

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Civic Affairs Committee

24th September 2012

AUTHOR/S: Monitoring Officer

UPDATE ON COMPLAINTS/CONFIDENTIALITY REQUIREMENTS

Purpose

1. To update members on complaints cases which were not completed before the 30th June 2012 when the former standards regime became defunct and have been dealt with under transition arrangements set out in the Localism Act 2011 and complaints that have been made since 1st July 2012. Members are also asked to set new procedures concerning the confidentiality requirements of the complaints process.

2. **RECOMMENDATIONS:**

That the Civic Affairs Committee:

- a) **Note the progress of outstanding complaints.**
- b) **Resolve that all ongoing cases be subject to a requirement of confidentiality by all participants in the process until such time as the case is concluded**
- c) **Resolve that where a conclusion has been reached that the code of conduct has not been breached that the identity of the councillor remains confidential**
- d) **Resolve that where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to summary resolution that the investigation report will be published when the case is reported back to the committee**
- e) **Resolve that where a conclusion has been reached that the code of conduct has been breached and that summary 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**

Reasons for Recommendations

3. To 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 of councillors who have not breached the Code of Conduct.

Background

4. Under the transition provisions of the Localism Act 2011 cases which were not completed by the 30th June 2012 were to be dealt with as if they had been made under whatever new processes council set up, once those processes were in place. On 26th July the Council adopted a new code of conduct complaints procedure which states:

“What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?”

The Monitoring Officer will review the Investigating Officer's report and if satisfied that it is sufficient, the Monitoring Officer will send a copy of the Investigating Officer's final report to the Complainant, the Councillor and the Clerk (if appropriate) and notify them that no further action is required. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, she may ask the Investigating Officer to reconsider their report."

The outcome of such investigations will be reported to the next ordinary meeting of the Civic Affairs Committee and the relevant parish council (if appropriate) for information.

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing by the Civic Affairs Committee or, after consulting the Independent Person, seek Summary Resolution (see 8 below).

Summary Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Chairman of the Civic Affairs Committee, the Independent Person and with the Complainant and seek to agree what they consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such a resolution may include the Councillor accepting that their conduct was unacceptable/inappropriate and offering an apology, and/or other alternative action by the Council or the relevant parish council (if appropriate).

If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Civic Affairs Committee and the relevant parish council (if appropriate) for information, but will take no further action.

Referral for Hearing

If the Monitoring Officer considers that Summary Resolution is not appropriate, or the Councillor does not comply with any suggested resolution, then the Monitoring Officer will refer the Investigating Officer's report to the Civic Affairs Committee for a hearing to decide whether or not the Councillor has failed to comply with the respective Code of Conduct and, if so, whether to take any action in respect of the Councillor.

Confidentiality of investigation reports and complaints

5. On 10th December 2008 the Council's Standards Committee resolved that cases in which no breach of the Code of Conduct has been found or no further action is to be taken should be anonymised for the purposes of reporting back to the Committee and that only in cases where a breach has been found should the relevant member be identified to the Committee and the general public. The Civic Affairs Committee is asked to reconsider this issue as a new committee which needs to set its own procedures. The Monitoring Officer advises the following resolutions:
 - i) in the absence of a specific statutory requirement under the new processes that the Committee resolves 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 that the identity of the councillor remains confidential as there is no reason for making their identity public in these circumstances. Any investigation report will be published as a confidential item on the agenda and only an anonymised case summary put on the public agenda.
- iii) where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to summary 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 it has been found that a councillor has breached the code of conduct are published and follows the Council's previous actions in regard to this issue.
- iv) where a conclusion has been reached that the code of conduct has been breached and where summary 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 press.

6. **Cases outstanding at 30th June 2012**

(a) **CORCOM 4929**

This complaint was made by a district councillor about comments made by another district councillor regarding employees and was referred by the Standards Committee's Assessment Panel for investigation. The case was investigated by an external investigator who concluded that the councillor had not breached the code of conduct as:

- (i) on balance, the councillor did not fail to treat others with respect. Whilst his comments were ill advised, they were not directed at any identifiable individuals and, given the high degree of protection to be afforded to political comments under Article 10 of the European Convention on Human Rights, the conduct was not a failure to treat others with respect;
- (ii) on balance, neither did the councillor bring his office and the Council into disrepute.

The investigation report is attached as Appendix 1 to this report. Under the new arrangements no further action needs to be taken.

(b) **CORCOM 4934**

This complaint was made by a district councillor about a comment made by another district councillor before a meeting of the Planning Enforcement Sub-Committee and was referred by the Standards Committee's Assessment Panel for investigation. The case was referred to an external investigator who concluded that the councillor had breached three sections of the code of conduct - clauses 3(1), 3(2)(a) and 5 – respect, equalities and disrepute.

The investigation report is attached as Appendix 2 to this report. Following the complaint the councillor concerned resigned from the Planning Committee and the Planning Enforcement Sub-Committee (as was) and agreed to attend equalities training. The Monitoring Officer, the Independent Person and the Chairman of the Civic Affairs Committee considered this to be a satisfactory summary resolution of the complaint although the complainant felt the matter should be referred for a hearing.

(c) **CORCOM 35/36/38/39**

This complaint was made by a parish councillor and four members of the public in relation to the behaviour of a parish councillor chairman and was referred by the Standards Committee Assessment Panel for investigation. The case was referred to an internal investigator who concluded that there had been no breach of the code of conduct. The investigation report is attached as Appendix 3 to this report. Under the new arrangements no further action needs to be taken.

(d) **CORCOM 221**

This complaint was made by a member of public (a former parish councillor) about a district councillor. The complainant alleges a number of breaches of the code of conduct. The complaint has been sent to the councillor for their response and will then be assessed by the Monitoring Officer and Independent Person.

(e) **CORCOM 45 & 46**

This complaint was made by two members of the public about a district councillor/parish councillor regarding the councillor's participation in meetings at both parish and district level, related to their planning application. The complainant alleges a number of breaches of the code of conduct. The complaint has been sent to the councillor for their response and will then be assessed by the Monitoring Officer and Independent Person.

7. **New complaints since 1st July 2012**

CORCOM 194

This complaint was made by was made by a member of the public about two district councillors on the council's planning committee in relation to the 4th July 2012 planning committee meeting. The complainant alleges a number of breaches of the code of conduct. The complaint has been sent to the councillors for their responses and will then be assessed by the Monitoring Officer and Independent Person.

BACKGROUND PAPERS: Localism Act 2011
SCDC Code of Conduct Complaints procedures

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