



Process for Considering Complaints About Councillors

SUMMARY

- 1.1 The Cabinet Member with responsibility for governance committed to reviewing the processes for handling complaints about members in 2017. This followed several questions raised by councillors at meetings of Council and consideration of the Annual Report of the Standards Committee.
- 1.2 Following consideration of several options, detailed in this report, a preferred option was considered by Standards Committee at its meeting on 27 March 2018. The committee made some changes to the proposals and now recommends a finalised model to Council for its consideration.

RECOMMENDATION

- 2.1 To approve the adoption of a new Councillor Complaints Procedure, as attached at Appendix 2 and as detailed in the report.
- 2.2 To approve the adoption of a new Complaints Form, as attached as Appendix 3.
- 2.3 To request that all political groups will establish or review their own Group Complaints Procedures to ensure they are able to deal with complaints that fall outside of the new Procedure detailed in Appendix 2.
- 2.4 To disapply the necessity for political balance on the Standards Committee as a permitted 'exception', and that the Standards Committee shall henceforward have a composition of:
 - one member per political group on the council;
 - one place reserved for ungrouped members (there are presently none).

(Note for councillors: to be compliant with legislation this recommendation can only be carried by Council if it is voted upon with no member voting against).

- 2.5 To approve a variation of Council Procedure Rule CP101 such that appointed members of the Standards Committee are permitted to send group colleagues to attend as substitute members on their behalf.
- 2.6 To appoint Mr Peter Purnell and Mr Philip Sunderland as independent persons to the Standards Committee and to establish an Independent Person Advisory Panel.

- 2.7 To note that it is proposed that the new arrangements will be reviewed by the Standards Committee in the latter stages of the 2018/9 municipal year.

REASONS FOR RECOMMENDATION

- 3.1 To ensure the council has fair and robust complaint processes in place that enable Derby's general public to be confident that the system is robust and fit for purpose.
- 3.2 To ensure that a mechanism exists for complaints which may be reasonably deemed as "potentially politically influenced" to be considered nonetheless, without impacting upon the impartiality of the treatment of complaints which may not reasonably fall within this definition.
- 3.3 To protect councillors from frivolous, partisan or obsessive complaints, and to protect officers from a situation where they may be required to adjudicate between councillors.
- 3.4 To reduce the risk of costly investigations requiring external counsel in situations where it would not be appropriate for officers to investigate.
- 3.5 To provide councillors with an assurance that the general public have an appropriate mechanism for raising complaints where appropriate, while enabling members to self-regulate those complaints which may reasonably be deemed to be "potentially politically influenced".

SUPPORTING INFORMATION

Current arrangements

- 4.1 The council was required to change its councillor complaints process in 2012, as a result of the Localism Act 2011.
- 4.2 This Act resulted in the following changes:
- There was no longer a requirement for a Standards Committee;
 - Where councils opted to retain a Standards Committee, voting independent members were not allowed (there had previously been an independent chair);
 - The exception which enabled Standards Committees not to be politically balanced (part of the 'Widdicombe Rules') no longer applied – by default under the Local Government Act 2000 and Local Government and Housing Act 1989, the committee is politically proportionate;
 - The Code of Conduct was no longer nationally agreed but a matter for local adoption provided it adhered to the General Principles of Public Life (the 'Nolan Principles');
 - The sanctions available to the committee following findings of breaches were reduced – specifically the ability to suspend councillors was removed;
 - 'Independent Persons' were introduced to support the Monitoring Officer, councillors accused of breaches and the committee (where applicable) at various stages of the process.

- 4.3 The current arrangements have attracted criticism, and for a considerable period two political groups did not participate or 'recognise' the committee. A large number of complaints have been councillor versus councillor. The determination of complaints has been criticised due to the political proportionality which exists by statute.
- 4.4 This criticism prompted the Cabinet Member to commit to a review to put in place better arrangements that would provide assurance to the public and councillors.

Review of the current arrangements and consideration of alternative models

- 4.5 The council's review is restricted by the existing legislation which explicitly prevents the reinstatement of aspects of the previous regime. A Select Committee review is currently exploring Local Government Ethical Standards. The Committee on Standards in Public Life is undertaking a stakeholder consultation until 18 May 2018.
- 4.6 It is not considered to be viable to delay assessment of the council's options until that committee reports back its findings. Any change in legislation which widens or changes the council's options are unlikely to be forthcoming imminently, so it is proposed that an alternative model be adopted as soon as possible.
- 4.7 A number of options have been considered. These are detailed in the following paragraphs.

4.8 Minimum Statutory Requirements

This would remove councillors from the process. Under this model, complaints would be subject to consideration by the Independent Person, whose view would be taken into account by the Monitoring Officer. The Monitoring Officer would make a final determination, possibly following a more thorough investigation and further consultation with the Independent Person.

- 4.9 While this model is simple and removes the risk of members impartiality being brought into question (due to their non-involvement), it is not recommended. It would place too much pressure and power on the Monitoring Officer and would send a confusing message to the public about the council's commitment to maintaining high levels of member conduct.

4.10 Retention of existing arrangements (or similar) but removal of political balance

This has been proposed by some members previously and would provide an immediate fix to any suggestion over member partiality. However, there remains an ongoing issue where member versus member complaints outweigh complaints by the general public. This model could actually increase the risk of members being accused of using the system for political gain. This model is not recommended.

4.11 Independent/Co-opted Persons Recommendation Panel

This model would involve a panel of independent or co-opted persons making a recommendation to the Standards Committee before it made a final determination on councillor complaints.

- 4.12 There would be obvious benefits to this proposal with independent persons actively contributing to a final recommendation. However, it may appear overly bureaucratic to add a further committee to the process and there would also be a risk that the panel's recommendation would place additional pressure on the committee to be seen to support it – which could create issues if, for example, a committee unanimously took a different view.
- 4.13 Furthermore, the Localism Act specifically reduced the proactive role of independent members in determining the final decision, and while a separate consultative panel would be a way around the mandatory removal of voting independent members from the committee, it could be considered to be outside of the spirit of the Act.

Preferred model and recommended option

- 4.14 It is proposed that a system be introduced to filter complaints and introduce greater self-regulation by councillors through the political groups.
- 4.15 The system would involve a three-stage process before any complaints were referred to the Standards Committee:
- Initial screening of complaints;
 - Monitoring Officer assessment of complaints;
 - Consultation with the Independent Person.

4.16 Initial screening stage

This would be a paper-based exercise undertaken by officers using the information supplied by the complainant. The purpose of the screening process would be to identify any complaints which could reasonably be considered to be "potentially politically influenced". Any such complaints would be referred to political groups to deal with through their Group Disciplinary Procedure.

4.17 Definition of "potentially politically influenced"

It is very important to establish from the outset that in defining a complaint as falling under this category, an officer would not be suggesting that complaint is conclusively politically-motivated and not to be treated as potentially serious. The categorisation is simply proposed to remove from the process any complaint which has the *potential* to be subject to such an allegation, to ensure the remaining parts of the process cannot be criticised for this.

- 4.18 It is proposed that a complaint which is deemed "potentially politically influenced" would be defined as any that has been submitted or supported by a person who in the previous three years has:
- Been a councillor, MP or MEP;
 - Been a candidate for local, European or Parliamentary Elections;
 - Is personally or otherwise closely associated with any person above, or any political party, including being a signatory in electoral nomination forms.

4.19 Group Disciplinary Procedures

Any such complaint would be referred to political groups to process. There is no expectation that group procedures will be validated by officers or that the procedures for one group need necessarily reflect those of another. It will be for groups to take responsibility for their own procedures and to be accountable for them.

4.20 Monitoring Officer Assessment Stage

This stage would involve the Monitoring Officer moving through a number of questions to disqualify any complaints that should not proceed. These would include:

- Complaints that, even if proven, would not be a breach of the Code of Conduct;
- Complaints where the accused member is either not currently a member or was not a member at the time of the incident giving rise to the allegation;
- Complaints where the accused member was clearly acting in a personal capacity and the allegation is not so serious that it could be deemed, if proven, to bring the council into disrepute;
- Complaints where the subject member has already sought to make amends, such as through an apology, provided that the remedying measures taken are proportionate to the complaint in the view of the Monitoring Officer;
- Complaints which form part of a series of complaints that could be linked or which have features from which it could be concluded that the complaint is vexatious, partisan or obsessive.

4.21 In all of the above cases, the complaint would be dismissed. Complaints would otherwise proceed to the final stage before potential consideration by the Standards Committee.

4.22 Independent Person Consultation Stage

Complaints reaching this stage could not be accused of being politically influenced and would not fall foul of the reasons for which they could be disqualified by the Monitoring Officer. These complaints would be referred to the Independent Person by the Monitoring Officer for comment, before the Monitoring Officer would decide which of three routes to take, as described in the following paragraphs.

4.23 Option 1: The matter should not be investigated

This is an option that currently exists for minor breaches that are unlikely to result in any sanctions being implemented against the accused councillor. It is proposed that the test a Monitoring Officer would apply before reaching this conclusion is that the public interest in the expense and time of the investigation is outweighed by the public interest in not proceeding.

4.24 Option 2: An investigation is avoided by a required remedying measure

This is a middle ground between Options 1 and 3. It would be used where the Monitoring Officer feels it is likely that there has been a breach but that the likely sanction, such as an apology, can be secured more readily by negotiation rather than following an investigation. This option would save time and money in such circumstances. If the councillor was not agreeable to the required remedying measure, then such matters would automatically be dealt with under Option 3.

4.25 Option 3: An investigation is required

This option will be utilised where the Monitoring Officer is satisfied that it is the only way to satisfactorily resolve the complaint.

