

MEMBER CONDUCT COMMITTEE – 13TH JUNE 2022

Report of the Monitoring Officer

Part A

ITEM 6 MEMBER CONDUCT COMPLAINTS - FACT FINDING REPORTS

Purpose of Report

To present a proposal to update the reporting and publicity arrangements for Member conduct complaints at the fact finding stage.

Recommendation

That the proposed approach towards fact finding reports into Member conduct complaints as set out in Part B of this report be approved, and that such fact finding reports should in future be published on the Borough Council's website.

Reason

To respond to a recent recommendation following an independent investigation that the status of fact finding reports into Member conduct complaints should be clarified, and to adopt a revised approach based on that used by the Public Services Ombudsman for Wales.

Policy Justification and Previous Decisions

Under section 28(6) of the Localism Act 2011, the Borough Council, as a relevant authority, must have in place arrangements under which allegations of breaches of its Member Code of Conduct, and those of parish councils within the Borough, can be investigated and under which decisions on allegations can be made.

At their meeting on 10th June 2013, the Member Conduct Committee noted a proposed approach for publicity relating to Member conduct complaints which specified that at the fact finding stage only summary information would be published together with the number of complaints, and that the identity of councillors being complained about would normally only be made public if a complaint progressed to a hearing following an investigation.

Implementation Timetable Including Future Decisions

If approved, the revised approach can be implemented immediately.

Report Implications

Financial Implications

None.

Risk Management

No risks have been identified arising from this report.

Background Papers: None

Appendices: Appendix A - Example Published Report From the
Public Services Ombudsman for Wales

Appendix B - Example of Proposed Fact Finding
Report

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Part B

Background

1. A recent independent investigation was commissioned by the Chief Executive following a complaint made by a complainant about the process that had been applied for dealing with a Member conduct complaint which they had submitted.
2. Whilst the independent investigation concluded that the approved process had been fully and correctly applied and the complaint was therefore not upheld, a recommendation was made by the investigator that the status of 'fact finding' reports, setting out the initial conclusions of the Monitoring Officer and the views of the Independent Person, should be clarified.
3. Fact finding reports are currently only circulated to the complainant, to the councillor being complained about, and, where the complaint is about a parish councillor, to the parish clerk.
4. Fact finding reports are not made publicly available by Charnwood Borough Council, and are only summarised in the complaint update reports submitted to the Member Conduct Committee.
5. However, fact finding reports themselves are currently not marked as being confidential. This is mainly because in the case of 3rd parties such as members of the public who have made such a complaint, the Borough Council would have limited scope to enforce any confidentiality requirements even if the documents were to be marked as confidential.
6. In the particular case in question one of the elements of the the complaint was that the fact finding report had been shared more widely by one of the recipients and that it contained information which identified the complainant. Fact finding reports currently name the complainant and the the councillor being complained about.
7. Having undertaken some research into potential alternative options, the recommendation of the Monitoring Officer is to introduce an approach similar to that used by the Public Services Ombudsman for Wales in respect of Member conduct complaints, which is to publish a summary naming the council involved and providing an overview of the complaint and the fact finding conclusions but not to name the complainant or the councillor being complained about.
8. An example of such a report from Wales is attached as Appendix A, and a proposed style to be used locally if the recommendation is accepted is attached as Appendix B.

9. This would also follow the general approach used by the Local Government and Social Care Ombudsman in England, where a summary of each complaint received is published naming the council being complained about and providing a summary of the complaint and the conclusions reached, but not naming the complainant.
10. If the recommendation is accepted then the fact finding reports could be published in future, as they would not identify any individuals.

Example Report From the Public Services Ombudsman for Wales

Promotion of equality and respect : Sully and Lavernock Community Council

Report date

12/07/2021

Subject

CODE : Promotion of equality and respect

Outcome

CODE

Case ref number

202000622

Report type

CODE - Referred to Standards Committee/APW

Relevant body

Sully and Lavernock Community Council

The Ombudsman received a complaint from an employee of Sully and Lavernock Community Council (“the Council”) that a Member (“the Member”) of the Council had failed to observe the Code of Conduct for Members.

It was alleged that, during an incident on a Council playing field concerning Council equipment, the Member verbally abused and bullied the employee and subjected the employee’s father to abuse and provocation.

The Ombudsman concluded that the Member used abusive and offensive language towards the employee in front of other members and the employee’s father, in an attempt to insult, belittle and undermine the employee. The Ombudsman concluded that the Member’s actions were suggestive of bullying and provocation.

The Ombudsman determined that the Member’s behaviour may have breached the Council’s Code of Conduct, in particular 4(b) and 4(c) in a failure

to show respect and consideration to others, and not to use bullying behaviour. The Ombudsman also found that the Member's conduct could reasonably be regarded as behaviour which might bring the office of Member of the Council into disrepute and was therefore also suggestive of a breach of 6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Vale of Glamorgan Council for consideration by its Standards Committee.

The Member resigned shortly before the Standards Committee Hearing. The Standards Committee of Vale of Glamorgan Council determined that the Former Member had breached paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct and the Former Member received a censure

Example of Proposed Fact Finding Report

FACT FINDING REPORT

Complaint that a Member of XXX Parish Council failed to observe the Council's Member Code of Conduct

Complaint Ref: MC? 22/23

A complaint was received that a Member ('the Member') of XXX Parish Council ('the Council') had failed to observe the requirements of the Council's Member Code of Conduct.

In summary the complaint alleged that, during an incident on a Council playing field concerning the use of Council equipment, the Member verbally abused and bullied the complainant and also subjected the complainant's father to abuse and provocation.

Having considered the complaint and the Member's response, the Monitoring Officer concluded that an investigation was merited to determine whether the Member used abusive and offensive language towards the complainant and their father as was alleged and, if so, whether that behaviour may have breached the following requirements of the Council's Member Code of Conduct:

As a councillor:

- 1.1 *I treat other councillors and members of the public with respect.*
- 2.1 *I do not bully any person.*

Views of the Independent Person

An Independent Person, XXX, was consulted and supported the Monitoring Officer's decision to refer the complaint for investigation.

Adrian Ward
Monitoring Officer

Date: XXX