

# Corporate Policy and Strategy Committee

10.00am, Tuesday, 27 February 2018

## Councillor Complaints Procedure

Item number	8.5
Report number	
Executive/routine	
Wards	
Council Commitments	

### Executive Summary

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At Council on 23 November 2017, a motion was approved with regard to the Council reviewing the procedures currently in place for dealing with potentially inappropriate behaviour by Councillors.

This report responds to this motion and makes recommendations as to the way forward.

## Councillor Complaints Procedure

### 1. Recommendations

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- 1.1 Committee is asked:
  - 1.1.1 To note the content of this report;
  - 1.1.2 To approve Option 2 as the way forward; and
  - 1.1.3 To approve the proposed submission to the Standards Commission consultation on behalf of the Council.

### 2. Background

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- 2.1 At Council on 23 November 2017, a motion was approved with regard to the Council reviewing the procedures currently in place for dealing with potentially inappropriate behaviour by Councillors.
- 2.2 Following Council, an informal working group was set up on a cross-party basis to discuss possible approaches to this issue. This group met in December 2017 with the Chief Executive and Monitoring Officer and agreed on a proposed way forward as set out in this report.
- 2.3 In early January 2018, the Standards Commission also issued a circular seeking views on the potential for changes to the Councillors' Code of Conduct to deal with these matters. This report also proposes the Council's formal response to this consultation.

### 3. Main report

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- 3.1 A motion was raised by Councillor Main and approved at Council in November 2017 on the following terms:
  - 3.1.1 "Council notes that there are formal procedures in place to allow staff and public to make complaints about inappropriate behaviour of councillors: the complaints procedures and the externally commissioned whistle-blowing service.  
  
Council also notes that Councillors cannot complain about fellow councillors through the whistleblowing service and there is no formal Council procedure

for councillors who might wish to make a complaint about inappropriate behaviour of other Councillors.

Therefore asks that each political group to nominate one member to meet with the Chief Executive to ensure that the appropriate Council provision is made as soon as possible, in addition to the Standard Commission's provisions of the Councillors' Code of Conduct, and a report will be brought to the Corporate Policy and Strategy Committee within two cycles."

- 3.2 In a letter dated 24 November 2017, Kevin Stewart MSP wrote to the President of COSLA to encourage the eradication of harassment and inappropriate behaviour. In particular, he highlighted that he would be looking at whether the Councillors' Code of Conduct required to be updated in this regard.
- 3.3 It is generally recognised that matters relating to Councillor behaviour are currently the domain of the Commissioner for Ethical Standards in Public Life Scotland and the Standards Commission. They are the parties with the appropriate powers to investigate and sanction as appropriate. However, it is recognised that the processes operated by these bodies are both necessarily formal and usually lengthy.
- 3.4 The Police may also have a role in relation to some more serious behaviour.
- 3.5 At present the Chief Executive or Monitoring Officer deal with any such matters referred to them informally through engagement with the relevant Councillors and political groups as required.

### **Options**

- 3.6 As the motion suggests, the Council should consider the potential options open to it in this regard. It appears that there are two broad options available to the Council, both of which have advantages and disadvantages, as follows:
- 3.7 Option 1 would be to introduce a formal Council process to deal with any such allegations. This would demonstrate the Council's willingness to address these issues and could provide a more streamlined process to deal with matters more quickly than through the Standards Commission. This would require all members to sign up to any new process and agree to abide by it. However, it is considered that this would be unlikely to be enforceable, as neither the Chief Executive or Monitoring Officer have effective powers to investigate or sanction Councillors. It also gives rise to the possibility for conflict with possible Commissioner or Police investigations as well as opening up the potential for misuse.
- 3.8 Option 2 is to maintain the status quo at present but to support any wider changes proposed to the Councillors' Code of Conduct to strengthen the current position regarding harassment and inappropriate behaviour. This option recognises the current Member/Officer protocol as well as the intrinsic lack of powers. It also acknowledges that this matter is of national importance and will therefore require a

more national solution. Pending such wider changes, the informal process operated by the Chief Executive and/or the Monitoring Officer will remain in place.

### **Conclusion**

3.9 Having undertaken an initial assessment, whilst some form of quasi-formal arrangement could be put into place through Option 1, it has many of the drawbacks noted above. Option 2 is therefore recommended as the way forward.

In summary:

- 3.9.1 Any behaviour which would potentially be criminal, be it by a Councillor or employee, would be referred to the Police as presently happens.
- 3.9.2 Any possible breach of the Code would, on referral, need to be investigated by Commission for Ethical Standards in Public Life Scotland and the Standards Commission as usual.
- 3.9.3 More minor behavioural matters will continue to be dealt with by the Chief Executive and/or the Monitoring Officer on an informal basis with the relevant Councillor and Group Leaders as appropriate.
- 3.9.4 The whistleblowing hotline remains operational and can be used by anyone, including on an anonymous basis. With regard to investigating Councillors through this route, given the lack of formal investigatory powers of Council officers in this regard, the referring party would likely be advised to speak directly to the Standards Commission or to the Police.
- 3.9.5 It is further proposed that to ensure gender representation remains appropriate, the current Head of HR work with the Chief Executive and Monitoring Officer to address any issues which are raised in relation to Councillors. Individuals will be able to approach the Head of HR direct should they wish to do so.

### **Consultation**

3.10 With regard to the consultation response sought by the Standards Commission, the Council proposes a response as follows

“The Council welcomes consideration being given to amending the Councillors’ Code of Conduct to deal more robustly with the issue of harassment and bullying. The Council recommends that a specific reference is made in Section 3 General Conduct of the Councillors’ Code of Conduct, setting out clear examples of what would be a breach of the Code in this regard. Consideration should also be given to whether the process for investigating these matters needs to be amended. For example, consideration should be given to how the investigation process by the Commissioner for Ethical Standards in Public Life in Scotland could be undertaken in an expeditious manner to avoid excessive delays that affect all parties involved in such complaints.”

## **Training**

- 3.11 It has been suggested by the working group that, as part of a wider awareness and education piece, elected members be offered training in both team dynamics (ie individual preferences in how people perceive the world around them and coming to decisions (eg Myers Briggs) and mediation. The Heads of HR and Strategy and Insight are looking into the potential options and will provide appropriate training to elected members over the coming months.

## **4. Measures of success**

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- 4.1 An increased awareness and willingness of people to report any instances of inappropriate behaviour, coupled with a reduction in, and eventual elimination of, such behaviour.

## **5. Financial impact**

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- 5.1 Any training will be provided internally where possible or contained within existing budgets.

## **6. Risk, policy, compliance and governance impact**

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- 6.1 Improved transparency and a reduction in risk of harassment and inappropriate behaviour.

## **7. Equalities impact**

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- 7.1 Implementation of this report will assist with promoting and improving equalities.

## **8. Sustainability impact**

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- 8.1 There are no sustainability impacts arising from this report.

## **9. Consultation and engagement**

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- 9.1 Consultation with all political groups and proposed with the Standards Commission.

## **10. Background reading/external references**

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- 10.1 None

**Andrew Kerr**

**Chief Executive**

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## **11. Appendices**

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None