

<b>Decision maker:</b>	Governance & Audit & Standards Committee
<b>Subject:</b>	Arrangements for Assessment, Investigation and Determination of a Complaint that a Member has failed to Comply with the Members' Code of Conduct
<b>Date of decision:</b>	Governance & Audit and Standards Committee 27 <sup>th</sup> June 2014 Council 15 <sup>th</sup> July 2014
<b>Report by:</b>	City Solicitor
<b>Wards affected</b>	N/A
<b>Key decision (over £250k)</b>	No

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## 1 Background

1.1 Following Council's consideration of a Notice of Motion on the 13<sup>th</sup> February Council resolved that the matter set out below, was referred to the Governance & Audit & Standards Committee.

"The Councils arrangements for the determination and consideration of complaints approved by Council on the 17 July 2012 provide that when the Monitoring Officer produces a report into an alleged breach of a Code of Conduct, that a copy of that report is provided to the Councillor who is the Subject of the Complaint.

The Governance and Audit and Standards Committee are asked to consider a review to these arrangements to require that when a Consideration Sub-Committee accept an independent investigators report into a member complaint on behalf of the GA&S Committee, that the report should be published, complying with the Data Protection Act, and that a copy of the report should be provided to the Complainant also."

1.2 The Committee is asked to consider whether it is content to make this amendment to the present arrangements for the assessment, investigation and determination of complaints. In the event that the Committee makes any change to those arrangements that decision will be required to be approved by Council.

## 2 Purpose of Report

2.1 To enable Members to consider whether they are content to agree the proposed change to the arrangements so that any independent investigators report into a complaint is published and a copy provided to the complainant, subject to compliance with the Data Protection Act.

### **3 Present situation with regard to investigation reports produced as part of the consideration of complaints.**

- 3.1 Following the receipt of a complaint an Assessment Sub-Committee of the Governance and Audit and Standards Committee is established to consider the complaint. The purpose of the Sub-Committee is to decide if what has been complained about could, if it is proven, amount to a breach of the Council's Code of Conduct. It is not to decide on whether or not there has been a breach of the Code. In the event that it is decided that it could amount to a breach of the Code then the Sub-Committee can if they consider it to be a sufficiently serious breach refer it for investigation. Depending upon the allegations in the complaint this may be investigated internally or externally. A report is then produced for the Sub-Committee to consider.
- 3.2 A copy of the report is made available to the Councillor who is the subject of the Complaint. This is to enable the Councillor to respond to the investigators findings which is essential to enable a proper consideration of the complaint and it is also necessary in the interest of justice that the Subject Councillor is made aware of the allegations and evidence against them.
- 3.3 At present the report is not published. This is to allow the details of the allegation and the result of the investigation to remain confidential until such time as the Sub-Committee have been able to consider the report, decide if they accept its findings and also reach a conclusion on those findings. It is a concern that if the report was published before the Sub-Committee had fully considered it this could impact upon the Sub-Committee and would be unfair for any Councillor who is the subject of a complaint. In particular that it may prejudice the outcome of the matter before it was fully considered. It is for these reasons that this change is not recommended.
- 3.4 A copy is also not at present automatically made available to the Complainant. The complainant is not provided with a copy as they are considered to be witness to the events complained of and in that capacity. The complainant will, however, inevitably be interviewed as part of the investigation and their concerns examined by the investigator in his report.
- 3.5 The proposal to provide the complainant with a copy would in reality not give the complainant greater rights than they presently enjoy, as they are entitled to obtain a copy if they are referred to in the report, under the Data Protection Act. Any such copy of the report would in any event be redacted to protect the rights of the Councillor who is the subject of the complaint. It may, however, be felt that the procedure for the assessment investigation and determination of complaints should be amended to make this right of the complainant explicit. It could also be further amended to require copies of any report which is produced as part of an investigation to be provided to the complainant, whether it is produced by an independent investigator or the Monitoring Officer.

#### **4 Recommendation**

- 4.1 For the reasons outlined above the investigation report is not published in whole, or in part, but that the Council's procedure for the assessment investigation and determination of complainants is amended to allow a redacted copy of the investigators report to be provided to the complainant at the same time that it is provided to the councillor who is the subject of the complaint.

#### **5 Equality Impact Assessment (EIA)**

- 5.1 The contents of this report does not have any relevant equalities impact and therefore an equalities assessment is not required.

#### **6 City Solicitor's Comments**

- 6.1 The City Solicitor's comments are included in this report.

#### **7 Head of Finance & S151 Officer Comments**

- 7.1 There are no financial implications arising from the recommendations set out in this report.

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Signed by: Michael Lawther City Solicitor

#### **Appendices:**

##### **Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
None	N/A