

**Time and Date**

2.00 pm on Thursday, 30th August, 2012

Place

Diamond Room 2 - Council House

Public Business

1. **Apologies**
2. **Declarations of Interests**
3. **Approval of Complaints Protocol** (Pages 1 - 16)
Report of the Monitoring Officer
4. **Any other items of public business which the Chair decides to take as matters of urgency because of the special circumstances involved**

Private Business

Nil

Bev Messinger, Director of Customer and Workforce Services, Council House Coventry

Tuesday, 21 August 2012

Note: The person to contact about the agenda and documents for this meeting is Gurdip Paddan 024 7683 3072

Membership: Councillors A Andrews, P Hetheron (Chair), D Howells, D Kershaw and K Mulhall

Please note: a hearing loop is available in the committee rooms

If you require a British Sign Language interpreter for this meeting
OR if you would like this information in another format or
language please contact us.

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Coventry City Council

Public report

Report to
Ethics Committee

30th August 2012

Report of
Monitoring Officer

Title
Approval of Complaints Protocol

1. **Purpose of Report**

- 1.1 The former ethical standards regime under the Local Government Act 2000 was abolished on 1 July 2012 and replaced by new arrangements in the Localism Act 2011.
- 1.2 Amongst other things, all councils have a duty to adopt a Code of Conduct for its Elected and Co-opted Members and must have in place arrangements under which (1) allegations can be investigated and (2) decisions on allegations can be made.
- 1.3 The Council adopted its Code of Conduct at the Council meeting on 3 July 2012.
- 1.4 A draft Complaints Protocol is attached at Appendix A which is recommended for the Committee's approval.

2. **Recommendations**

- 2.1 The Ethics Committee is recommended to approve the Complaints Protocol which is attached at Appendix A.

3. **Information/background**

- 3.1 Part 1 Chapter 7 of the Localism Act 2011 which came into effect on 1 July 2012 abolished the former ethical standards regime under the Local Government Act 2000 and introduced a new regime for both the conduct of Elected Members and the way in which complaints against such Members will be dealt with.

3.2 The main requirements on local authorities are as follows:

- There is a legal duty to promote and maintain high standards of conduct;
- They are required to approve a new Code of Conduct;
- They must have in place arrangements to investigate and make decisions on allegations of breach of the Code;
- They are required to appoint Independent Persons;
- The Monitoring Officer must establish and maintain a register of interests of Elected & Co-opted Members.

3.3 The Council adopted its Code of Conduct at the Council meeting on 3 July 2012.

3.4 The Council has to put in place new arrangements to investigate and make decisions on allegations of breach of the new Code. The Terms of Reference of the Ethics Committee include the following:

"Approving and revising the Complaints Protocol which will set out the detailed procedures for considering complaints made against Elected and Co-opted Members under the Code of Conduct for Elected and Co-opted Members"

4. **Proposals and other options to be considered**

4.1 The Ethics Committee is recommended to approve the Complaints Protocol which is attached at Appendix A.

4.2 There is a statutory requirement in the Localism Act 2011 for the Council to have in place arrangements to investigate and make decisions on allegations of breach of the Code. Therefore, no other options have been considered.

5. **Other Specific Implications**

	Implications (See below)	No Implications
Best Value		✓
Children and Young People		✓
Climate Change & Sustainable Development		✓
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Sustainable Community Strategy		✓
Crime and Disorder		✓
Equal Opportunities		✓
Finance		✓
Health and Safety		✓

	Implications (See below)	No Implications
Human Resources		✓
Human Rights Act	✓	
Impact on Partner Organisations		✓
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓
Property Implications		✓
Race Equality Scheme		✓
Risk Management		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

6. **Human Rights Act implications**

- 6.1 Article 6 of the European Convention on Human Rights creates a right to a fair hearing. The Complaints Protocol is considered to be compliant with Article 6 as far as the rights of any Elected or Co-opted Member who is the subject of a complaint are concerned.

7. **Legal implications**

- 7.1 Section 28 of the Localism Act 2011 requires the Council to have in place arrangements under which (1) allegations can be investigated and (2) decisions on allegations can be made.

8. **Timescale and expected outcomes**

- 8.1 If the Committee decide to approve the Complaints Protocol, it will come into effect immediately.

