

REPORT OF THE CITY SOLICITOR

TO

COUNCIL

ON

20 July 2022

TITLE: Revisions of the Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members

RECOMMENDATIONS:

That Council:

1. Approves the revised Arrangements for dealing with complaints that the City Mayor and Members have failed to comply with the Council's Code of Conduct for Members as set out in the Appendix to the report.
2. Agrees under paragraph 12 of the Revised Arrangements to amend those Arrangements to depart from the Hearing provisions in Stage 4 so that the Member Code of Conduct complaints referred to in section 2 of this report can be dealt with and finalised.
3. Agrees that the proposed amendment specifically applies to the Member Code of Conduct complaints referred to in section 2 of this report notwithstanding that they were commenced under the previous Arrangements that were in place.
4. Delegates to the Monitoring Officer power to make the final decision in respect of the complaints referred to in Section 2 as to whether there has been a failure to comply with the Council's Code of Conduct for Members. It is acknowledged that if a hearing is required, the Monitoring Officer will appoint an independent external adjudicator to conduct the hearing and submit their findings to her.
5. Delegates to the Monitoring Officer power to take such action and/or apply sanctions as may be necessary to promote high standards of conduct should the Monitoring

Officer make a finding that there has been a failure to comply with the Council's Code of Conduct for Members.

EXECUTIVE SUMMARY: This report asks Council to approve the revised Arrangements for dealing with allegations of failure to comply with the City Council's Code of Conduct for Members ('the Arrangements').

The main changes are aimed at making the procedure clear and ensuring it is up to date with current legislation and include the following specific points:

- Ensure that the Independent Person should be consulted where it is appropriate and beneficial to do so throughout the entire procedure.
- Insert provision for a public interest test to be carried out to determine whether referring a complaint for investigation is a proportionate use of resources and/or will give rise to an overriding public benefit.

The report also asks Council to agree that the Revised Arrangements are amended so that the Member Code of Conduct complaints referred to in section 2 of this report can be progressed and also to delegate power to the Monitoring Officer to finalise those complaints so that a decision can be taken as to whether there has been a failure to comply with the Council's Code of Conduct for Members.

BACKGROUND DOCUMENTS:

Salford City Council's Constitution, Code of Conduct for Members, Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members

KEY DECISION: NO

DETAILS:

1. The Arrangements

1.1 Under section 28 of The Localism Act 2011 the City Council must have in place Arrangements under which allegations that an elected or co-opted Member of the Council has failed to comply with the Council's Code of Conduct for Members ('the Code') can be considered and decisions made on such allegations.

1.2 It is for the City Council to decide the details of those Arrangements, but the City Council must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that it has decided to investigate.

1.3 The existing Arrangements were reviewed by the City Solicitor in light of the operation of the document and the fact it had been 4 years since the last review. The main changes are to:

- insert a paragraph to expressly provide that the Council's Independent Person should be consulted where it is appropriate and beneficial to do so throughout the entire procedure.
- provide clearer information about the role of the Monitoring Officer.
- insert provision for a public interest test to be carried out to determine whether referring a complaint for investigation is a proportionate use of resources and/or will give rise to an overriding public benefit. The test will specifically be carried out both at the initial assessment stage and following any attempts at local resolution which prove unsuccessful.
- adding an Appendix setting out the factors which will be taken into account when the public interest test mentioned above is carried out.
- make the various stages of the procedure clearer.
- take out references to the old standards regime (e.g., the reference to the Standards Board for England) and legislation which is no longer in force (e.g., the Disability Discrimination Act 2000).
- amend section 13 of the Arrangements to delete the delegation to the Chair of the Hearings Panel.

1.4 Under the Council's Constitution the Standards Committee is delegated with the role of advising the Council on the adoption, revision or replacement of the Arrangements as well as monitoring their operation. The Standards Committee considered the revised Arrangements at its meeting on 30 June 2022. The only substantive modification that the Standards Committee requested to the draft Arrangements was that a provision be included stating that if a complaint raised a safeguarding issue the Monitoring Officer will refer the issue to the relevant body for investigation. This has been addressed at paragraph 2.4 of the Arrangements

1.5 As set out in the first recommendation above Council is asked to approve the revised Arrangements which are attached as an Appendix to this report.

2. Member Code of Conduct Complaint

2.1 On 21 January 2021 a complaint was made against certain members of the City Council alleging they had breached the Council's Code for Members ('the Code') and a linked but separate complaint was received on 12 February 2021.

2.2 In accordance with paragraph 6 of the Council's previous Arrangements the Monitoring Officer appointed an Investigating Officer to consider the complaints and reports have been received in respect of both complaints.

2.3 Following receipt of the reports, the Monitoring Officer attempted to reach an informal resolution of the complaints, but this has not been possible in respect of all complaints. In the circumstances paragraph 8.1 of the revised Arrangements requires the Monitoring Officer to report the Investigating Officer's findings to a Hearing Panel

of the Council which will conduct a hearing before deciding whether the subject members have breached the Code.

2.4 The constitution of the Hearing Panel is set out in paragraph 8.2 of the revised Arrangements which provides that “It will comprise of at least one of the Independent Members co-opted to the Standards Committee and three elected Members of the Standards Committee one of whom should be a Member of the minority party”.

2.5 The nature of the complaints referred to means members of the main and the minority parties have either a conflict of interest in the matter and/or their involvement would give rise to the risk of an allegation of bias/impartiality. In the circumstances it is the Monitoring Officer’s opinion that members are unable to participate by sitting on a hearing panel as anticipated in the hearing stage set out in the revised Arrangements as to do so would be in breach of paragraph 1.7 of the revised Arrangements which states that no member or officer who may have a conflict can have any role in administering the Arrangements and the process may therefore be procedurally unfair.

2.6 It is also not legally possible for the Council to delegate its functions to the Chair of the Standards Committee so that they could hear the complaint alone.

2.7 In the circumstances the Monitoring Officer has referred the matter to full Council to seek approval for the Arrangements to be amended and power delegated to herself so this complaint can be dealt with and finalised.

2.8 Council is requested to make the recommendations numbered 2 to 5 at the beginning of this report.

KEY COUNCIL POLICIES:

Salford City Council’s Constitution, Code of Conduct for Members, Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:

Any equality issues are addressed in the report.

ASSESSMENT OF RISK: The Council has a statutory duty to have in place Arrangements under which allegations that an elected or co-opted Member of the Council has failed to comply with the Council’s Code can be considered and decisions made on such allegations. Failure to do so would mean the Council is in breach of that duty and therefore at risk of challenge which in turn would also cause reputational damage to the Council. The Arrangements which the Council has in place also need to be transparent, effective, and fair otherwise there will be a loss of confidence around how allegations that the Code has been breached amongst both the public and

councillors. It is anticipated that by adopting the revised Arrangements and by taking the steps proposed for the hearing of the Member Code of Conduct complaint referred to the Council will be able to meet its obligations, so the risk is considered low.

LEGAL IMPLICATIONS Supplied by: Ian Mark Principal Lawyer Shared Legal Service

These are set out in the body of the report

FINANCIAL IMPLICATIONS Supplied by: N/A

PROCUREMENT IMPLICATIONS Supplied by: N/A

HR IMPLICATIONS Supplied by: N/A

CLIMATE CHANGE IMPLICATIONS Supplied by: N/A

OTHER DIRECTORATES CONSULTED: N/A

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WARDS TO WHICH REPORT RELATES: ALL