



## Joint Standards Complaints Committee 18 July 2018

### Changes to the Constitution – Reporting Of Complaints

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#### Purpose of report

This report proposed amendments to Part 9 of the Constitution in relation to the reporting of complaints and their outcomes as a result of recent decisions. A possible amendment of the Code of Conduct is also proposed as a result of recent legal discussions on the applicability of the Code

#### Appendices

Appendix A – Example Summary Outcome Report – No further action at Initial Assessment (To follow)

Appendix B – Example Summary Outcome Report – Breach of Code after Hearing (To follow)

Appendix C – Privacy Impact Assessment (To follow)

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#### 1.0 Background

1.1 Part 9 of the Constitution makes for following provision for reporting the outcome of complaints:

*a) Initial Assessment*

Para 3.7 The Monitoring Officer, after taking a decision, will normally inform the complainant, relevant councillor(s) and if appropriate the Town or Parish Council of the decision and the reasons for that decision via a *written summary*. The summary will include the main points considered, the conclusions reached and the reasons for the decision and will be available for public inspection for a year. *No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the councillor(s) affected.*

*b) No Case to Answer after Investigation*

Para 4.7 If the Investigating Officer concludes that there is no case to answer of a failure to comply with the code of conduct and the Monitoring Officer agrees that no further action is required, the Monitoring Officer will write accordingly to the complainant and the councillor(s) concerned (and to the Town or Parish Council, where the complaint relates to a Town or Parish councillor). The letter will include a copy of the Investigating Officer's final report

*c) Other Action after Investigation*

Para 4.8 Where other action is agreed the Monitoring Officer will arrange for the required action to be taken and, once completed, the Monitoring Officer will inform the complainant, the councillor(s) complained against, and the JSCC (plus Town or Parish Council if relevant) that the complaint has been dealt with.

*d) No breach found at Hearing*

Para 5.6 No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the councillor(s) affected.

*e) Breach found after Hearing*

Para 5.8 options that include an element of reporting are:

- Recommend to the relevant council that the councillor(s) be censured for their breach of the code of conduct
- Recommend an apology to be made by the Councillor to the complainant (and/or others)
- Publish its findings in respect of the councillor's conduct. (Advice will be sought

as to the most effective place of publication to attract the attention of the relevant community). If this is on a council website, the publication will be removed after 12 months.

- Recommend to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to the relevant Council) that the councillor be removed from any or all committees or Sub-Committees of the Council.
- Recommend to the relevant Council the removal from some or all outside appointments to which the councillor has been appointed or nominated by the relevant council.

#### Para 5.9

- a formal decision notice to be prepared in consultation with the Chairman of the Hearings Panel, and send a copy to the complainant, the councillor(s) complained against (and to the Town or Parish Council if relevant).
- The outcome will also be reported to the JSCC at the next meeting and recorded in the minutes.

#### Appendix 3 - Para 4.1

- As soon as practicable after the Hearing Panel has completed its consideration and decision in respect of the allegation, the Monitoring Officer will:
  - (i) send the councillor(s) a written notice of the finding of the Hearing Panel, and the reasons for it; the statement will include a statement of any rights of appeal against that decision;
  - (ii) send a written report of the Panel decision to the next convenient meeting of the JSCC
  - (iii) where the complaint relates to a Parish or Town councillor, send a written notice of the decision to the Clerk to the relevant Parish or Town Council;

#### f) *Appeal*

Paragraph 6.6 the Monitoring Officer will arrange for a formal decision notice to be prepared in consultation with the Chairman of the Appeal Panel, and send a copy to the complainant, the councillor(s) complained against, (and to the Town or Parish Council if relevant). The outcome will also be reported to the JSCC at the next meeting.

1.2 In the past five years since the introduction of the provisions of the Localism Act this Council has not published any of its decisions on an detailed, individual basis, although the outcome has been notified to the subject councillor and the complainant, plus the Clerk of the relevant Town or Parish Council when the subject councillor is not an ENC councillor. No restriction has been placed on recipients on further publication or dissemination of these notifications. In addition anonymised outcome statistics have been provided to this Committee.