	Yes	No
Key Decision		✓
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		✓
Council Consideration (if yes, date of Council meeting)		✓

List of background papers

Proper officer: Christine Forde, Monitoring Officer /Council Solicitor and Assistant
Director (Legal Services) 02476 831587

Report author: John Scarborough,
Corporate Governance and Litigation Manager 02476 833011

Papers available for public inspection None

1. Introduction and Background

- (1) This Complaints Protocol has been developed and adopted by Coventry City Council to deal with complaints that an elected or co-opted member of the City Council or an elected or co-opted member of Allesley Parish Council or Keresley Parish Council has failed to comply with the Code of Conduct for their authority.
- (2) Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that an elected or co-opted member of the authority, or of a parish council within the authority's area, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- (3) Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by an elected or co-opted member against whom an allegation has been made.
- (4) Complaints will be dealt with as quickly as possible taking into account the detailed requirements of this Complaints Protocol.

(4) In this Protocol the words and phrases used have the following meanings:

"Complainant"	Means the person who makes the complaint that a member has failed to comply with the Code of Conduct
"Code of Conduct "	means the Code of Conduct of either Coventry City Council or a Parish Council, as the context allows.
"the Council"	means Coventry City Council
"Ethics Committee"	means the Ethics Committee of Coventry City Council
"IO"	means an Investigating Officer appointed by the Monitoring Officer to investigate an alleged breach of the Code of Conduct
"IP"	means an Independent Person appointed by the Council under Section 28(7) of the Localism Act 2011.
"Malicious"	means motivated by spite or ill will
"member"	includes a co-opted member as well as an elected member.

"MO"	means the Monitoring Officer of Coventry City Council.
"Parish Council"	means Allesley Parish Council and/or Keresley Parish Council.
"Politically Motivated"	means calculated to cause political embarrassment and injury to reputation of the party concerned
"Subject Member"	means the elected or co-opted member against whom an allegation has been made that the Code of Conduct has been breached
"Unreasonable"	means brought without any firm factual basis, for underhand motive, duplicating an earlier complaint (whether or not that complaint was determined), containing abuse or inappropriate content, being wholly or partly irrational or immoderate

2. Initial Filter by Monitoring Officer

- (1) When the MO receives a complaint alleging that a member has breached the Code of Conduct, they will first check the complaint to see if it identifies any potential criminal offence under Section 34 of the Localism Act 2011. If so, the MO will refer the matter as a first step, to the police and will not take any action on the complaint without prior discussion with the police.
- (2) If a complaint is received by the MO which contains both the above and an allegation which, whilst not identifying any potential criminal offence under Section 34 of the Localism Act 2011, is still potentially a breach of the Code of Conduct, the MO will not take any action on the complaint as a whole, without prior discussion with the police.
- (3) In the event the initial test is met, the complaint will be reviewed under Stage 1 of the Complaints Protocol.
- (4) The MO will acknowledge receipt of the complaint within 5 working days.
- (5) The Subject Member will be informed of the complaint when the MO determines it appropriate but without causing prejudice to the Subject Member.

3. Stage 1: Determining How the Complaint Should be Dealt with

- (1) Stage 1 of the Protocol is a review to decide how the complaint should be dealt with. Such a review will be undertaken by the MO and Chief Executive of the Council (or their respective nominees) as appropriate in consultation with the Group Leader of the Subject Member's party (if the complaint relates to a Council member and the Subject Member belongs to a political group), the Parish Clerk (if the complaint relates to a Parish Council member) and the IP where appropriate.
- (2) The options for dealing with a complaint are:-
 - (i) referring the matter to an internal/external IO for investigation;
 - (ii) taking no further action on the complaint; or
 - (iii) resolving the matter by informal resolution; or
 - (iv) any other way deemed appropriate
- (3) The factors to be taken into account when determining how to deal with a complaint may include (but are not limited to):-
 - (i) Whether the complaint relates to an existing member of the Council or Parish Council;
 - (ii) Whether the member was in office at the time and bound by the Code of Conduct at the time;
 - (iii) Whether the member was acting in his or her official capacity;
 - (iv) Whether the complaint is considered serious or significant in substance
 - (v) Whether the complaint would be in the public interest to pursue
 - (vi) Whether the complaint is vexatious, malicious, Politically Motivated or inappropriate;
 - (vii) Whether the complaint is substantially similar to a complaint already made to Standards for England, the Ethics Committee (or its predecessor the Standards Committee) or any other regulatory authority;
 - (viii) Whether the complaint is unreasonable;
 - (ix) Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;

- (x) Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (a) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegation(s); or
 - (b) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
 - (xi) Whether the complaint suggests that there is a wider problem throughout the authority;
 - (xii) Whether it is apparent that the complaint arises from the Subject Member's relative inexperience as a member,
 - (xiii) Where the Subject Member has admitted making an error;
 - (xiv) Whether training or conciliation would be the appropriate response;
 - (xv) Whether or not the member has been the subject of previous complaints that have been upheld
- (3) After consideration of the above factors, and any others the MO and/or the Chief Executive considers reasonable, the complaint will move to Stage 2.

