



Joint Standards Complaints Committee

22 March 2017

Activity Report of the Monitoring Officer

Purpose of report

This regular report provides a brief update on Monitoring Officer activity since the last meeting.

1.0 Registers of Interest and Monitoring Officer Enquiries

1.1 There has been no significant change in the level of regular activity in these areas. A regular stream of notifications of changes to existing registers and completed registers has been received since the last meeting, indicating that this process is now well embedded within local councils. Likewise there has been a steady stream of enquiries in relation to declaration of interests at meetings and miscellaneous governance issues. It is therefore proposed not to report these in detail going forward but to outline any patterns of interest or concern.

2.0 Complaints

2.1 Of more significance is the ongoing steady stream of potential and actual complaints relating to the Councillor Code of Conduct. 8 complaints are currently in the investigation stage (including the 6 reported last time which relate to issues at the same parish council). 7 relate to Town or Parish Councils and 1 to an ENC Councillor. A further complaint is in the initial assessment stage. It is anticipated that the outcome will be reported at the Committee. Finally, discussions have been held about three possible complaints; none has resulted in an actual complaint at the time of writing this report although one is related to another complaint that has been received.

2.2 One of these complaints has undergone an appeal by the 'complained against' Council against the initial assessment to refer for further investigation. The Appeal Panel decided to uphold the initial assessment. This appeal did however raise an issue as to whether it is appropriate to allow an appeal of the initial assessment where the outcome is to refer for further investigation. This is discussed in more detail in 3.4 below.

2.3 The Monitoring Officer and the Independent Person are currently concerned about the time some of the investigations are taking. Where complaints are referred for formal investigation, the Monitoring Officer commissions an independent investigator to carry this out as there is no internal capacity to undertake them. The investigation will involve gathering evidence to support or refute the complaint and will usually involve the investigator meeting with the parties involved to enable a report to be produced.

2.4 The Monitoring Officer has commissioned investigations from two different legal teams. Most of the delay has been caused by difficulties in key witnesses' availability (including the multiple complaints noted above). However, some of the difficulty has arisen from the investigators having other workloads. The Monitoring Officer is monitoring the situation and has drafted a commissioning template which indicates the expected timetable for report delivery to try and ensure more concentrated attention and hence faster turn round. While the investigation may be subject to unexpected delays as it progresses, a target completion date will enable better monitoring of progress to be undertaken.

3.0 Constitutional Changes

- 3.1 With the agreement of the Chairman and Vice-Chairman of this Committee and the Governance and Audit Committee, it was agreed to seek Council approval for an urgent change to the Code of Conduct. The change reflected the fact that an increasing number of complaints against Councillors that are received by the Monitoring Officer are in relation to occasions where the public perception is that the person concerned is acting as a councillor, although they may not have a formal role or power from the council concerned to do so (for example when making comments on social media using their title of Cllr). Such situations would have been covered by the old Code and are still covered by the NALC (National Association of Local Councils) Code, which some of our Parish Councils have adopted. However, they are not covered by the wording of the current ENC Code, a point which members of the public find hard to understand when their complaints cannot be pursued.
- 3.2 Council considered this issue and agreed at its January meeting to the proposal to add wording in italics as follows to the introduction to the Code:
“This Code applies to all Councillors when they act in their role as Councillors of the Council *or when they claim to act or give the impression of acting as a representative of the Council.* This Code is a requirement of the Localism Act 2011 and forms part of the Constitution of ENC, which all Councillors will follow. This code is based on the seven Nolan principles of public life.”
- 3.3 The change has been highlighted in a dedicated Member Brief to ENC Councillors. Town and Parish Councils will be informed of the change shortly and they will also be encouraged to adopt the revised Code.
- 3.4 As noted above, the Monitoring Officer feels that a further change is required but to the appeal provisions in Part 9 of the Council’s Constitution. The current procedure allows an appeal to be made against the outcome of the Initial Assessment made on a complaint. There are three possible outcomes arising from the Initial Assessment decision:
- i) To take no further action.
 - ii) To take other/informal action.
 - iii) To refer the complaint for formal investigation.
- 3.5 Where a complaint is referred for investigation and it is determined that there is a case to answer, the Councillor complained against may be either referred to a Panel Hearing or the complaint resolved by other action without the need for a Hearing. Part 9 includes appeal rights at the conclusion of the Hearing process and any “other action” would be by agreement. The right of appeal is therefore protected in Part 9 at this stage of the process.
- 3.6 The current right of appeal against the Initial Assessment outcome to refer the complaint for investigation gives a further opportunity to appeal at a stage where no determination has been made as to whether a breach of the Code of Conduct for Councillors has occurred and before an investigation into the complaint has taken place.
- 3.7 It can be argued that an appeal at this stage is inappropriate as no final decision has been made as to whether action is necessary. Such appeals delay the commissioning of an investigation by several weeks as the timescales for allowing representations are taken into account as well as convening a Hearing. This can prove to be a source of frustration for other parties involved in the process and a right of appeal at this stage of the process is not considered to be necessary in order to protect the rights of the parties involved. It is therefore proposed to remove the right of appeal for the decision at initial assessment to refer for further assessment.

