

HAMPSHIRE COUNTY COUNCIL**Report**

Decision Maker:	Conduct Advisory Panel
Date:	20 February 2014
Title:	Arrangements for the Assessment, Investigation and Determination of Complaints of Breach of the Code of Conduct for Members – Convening of Sub-Committees
Reference:	5666
Report From:	Chief Executive

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1. Executive Summary

- 1.1. On 30 October 2012 the Conduct Advisory Panel approved revised arrangements in respect of the assessment, investigation, and determination of complaints of breach of the new Code of Conduct for Members and Co-opted Members of the County Council “the Conduct Arrangements”, in accordance with the requirements of the Localism Act 2011. A copy of the Conduct Arrangements is contained at Annex I to this report.
- 1.2. Under the Conduct Arrangements it may, from time to time, be necessary to form a sub-committee of Members of the Conduct Advisory Panel to consider how a complaint under the Conduct Arrangements should proceed. This report suggests a procedure to be followed in respect of the convening of sub-committees of the Conduct Advisory Panel in this regard.

2. Contextual information

- 2.1. Section 7 of the Localism Act and Schedule 4, which it introduces, contain revised arrangements in respect of a Members’ Code of Conduct which the County Council is required to adopt, and arrangements in respect of the assessment, investigation and determination of complaints of breach of the new Members’ Code of Conduct.
- 2.2. Under the Conduct arrangements, if after initial assessment a complaint is accepted for further consideration there are three possible stages which might be required before a complaint is disposed of, all of which require the convening of a sub-committee of members of the Conduct Advisory Panel. These are:

- a) An Assessment Panel is formed in accordance with Paragraph 5.2 of the Conduct Arrangements, to determine how the complaint should proceed;
 - b) An Investigation Consideration Panel to be formed in accordance with Paragraph 9.1 of the Conduct Arrangements, where an Assessment Panel has required this; and
 - c) A Hearing Panel to be formed in accordance with Paragraph 11.1 of the Conduct Arrangements, where an Investigation Consideration Panel has determined that a complaint should be referred to a Hearing.
- 2.3. In each case the Panel is required to consist of three members of the Conduct Advisory Panel. Unlike previous Standards Arrangements prior to the Localism Act, it is a legal requirement that any sub-committee of the Conduct Advisory Panel is proportionally constituted. Whilst not a member of the sub-committee, the views of an Independent Person are required to be taken into account at each stage of the process.
- 2.4. Bearing in mind the political make up of the County Council, and the fact the Conduct Advisory Panel includes members from four political groups, it is considered sensible in the interests of good governance and to ensure representation from all political groups, for the Conduct Advisory Panel to agree, subject to proportionality requirements, a procedure to be followed regarding the convening of any sub-committee required to be formed in accordance with the Conduct Arrangements.
- 2.5. The suggested way forward is that delegated authority be given to the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, to establish a protocol in this regard, and that thereafter where a sub-committee of the Conduct Advisory Panel is required to be convened in accordance with the Conduct Arrangements, that delegated authority is given to the Monitoring Officer in consultation with the Chairman of the Conduct Advisory Panel to convene any sub-committee. This could be done on a rotational basis subject to proportionality requirements and individual Panel Member's availability. Members views are sought on this proposal and any principles which might apply.

3. Recommendations

- 3.1 It is recommended that delegated authority is given by the Conduct Advisory Panel to the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, to establish a protocol for the formation of any sub-committee of members of the Conduct Advisory Panel required to be convened in accordance with the Conduct Arrangements.
- 3.2 That where any sub-committee is so required delegated authority be given to the Monitoring Officer to convene, in consultation with the Chairman of the Conduct Advisory Panel, such sub-committee in accordance with the Conduct Arrangements, and the agreed protocol.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Revised Arrangements for the Assessment, Investigation and Determination of Complaints of breach of the new Code of Conduct for Members of the County Council	4202	4 September 2012
Revised Arrangements for the Assessment, Investigation and Determination of Complaints of breach of the new Code of Conduct for Members of the County Council	4406	30 October 2012
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	
Localism Act	2011	
Localism Act 2011 (Commencement No. 6 and Transitional Savings and Transitory Provisions Order)	2012	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. No specific impact.