4. Stage 2: Outcomes and Investigations

- (1) If following consultation the MO decides that no further action is to be taken, then the MO will write to the Subject Member and the complainant setting out the reasons for the decision.
- (2) If following consultation the MO decides that the matter should be resolved by informal methods then one or more of the methods set out in the Alternative Resolution Procedure will be followed. This can be found at **Appendix 1** to this Protocol.
- (3) If following consultation the MO decides that the complaint should be investigated, then an IO will be appointed by the MO to conduct the investigation. The IO will deliver a written report to the MO and will appear at any future Hearings Panel if required. **N.B. Only those complaints that are considered serious or significant will be investigated.**
- (4) When the IO's report is received, it will be considered by the MO in consultation with the Chief Executive and IP as appropriate. The report will then be finalised by the MO and referred to the Ethics Committee (see Stage 3 below)

5. Stage 3 : The Ethics Committee and Sanctions

- (1) The Ethics Committee will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.
- (2) The Council has agreed a procedure for local hearings, which is attached as **Appendix 2** to this Protocol. The hearing will be conducted in accordance with that procedure.
- (3) If the Ethics Committee concludes that the Subject Member did not fail to comply with the Code of Conduct, it will dismiss the complaint. If the Ethics Committee concludes that the Subject Member did fail to comply with the Code of Conduct, the Committee will then consider what action, if any, it should take as a result of the Subject Member's failure. In doing this, the Ethics Committee will consider and take into account the views of the IP before coming to a decision.
- (4) In the case of a complaint against a Parish Council member, the Committee can only recommend to the Parish Council what action it should take in respect of a breach from the list of possible sanctions set out in paragraph 5(5) below.
- (5) In the case of complaints against Council members, the Council has delegated to the Ethics Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Ethics Committee may—
 - (i) Decide to take no action;
 - (ii) Publish its findings in respect of the member's conduct;
 - (iii) Send a formal letter of censure to the member;
 - (iv) Report its findings to the Council either for information [or to recommend censure of the member;
 - (v) Recommend to the member's Group Leader that the member be removed from any or all Committees or Sub-Committees of the Council.
 - (vi) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
 - (vii) Recommend the MO to arrange training for the member;
- (6) Any recommendation made under (v) to (vii) above will require the cooperation of all parties.
- (7) Where a Subject Member does not accept a sanction which has been imposed upon him/her by the Ethics Committee, the MO shall submit a report to full Council which will then consider what action, if any, it should take as a result of the Subject Member's failure.

6. General Provisions

The Monitoring Officer will have the discretion to manage the complaints process in a reasonable and flexible way. This may require the MO to deviate from the agreed process or requirements where the circumstances of a particular case warrant it.

1. Purpose of an Informal Resolution

The aim of an informal resolution is to ensure that the balance between the interests of the Complainant and the rights of the Subject Member are correctly addressed, in a situation where the MO at Stage 1 of the Complaints Protocol has decided this is the manner in which the complaint should be dealt with. It recognises the need for both parties involved to be brought to the table and to have the opportunity to have their point of view considered by the other party.

2. Consequences of an Informal Resolution

- (1) If having been submitted, a complaint is referred by the MO at Stage 1 of the Complaints Protocol for an informal resolution, it shall be a binding decision for both parties, and at its conclusion, will result in the closure of the complaint.
- (2) The Council recognises that it has no power to force the parties to submit to an informal resolution, but action may be taken by the Subject Member's Political Group (where applicable) if the Subject Member does not engage with the process. If the Complainant refuses to engage with the process, then the complaint will be regarded as closed with immediate effect.
- (3) Informal resolution is intended to be a flexible, conciliatory process, which can be adapted to be suitable for the particular circumstances of the complaint.