1.3 More recently the context in which outcomes could or should be shared has changed and it is considered timely to review the relevant arrangements as a consequence. The changed context included consideration of the reporting arrangements at other councils and the following factors

a) *Investigation Report*. There is an Inconsistency in sharing of the final investigation report between different stages as the process currently standards. In addition, there has been a recent case, where a councillor had ceased to be a councillor before an investigation report was finalised, and the Information Rights Tribunal was held that the draft report should be published,. The Tribunal felt that was hard to see how or in what substantial respects, the report's findings of fact or its final conclusions could properly have been altered by the standards committee, had it been submitted to them and that the public interest outweighed the implications for the personal data of the councillor.

b) *Publication of Decision Notices*. At present there is no restriction on the subject councillor(s), complainant or Town/Parish Council publishing the decision notice, even though it may be decided by a Hearing Panel that no publication should take place from this council. In addition there have been recent FOI requests for decision notices for which there were no grounds for refusal,

although personal details, including the name of the councillors and complainants were redacted.

## **2.0 Proposed Reporting Changes**

- 2.1 It is proposed that Decision Notices at all stages of the complaints process should be marked as not for publication on the grounds that they contain personal data of the subject councillor(s) and complainant. However a public summary will be published on the ENC website within 5 days of decision and will also reported to the next available meeting this Committee.
- 2.2 This summary will be anonymised (no name of councillor(s) or Complainant but will name the council involved. It will also include:
- whether the complaint by member of public (which will include complaints by staff) or by a councillor,
  - the paragraphs of the Code that were alleged to be breached,
  - a brief description of the activity that created the alleged breach (avoiding identifying detail)
  - the outcome of the complaint
- Example outcome reports can be found in the Appendices A & B. A summary with similar information for complaints received 2012-2017 will be circulated at the Committee but will not be published separately on the website.
- 2.3 The summary will also be sent to the Clerk of the relevant Town or Parish Council if it relates to one of their councillors so that this can be reported to their Council if that is their practice. This revised approach would only apply for any new complaints received after agreement by Council which is anticipated to be in October.
- 2.4 Where a Hearing has been held and a breach has been found it is proposed that the Cllr's name will be included in the summary to be published. Draft or Final Investigation Reports will not be published as a matter of routine and will be marked as not for publication as they will contain personal data. Any requests for publication will be considered under Freedom of Information legislation and would have appropriate personal information redacted.
- 2.5 Adoption of the above procedure for publishing a public summary will effectively make one of the current potential sanctions available to a Hearing Panel obsolete and it is suggested that the following sanction is removed from the list in Section 5.8 of Part 9 of the Constitution:

*Publish its findings in respect of the councillor's conduct. (Advice will be sought as to the most effective place of publication to attract the attention of the relevant community). If this is on a council website, the publication will be removed after 12 months.*

## **3.0 Proposed Amendment of the Code of Conduct (Part 5.1 of the Constitution)**

- 3.1 Councillors will recall that in January 2017 the introductory paragraph of the Code was modified with the inclusion of the words in italics:  
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.*
- 3.2 The purpose of this change was to respond to an increasing number of complaints against Councillors that are received by the Monitoring Officer 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.
- 3.3 The adopted wording was a balancing act between having something that the public and councillors can understand and which would help guide behaviour/expectations on

both sides with the complex legal position as to whether or not they are actually acting as a councillor. Case law indicates that a councillor is acting as such, not only in formal committees but when communicating with ward residents about a ward matter or if using the resources of the council to do the above .

3.4 The key case in this area is *McTigue v Middlesbrough Council* (2009 - APE 421) (a decision of the former Adjudication Panel for England. When Cllr McTigue posted on a forum under the pseudonym "Indie" the Panel held she was not acting as a councillor when commenting about things in general, but despite the lack of identification as a councillor in her user name, she was acting as such when the contents of her posts concerned ward matters.

