

**DERBYSHIRE COUNTY COUNCIL**

**5<sup>th</sup> October 2016**

**Standards Committee**

**Report of the Director of Legal Services**

**Complaints against Councillors – 2015/16**

**1. Purpose of the Report**

To inform the Committee of complaints against Councillors received during the year ending 31<sup>st</sup> March 2016.

**2. Information and Analysis**

The Council's Procedure for considering complaints that Councillors have breached the Code of Conduct (Appendix 1) provides that the Monitoring Officer, in consultation as appropriate with one of the Independent Persons from the Standards Committee, decides how complaints should be dealt with. Decisions are made as to whether or not complaints should be investigated and whether or not they should be referred on to the Standards Committee for consideration.

The Committee is kept informed of complaints received against Councillors on an annual basis.

During the year ending the 31<sup>st</sup> March 2016, the following complaints were received, all of which were ineligible under the Code:-

1. A former employee who had been dismissed for misconduct complained against four Councillors, alleging that they had colluded with bullying and harassment by officers and that they had not adhered to the Council's Whistleblowing Policy. The complaints were considered not to require consideration under the Code of Conduct since they were of a broad, corporate nature, reflecting the complainant's concerns about how he had been treated by the Council, rather than relating to the personal conduct of individual Councillors. The former employee had been dealt with in accordance with established policies and procedures and she was advised that she should seek redress by means other than ethical standards complaints. In addition, the employee was advised that the Whistleblowing Policy had not in fact been engaged but that the Policy was in place for use as necessary.

2. A member of the public complained than a Councillor had failed to ensure that his complaint was considered in accordance with the Council's Complaints Procedure. It was established that the Councillor had been acting in his capacity as a school governor rather than as a Councillor and so the complaint did not fall to be considered under the Code of Conduct. The complainant was advised to follow the school's complaints procedure.
3. A member of the public complained that a Councillor had cancelled a meeting with him but this was considered to have been an administrative issue rather than a matter which fell to be considered under the Code of Conduct.
4. A district councillor complained that a County Councillor had disclosed to the public at a parish council meeting a plan indicating the route of a proposed highway. It was suggested that the plan should not have been disclosed since it was highly commercially sensitive and should have remained confidential until a planning application had been submitted. It was found that the plan had been provided to the County Councillor by an officer of the Council for the express purpose of informing discussions with the parish council and that the plan was not confidential and there was no question of a breach of the Code.

As the Committee will appreciate, the details of the individual Councillors against whom the complaints were made cannot be disclosed since this would be in breach of the Data Protection Act 1998.

### **3. Other Considerations**

In preparing this report the relevance of the following factors have also been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

### **4. Background Papers**

Confidential files held by the Director of Legal Services

### **5. Officer's Recommendations**

The Committee is asked to note the contents of the report and to note that further reports will be presented on an annual basis.

**John McElvaney**  
**Director of Legal Services**



## DERBYSHIRE COUNTY COUNCIL

### PROCEDURE FOR CONSIDERING COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

1. The Monitoring Officer acknowledges receipt of the complaint within 5 working days of receipt.
2. The Monitoring Officer informs the subject member of
  - (a) the complaint, giving a summary of it and the name of the complainant
  - (b) his right to consult one of the Independent Persons appointed by the Council, through the Monitoring Officer.
3. The Monitoring Officer, in consultation with an Independent Person (other than one consulted by the subject member under paragraph 2 (b)), decides, within 20 working days of receipt of the complaint, that:
  - (a) The complaint does not come within the remit of the Code of Conduct.
  - (b) The complaint is not sufficiently serious to warrant an investigation
  - (c) That it is not in the public interest to investigate the complaint.
  - (d) He should seek to resolve the complaint without the need for an investigation (e.g. by way of an apology or training by the subject member).
  - (e) The complaint should not be investigated because it is vexatious, malicious or obsessive.
  - (f) The complaint should not be investigated because it is broadly similar to a complaint against the same member about the same alleged incident.
  - (g) The complaint should not be investigated because there is a clear ulterior/political motive for it or it is just a tit for tat complaint
  - (h) An investigation should take place

4. Before coming to his decision under paragraph 3 the Monitoring Officer may request further information and/or clarification from the complainant and/or the subject member and the time period shall be extended accordingly.
5. If the Monitoring Officer decides that the complaint should be investigated, or his attempts to resolve the complaint without an investigation do not succeed, then he will carry out an investigation or appoint an investigator to carry out an investigation on his behalf.
6. The investigator appointed under paragraph 5 by the Monitoring Officer may be;
  - (a) A senior officer of the Council
  - (b) A senior officer of another council
  - (c) An external investigator with relevant experience.
7. A report into an investigation shall include the investigator's findings on whether the Code has been breached.
8. Before finalising his report the investigator shall send a copy of it to both the complainant and the subject member and give them at least 5 working days to comment on it.
9. If the investigator's final report finds there has not been a breach of the Code the Monitoring Officer can, in consultation with an Independent Person, decide to;
  - (a) Take no action
  - (b) Refer the report to the Standards Committee for information.
10. If the investigator's report finds there has been a breach of the Code then the Monitoring Officer must refer the matter to the Standards Committee

11. When the matter has been referred to the Standards Committee by the Monitoring Officer, the Standards Committee (or a Hearing Sub Committee if this is considered by the Committee to be appropriate) will:
- (a) Allow the Investigator to present his report and call witnesses, including the complainant
  - (b) Allow the subject member to make representations and call witnesses
  - (c) Decide if the subject member has breached the Code of Conduct
  - (d) Decide what sanction should be imposed if it is decided that the Code has been breached.
12. The sanctions the Standards Committee or Hearing Sub Committee can impose if a breach of the Code is found are;
- (a) Censuring the member
  - (b) Reporting its findings to the Council for information;
  - (c) Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - (d) Recommending to Council that the member be replaced as Executive Leader of the Authority;
  - (e) Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
  - (f) Recommending that the Monitoring Officer arrange training for the member;
  - (g) Recommending to Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority
13. In reaching a decision as to whether there has been a breach of the Code and if so what sanction should be imposed the Standards Committee or Hearing Sub Committee will consult and take into account the views of the Independent

Persons who attend such hearings and the Independent Persons' views will be recorded in writing.

14. Following any final decision by the Monitoring Officer or the Standards Committee or Hearing Sub Committee, at whatever stage, the Monitoring Officer shall inform the complainant and the subject member of the decision and the reasons for it within 10 working days.
15. Wherever there has been a decision that the subject member has breached the Code of Conduct that decision and the reasons for it shall be put on the Council's website in a prominent position.
16. Wherever there is a decision that the subject member has not breached the Code of Conduct that decision shall be put on the Council's website, in a prominent position if the subject member wishes it to be.
17. Any decision of the Monitoring Officer or the Standards Committee or Hearing Sub Committee shall be final and binding.
18. The Monitoring Officer will every 6 months present a report to the Standards Committee setting out:
  - (a) The number of complaints received and brief details
  - (b) How they are progressing
  - (c) What decisions have been made
  - (d) What action has, where appropriate, been taken
19. The Monitoring Officer has delegated power, in consultation with an Independent Person and the Chairman of the Standards Committee, to approve a departure from these arrangements when he considers it is expedient to do so to secure the effective and fair consideration of any matter.

20. In all cases where the Monitoring Officer is unable to perform his role his deputy will do so.



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