3. Examples of Informal Resolution

Examples of informal resolution are as follows, but these are purely for guidance and are not an exhaustive list of options:-

- (i) Specialist training on the Code of Conduct or other parts of the Constitution as may be deemed necessary by the MO
- (ii) Mediation by the MO between the parties, either by face to face meeting or in the form of one to one meetings
- (iii) Mediation by the Independent Person or Chair of Ethics Committee, with the assistance of the MO
- (iv) Mediation by the Political Group Leaders, with the assistance of the MO
- (v) Delivery of personal apologies, either in writing or verbally, in private or in public
- (vi) Relinquishing of a role on a voluntary basis for a period of time

4. Factors to be Taken into Account When Considering Whether Informal Resolution is Appropriate

Informal resolution may be especially suitable where, in the opinion of the MO, the complaint has arisen out of a set of circumstances where it is likely that-

- (i) the parties may reach an amicable agreement if direction is given; or
- (ii) the complaint was the result of a simple confusion or misunderstanding of the principles or rules governing the Code of Conduct either by the Subject Member or the Complainant; or
- (iii) where there is another non-complex explanation for the alleged misconduct; or
- (iv) either or both of the parties would be satisfied if an explanation and apology were offered and delivered; or
- (v) where it is apparent that the complaint arises from the Subject Member's relative inexperience as a member; or
- (vi) where the Subject Member has admitted the alleged misconduct and expressed a willingness to engage in specialist training or other conciliation with the complainant.; or
- (vii) where both the Complainant and the Subject Member are members of the Council and need to continue an effective working relationship for the benefit of their constituents; or
- (viii) where the Complainant is an officer of the Council and there is therefore a necessity to continue an effective working relationship

5. Monitoring Officer's Discretion

- (1) The MO will have absolute discretion over the proposed informal resolution, and may at any stage bring the process to a close if the resolution is not achieving the expected result. In these circumstances the MO will refer the matter back to Stage 1 of the Complaints Protocol and a decision will be made as to whether the complaint should instead proceed to an investigation, take different action or whether no further action should be taken.
- (2) The MO will liaise with the Chair of the Ethics Committee to determine administration and process for the informal resolution as required.
- (2) Informal resolution will take place in private, but the outcome when achieved, will be reported to the Ethics Committee where appropriate.

1. Introduction and General Notes

- 1.1. The aim of the Ethics Committee Hearings Procedures is to ensure that complaints against members are dealt with fairly and efficiently for both the Complainant and the Subject Member.
- 1.2 All hearings before the Ethics Committee will be in public, unless the MO advises the Committee it must retire to consider an item in private.
- 1.3 Given the relative informality of proceedings, it is not envisaged that legal representatives will be required, and it should be regarded as the exception. The Chair of the Ethics Committee will have the discretion to allow legal representatives to take part in the proceedings.
- 1.4 All decisions of the Ethics Committee are binding, and there are no rights of appeal through the Council process.
- 1.5 A hearing before the Ethics Committee will only be convened where an Investigating Officer's report has been delivered to the parties and either the Complainant or Subject Member do not accept the IO's recommendations.
- 1.6 If the Ethics Committee concludes that the member did fail to comply with the Code of Conduct, the Committee will then consider what action, if any, it should take as a result of the member's failure. In doing this, the Ethics Committee will consult the IP before coming to a decision. In the case of a complaint against a Parish Council member, the Committee can only recommend to the Parish Council what action it should take in respect of a breach from the list of possible sanctions set out in paragraph 5(5) below.
- 1.7 The decision will then be communicated in writing to both parties and published on the council's website or elsewhere where the Committee considers it appropriate.
- 1.8 If the IO finds that no breach has occurred, and both parties accept this, no further action will be taken.

2. Purpose of Pre Hearings Procedure

2. 1 In order for the Ethics Committee to be effective, the parties must follow the Pre Hearings procedure. The procedure is intended to encourage : -
 - The early identification of what is agreed and not agreed by the parties
 - The parts of the IO report which are in dispute and which may therefore require the attendance of the IO and any witnesses he has utilised in drawing up his report
 - A speedy and efficient disposal of the complaint on the day of the hearing
 - The overriding objective of ensuring complaints are dealt with fairly, expeditiously and with due regard to the costs involved

2.2. The following procedures have been agreed as a guide for the fair disposal of a complaint, following an investigation. They are intended to assist all parties in understanding the process and preparing for the Ethics Committee. The MO, in consultation with the Chair of the Committee may alter these procedures for a single complaint, either at the start of or during the Pre Hearing Procedure or during the Ethics Committee itself.