3.5 In the light of recent legal discussions around this issue of capacity it is proposed that the Introductory paragraph be nuanced as follows: "This Code applies to all Councillors when they act in their role as Councillors of the Council. *This may include* when they claim to act or give the impression of acting as a representative of the Council *or when carrying out ward councillor activities.*"

#### **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 This report outlines activities undertaken under local arrangements which reflect the Localism Act 2011 and related regulations. The proposed change to the Code of Conduct mitigates the risk that the application of the Code will be challenged as *ultra vires*.

#### **6.0 Risk management**

6.1 The recommendations made in this report reduce the risk of non-compliance with legislation.

#### **7.0 Resource and Financial implications**

7.1 There are no known financial implications from this report.

#### **8.0 Constitutional Implications**

8.1 If approved, the recommendations in this report would require full Council to agree changes to Parts 5.1 and Part 9 of the Constitution

#### **9.0 Privacy implications**

9.1 The proposed changes to the reporting arrangements have been carefully considered to balance the public interest in the outcome of complaints with the legal requirements for the protection of personal information of the individuals involved in complaints.

#### **10.0 Customer Service Implications**

10.1 The recommendations in this report are designed to improve public confidence in arrangements for the processing of complaints against councillors by improving transparency of outcomes.

#### **11.0 Corporate outcomes**

11.1 The work reported here contributes to the Corporate Outcome of Effective Management.

## 12.0 Recommendation

12.1 The Committee is recommended to support the principles of changes to Parts 5.1 and 9 of the Constitution noted in this report and ask the Monitoring Officer to formally draft changes and report these to the Governance and Audit Committee for recommendation to Council.

*(Reason: These changes will improve transparency in the council's arrangements for processing complaints against councillors and help satisfy the council's duty to provide high standards of ethical behaviour).*

<b>Legal</b>	Power:	<b>Localism Act 2011</b>			
	Other considerations:				
<b>Background Papers:</b>					
<b>Person Report:</b>	<b>Originating</b>	Sharn Matthews, Monitoring Officer, ☎ 01832 742108, ✉ smatthews@east-northamptonshire.gov.uk			
<b>Date: 3/7/18</b>					
<b>CFO</b>		<b>MO</b> <b>13/7/18</b>		<b>CX</b>	

## Proposed Changes to the Constitution

### *Initial Assessment*

Para 3.7 The Monitoring Officer, after taking a decision, will normally inform the complainant, relevant councillor(s) and if appropriate the Town or Parish Council of the decision and the reasons for that decision via a ~~written summary~~ **decision notice which is not for publication**. The ~~summary~~ **decision notice** will include the main points considered, the conclusions reached and the reasons for the decision ~~and will be available for public inspection for a year. No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the councillor(s) affected.~~ **A short summary note will be produced, which does not include the names of the councillor or complainant but will include the name of the council and the paragraphs of the code concerned. This will be reported to the Joint Standards Complaints Committee at the next meeting**

### *No Case to Answer after Investigation*

Para 4.7 If the Investigating Officer concludes that there is no case to answer of a failure to comply with the code of conduct and the Monitoring Officer agrees that no further action is required, the Monitoring Officer will write accordingly to the complainant and the councillor(s) concerned (and to the Town or Parish Council, where the complaint relates to a Town or Parish councillor). The letter will include a copy of the Investigating Officer's final report

### *Other Action after Investigation*

Para 4.8 Where other action is agreed the Monitoring Officer will arrange for the required action to be taken and, once completed, the Monitoring Officer will inform the complainant, the councillor(s) complained against, and the JSCC (plus Town or Parish Council if relevant) that the complaint has been dealt with.

### *No breach found at Hearing*

Para 5.6 No formal publication (on the council's website or in a newspaper) of the outcome will take place unless requested by the councillor(s) affected.

### *Breach found after Hearing*

Para 5.8 options that include an element of reporting are:

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- Recommend an apology to be made by the Councillor to the complainant (and/or others)
- ~~Publish its findings in respect of the councillor's conduct. (Advice will be sought as to the most effective place of publication to attract the attention of the relevant community). If this is on a council website, the publication will be removed after 12 months.~~
- Recommend to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to the relevant Council) that the councillor be removed from any or all committees or Sub-Committees of the Council.
- Recommend to the relevant Council the removal from some or all outside appointments to which the councillor has been appointed or nominated by the relevant council.