2. Impact on Crime and Disorder:

2.1. No specific impact.

3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

No specific impact.

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No specific impact.

HAMPSHIRE COUNTY COUNCIL

Arrangements for dealing with the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Code of Conduct for Members

1. Introduction

1.1. These arrangements set out the procedure to be followed when a complaint is received that a Member or Co-opted Member of Hampshire County Council has failed to comply with the Hampshire County Council Code of Conduct for Members.

1.2. The Code of Conduct for Members was adopted by the County Council on 19 July 2012, is attached at Appendix 1 to this Procedure, and is available for inspection and on the County Council's website and on request at the County Council's offices.

2. Making a Complaint

2.1. A complaint must be made in writing by post to:

The Monitoring Officer
Hampshire County Council
The Castle
Winchester
SO23 8UJ

or e mail : members.services@hants.gov.uk

2.2. The standard complaint form should be used, which can be downloaded from the County Council's website <http://www3.hants.gov.uk/complaints> or obtained on request from the Monitoring Officer.

2.3. Anonymous complaints will not be considered unless the complaint is accompanied by documentary or photographic evidence indicating an exceptionally serious or significant matter.

2.4. The Monitoring Officer will acknowledge receipt of a complaint within five working days of receipt of a completed complaint form.

3. Initial Validation of Complaint

- 3.1 Once a complaint has been received the Monitoring Officer will carry out an initial validation of the complaint. In carrying out this initial validation three tests will be applied. These are:
- 3.1.1 Is it a complaint against one or more named Members or Co-opted Members of the County Council?
 - 3.1.2 Was the named Member or Co-opted Member in office, and acting or purporting to act in his official capacity as a Member or Co-opted Member of the County Council at the time of the alleged conduct; and
 - 3.1.3 Would the complaint, if proven, amount to a breach of the Members' Code of Conduct.
- 3.2 If the Complaint fails one or more of these tests, it cannot be investigated as a breach of the Code of Conduct for Members. The Monitoring officer will normally make an initial validation within 20 working days of receipt of a complaint, and the complainant will be notified of the outcome within five working days of the decision being made.

4. Initial Assessment of Validated Complaint

- 4.1. Once a complaint has been validated by the Monitoring Officer, an initial assessment of the complaint will be carried out by the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person. The Subject Member will be informed of the complaint. A copy of the complaint will be forwarded to the Subject Member, unless the Complainant is an officer of the County Council, and the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, considers it appropriate to withhold the specific details of the complaint at this stage.
- 4.2. An Independent Person is a person other than a Member or Co-opted Member of the County Council whose views must be sought and taken into account before the County Council makes any decision about an allegation that a Member or Co-opted Member of the County Council has breached the Code of Conduct for Members which the County Council has decided to investigate, and whose views may be sought by the County Council in relation to an allegation in other circumstances, or by a Member or Co-opted Member of the County Council against whom an allegation has been made.
- 4.3. The purpose of the initial assessment by the Monitoring Officer is to determine whether the complaint should be accepted for further consideration by an Assessment Panel, or rejected.
- 4.4. In determining whether a complaint should proceed the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person will apply the following criteria:
- 4.4.1 Sufficiency of information – Is there sufficient information or evidence

provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.

- 4.4.2 Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or ‘tit for tat’? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?
 - 4.4.3 Duplication – Is the complaint substantially similar to a previous allegation considered by the Conduct Advisory Panel, or subject of an investigation by another relevant authority?
 - 4.4.4 Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action.
 - 4.4.5 Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?
 - 4.4.6 Anonymous – Is the complaint anonymous? Anonymous complaints will not normally be considered unless there is additional documentary or photographic evidence to support the complaint, and the complaint is sufficiently serious to consider.
- 4.5. The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within ten working days of it being made. Should it be determined by the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person that the complaint should not proceed, then that is the end of the matter.

