

**REVIEW OF COMPLAINTS PROCEDURE FOR CONDUCT COMPLAINTS**

- To:* **Constitution and Ethics Committee**
- Meeting Date:* **27 June 2019**
- From:* **Monitoring Officer**
- Purpose:* **Consider amending the current complaints procedure to introduce a requirement of confidentiality where appropriate.**
- Recommendation:* **It is recommended that Constitution and Ethics Committee:**
- 1. Resolve that all code of conduct complaints be subject to a requirement of confidentiality by all participants in the process until such time as the complaint case is concluded.**
  - 2. Resolve that where a conclusion has been reached that the code of conduct has not been breached or where the Monitoring Officer concludes, following an initial assessment of a complaint, that no further action needs to be taken that the identity of the councillor who is the subject of the complaint remains confidential unless that councillor wishes it to be made public.**
  - 3. Resolve that where a complaint has been informally resolved by agreement without the need for a formal investigation that the identity of the councillor who is the subject of the complaint and a summary of the complaint is reported back to the committee.**
  - 4. Resolve that where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to an agreed alternative resolution that the investigation report will be published when the case is reported back to the committee**
  - 5. Resolve that where a conclusion has been reached that the code of conduct has been breached and that alternative resolution is not appropriate/ possible that the investigation report will remain confidential until such time as the hearing into the complaint takes place, at which stage it will be published.**

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## **1. BACKGROUND**

- 1.1 The Constitution & Ethics Committee has requested a review of existing procedures for the handling of code of conduct complaints to consider whether a requirement of confidentiality should be introduced to the process.
- 1.2 Currently decision notices relating to all complaints against councillors are published on the council's website, whether the complaint was upheld or not. Complainants often contact the media to say that they have lodged a complaint against a member which leads to media interest before any conclusions have been reached about the complaint.
- 1.3 The purpose of this report is for the Committee to decide if it wishes to introduce a requirement that all complaints that a member has breached the code of conduct should be dealt with on a confidential basis initially. This would enable information regarding complaints to be treated as confidential until such time as they are concluded so that information is not released which may be prejudicial to the conduct of the complaints process and to protect the identity and reputation of councillors who have not breached the Code of Conduct.
- 1.4 Under the previous legislative system for handling complaints against councillors set up by the Local Government Act 2000 there was a statutory requirement that complaints should be kept confidential. When the Localism Act 2011 introduced a new way of working in July 2012 councils were able to devise their own codes of conduct (as long as it was based on the Nolan Principles) and set its own procedures for dealing with complaints.
- 1.5 Some councils continued to see the benefit of keeping the process confidential until resolution and included this in the new procedures. The issue has not previously been considered by Cambridgeshire County Council.
- 1.6 This report is for Constitution and Ethics Committee to consider under its Terms of Reference "Authority to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:
  - Promoting and maintaining high standards of conduct by Members and co-opted members;
  - Assisting the Members and co-opted members to observe the Code of Conduct;
  - Advising the Council on the adoption or revision of the Code of Conduct;
  - Monitoring the operation of the Code of Conduct;
  - Advising, training or arranging to train Members and co-opted members on matters relating to the Code of Conduct."
- 1.7 In the absence of a specific statutory requirement regarding confidentiality under the Localism Act the Council has the ability to set its own processes.
- 1.8 The Monitoring Officer advises the Committee could consider the following resolutions:

- i) All complaints about the conduct of a member be subject to a requirement of confidentiality by all participants in the process until such time as the case is concluded and reported back to the Committee. A breach of this requirement may be a separate breach of the Code of Conduct.
- ii) Where a conclusion has been reached that the code of conduct has not been breached or where the Monitoring Officer concludes, following an initial assessment of a complaint, that no further action needs to be taken that the identity of the councillor remains confidential. This is because there is no reason for making their identity public in these circumstances and no public interest in doing so. Any investigation report will be published as a confidential item on the agenda and only an anonymised case summary put on the public agenda for Constitution & Ethics Committee. The complaint will only be made public if councillor who is the subject of the complaint decides to make it public at the end of the process.
- iii) Where a complaint has been informally resolved by agreement without the need for a formal investigation (this is usually by way of an apology which is offered and accepted) that the identity of the councillor who is the subject of the complaint and a summary of the complaint is reported back to the committee. It is considered to be in the public interest that these details are made public where there is an acknowledgement of fault on behalf of the relevant councillor.
- iv) Where a conclusion has been reached (following a formal investigation) that the code of conduct has been breached but that no hearing is necessary, due to alternative resolution, that the investigation report and any action taken will be published when the case is reported back to the committee for information. It is considered to be in the public interest that the details of a complaint where an investigation has taken place and a finding made that a councillor has breached the code of conduct are published. It is important to note that alternative resolution is only possible where the councillor accepts an element of fault.
- v) Where a conclusion has been reached that the code of conduct has been breached and where alternative resolution is not appropriate/possible that the investigation report will remain confidential until such time as the hearing into the complaint takes place, at which stage it will be published. This is to avoid “trial by media” in advance of a case being heard so that panel members are not prejudiced by anything that is published in the media.

## **REASON FOR THE RECOMMENDATIONS**

- 1.9 If a requirement of confidentiality is added to the complaints process it should ensure that councillors are not judged publically for their conduct until due process has been gone through and a finding made. This will minimise the opportunity for the reputation of councillors who have complaints made against them being tarnished before any decision has been made on whether they have breached the code of conduct and minimise the possibility of

Hearings Panel members being influenced by press reporting of complaints which may not have the full facts.

Source Documents	Location
None	