A member who is the subject of a complaint shall be informed of, and shall have the right to attend and/or be represented at, the hearing of the Standards Advisory Committee or any of its sub-committees that considers any matter relating to that complaint following investigation.
20. The timelines set out in this procedure are for guidance only and shall be observed where practicable but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.