5. Assessment Panel

- 5.1. Should it be determined, having regard to the criteria referred to at Paragraph 4.4 above, that the complaint be accepted for further consideration, a meeting of an Assessment Panel will be convened.
- 5.2. The Assessment Panel will include three members of the Conduct Advisory Panel, and will be proportionally constituted. An Independent Person will be invited to attend the meeting of the Assessment Panel.
- 5.3. A meeting of an Assessment Panel will not be open to the press or public if the Panel resolve in accordance with Part VA and Schedule 12A to the Local Government Act 1972 that this is appropriate.
- 5.4. The Assessment Panel will determine how the complaint should thereafter proceed. The views of the Independent Person will be sought by the Assessment Panel in making any decision.

6. Outcome of Assessment Panel

- 6.1. The Assessment Panel will make one of the following three decisions:
 - 6.1.1 Refer the complaint to the Monitoring Officer for investigation; or
 - 6.1.2 Refer the complaint to the Monitoring Officer for 'other action'; or
 - 6.1.3 Determine that no further action should be taken in respect of the allegation.
- 6.2 The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the decision within ten working days of the meeting of the Assessment Panel. Where the decision of the Assessment Panel is that no further action should be taken, then that is the end of the procedure.

7. Other Action

- 7.1. On occasions the Assessment Panel might consider that action other than a formal investigation is the most appropriate way of dealing with a complaint. An example might be where it is considered that the Subject Member requires training on the Code of Conduct for Members and/or the County Council's procedures. 'Other action' might constitute but is not limited to the following:
 - 7.1.1 Arranging for the Subject Member to receive training from the Monitoring Officer.
 - 7.1.2 Arranging for the Complainant and the Subject Member to engage in a process of conciliation.
 - 7.1.3 Any other steps (other than investigation) which appear appropriate.

8. Investigation

- 8.1. Where the decision of the Assessment Panel is to investigate the complaint, the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, will appoint an Investigating Officer. The Investigating Officer may be an Officer of the County Council, or an external investigator.
- 8.2. The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints, and the investigation will be carried out in accordance with such guidance.
- 8.3. At the end of the investigation, the Investigating Officer will produce a draft report and send copies of the draft to both the Complainant and the Subject Member for comment. The Investigating Officer will take the comments of the Complainant and Subject Member into account, before issuing his final report to the Monitoring Officer.
- 8.4. The Subject Member may take the views of an Independent Person at any stage in the investigation.

9. Investigation Consideration Panel

- 9.1. Following completion of the investigation by the Investigating Officer, the Monitoring Officer will prepare a report for consideration by an Investigation Consideration Panel. The Investigation Consideration Panel will comprise three Members of the Conduct Advisory Panel and will proportionally constituted. Membership of the Investigation Consideration Panel should be drawn, where possible, from Membership of the Assessment Panel.
- 9.2. An Independent Person will be present at the Investigation Consideration Panel, and Members of the Investigation Consideration Panel will take the views of the Independent Person into account in its determination.
- 9.3. A meeting of an Assessment Panel will not be open to the press or public if the Panel resolve in accordance with Part VA and Schedule 12A to the Local Government Act 1972 that this is appropriate.
- 9.4. The Investigation Consideration Panel shall reach one of three conclusions. These are:
 - 9.4.1 That the matter should be referred to a hearing of the Conduct Advisory Panel; or
 - 9.4.2 That the complaint can be disposed of by informal resolution; or
 - 9.4.3 That there was no failure by the Subject Member to observe the Code of Conduct for Members.

