

North Tyneside Council

Report to Council

Date: 27 November 2014

ITEM 11

Title: Review of Local Arrangements – Code of Conduct for Members

Report from Service Area **Law and Governance**

Responsible Officer: **Vivienne M Geary, Head of Law and Governance** **(Tel: 0191 643 5339)**

Wards affected: **All**

PART 1

1.1 Purpose:

To provide a report on the work of the Standards Committee to review the Authority's Local Arrangements for dealing with Complaints under the Code of Conduct for Members and Co-opted Members (the 'Local Arrangements').

1.2 Recommendation(s):

Council is recommended to:

- a) note the findings and recommendations of the Standards Committee and its Working Group in relation to the Authority's Local Arrangements;
- b) agree to the amendments to the Local Arrangements set out in bold in the body of this report; and
- c) adopt the revised terms of reference for the Standards Sub-Committee at Appendix 3.

1.3 Forward plan:

This report first appeared on the Forward Plan that was published on 27 October 2014.

1.4 Council plan and policy framework

There is no reference in the Our North Tyneside Plan to this item of business.

1.5 Information:

At the Standards Committee's meeting on 19 June 2014, Members considered the operation of Authority's Local Arrangements for dealing with complaints under the Code of Conduct for Members.

Members expressed the view that complaints needed to be dealt with in a timely manner, particularly in the case of formal investigations leading onto a hearing; that specified timescales should be adhered to; and the process to be conducted in a timely way.

The Committee agreed to establish a working group to consider how the Authority's Local Arrangements could be updated to address the matters detailed above. Following consultation with the Chair of the Standards Committee, the Working Group met on 3 occasions during September and October and reported to the Standards Committee's meeting held on Thursday 16 October 2014. At that meeting the Committee adopted the findings of the Working Group and the proposed amendments to the Local Arrangements are now referred to Full Council for consideration and adoption.

In addition the Committee requested that the views of all Members be sought on the proposals to change the Authority's Local Arrangements prior to submission to Council. Details of the proposed changes were sent to all Members on 6 November 2014 with responses requested by 14 November 2014. No responses have been received.

A copy of the Authority's current Local Arrangements is attached for information at Appendix 1.

1.5.1 Findings of the Working Group

Set out below are the stages in the consideration of a Code of Conduct Complaint in accordance with the Authority's Local Arrangements:

- i) the Assessment Process;
- ii) cases referred for local resolution by the Monitoring Officer rather than investigation;
- iii) the Investigation Process; and
- iv) the Determination Process

1.5.1.1 The Assessment Process

The Assessment Process is a "filter" stage where the Monitoring Officer reviews every complaint received and, after consultation with the Independent Persons and consideration of the initial comments of the Subject Member, decides whether the complaint will be investigated.

The Monitoring Officer's decision is based on whether the allegation, if proved, would constitute a failure to observe the Code of Conduct and the application of the Authority's adopted local assessment criteria. This decision will normally be taken within 28 days of receipt of the complaint. The parties are advised of the Monitoring Officer's decision together with the reasons for that decision.

The Working Group noted that on average since the current Code of Conduct came into force in July 2012 the time taken to deal with the assessment a complaint has been within the preferred 28 day period at 24.3 days. Some variations in timescales had been identified relating to particular several complaints arising from one issue and one instance when key participants had been unavailable causing a delay in the scheduling of the assessment meeting

No comments have been received from Members in relation to the current timescales for the completion of the assessment process.

The Working Group, in considering the above, noted that the local arrangements provide for the Monitoring Officer to seek an initial response from the Subject Member of the complaint prior to the assessment of the complaint which is then shared with the Independent Persons. The Working Group considered whether the local arrangements

should be amended to require this initial response also to be shared with the complainant unless there are particular reasons not to, for example if the response included sensitive personal information affecting third parties.

Recommended Change to the Local Arrangements:

It is recommended that initial responses to complaints from the Subject Member are shared with the complainant unless there are particular reasons not to.

To achieve the above it is suggested that the following be inserted into the Procedure for Standards Hearings at Page 3 at the end of Paragraph 5 of the Authority's Local Arrangements:

“A copy of the Subject Member’s initial comments will normally be provided to the Complainant with the assessment decision unless there are particular reasons, in the view of the Monitoring Officer, not to.”

1.5.1.2 Cases referred for Local Resolution by Monitoring Officer

The Monitoring Officer may consider that a complaint can be reasonably resolved informally. In such a case, the Monitoring Officer will consult with the Independent Persons, the subject member and the Complainant to seek to agree a fair resolution of the complaint which also helps to ensure high standards of conduct for the future. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action.

