



Governance and Audit Committee 31 January 2018

Proposed Changes to Part 9 of the Constitution – Procedure for Assessment

Purpose of report

To propose changes to Part 9 of the Constitution in respect of the appeal process after initial assessment.

1.0 Background

- 1.1 The Joint Standards Complaints Committee in 2017 considered two sets of comments on its appeal process as part of its Procedure for the Assessment of Complaints against Councillors (Part 9 of the Constitution).
- 1.2 The council's legal advisors, LGSS, noted that there is no legal requirement to have an appeal process for the outcomes of the initial assessment stage in the code of conduct complaints handling process. They also noted that ENC could be unique in allowing such appeals and that having such an appeal process can potentially add delay into the process, which can already take quite a long time for either the affected councillor wanting to clear their name or a disgruntled complainant.
- 1.3 Mr Jonathan Goolden (an external lawyer with significant experience of Code of Conduct matters who has been appointed as a Deputy Monitoring Officer to this council) has also commented on this Council's process and suggested that the Council removed the right of appeal for no or 'other action' at Initial Assessment stage.
- 1.4 The Joint Standards Complaints Committee also noted that:
- a) the complainant or Councillor(s) complained against was able to refer the matter to the Local Government Ombudsman should they feel that the Council's procedure had not been followed or if the outcome proposed was not considered appropriate.
 - b) at present, 20 working days was allowed for the appeal period. This extended the period of uncertainty for the complainant or councillor(s) complained against and it was suggested that this could be reduced to reduce the delay, whilst allowing for the parties involved to be on holiday etc.
 - c) the ability to appeal if the outcome of the initial assessment is referral for investigation was removed earlier in 2017.
 - d) the purpose of initial assessment stage was to allow Monitoring Officers to more quickly deal with less serious complaints. Allowing for appeal at initial assessment does add to the burden of work on complaints related matters for officers at a time of continuing constraints on public expenditure.

2.0 Proposed Change

- 2.1 After discussion and in the light of the comments above in relation to the role of the Local Government Ombudsman, the Joint Standards Complaints Committee agreed to recommend to this Committee the following changes to the Procedure in Part 9 of the Constitution:

Stage 4 – Appeal

6.1 An appeal may be made **in respect of Initial Assessment where the outcome is either no further action or 'other action'** only where the complainant or councillor(s) complained about feels that:

- a) ~~the process outlined in this procedure has not been followed~~
- b) ~~the outcome proposed is considered inappropriate; or~~
- e) significant new evidence is available which has not been considered during the previous process.

Any such appeal should be made in writing (by letter or e-mail) to the Monitoring Officer within ~~20~~ **10** working days of the receipt of the notification of the relevant decision.

6.2 Hearing Outcome

An appeal may be made where the complainant or councillor(s) complained about feels that:

- a) **the process outlined in this procedure has not been followed**
- b) **the outcome proposed is considered inappropriate; or**
- c) **significant new evidence is available which has not been considered during the previous process.**

Any such appeal should be made in writing (by letter or e-mail) to the Monitoring Officer within 20 working days of the receipt of the notification of the relevant decision

3.0 Equality and diversity issues

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

4.0 Legal Implications

4.1 There are no known legal implications arising from this report.

5.0 Risk Management

5.1 Should any councillor or complainant be unhappy with the way the complaints procedure has been is applied they may make a complaint to the Local Government Ombudsman. It should be noted that the Ombudsman will generally only review whether the process has been correctly followed rather whether the outcome is acceptable to the person complaining to them.

6.0 Resource and Financial Implications

6.1 The proposed change should reduce the number of appeal hearing required which will reduce the requirement for related officer resources.

7.0 Constitutional Implications

7.1 Any proposed changes to the procedure in Part 9 of the Constitution will be have to been approved by (full) Council.

8.0 Implications for our Customers

8.1 The processing of appeals does extend the overall time take to determine complaints and can a negative impact on the councillor seeking to clear their name or the complainant awaiting an outcome for their complaint.

9.0 Corporate Outcomes

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

10.0 Recommendations

10.1 Members are recommended to resolve to recommend to Council the changes as outlined in paragraph 2.1 be approved.

[Reason: To ensure that the procedure followed for Complaints against Councillors is proportionate and fair.]

Legal	Power: Localism Act 2011				
	Other considerations: Part 9 of the Constitution				
Background Papers: Joint Standards Complaints Committee Reports July and Nov 2017					
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Date: 10/1/18					
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