3. Pre Hearings Procedure

3.1 The MO will circulate the final version of the IO's report to the Complainant and the Subject Member.

3.2 Each party must produce a Response to the IO's report and deliver a copy to the MO and each other.

The response must: -

- Identify any areas of disagreement by reference to the paragraph number
- State what it is the party says the correct case should be instead of what the IO says
- Attach any evidence the party wishes the Ethics Committee to take into account when determining the case
- State whether or not the party wishes to attend the Ethics Committee together with reasons why this is necessary
- Attach a copy of the submissions the party wishes to make to the Ethics Committee

3.3 The MO must receive the above document within 21 days of the final version of the IO's report having been sent out to all the parties.

3.4 If either or both parties submits a Response, and there are areas of disagreement which in the view of the MO merit a Ethics Committee meeting, then the MO will arrange for the Committee to meet.

3.5 Only those matters referred to in the Response will be considered by the Ethics Committee, save in exceptional circumstances. It is vital that each party states their areas of disagreement and sets out their case, **as the matter will only proceed to a Ethics Committee where there are real areas of dispute. It will be exceptional for the Ethics Committee to allow a party to raise a new issue which they have not already referred to in their Response.**

3.6 Once the MO has received the Response from both parties, a case summary and a chronology will be prepared for the benefit of the Ethics Committee if the MO considers this would be helpful.

3.7 The MO will also request a response in writing from the Independent Person, to the IO's report, which will be added to the documents for the Ethics Committee (see below)

4. Timetable

4.1 The Ethics Committee will be convened to consider the complaint within 2 months of the IO's final report being delivered to the parties in accordance with (x) above

4.2. The Ethics Committee will have a Hearings Bundle, which will contain: -

The Investigating officers report
The Response of the complainant
The Response of the elected member
The MO's case summary & a Chronology (if the facts are complicated)
The views of the Independent Person

4.3 The Hearings Bundle will be delivered to the members of the Committee when the agenda for the meeting is published.

4.4. The Chair of the Committee may, on receipt of the documents, set out a draft agenda for the day's events and circulate this to all parties.

4.5. All documents will be published subject to the requirements of Freedom of Information and Data Protection.

5. Procedure at the meeting of the Ethics Committee

5.1 The procedure for the day will be in the discretion of the Chair, and may be adapted either before the day, from the agenda sent out, or on the day itself.

5.2 Oral evidence at the hearing will not generally be allowed. The Chair of the Ethics Committee will have the discretion to allow oral evidence.

5.3 Where either the Complainant or Subject Member are not present at the hearing, the Ethics Committee will have the option to continue to consider and make a decision on the complaint where they have all the necessary information needed or adjourn to a further date.

5.4 The Committee will review the Hearings Bundle and may adopt the following procedure: -

- Preliminary matters such as declarations of interest, quorum, public nature of proceeding etc
- Introduction of the IO's report by the IO or MO and statement of areas of dispute (if any)
- Consideration of Complainant's submissions any witnesses/evidence allowed
- Consideration of Subject Member's submissions and any witnesses/ evidence allowed

- Consideration of the views of the Independent Person
- Advice from the MO on any legal issues raised
- Consideration of whether or not the disputed areas of the report are accepted by the Ethics Committee or not
- Determination of breach of Code or not

5.5 In the event the Ethics Committee consider a breach has occurred, it may adjourn to consider what action it should take from the list of possible sanctions set out in paragraph 5(5) of the Complaints Protocol.

5.6 It may review any documents sent in by the Subject Member, or hear from the Subject Member on a case of 'mitigation' if it considers appropriate.

5.7 It may adjourn to require the Subject Member's attendance, if it considers it would be just to do so in advance of any censure/ sanction.

5.8 In the case of a complaint against a Parish Council member, the Committee can only recommend to the Parish Council what action it should take in respect of a breach from the list of possible sanctions set out in paragraph 5(5) below.

5.9 In the event the Ethics Committee determines there has not been a breach of the Code, then it shall announce the decision accordingly and direct that the MO will inform both the Complainant and the Subject Member as soon as possible after the meeting.

5.10 In both cases of breach and non breach, the MO will send out a note of the decision (called the Full Decision), and the reasons for it, within 14 days of the determination, The Full Decisions must be agreed with the Chair, prior to dispatch to the parties. The Full Decision will also be published on the authority's website, on the same date that it is dispatched to the parties.