Members have raised concerns in relation to the time taken between the referral of a complaint for Local Resolution and an outcome being achieved.

Of the 21 cases received at the time of the Working Group's investigation since the current Code of Conduct was introduced in July 2012, only 3 cases had been considered to be suitable for local resolution. In one such case it took approximately 3 months for the matter to be resolved. It was recognised that to achieve an acceptable informal resolution may require extensive discussion involving the affected parties and as a result the Working Group and Standards Committee concluded that no further amendments be made to the Local Resolution provisions of the Local Arrangements.

1.5.1.3 The Investigation Process

If the Monitoring Officer decides in the Assessment Process that a complaint merits formal investigation, she will appoint an Investigating Officer. The Investigating Officer may be another officer of the Council, an officer of another Council or an external investigator. The investigation will involve contact with the subject member, complainant and a review of relevant materials.

At the end of the investigation, the Investigating Officer produces a draft report for comment on factual matters and to raise any further issues not considered. A copy of the draft report will also be sent to the Monitoring Officer.

Having received and taken account of any comments received the final report is sent to the Monitoring Officer.

There can be a number of factors that can affect the completion of the investigation report. These include:

- the availability of witnesses to be interviewed, including the subject member;
- evidence from third parties;
- delays in receiving the subject member's response to the draft report; and
- the extent of the subject member's comments/disagreements with the findings of the Investigating Officer in the draft report.

It must be noted that the Authority cannot require third parties to provide information. This must be requested and can take time to be provided.

There is no formal timescale within the Local Arrangements relating to the duration of investigations. However, when the Monitoring Officer appoints an Investigating Officer a timescale for completion of the final report is always stipulated in the appointment letter. The timescale stipulated is usually between 6 and 12 weeks, however it is not always possible for this timescale to be met as the completion of the Investigating Officer's report is an iterative process. The aim of the investigations is to achieve a robust and substantive report that reaches a conclusion about a complaint which is based on the relevant facts.

The Working Group and Standards Committee concluded that no further amendments be made to the investigation provisions of the Local Arrangements.

1.5.1.4 The Hearing process

The Authority's Local Arrangements provide that hearings into a complaint, where the Investigating Officer has found that a breach of the Code of Conduct has occurred, will be held within 3 months from receipt of the final investigation report.

The arrangements for a complaint to be heard include a Pre-Hearing Process that is co-ordinated by the Monitoring Officer in consultation with the Chair of the Standards Sub-Committee established to hear the complaint. The pre-hearing process is administratively complex and provides amongst other things:

- for the subject member to specify in advance matters that are in dispute with the Investigating Officer's final report,
- the witnesses that the subject member wishes to bring to a hearing,
- the submission of additional evidence by the subject member which can result from the subject member specifying the matters that are in dispute, and
- where additional evidence is submitted this can cause delay as the agreement of the Chair of the Sub-Committee to admit that additional evidence into the process must be sought and the Investigating Officer must be able to comment/respond to the additional evidence submitted as it may change the findings in the Investigating Officer's final report.

The Pre-hearing Process is focussed on securing an efficient hearing addressing only the salient points at issue.

The Working Group noted that the Authority's current Local Arrangements did not refer to circumstances when a hearing would proceed in the absence of the subject member/investigating officer in order to prevent excessive delay.

Any decision to proceed in the absence of the subject member would have to be taken by the Sub-Committee hearing the complaint taking into account the particular

circumstances relating to why the subject member/investigating officer or their witnesses were not present.

Recommended Change to the Local Arrangements:

It is recommended that an amendment be made to the current local arrangements in relation to the administration of complaints that had been referred for a hearing once the final report of the Investigating Officer had been received. It is suggested that the Local Arrangements should advise that the Chair of the hearing sub-committee's primary responsibility is to ensure that a hearing is conducted in a fair yet timely manner in order to minimise delay.

It is suggested that the following be inserted into the Procedure for Standards Hearings at Page 24 Section 3 of Appendix 4 of the Authority's Local Arrangements:

“The Chair of the Standards Sub-Committee’s primary responsibility is to ensure that a hearing is conducted in a fair yet timely manner and to minimise delay in reaching a decision on a complaint. The Chair of the Standards Sub-Committee may decide that a hearing of a complaint will proceed in the absence of a relevant party where the Chair is of the view that it is proper to proceed and to prevent unreasonable delay.”

