

7. STANDARDS COMPLAINTS PROCEDURE FROM JULY 2012

REPORT OF: Tom Clark, Solicitor to the Council and Monitoring Officer
Email: Tom.Clark@midsussex.gov.uk Tel: 01444 477459
Wards Affected: All
Key Decision No

1. Purpose of Report

- 1.1 To consider the procedure for dealing with standards complaints in Mid Sussex post 1st July 2012, following the implementation of the new provisions in the Localism Act 2011.

2. Summary

- 2.1 The Council should maintain the system of panels of three Standard Committee members to deal with the assessment of complaints, a request for a review of the assessment decision and any hearings the three member panels to include at least one parish / town member and one district member.

3. Recommendations

- 3.1 **That the Monitoring Officer has delegated authority to compose panels of three members to consider complaints to include at least one district member and one town / parish member on each panel.**
- 3.2 **The Council maintains the system of assessment panels, review panels and hearing panels, in accordance with the form of procedure used since 2008 as summarised in Appendix 1.**
-

4. Background

- 4.1 The final regulations to bring into force the new provisions in the Localism Act 2011 relating to Standards were made on 6th June 2012. The draft Code of Conduct reflecting the existing Code of Conduct was completed with the addition of the pecuniary prejudicial interest and adopted by Mid Sussex District Council (MSDC) at its Council meeting on 27th June 2012. The Code was adopted for operation from 1st July 2012 in accordance with the statutory requirements.
- 4.2 Parish / town councils across Mid Sussex are adopting a Code of Conduct in accordance with the Nolan principles. Most are adopting a code similar to the one adopted at Mid Sussex District Council.
- 4.3. As has been the practice at Mid Sussex District Council for the past four years, there is now a statutory requirement for Members' declaration of interest forms to appear on the MSDC website. Those declaration forms must be completed within 28 days of a council adopting a new Code of Conduct. At MSDC we should have all the declarations of interest forms for District Councillors on the website by Friday 27th July 2012.

5. Procedure for Dealing with Complaints

- 5.1 The procedure previously adopted for dealing with complaints has worked well in Mid Sussex. This procedure was laid down by the former Standards Board for England. There is now no requirement to follow the same procedure but it is compliant with the principles of a fair hearing and therefore Appendix 1 of this report is suggesting no change save that the independent members now have a different role. The independent members have to be consulted on an allegation before an investigation is concluded. As Monitoring Officer, I would also inform an independent member of the nature of a complaint received and seek his views on whether the complaint can be refused without the need for an Assessment Hearing if it appears to have little to do with the Code of Conduct. In recent times, complaints have been received which suggest that Members are in breach of the Code of Conduct simply because the complainant does not like a decision that the Council has taken.
- 5.2 The Council's website will need to be updated to include information about how to make a complaint and what happens when a complaint is made.

6.0 Financial Implications

- 6.1 The conduct of a complaint system about Members at the district council and parish / town councils remains an expense for the district council. If a major investigation was required, it would be a substantial cost to the district council.

7. Other Options Considered.

- 7.1 A less formal approach to dealing with complaints could be implemented. This runs the risk of Judicial Review because it might be held that there was insufficient opportunity for those affected by a complaint to make their case.

8. Equality Implications.

- 8.1 The Standards Committee has always required complaints to be made in writing. In circumstances where a complainant cannot express themselves in writing, the Monitoring Officer has assisted by writing down their dictated complaint.

9. Legal Implications

- 9.1 Sections 26 to 37 of the Localism Act 2011 are now in force in relation to Standards. A failure on the part of Mid Sussex District Council to comply with the provisions would open up the possibility of Judicial Review proceedings. A failure by Members to register their interests in accordance with the adopted Code or to declare pecuniary prejudicial interest could, in extreme circumstances, result in a criminal prosecution against the Member. The penalties available to a hearings panel for a breach of the code no longer include suspension or disqualification.

PROCEDURE FOR DEALING WITH CODE OF CONDUCT COMPLAINTS

1. The Monitoring Officer receives a written complaint setting out the paragraph or paragraphs of the relevant Code of Conduct which are alleged to have been breached.
2. The Monitoring Officer speaks to one of the independent persons to discuss the nature of the complaint and agree that the matter should go forward to an assessment panel.
3. An assessment panel is put together of three members including, at least one town / parish member and one district member.
4. The relevant papers are sent to the panel members, ahead of the private meeting (usually in the Chairman's office).
5. The decision of the assessment panel is communicated to the complainant and to the member in receipt of the complaint and in the case of the town / parish council to the clerk, within five working days of the panel meeting. The panel can decide to commence an investigation, to decide no further action is required or to request the acknowledging officer to take some further non-statutory steps.
6. If the panel decides no further action should be taken, the complainant can request a review of that decision. The review panel members will be composed in the same way as the assessment panel members but there will be no overlap.
7. The Review Panel will receive the relevant papers and any update papers. They will meet in private to discuss these and decide whether or not to institute an investigation or ask the Monitoring Officer to do some non-statutory activity or whether to take no further action.
8. The decision of the Review Panel will be communicated to the relevant persons within five working days of their meeting.
9. If an investigation is requested, the Monitoring Officer will appoint an investigator who has not previously been involved with the matter.
10. The investigator will conduct their investigation and produce a draft report. The draft report will be shown to the complainant and to the member in receipt of the complaint for any comments and factual corrections. The corrected report will be discussed with one of the independent persons
11. The finalised report will be sent to a panel of three members with at least one district and one town / parish member to consider the recommendation if the recommendation is for no further action. Provided this panel are satisfied with this recommendation, that will be the end of the matter and this decision communicated to relevant persons as above.
12. If the report suggests there has been a breach of the Code of Conduct, a hearing will be organised with a panel of three members to include at least one district councillor and one town / parish councillor and the author of the report will present it to that panel. The complainant and the panel will have an opportunity to question the author of the report. The member the subject matter of the complaint will then give their own evidence in connection with the matter, including the introduction of up to four

witnesses. The member in receipt of the complaint may be legally represented. Any witnesses can be questioned by the author of the report and by the panel.

13. Once the hearing's panel has heard all the evidence and closing submissions, it will leave the room to discuss whether or not it believes the code has been broken.
14. If the panel concludes that the code has not been broken, that is the end of the matter. If the panel believe the code has been broken, they will consider further submissions from the report author and the member in receipt of the complaint (for their legal advisor) before making a decision on the appropriate sanction.
15. If there is a finding of a breach of the code this will be published on the Council's web site and the summary report will remain in situ for 2 years.