

PROCEDURE FOR LOCAL DETERMINATION OF COMPLAINTS

EXECUTIVE MEMBER: Councillor Elaine Woodburn
LEAD OFFICER & REPORT AUTHOR Tim Capper, Democratic Services Manager and Monitoring Officer

Why has this report come to the Audit and Governance Committee?

To ask Audit and Governance Committee to consider recommending to Council a revision to the procedure for determining allegations of breaches of the Code of Conduct

Recommendation:

The Audit and Governance Committee are recommended to recommend to Council that the procedure for assessment and determination of complaints be amended as set out in paragraph 3.1 below.

1 Introduction

1.1 Under Section 28 of the Localism Act 2011, principal authorities are required to have in place “arrangements” for dealing with allegations that a member of the principal council, or a member of a town or parish council in the area of the principal council, has breached his/her Council’s Code of Conduct. The arrangements must also provide for how decisions are to be made on any action to be taken in cases where such allegations have been investigated and proven.

1.2 Section 28 of the Act does not prescribe what these “arrangements” are to be, and there is much discretion for authorities to decide for themselves what arrangements to implement.

1.3 The Council at its meeting on 14 June 2012 agreed a set of arrangements under Section 28 of the Act, subsequently amended on recommendation of this Committee to provide for involvement of a representative of parish councils where an allegation is made against a member of a parish or town council. For ease of reference, a copy of these arrangements, as amended, are reproduced at Appendix “A”.

2 Courses of Action Available to Assessment and Review Panels

2.1 Section 7 of the agreed Procedure describes the courses of action available to Assessment and Review Panels when considering allegations of breaches of the Code of Conduct.

2.2 Sub paragraphs (iii) and (iv) of Section 7 as currently drafted refer to cases where a Member may have breached “an interest other than a DPI” and provides for the appropriate action to be taken in each case.

2.3 Members will note, however, that the Code of Conduct adopted by the Council in 2012 places a number of more general obligations upon Members which are not concerned directly with the declaration and registration of interests – they require Members, for example, not to bring their office or authority into disrepute, to treat others with respect, and to respect the impartiality and integrity of employees. Technically therefore, sub paragraphs (iii) and (iv) of Section 7 of the Procedure as currently drafted do not cover allegations of breaches of these more general obligations. They are restricted to breaches involving interests.

3 Proposals

3.1 On the basis that the Council’s Procedure should include any allegations of breaches of the Code of Conduct, not just breaches concerning the declaration and registration of interests, it is suggested that the words “or other breach of the Code of Conduct” be added to sub paragraphs (iii) and (iv) of Section 7, after the words “interest other than a DPI” in each case.

4 Conclusion

4.1 The proposals set out in this report address a weakness in the Council’s arrangements for determining complaints against members.

Consultees: Chief Executive; Section 151 Officer; Chair

Monitoring Officer comments: Included in report

S151 Officer comments: There are no additional cost implications.

EIA comments: No groups are advantageously or disadvantageously affected by the proposals in the report.

Appendices – Appendix “A” Existing Procedure

Copeland Borough Council

Procedure for Initial Assessment of Allegations of Breaches of the Code of Conduct

Introduction

1 This procedure applies when a complaint is received that a Borough Councillor, co-opted Member or Parish Councillor has or may have failed to comply with the relevant Code of Conduct.

2 The person making the complaint will be referred to as the complainant and the person against whom the complaint has been made will be referred to as the subject member.

3 No Member, Independent Person, or officer will participate in any stage of the assessment process if they have any personal conflict of interest in the matter, including any earlier stages of the assessment or processing of a complaint.

Assessment Hearing

4 Upon receipt of a complaint that a Borough Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Code of Conduct, the relevant Democratic Services Officer will convene as soon as possible and in any event within 20 working days a meeting of an Assessment Panel. The subject Member will be informed that a complaint has been received and the nature of the complaint and the identity of the complainant, unless the complainant has requested confidentiality, in which case the complainant's identity will not be revealed to the subject member until the Assessment Hearing has considered the matter (see below).

5 The Assessment Panel will comprise the Chief Executive and the Monitoring Officer in consultation with at least one Independent Person. The Panel will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or his representative which will set out the following details:

- Whether the complaint is within the jurisdiction of the Council – i.e. whether the subject member was subject to a relevant code of conduct at the time of the allegation
- The paragraphs of the Code of Conduct the complaint might refer to, or the paragraphs the complainant has identified
- A summary of key aspects of the complaint if it is lengthy or complex
- Any further information that the officer has obtained to assist the Assessment Panel with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents

The Assessment Process

6 The Assessment Panel will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members of the Borough Council or a parish council within Copeland Borough;
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests, then the decision of the Assessment Panel must be that no further action will be taken.

7 If the complaint meets the above tests, then the Assessment Panel will proceed to consider which of the following courses of action is appropriate, having regard to all relevant circumstances:

(i) That there has been no breach of the Code and no action is necessary

(ii) That there is a prima facie case to answer involving a DPI and that the matter should be referred to the police for investigation.

(iii) That there is a prima facie case to answer involving an interest other than a DPI, and that the matter should be referred for investigation by an independent investigating officer appointed by the Monitoring Officer

(iv) That there appears to have been a technical breach of an interest other than a DPI, but that a full investigation cannot be justified and that an informal resolution to the complaint involving mediation, arbitration, training, or other means, should be sought, to the mutual satisfaction of both parties.

8 The Assessment Panel will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

9 If the Assessment Panel decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within 5 working days after the date of the meeting.

10 If the Assessment Panel decides to refer the complaint to the Monitoring Officer, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within 5 working days after the date of the meeting.

11 However, the Assessment Panel may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Panel will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Panel will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

12 Where an allegation is referred for investigation by an independent investigating officer, a report on the investigation should be submitted to the Monitoring Officer within 2 months of the date of referral, or failing that a progress report with a projected completion date should be provided within 2 months.

13 Where a report of an independent investigating officer is made with a finding that there has been a breach of the Code, a hearing will be conducted by the Chief Executive and the Monitoring Officer, in consultation with at least two independent persons, within 20 working days of the date of receipt of the report.

The Review Process

14 If the Assessment Panel decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.

15 When a request for review is received, the relevant Democratic Services Officer will convene as soon as possible and in any event within 20 working days a meeting of a Review Panel.

16 The Review Panel will comprise an Independent Person who has had no previous involvement in the complaint, either in a consultative capacity to the Council or in an advisory capacity to the subject Member; the independent Chair of the Audit and Governance Committee; and a Member of the Audit and Governance Committee, to be nominated by the Chair. The Review Panel will be advised by the Deputy Monitoring Officer or a senior officer nominated by him/her.

1. In addition to the documents referred to in paragraph 9 above, the Review Panel will have a copy of the Assessment Panel's decision notice, but will consider the complaint afresh. The Review Panel has the same decisions available to it as the Assessment Panel and will follow the procedure outlined above in paragraphs 6-13.
2. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Panel will consider if it is more appropriate to pass this to an Assessment Panel as a new complaint. In this instance, the Review Panel will make a formal decision that the review request will not be granted.

Withdrawing Complaints

17 If a complainant asks to withdraw the complaint prior to the Assessment Panel having made a decision on it, the Assessment Panel will decide whether or not to grant the request. In making its decision, the Panel will consider:

- Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
- Whether the complaint is such that action can be taken on it without the complainant's participation
- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

Confidentiality

18 If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Panel at the same time as it considers the complaint.

19 As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Panel may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

20 The Assessment Panel will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.

21 If the Assessment Panel decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Panel will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member