

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

19 January 2015

Report of the Monitoring Officer

Part 1- Public

Matters for recommendation to Council

1 CODE OF CONDUCT COMPLAINTS – REVIEW OF ARRANGEMENTS

1.1 In accordance with the requirements of Section 28 of the Localism Act 2011, the Borough Council has adopted arrangements under which allegations can be investigated and decisions on allegations can be made. The existing arrangements were adopted by the Borough Council on 10 July 2012, and apply to all Code of Conduct complaints made against Borough or Parish Councillors.

1.1.1 The current arrangements are attached as **Annex 1**.

1.1.2 Since adoption of the arrangements a small number of issues have arisen in assessing complaints made to the Borough Council. This report therefore seeks to make some small changes to the arrangements to address the practical operation of the complaints process.

1.2 Local assessment criteria – age of complaint

1.2.1 Complaints made to me as Monitoring Officer are assessed against the legal jurisdiction test (paragraph 1.2 of Annex 2 to the arrangements) and, if applicable, the local assessment criteria (paragraph 1.4 of Annex 2).

1.2.2 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. So, for example, where the alleged misconduct happened more than 3 months ago (paragraph 1.4(f) of the local assessment test), the complaint will be rejected.

1.2.3 This has led to the rejection of one recent complaint, where the alleged misconduct (which in that case was the failure to inform the Monitoring Officer of Disclosable Pecuniary Interests) occurred at various times between July 2012 and August 2013. In each case it was clear that there was a prima facie breach of the Code, but no further action could be taken because of the operation of the 3 month rule in the local assessment criteria.

1.2.4 Whilst there are sound reasons for maintaining a time limit within the criteria, it is considered that provision should be made for exceptions to be permitted to this, should the circumstances of a particular case so warrant. It is therefore suggested that the local assessment criteria should be amended so as to allow for the

Monitoring Officer to depart from the 3 month rule where he is satisfied that exceptional circumstances exist. In determining whether such exceptional circumstances exist, it is suggested that the Monitoring Officer should have regard to the seriousness of the alleged breach and to the consequences of the delay for a fair disposal of the complaint.

1.3 Publicising decisions on assessments under the Code of Conduct

1.3.1 At a previous meeting of this Committee, concern was raised about the omission of personal details of both the Complainant and the Subject Member from a report on recent complaints.

1.3.2 Since that discussion there have been 2 cases of note considered by the Information Commissioner/ First Tier Tribunal (Information Rights) which provide assistance in considering whether the personal details of Complainants/ Subject Members should be published.

1.3.3 In a decision of the Information Commissioner (FSA50475954) concerning the manner in which Northumberland County Council had dealt with a request for certain information pertaining to a Code of Conduct complaint, the Commissioner concluded that the disclosure of a Subject Member's response to a complaint would be unfair, and thus breach the first data protection principle. The Information Commissioner commented -

'In this case the complaint was assessed by the Council's Monitoring Officer, who decided not to take any further action. The Commissioner is of the view that individuals who are the subject of complaints are generally entitled to a certain degree of confidentiality in the way complaints are handled. For example, where a complaint is found not to be upheld it is less likely to be fair to disclose information relating to that complaint. The Commissioner has seen no evidence to suggest that there is an overriding public interest which demands that the information be disclosed into the public domain.'

1.3.4 In the case of Parker v the Information Commissioner (EA.2013.0220) the First Tier Tribunal held that a Subject Member's response to a complaint was their personal data, and there was a reasonable expectation on the part of the Subject Member that this response would not be made public. The Tribunal went on to conclude that the *'limited and general public interest in the disclosure of information concerning public officials is greatly outweighed by the expectations of Councillor X and the distress likely to be caused to him in respect of the Council's handling of a request for his personal data'*.

1.3.5 The First Tier Tribunal further concluded that North Lincolnshire Council was not obliged to confirm or deny whether it held information relating to a complaint against Councillor X, as to do so would reveal personal data in that it would reveal that a complaint had been made against him. The Tribunal concluded that this would not be fair, and thus would be in breach of the first data protection principle.

1.3.6 In light of the above decisions, I do not consider that it would be lawful for the Borough Council to publish personal details of Complainants or Subject Members, unless a complaint leads to an investigation and public hearing before the Hearing Panel. It is therefore proposed to amend the arrangements (in particular paragraph 4.7 of Annex 2) to remove reference to publication of Decision Notices.

1.4 **Informal resolution**

1.4.1 Elsewhere on this agenda Members will see an Information Report relating to 2 recent complaints made to me, which ultimately led to the Subject Members refusing to accept the proposed Informal Resolution.

1.4.2 The existing arrangements are silent as to what should happen in these circumstances, save for a report to be made to the Joint Standards Committee. In order to provide certainty for both complainants and Subject Members, it is considered that the arrangements could be improved by amending the provisions of paragraph 6.5 of Annex 2 so as to read as follows –

‘Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action within a reasonable timescale, the Monitoring Officer may after consultation with the Independent Person(s) and the Chairman and Vice-Chairman of the Joint Standards Committee may reconsider whether the complaint should be investigated, or an investigation concluded’.

1.5 **Legal Implications**

1.5.1 The Borough Council is required to have in place arrangements under which allegations can be investigated, and decisions on allegations can be made.

1.6 **Financial and Value for Money Considerations**

1.6.1 None arising from this report.

1.7 **Recommendation**

1.7.1 Members are asked to **RECOMMEND** to Council that the amendments to the arrangements set out in this report are approved.

Background papers:

contact: Adrian Stanfield

Nil

Adrian Stanfield
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