10. Informal Resolution

- 10.1 If the Investigation Consideration Panel, having consulted with the Independent Person, consider that the matter can be resolved without the need for a formal hearing, the Panel may determine that the matter may be disposed of by way of informal resolution. "Informal Resolution" might constitute but is not limited to the following:
 - 10.1.1 Arranging for the Subject Member to receive training from the Monitoring Officer.
 - 10.1.2 Requesting that the Subject Member offer an apology, and / or other remedial action.
 - 10.1.3 Any other steps (other than a formal hearing) which appear appropriate.
- 10.2 Where a decision to seek informal resolution of a complaint is made, this means that the Investigation Consideration Panel consider that the conduct of the Subject Member was not in accordance with the Code of Conduct for Members. Thus, if the Subject Member refuses informal resolution, or to engage with the agreed outcome, the matter will be referred by the Monitoring Officer for a hearing. Where the Investigation Consideration Panel consider that an apology is appropriate, the wording shall be agreed by the Monitoring Officer, in consultation with the Chairman of the Panel.
- 10.3 Where the decision of the Investigation Consideration Panel is that the complaint may be disposed of by way of Informal Resolution, and the Subject Member co-operates with the requests of the Investigation Consideration

Panel, the Monitoring Officer will report the outcome to the Investigation Consideration Panel, and that is the end of the matter.

11. Hearing

- 11.1 Where the Investigation Consideration Panel consider that the matter should be referred to a hearing of the Conduct Advisory Panel, or Informal Resolution has been declined by the Subject Member, a Hearing Panel will be arranged. The Hearing Panel will comprise three members of the Conduct Advisory Panel and will be proportionally constituted.
- 11.2 An Independent Person will be present at the Hearing Panel, and members of the Hearing Panel will take the views of the Independent Person into account in its determination.
- 11.3 A Hearing Panel meeting will normally be open to the press and public, unless the Panel decide in accordance with Part V A and Schedule 12 A to the Local Government Act 1972, that the matter should be considered in private session.
- 11.4 The Investigating Officer shall present his report to the Hearing Panel, and call such witnesses as he considers necessary to substantiate his conclusions. The Subject Member may also make representations to the Hearing Panel, and call such witnesses as he considers necessary, and shall be entitled to take the views of an Independent Person at any stage in the Hearing. Should the Subject Member decline to attend the Hearing, the hearing will proceed in the Subject Member's absence, unless the Hearing Panel is satisfied with the Subject Member's reasons for not being able to attend, in which case it may arrange for the Hearing to take place on another date.

12. Action following Hearing

- 12.1. The Hearing Panel will reach one of two conclusions :
 - 12.1.1 That the Subject Member failed to comply with the Code of Conduct for Members; or
 - 12.1.2 That there was no failure by the Subject Member to comply with the Code of Conduct for Members.
- 12.2 Where the decision of the Hearing Panel is that there was a failure by the Subject Member to comply with the Code of Conduct for Members the Hearing Panel may:
 - 12.2.1 Publish its findings in such manner as the Panel considers appropriate
 - 12.2.2 Report its findings to the County Council for information
 - 12.2.3 Recommend to the County Council that the Subject Member be censured by resolution of the County Council
 - 12.2.4 Recommend to the Subject Member's group leader that the Subject Member be removed from the Executive and / or Committees of the County Council and / or Outside Bodies (as appropriate).

12.2.5 Instruct the Monitoring Officer to arrange such training for the Subject Member as the Panel considers appropriate.

NB : A Hearing Panel has no power to suspend or disqualify a Member or to withdraw a Member's allowances. Removal of a Member from a Committee or Outside Body will require a formal decision of the County Council.

12.3. Where the decision of the Hearing Panel is that there has been no breach of the Members' Code of Conduct, then that is the end of the procedure.

13. Appeals

13.1. There is no right of appeal against any decision in respect of a Code of Conduct complaint, except through the Courts by way of judicial review.

**Procedure for the Assessment, Investigation and Determination of
Complaints of Breach of the New Code of Conduct for Members of the
County Council**