- 3.8 The Initial Assessment decision is in any case subject to consultation with the Chairman or Vice-Chairman of the JSCC as well as the Independent Person (or Reserve). These checks and balances would serve to identify any procedural flaws in the process. No sanction is applied at the Initial Assessment stage of the procedure (this would only arise from a Panel Hearing where a breach of the Code was found) and any significant new information could be provided as the investigation is carried out. The removal of the right to appeal against referral of the complaint for investigation is therefore considered not to adversely affect the Councillor complained against.
- 3.9 An Initial Assessment decision to take no further action or to take other/informal action would effectively bring the process to an end. It is therefore considered that a right of appeal against these outcomes should be retained
- 3.10 In order to implement this proposal quickly if it receives the support of this Committee, this matter has also been reported to the Governance and Audit Committee which is meeting on the 20 March. The outcome of that consideration will be reported to this Committee. If the proposal receives support from both Committees it will be presented in a separate report by the Monitoring Officer for consideration by Council on 10 April.

4.0 Other Matters

- 4.1 A recent case (Taylor v Honiton Town Council [2016] EWHC 3307 (Admin)) has confirmed it is lawful for principal councils (such as ENC) to recommend sanctions to local councils in relation to findings of breach of the Code of Conduct for Councillors and that these sanctions could include a requirement for training. However, it also found that the local council could not implement any additional sanctions over and above those recommended by the principal council.

5.0 Equality and diversity issues

- 5.1 There are no known negative equality and diversity issues arising from this paper.

6.0 Legal implications

- 6.1 This report outlines activities undertaken under local arrangements which reflect the Localism Act 2011 and related regulations.

7.0 Risk management

- 7.1 The actions reported reduce the risk of non-compliance with legislation.

8.0 Resource and Financial implications

- 8.1 There are no known additional financial implications arising from this report.

9.0 Constitutional Implications

- 9.1 There are no constitutional implications directly arising from this report. If the proposal at 3.7 to remove the right of appeal at Initial Assessment to refer for further investigation is supported a separate report will be taken to Council. If it is then approved there will be a resultant change in the Constitution Part 9 Complaint assessment Procedure.

10.0 Customer Service Implications

- 10.1 There are no specific customer services implications arising from this report.

11.0 Corporate outcomes


11.1 The work reported here contributes to the Corporate Outcomes of Effective Management and Strong Community Leadership.

12.0 Recommendation

12.1 The Committee is recommended to

1. Note the contents of this report
2. Consider the proposal to remove the right to appeal an Initial Assessment decision to refer a complaint for further investigation and indicate if they would wish this proposed change to the Constitution to be referred to Council

(Reason: It is considered this proposal would assist in decreasing the length of time to complete investigations of complaints of alleged breach of the Code of Conduct for Cllrs)

Legal	Power: Localism Act 2011		
	Other considerations:		
Background Papers:			
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