



Council 10 April 2017

Proposal to Change the Council's Constitution

Purpose of report

This report proposes changes to Part 9 of the Council's Constitution to remove the right of appeal to an Initial Assessment decision to refer a Councillor Code of Conduct Complaint to further investigation.

1.0 Background

1.1 The first stage of the assessment of a complaint of an alleged complaint of breach of the Councillor Code of Conduct is an Initial Assessment by the Monitoring Officer. 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.

The current procedure contained in Part 9 of the Constitution allows an appeal to be made against all the possible outcomes of the Initial Assessment made on a complaint

1.2 Where a complaint is referred for investigation and it is subsequently 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.

2.0 Proposed Change to Part 9 of the Constitution

2.1 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.

2.2 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 investigation.

2.3 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.

3.0 Other considerations

3.1 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.

3.2 This proposal has been considered by the Governance and Audit Committee on 20 March and Joint Standards Complaints Committee on 22 March. The proposal received support from both Committees but because of the order of consideration it was not considered appropriate for the matter to be recommended to council from either committee but presented in a separate report by the Monitoring Officer for consideration by Council noted their support.

4.0 Equality and diversity issues

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

5.0 Legal implications

5.1 The change proposed to Part 9 is compliant with provisions of the Localism Act 2011 and related regulations.

6.0 Risk management

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

7.0 Resource and Financial implications

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

8.0 Constitutional Implications

8.1 If the proposal at 2.2 to remove the right of appeal at Initial Assessment to refer for further investigation is approved there will be a resultant change in the Constitution Part 9 Complaint Assessment Procedure.

9.0 Customer Service Implications

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

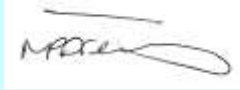

10.0 Corporate outcomes

10.1 The work reported here contributes to the Corporate Outcomes of Effective Management

11.0 Recommendation

11.1 Council is recommended to agree the proposal to remove the right to appeal an Initial Assessment decision to refer a complaint for further investigation and for the Monitoring Officer to make appropriate changes to the Constitution.

(Reason: 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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