

MEMBER CONDUCT COMMITTEE – 2ND DECEMBER 2019

Report of the Monitoring Officer

Part A

ITEM 7 HEARINGS APPEALS PROCESS REVIEW

Purpose of Report

To consider the process for appeals against decisions of Member Conduct Panels when determining complaints that a councillor may have breached the Members' Code of Conduct of their authority.

Recommendations

That the Committee notes the report and considers what, if any, further action they may wish to take.

Reasons

To give further consideration to matters relating to the appeals process and counselling support previously raised by the Committee.

Policy Justification and Previous Decisions

At its meeting on 9th September 2019 the Committee agreed that the appeals process required review in light of a recent hearing and subsequent grounds for appeal which were submitted and then subsequently withdrawn.

The Committee asked the Monitoring Officer to consider its views regarding the application of time limits and availability of counselling support when preparing the Hearing Appeals Process report for its meeting to be held on 2nd December 2019.

Implementation Timetable including Future Decisions

Any amendments to the procedure for considering member conduct complaints could be put forward as part of the ongoing annual review of the Constitution.

Report Implications

The following implications have been identified for this report.

Financial Implications

None specifically arising from this report, although any potential extension of the counselling service offered to Borough officers and councillors would have cost implications

Risk Management

No risks have been identified with this report.

Background Papers: None

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Current Appeals Procedure

1. Sections 18.9 and 18.12 of the current procedure for dealing with Member Conduct complaints state that if a Panel finds against a Member, the Member can appeal in writing within 10 working days for a review of the decision, setting out the reasons for their request.
2. In discussing this process previously the Committee were concerned that the current arrangements could potentially allow for groundless or frivolous appeals to be made.
3. To put this matter into context, the number of appeals that have been submitted is very low with only 2 having been received in recent years (one in 2019 which was subsequently withdrawn, and one in 2016 where the Appeals and Reviews Committee upheld the original Panel's decision).

The Principles of Natural Justice

4. In the interests of fairness and transparency, the principles of natural justice should apply to the process for considering member conduct complaints, including the right to a fair hearing.
5. Although a right of appeal is not specifically included within the principles of natural justice, it is common practice to allow for a right of appeal if someone considers that they have not been allowed a fair hearing.

Potential Amendments to the Appeals Process

6. Councillor Rollings has suggested that appeals should only be allowed if there has been a procedural breach, or if new evidence has come to light since the determination of the complaint.
7. If the Committee is minded to amend the current appeals arrangements in line with Councillor Rolling's suggestion, then they will need to consider who would decide whether an appeal met the required threshold to be allowed. Potential options for the decision maker would include the chair of the original Panel, the chair of the Appeals and Reviews Committee (which would be the Committee from which the Appeal Panel would be drawn), or the Monitoring Officer.
8. However, in light of the very low number of appeals which have been submitted, alternatively the Committee may wish to continue with the current arrangements.

Counselling Support

9. Borough Council employees and councillors do already have access to an independent counselling service - the Council purchases a specified number of support cases at a cost of approximately £4,500 per year.
10. However, this service is not available to parish or town councillors who may have been complained about, or to external complainants.

11. Whilst the Monitoring Officer can offer procedural guidance to such persons, no counselling support is available other than potentially sign-posting them to national resources such as the Samaritans.
12. Councillors who are members of political parties may be able to seek support via their party.