1.5.2 Membership of the Standards Committee

At the Council Meeting on 24 July 2014 the Annual Report of the Standards Committee was considered and received. As a part of the debate of that item of business Members raised issues in relation to the political balance of the Committee/Sub-committee that hears and determines complaints against Members where the Investigating Officer has found a breach of the Code of Conduct. Members will be aware that the Local Government and Housing Act 1989 requires that Authority committees are politically balanced to reflect the political balance of the whole Authority.

It is possible for the Standards Committee and its sub-committee not to be politically balanced. However, to achieve this a decision of Council would be necessary where no Member voted against the establishment of the Standards Committee/sub-committee on a non politically balanced basis.

The previous Working Group which considered the local arrangements for handling complaints in early 2012 the establishment of the Committee on a non-politically balanced Committee basis – with a membership made up of two members from each political group, however, the Working Group did not recommend this arrangement to Council in July 2012.

In considering this matter the Working Group requested and received information on:

1. the number of Authorities that have appointed Independent Members to act as the Chair of their Standards Committee;
2. the approach other Authorities were taking to the re-appointment of Independent Persons; and
3. options available in relation to hearing of complaints against Members.

Following a review of options in relation to the membership of the Standards Committee, the Working Group and Standards Committee concluded no change to the membership of the Standards Committee would be recommended to full Council but that Committee

consider opportunities to promote the reputation of the Committee as independent and impervious to party politics.

1.5.3 Terms of reference of Standards Sub-Committee

The Standards Committee established a sub-committee to deal with applications for dispensations from the requirements of the Code of Conduct in relation to interests and to deal with other functions as may be delegated to it by the Standards Committee.

The current terms of reference are attached at Appendix 2.

The terms of reference need to be amended to allow the Sub-Committee to receive reports from Investigating Officers where no breach of the Code of Conduct has been found and to determine whether to accept the report; refer the report back to the Investigating Officer if it is considered incomplete; or refer the report to a hearing.

Previously, in September 2013 the local arrangements were amended to enable direct referral of reports where a breach of the Code of Conduct has been found to the Sub Committee.

The revised terms of reference, if adopted, will require a consequential amendment to be made to the Authority's Constitution. The Constitution Task Group have been consulted on the revised terms of reference and have made no comment on the proposed changes.

Set out in Appendix 3 are the proposed amendments and additions to the Terms of Reference of the Standards Sub-Committee.

1.6 **Decision options:**

Option 1

Council may:

Approve the proposed amendments to the Local Arrangements for dealing with complaints against Members and Co-opted Members under the Code of Conduct and the amendment to the Terms of Reference of the Standards Sub-Committee.

Option 1 is the recommended option.

Option 2

Not approve the revised arrangements for dealing with complaints against Members and Co-opted Members under the Code of Conduct and the amendment to the Terms of Reference of the Standards Sub-Committee and request the Standards Committee to consider their proposals further.

1.7 **Reasons for recommended option:**

The revised arrangements for dealing with complaints against Members and Co-opted Members under the Code of Conduct and the amendment to the Terms of Reference of the Standards Sub-Committee have been developed following the analysis and comparison of arrangements at other authorities in the northern region and following consultation with the Standards Committee Working Group.

1.8 Appendices:

Appendix 1: Arrangements for dealing with allegations of breach of the Code of Conduct for Members and Co-opted Members

Appendix 2: Current Terms of Reference of Standards Sub-Committee

Appendix 3: Proposed Terms of Reference of Standards Sub-Committee

1.9 Contact officers:

Stephen Ballantyne, Lawyer Specialist – Governance and Employment (0191 643 5329)

Alison Campbell, Finance Business Manager (0191 643 7038)

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

1. [Local Arrangements 2013](#)
2. Localism Act 2011
3. Local Government and Housing Act 1989
4. Local Government Act 1972

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs of administering the new arrangements will be managed within existing budgets.

2.2 Legal

Under Section 28(6) and (7) of the Localism Act 2011, the Authority must have in place “arrangements” under which allegations that a Member or Co-Opted Member of the Council or a Committee or Sub-Committee of the Authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

2.3 Consultation/community engagement

All Members of the Council have been requested to provide comments on the Authority’s current arrangements.

The arrangements for dealing with complaints against Members and Co-opted Members under the Code of Conduct and the consequential amendments to the Constitution and Officer Delegation Scheme are a matter internal to the authority.

2.4 Human rights

There are no Human Rights issues arising from this report.

2.5 Equalities and diversity

There are no equalities and diversity issues arising from this report.

2.6 Risk management

There are no risk management issues arising from this report.

2.7 Crime and disorder

There are no crime and disorder issues arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability issues arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive X
- Head(s) of Service X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy X