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Councillor Conduct Committee

Tuesday, 3 December 2013 at 7.30 pm
Room 3, Civic Centre, Silver Street, Enfield,
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Councillors: Yasemin Brett (Chair), Tom Waterhouse (Vice-Chair), Tahsin Ibrahim,
Michael Rye OBE and Chamberlain

Independent Person: Christine Chamberlain

Dear All

To Follow Papers

Please find attached the "To Follow" papers mentioned on the agenda for the 3
December 2013 meeting of the Councillor Conduct Committee.

Item 3 Complaints Hearing Procedure

Please bring these papers with you to the meeting next week.

If you have any queries in the meantime, please contact me details above.

Thank you

Yours faithfully

Penelope Williams

Penelope Williams
Governance Team

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MUNICIPAL YEAR 2013/2014 REPORT NO. **145**

MEETING TITLE AND DATE

Councillor Conduct Committee
3 December 2013

REPORT OF: Director of Finance,
Resources and Customer Services

Contact officer: John Austin
(Assistant Director of Corporate
Governance) Tel: 020 8379 4094
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| | |
|--|----------------|
| Part: 1 | Item: 3 |
| Subject: Procedure for hearing complaints and appeals against complaints against councillors and co-opted members | |
| Wards: All | |
| Cabinet Member consulted: Not applicable | |

1. EXECUTIVE SUMMARY

Following the review of the complaints procedure for use when dealing with complaints against councillors and co-opted members at the last meeting of Councillor Conduct Committee, it was agreed that the process for committee hearings also be reviewed.

A procedure has been put together and is attached to this report as Appendix A.

2. RECOMMENDATIONS

- 2.1 That the Councillor Conduct Committee consider and agree the procedure for hearing complaints against members and appeals against monitoring officer decisions (as set out in Appendix A to this report).

3. BACKGROUND

- 3.1 Enfield's procedure for dealing with complaints against councillors and co-opted members was redrafted following the changes to the Standard's Regime brought about by the Localism Act 2011. The aim of the changes introduced by the Localism Act was to streamline the procedure for dealing with complaints against councillors and it was left to individual authorities to establish their own local arrangements. A new complaints procedure was agreed at Council on 4 July 2012.
- 3.2 This complaints procedure was reviewed by the Councillor Conduct Committee at their meeting on 22 October 2013 and changes

recommended were agreed by Council on 27 November 2013. As part of the review it was also agreed that the hearings process should be revised.

3.3 A hearings procedure is attached as Appendix A, for consideration by the Committee.

3.4 The presumption in the attached procedure is that the complainant and member(s) complained against will be able to attend the investigation hearing to present their respective cases, but not an appeal hearing.

4. ALTERNATIVE OPTIONS CONSIDERED

An alternative option would be not to make any changes to the hearings process, but this would mean that it would be less easy to follow.

5. REASONS FOR RECOMMENDATIONS

To ensure that the complaints hearing process is fit for purpose.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The changes will be made within existing financial resources.

6.2 Legal Implications

The report and procedures set out comply with the rules of natural justice which state that in order for hearings to be fair two parts must be observed - being heard by the other side and the rule against bias.

6.3 Property Implications

Not applicable

7. KEY RISKS

That the procedure on the hearings process is not clear and the process is open to challenge.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All and Strong Communities

A strong ethical approach by the Council and the promotion of good conduct on the part of members will have a positive effect on their representational role and a consequential impact on communities.

9. EQUALITIES IMPACT IMPLICATIONS

The proposals within this report will help to ensure fair, equal and consistent treatment of complaints against councillors for all parties concerned.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

There are no performance management implications

11. PUBLIC HEALTH IMPLICATIONS

There are no public health implications.

Background Papers

None

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London Borough of Enfield

Procedure for Hearing Complaints against Councillors and Co-opted Members and for Appeals against Monitoring Officer Decisions on Complaints

1. General Principles

- 1.1 The Councillor Conduct Committee will decide, on a balance of probabilities, whether the allegation(s) is or are upheld. They will be able to call on the advice of relevant council officers and the Independent Person, who had not previously been consulted on the complaint. (where we have two independent persons)
- 1.2 Papers will be sent out in advance of the hearing, including the Monitoring Officer/Investigating Officer report with all the evidence gathered, and representations from both the complainant and the member complained against. They will both have the opportunity to comment, in advance, on the report and evidence put forward. Any comments will be included with the papers.
- 1.3 The Committee will make a decision by considering the Monitoring Officer/Investigating officer's report and any representations by the Monitoring/Investigating officer or their representative and the written or oral representations made by the complainant or member complained against, any information provided at a hearing. Both parties will have the opportunity to make representations, irrespective of whether they are invited to attend the hearing.
- 1.4 Both the complainant and the member(s) complained against will be invited to attend investigation hearings. Unless the committee decides otherwise, they will not be able to attend appeal hearings. All parties will be advised of this beforehand.
- 1.5 The complainant and the member complained against may be represented or accompanied during the investigation hearing.
- 1.6 If the member complained against or the complainant is not present at the start of the investigation hearing the Chair shall ask the Monitoring Officer whether the member or complainant has indicated his/her intention not to attend the hearing. If they have advised that they will not be attending the hearing, the committee can proceed in their absence. If no response has been received from either party then the committee shall decide whether to continue the hearing in their absence.
- 1.7 The public and press will be excluded for those parts of the hearing where confidential or exempt information under Schedule 12A of the Local

Appendix A



Government Act 1972, as amended, is disclosed. At the start of the hearing, the Committee will make a decision as to whether or not all or part of the hearing should be held in public.