Para 5.9

- a formal decision notice to be prepared in consultation with the Chairman of the Hearings Panel, and send a copy to the complainant, the councillor(s) complained against (and to the Town or Parish Council if relevant).
- The outcome will also be reported to the JSCC at the next meeting and recorded in the minutes.

Appendix 3 - Para 4.1

- As soon as practicable after the Hearing Panel has completed its consideration and decision in respect of the allegation, the Monitoring Officer will:
  - (i) send the councillor(s) a written notice of the finding of the Hearing Panel, and the reasons for it; the statement will include a statement of any rights of appeal against that decision;
  - (ii) send a written report of the Panel decision to the next convenient meeting of the JSCC
  - (iii) where the complaint relates to a Parish or Town councillor, send a written notice of the decision to the Clerk to the relevant Parish or Town Council;

#### *Appeal*

**Ref** the Monitoring Officer will arrange for a formal decision notice to be prepared in consultation with the Chairman of the Appeal Panel, and send a copy to the complainant, the councillor(s) complained against, (and to the Town or Parish Council if relevant). The outcome will also be reported to the JSCC at the next meeting.

## Example Summary Outcome Report

East Northamptonshire Joint Standards Complaints Committee - Complaint Outcome Summary

*[NOTE:- The named Parish Council and contents of this example summary are fictitious]*

In February 2015 a complaint was received from a member of public in relation to a Councillor serving on Weatherbury Town Council. The complaint alleged that the councillor concerned had broken the following paragraphs of the adopted Code of Conduct for Weatherbury Town Council by their behaviour at a local event in January:

### **1.0 Introduction**

*As a Councillor you are a representative of the Council, and the public and other stakeholders will form a view of Weatherbury Council as a result of your actions. As such you must conduct yourself in a manner which is consistent with the Council's duty to promote and maintain high standards of conduct of Councillors.*

### **2.4 Accountability**

*Everything Weatherbury Council does must be able to stand the test of scrutiny by the public, the media, other stakeholders, and the courts. You are accountable to the public for your actions and the manner in which you carry your responsibilities, and will co-operate fully and honestly with any scrutiny appropriate to your particular office.*

### **2.6 Leadership**

*You will promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence and avoids bringing your role or the council into disrepute. You will actively promote and robustly support this code and be willing to challenge poor behaviour wherever it occurs*

In accordance with the adopted procedure for the consideration of complaints against Councillors ([https://www.east-northamptonshire.gov.uk/downloads/file/4455/part\\_9\\_-\\_procedure\\_for\\_assessment](https://www.east-northamptonshire.gov.uk/downloads/file/4455/part_9_-_procedure_for_assessment)) the Monitoring Officer contacted the councillor concerned and sought their view of the complaint. This was then considered, together with the complaint, the views of the Vice Chair of the Joint Standards Committee and the Independent Person, by the Monitoring Officer before reaching a decision.

It was agreed that **no further action** should be taken in relation to the complaint as the Code of Conduct for Councillors was deemed not to apply as the Councillor was not carrying out the role of a councillor at the time.

Monitoring Officer

March 2015

## Example Summary Outcome Report

East Northamptonshire Joint Standards Complaints Committee - Complaint Outcome Summary

*[NOTE:- The named Parish Council, Councillors and contents of this example summary are fictitious]*

In February 2015 a complaint was received from a member of public in relation to Councillors Troy and Boldwood serving on Casterbridge Town Council. The complaint alleged that the two Councillors had broken the following paragraphs of the adopted Code of Conduct for Casterbridge Town Council by their behaviour towards female staff over the past three years :

*1.0 Introduction. As a Councillor you are a representative of the Council, and the public and other stakeholders will form a view of Casterbridge Town Council as a result of your actions. As such you must conduct yourself in a manner which is consistent with the Council's duty to promote and maintain high standards of conduct of Councillors.*

*3a) As a councillor you will strive to establish respectful and courteous relationships with everyone you come into contact with as Councillors.*

*3b) As a councillor you will uphold the law in relation to the policies of the council and its legal obligations*