Serious complaints

- 4.26 Following initial consultation with political groups, there was general support for the principle that the majority of complaints that may be politically influenced could be appropriately dealt with by Group procedures. However, there was feeling that for the most serious complaints where it was abundantly clear a councillor had a case to answer, this should instead be escalated in order that it could eventually find its way to a committee hearing (subject to the findings of any resultant investigation).
- 4.27 The consultation with the existing pool of Co-opted and Independent Persons showed that they felt they could offer a valuable independent role in determining this distinction. It is therefore proposed that where, in the view of the Monitoring Officer following consultation with an Independent Person Advisory Panel, sufficient evidence has been provided at the point of complaint that it appears likely that a councillor will have a case to answer in respect of a serious complaint, the matter can be escalated immediately to the Monitoring Officer Assessment Stage.

Political proportionality ('Widdicombe Rules')

- 4.28 The provisions which excepted Standards Committees from the rules on political proportionality (which otherwise apply to Council committees) were removed with changes to the Standards regime in 2012 following the Localism Act 2011.
- 4.29 There remains, however, a provision in the original legislation which introduced Widdicombe Rules (Local Government and Housing Act 1989) through which an authority can disapply the requirement from a committee. This requires a vote to be carried without any member voting against.

Independent Persons and Co-opted Members

- 4.30 The Localism Act requires one Independent Person to be appointed. The role of this individual is to support the Monitoring Officer/accused member/committee through the process. In practical terms, one Independent Person is insufficient as one is needed to assist the subject member and another to support the Monitoring Officer. In Derby, two have been appointed for this purpose.

- 4.31 Co-opted members do not have the same role as the Independent Person but attend committee meetings where they can provide a view on matters but do not have a voting role. The two existing co-opted persons were previously disqualified from sitting as Independent Persons under the new regulations because they had previously been independent members during the pre-2012 regime.
- 4.32 That disqualification no longer applies due to the period of time that has passed. In order to sustain the existing strong pool of non-councillor members during the earlier stages of the process, it is proposed that the existing co-opted members, Mr Purnell and Mr Sunderland, be instead appointed as Independent Persons. Mr Purnell and Mr Sunderland have been consulted on this proposal and agreed that extending their role would enable them to offer value at earlier stages of the process.

Referral by Monitoring Officer

- 4.33 There is provision under existing arrangements for the Monitoring Officer to refer matters directly to the Standards Committee in certain circumstances.
- 4.34 It is not proposed that these powers, which sit outside of the councillor complaints process, should be changed. However, it is proposed that the procedure clarifies that any such matters are referred for information only, rather than for determination. If complaints arise as a result of that information being reported then it would be treated as with any other complaint.

Consideration by the Standards Committee

- 4.35 A previous version of this report was considered on 27 March 2018. A number of additional recommendations were made by the committee and are now absorbed into this consolidated report.
- 4.36 The additions made by the Standards Committee were:
- The proposed change to substitution rules (recommendation 2.5);
 - That the disapplication of political proportionality was made more explicit and that provision was made to involve ungrouped members (recommendation 2.6);
 - That the procedure explicitly states that members of the committee who are subject to complaints or complainants can only attend a hearing in that capacity (included in new procedure at Appendix 2) and not as part of the decision-making process;
 - That the process following a Monitoring Officer referral be added to the new procedure (also included at Appendix 2);
 - That it be stated that no decision to refer a matter to a political group shall be made without first consulting the Independent Person Advisory Panel (also included at Appendix 2 and shown in Appendix 4);
 - That the Standards Committee shall review the new arrangements after 12 months (recommendation 2.7);
 - That update reports be provided to every Standards Committee meeting going forward (arrangements put in place by Democratic Services).

OTHER OPTIONS CONSIDERED

- 5.1 A range of options are detailed within the report. The final scheme could adopt different aspects of any of the options described.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Olu Idowu – Head of Legal Services Don McLure – Interim Strategic Director of Corporate Resources N/A N/A N/A N/A
For more information contact: Background papers: List of appendices:	David Walsh 01332 643655 david.walsh@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Draft Procedures for Considering Complaints Appendix 3 – Draft Complaints Form Appendix 4 – Draft Process Diagram

IMPLICATIONS

Financial and Value for Money

- 1.1 It is anticipated that savings will be achieved by referring complaints deemed to be "potentially politically influenced" to groups, as there is a reduced likelihood that external counsel will be required to investigate complaints.

Legal

- 2.1 The course of action recommended in the report is compliant with the Localism Act 2011, which changed the way in which Standards Committees were constituted in 2012, and with both the Local Government Act 2000 and Local Government and Housing Act 1989 in respect to political proportionality.

Personnel

- 3.1 No significant implications.

IT

- 4.1 None.

Equalities Impact

- 5.1 None.

Health and Safety

- 6.1 None.

Environmental Sustainability

- 7.1 None.

Property and Asset Management

- 8.1 None.

Risk Management and Safeguarding

- 9.1 It is anticipated that the proposals in the report, if approved, would reduce reputational risk to the council by referring potentially contentious councillor vs councillor complaints to political groups to self-regulate.

Corporate objectives and priorities for change

- 10.1 Councillors have expressed concerns over the authority's arrangements for handling member complaints since they were required to change by law in 2012. These issues have become more obvious in recent months.