

<b>Meeting:</b>	<b>Standards Panel</b>
<b>Meeting date:</b>	<b>16 October 2018</b>
<b>Title of report:</b>	<b>Appeal of a monitoring officer resolution by a complainant</b>
<b>Report by:</b>	<b>Democratic services officer</b>

## **Classification**

Open – Report

Appendices 1 to 5 are exempt by virtue of the paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended.

- 1 Information related to any individual

And the public interest in maintaining this exemption whilst the matter is being determined by the panel outweighs the public interest in disclosing the information.

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

All Wards

## **Purpose**

To consider an appeal by a complainant.

## **Recommendation**

**THAT the panel determine an appeal by a complainant following monitoring officer resolution of a code of conduct complaint.**

## **Options**

1. There are two options open to the panel:
  - a) Confirm the monitoring officer's decision; or
  - b) Substitute the monitoring officer's decision for their own decision.

## Key Considerations

2. The standards panel is determining an appeal against a monitoring officer resolution by a complainant against a finding of a breach of the code of conduct
3. The original complaint is attached at appendix 1.
4. The initial assessment of the complaint is attached at appendix 2.
5. The subject member's comments on the complaint are attached at appendix 3
6. The original monitoring officer resolution decision notice is attached at appendix 4.
7. The appeal information submitted by the complainant is attached at appendix 5.
8. The monitoring officer who looked at this complaint will be present at the meeting to answer queries which the panel members may have in connection with the matter.
9. The independent person whose views were taken into account when making the monitoring officer resolution has also been invited to the meeting to answer queries which panel members may have.
10. The complainant has the right to attend the panel to present their views or submit in writing their comments.
11. The subject member has been invited to present their views on the monitoring officer resolution decision notice.
12. It is for the panel members to determine whether or not there has been a breach of the code of conduct in relation to the complaint.
13. If the panel find that a subject member is in breach of the code of conduct, it may:
  - Publish its findings in respect of the member's conduct;
  - Report its findings to council (or to the town/parish council) for information;
  - Recommend to council that the member be censured;
  - Recommend to the member's group leader (or in the case of un-grouped members, recommend to council) that he/she be removed from any or all committees or sub-committees of the council;
  - Recommend to the leader of the council that the member be removed from the cabinet, or removed from their portfolio responsibilities;
  - Recommend that the subject member be replaced as executive leader;
  - Instruct the monitoring officer to (or recommend that the town/parish council) arrange training for the member;
  - Recommend to council (or recommend to the town/parish council) that the member should not be appointed and/or be removed from all outside body appointments to which they have been appointed or nominated by the council (or by the town/parish council);
  - Withdraw (or recommend to the town/parish council that it withdraws) facilities provided to the member by the council, such as a computer, website and / or email and internet access;
  - Exclude (or recommend that the town/parish council exclude) the member from the council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.
  - Require an apology in terms suitable to the standards panel.

14. The above list is not exhaustive. However, it should be noted that the panel does not have the power to suspend a councillor or to withdraw any allowances which a subject member may be in receipt of. The panel can only make recommendations to the parish council in respect of any finding of a breach of the code of conduct.
15. If there is a finding of a breach of the code of conduct, the decision will be published as a decision of the standards panel.

## **Community Impact**

16. Having an effective process for dealing with code of conduct complaints upholds principle A and G of the code of corporate governance by ensuring that councillors behave with integrity and that councillors are accountable for their actions. This should provide reassurance to the community that councillors are behaving in the best interests of their communities and that appropriate action is being taken to ensure that the code is being upheld.

## **Equality duty**

15. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
16. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.
  17. The appeal process will comply with Equality legislation and will ensure where necessary that the process is accessible and where necessary reasonable adjustment will be provided to support those that share a protected characteristic to participate fully in the process. .
  18. Although Article 6 ECHR "right to a fair trial" does not apply to this type of hearing due to the sanctions that can be applied. The common law right to be heard by an unbiased tribunal, have notice of the misconduct and be heard in answer to the charges apply. The appeal process is capable of achieving justice and fairness.

## **Resource implications**

18. There are no resource implications arising as a result of this report.

## **Legal Implications**

19. The appeal process forms part of this council's arrangements for making decisions on allegations in accordance with section 27 (6) (b) of the Localism Act 2011.

## **Risk Management**

20. There are no risks arising directly from the report which is for information. Maintaining high standards of conduct mitigates risks to the reputation of the council.

## **Consultees**

21. None.

## **Appendices**

Appendix 1 – Original complaint

Appendix 2 – Initial assessment

Appendix 3 – Subject member's comments

Appendix 4 – Original monitoring officer's resolution decision notice

Appendix 5 – Appeal information submitted by complainant

## **Background Papers**

None