The complaint was assessed in accordance with the adopted procedure for the consideration of complaints against Councillors ([https://www.east-northamptonshire.gov.uk/downloads/file/4455/part\\_9\\_-\\_procedure\\_for\\_assessment](https://www.east-northamptonshire.gov.uk/downloads/file/4455/part_9_-_procedure_for_assessment)) After initial assessment by the Monitoring Officer the complaint was referred for investigation by an Independent Investigator who found that there was a case to answer for breach of the Code. A Hearing Panel was convened which found that there has been breaches of the following paragraphs of the Code as a result of the sexual harassment of members of staff over a number of years :

Introduction - Given the nature of the conduct found and the various incidents set out in the investigation report, the Hearing Panel decided that the actions of the two councillors were, and are, in conflict with the promotion and support of high standards of conduct.

Paragraph 3a) Given the nature of the conduct found and the various incidents set out in the investigation report, the Hearing Panel found the councillors' actions were grossly discourteous and disrespectful to the female staff involved.

Paragraph 3b) The Hearing Panel agreed that the actions of the two councillors exposed Casterbridge Town Council to the potential of being seen, or being perceived as being, in breach of its obligations to its staff and therefore he was in breach of the Code of Conduct.

## **Sanctions**

Having made its determination that Councillors Troy and Boldwood\* had breached Casterbridge Town Council's Code of Conduct for Councillors, the Hearing Panel then considered what sanctions, if any, should be recommended to Casterbridge Town Council. As part of their deliberations the Hearing Panel had regard to the views of the Independent Person as to the appropriate sanction should breaches of the Code of Conduct be determined.

They noted that the powers for a Council to disqualify or suspend an elected member were removed pursuant to the Localism Act 2011. The East Northamptonshire Council Hearing Panel therefore decided that:

- a) It would issue a letter of censure against Cllrs Troy and Boldwood
- b) Recommend to the Town Council that
  - i) the two councillors be removed from any or all Committees / Sub Committees and outside bodies
  - ii) access to the Town Council premises be restricted to the Council Chamber and Ante Chamber for the remainder of the current term of office
  - iii) any communication with officers be conducted via e-mail to the Town Clerk.
  - iv) The two councillors be required to undertake relevant training

Casterbridge Town Council has been notified of these recommendations and is expected to decide on their implementation at their next meeting. The letter of censure has been published on the East Northamptonshire Council website.

Monitoring Officer

May 2016

## ENC Privacy Impact Assessment – Initial Screening Form

*For ease, where the term 'project' is used, it will refer equally to a project, a strategy or a policy, for the purposes of the assessment.*

Project Name:	Change to Part 9 of Constitution – Reporting of Code of Conduct Complaints
Reference/Identifier (e.g. Project number)	Report to JSCC 18/7/18
Name of project/policy owner:	Sharn Matthews
Date of assessment:	17/7/18

### Will the project/policy result in the collection/use/control of any Personal Data?

	Please tick	Next step...
<b>No</b>		If no, you need take no further steps. Save and submit this form with your policy, or save it with your project documentation.
<b>Yes</b>	X	If yes, answer the questions below. Submit the completed form to the Information Governance Manager.

**For projects/policies utilising personal data, please answer all questions. Please provide relevant explanations/descriptions:**

Will the project involve the collection of new information about individuals?	No
Will the project compel individuals to provide information about themselves?	No
Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information?	Yes – in the case where complaints reach Hearing Stage and a Breach of the Code is determined
Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	Yes – where a breach has been determined the name of the councillor will be published in the summary outcome report
Does the project involve you using new technology which might be perceived as being privacy intrusive? For example, the use of biometrics or facial recognition.	No
Will the project result in you making decisions or taking action against individuals in ways which can have a significant impact on them?	No – decisions will still be made as before – only name of Cllr will be published where breach of the Code determined
Is the project likely to raise privacy concerns or expectations? For example, using health records, criminal records or other information that people would consider to be particularly private.	No – it has always been an option to publish outcomes of complaints where a breach has been determined.
Will the project require you to contact individuals in ways which they may find intrusive?	No