2. Procedure at Investigation Hearings

The Legal Representative will be the advisor to the Committee and may seek further information or ask questions at any point in these proceedings. During the hearing all questions and other proceedings shall be addressed through the chair.

2.1 Presentation of the Monitoring Officer Report

- a. The Monitoring/Investigating Officer will present his/her report and any relevant information to the committee members.
- b. The Independent Person, who has been consulted on the Monitoring Officer decision, may include their comments.
- c. The committee members will have an opportunity to ask questions of the Monitoring Officer, the Independent Person.
- d. The complainant will have an opportunity to ask questions of the Monitoring Officer, the Independent Person.
- e. The member complained against will have the opportunity to ask questions of the Monitoring Officer/Investigating Officer and the Independent Person.

2.2 Complainant Presents to the Committee

- a. The complainant has the opportunity to address the committee and present their case.
- b. The committee members will have an opportunity to ask questions of the complainant.
- c. The complainant has an opportunity to respond.
- d. The member complained against has an opportunity to ask questions of the complainant.
- e. The complainant has an opportunity to respond.
- f. The Monitoring Officer has an opportunity to ask questions of the complainant.
- g. The complainant has an opportunity to respond.
- h. The committee members have a further opportunity to ask questions.

Appendix A



2.3 The Member Complained Against

- a. The member complained against has the opportunity to address the committee and respond to the complainant's case.
- b. The committee members will have an opportunity to ask questions of the member.
- c. The member complained against has an opportunity to respond.
- d. The complainant has an opportunity to ask questions.
- e. The member complained against has an opportunity to respond.
- f. The Monitoring Officer/Investigating Officer has an opportunity to ask questions of the member.
- g. The member complained against has an opportunity to respond
- h. The committee members have a further opportunity to ask questions.

2.4 Consideration by the Committee

- a. The Monitoring/Investigating Officer, Independent Person, complainant member and any other relevant parties will all withdraw. The Legal Representative and Committee Administrator will remain.
- b. The Committee will consider all the information and make a decision as to whether or not there has been a breach of the code of conduct.

2.5 Agree Outcome

The Committee have the option of agreeing that there has or has not been a breach of the code.

If it is decided that there had been a breach of the code, the Committee will then consider and agree what sanctions should be imposed. A list of possible sanctions is set out in Appendix A.

2.6 Outcome of Hearing

A formal written notice of the decision will be communicated to all parties including the member complained against, the Monitoring Officer/Investigating Officer, the members of the committee and the complainant with reasons. This must be within five working days of the conclusion of the hearing.

2.7 General Recommendations from the Hearing

After the hearing the Committee may consider whether there are any general recommendations in relation to ethical governance matters which they may wish to make arising from consideration of the allegation.

3. Procedure at an Appeal Hearing Against a Decision by the Monitoring Officer

The attendance of the complainant and member complained against will not be required unless the Committee decides otherwise.

3.1 Presentation of the Monitoring Officer Report

- a. The Monitoring/Investigating Officer will present his report and any other information to the committee members along with any comments submitted in writing by the complainant or member(s) complained against.
- b. The Independent Person, who had been consulted on the Monitoring Officer decision, may include their comments.
- c. The committee members will have an opportunity to ask questions of both the Monitoring Officer and the Independent Person.

3.2 Consideration of the Evidence

- a. The Monitoring/Investigating Officer and Independent Person will then withdraw. The Legal Representative and Committee Administrator will remain in the appeal hearing.
- b. The Committee will consider all the information and make a decision as to whether or not to uphold the Monitoring/Investigating Officer decision.

3.3 Agree Outcome

If the outcome of the appeal results in Committee confirming that a breach of the code has occurred then it will need to consider what sanctions it wishes to impose as a result. A list of sanctions is attached as Appendix A.

3.4 Outcome of Hearing

A formal written notice of the decision will be communicated to all parties including the member complained against, the Monitoring Officer/Investigating Officer, the members of the committee and the complainant with reasons. This must be within five working days of the conclusion of the appeal hearing.

3.5 General Recommendations from the Hearing

After the appeal hearing the Committee may consider whether there are any general recommendations in relation to ethical governance matters which they may wish to make arising from consideration of the allegation.

Appendix A



Appendix A

In the event of a finding of a breach of the Code, the Committee will have the option of recommending a sanction against the member concerned. This can include:

- Reporting the findings to full Council.
- Recommending to the relevant Group Leader that the councillor be removed from relevant meetings of the Authority of which they are a member.
- Recommending to the Leader of the Council that the member be removed from the Cabinet or from particular portfolio responsibilities.
- Withdrawing facilities provided to the member by the Council – such as computer access and/or e mail or internet access.
- Excluding the member from the Council's offices or other premises for a defined period of time – with the exception of meeting rooms as necessary for the purpose of attending meetings of the Authority of which they are a member.
- Publishing the findings in the local media.

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