

CONSTITUTION AND ETHICS COMMITTEE	AGENDA ITEM No. 4
9 JULY 2018	PUBLIC REPORT

Report of:	Fiona McMillan Interim Director of Law and Governance & Monitoring Officer	
Cabinet Member responsible:	Cllr David Seaton – Cabinet Member for Resources	
Contact Officer:	Philippa Turvey, Democratic and Constitutional Services Manager Daniel Kalley, Senior Democratic Services Officer	Tel. 452460/2963 34

CODE OF CONDUCT COMPLAINTS PROCESS & CONFIDENTIALITY

RECOMMENDATIONS	
FROM: Interim Director of Law and Governance & Monitoring Officer	Deadline date: N/A
<p>It is recommended that Constitution and Ethics Committee:</p> <ol style="list-style-type: none"> 1. Resolve that all code of conduct complaints be subject to a requirement of confidentiality by all participants in the process until such time as the complaint case is concluded. 2. Resolve that where a conclusion has been reached that the code of conduct has not been breached or where the Monitoring Officer concludes, following an initial assessment of a complaint, that no further action needs to be taken that the identity of the councillor who is the subject of the complaint remains confidential unless that councillor wishes it to be made public. 3. Resolve that where a complaint has been informally resolved by agreement without the need for a formal investigation that the identity of the councillor who is the subject of the complaint and a summary of the complaint is reported back to the committee. 4. Resolve that where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to an agreed alternative resolution that the investigation report will be published when the case is reported back to the committee 5. Resolve that where a conclusion has been reached that the code of conduct has been breached and that alternative resolution is not appropriate/ possible that the investigation report will remain confidential until such time as the hearing into the complaint takes place, at which stage it will be published. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Constitution and Ethics Committee by the Council's Monitoring Officer.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The Constitution & Ethics Committee is newly formed and may consider it appropriate to review existing procedures for the handling of code of conduct complaints to ensure they fulfil the requirements of the council.
- 2.2 The purpose of this report is for the Committee to decide if it wishes to introduce a requirement that all complaints that a member has breached the code of conduct should be dealt with on a confidential basis. This would enable information regarding complaints to be treated as confidential until such time as they are concluded so that information is not released which may be prejudicial to the conduct of the complaints process and to protect the identity and reputation of councillors who have not breached the Code of Conduct.
- 2.3 Under the previous legislative system for handling complaints against councillors set up by the Local Government Act 2000 there was a statutory requirement that complaints should be kept confidential. When the Localism Act 2011 introduced a new way of working in July 2012 councils were able to devise their own codes of conduct (as long as it was based on the Nolan Principles) and set its own procedures for dealing with complaints. Some councils continued to see the benefit of keeping the process confidential until resolution and included this in the new procedures. The issue has not previously been considered by Peterborough City Council.
- 2.4 The Monitoring Officer advises the following resolutions:
- i) in the absence of a specific statutory requirement regarding confidentiality under the Localism Act the Council has the ability to set its own processes and can therefore resolve that all ongoing complaints be subject to a requirement of confidentiality by all participants in the process until such time as the case is concluded and reported back to the Committee. A breach of this requirement may be a separate breach of the Code of Conduct.
 - ii) where a conclusion has been reached that the code of conduct has not been breached or where the Monitoring Officer concludes, following an initial assessment of a complaint, that no further action needs to be taken that the identity of the councillor remains confidential. This is because is no reason for making their identity public in these circumstances and no public interest in doing so. Any investigation report will be published as a confidential item on the agenda and only an anonymised case summary put on the public agenda. The complaint will only be made public if councillor who is the subject of the complaint decides to make it public at the end of the process.
 - iii) Where a complaint has been informally resolved by agreement without the need for a formal investigation (this is usually by way of an apology which is offered and accepted) that the identity of the councillor who is the subject of the complaint and a summary of the complaint is report back to the committee. It is considered to be in the public interest that these details are made public where there is an acknowledgement of fault on behalf of the relevant councillor.
 - iv) where a conclusion has been reached (following a formal investigation) that the code of conduct has been breached but that no hearing is necessary due to alternative resolution that the investigation report and any action taken will be published when the case is reported back to the committee for information. It is considered to be in the public interest that the details of a complaint where an investigation has taken place and a finding made that a councillor has breached the code of conduct are published. It is important to note that alternative resolution is only possible where the councillor accepts an element of fault.
 - v) where a conclusion has been reached that the code of conduct has been breached and where alternative resolution is not appropriate/possible that the investigation report will remain confidential until such time as the hearing into the complaint takes place, at which stage it will be published. This is to avoid “trial by media” in advance of a case being heard so that panel members are not prejudiced by anything that is published in the media.

- 2.5 This report is for Constitution and Ethics Committee to consider under its Terms of Reference No. 2.72.2

Authority to oversee and approve the operation of the Council’s functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:

- Promoting and maintaining high standards of conduct by Members and coopted members;
- Assisting the Members and co-opted members to observe the Code of Conduct;
- Advising the Council on the adoption or revision of the Code of Conduct;
- Monitoring the operation of the Code of Conduct;
- Advising, training or arranging to train Members and co-opted members on matters relating to the Code of Conduct.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	
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4. BACKGROUND AND KEY ISSUES

- 4.1 The Council defines “Alternative Resolution” in its complaint process as follows:

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that their conduct was unacceptable and offering an apology. Where the member or the authority makes a reasonable offer of local resolution, but the person complaining is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint warrants formal investigation or no further action.

5. CONSULTATION

- 5.1 There is no further consultation required.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 Increased fairness and objectivity of the complaints process.

7. REASON FOR THE RECOMMENDATION

- 7.1 If a requirement of confidentiality is added to the complaints process it should ensure that councillors are not judged publically for their conduct until due process has been gone through and a finding made. This will minimise the opportunity for the reputation of councillors who have complaints made against them being tarnished before any decision has been made on whether they have breached the code of conduct and minimise the possibility of Hearings Panel members being influenced by press reporting of complaints which may not have the full facts.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Maintain the status quo whereby no confidentiality attaches to the process and a complainant may contact the media/publicise a complaint as soon as it is made and officers confirm factual details in response to media enquiries.

9. IMPLICATIONS

Financial Implications

9.1 None

Legal Implications

9.2 Under the Localism Act 2011 the council may set its own procedures in relation to the handling of complaints.

Equalities Implications

9.3 None

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 The Localism Act 2011

11. APPENDICES

11.1 None