

COUNCIL

DATE OF MEETING: 26 NOVEMBER 2020

TITLE OF REPORT: PROCEDURE TO BE FOLLOWED IN EVENT OF A
GRIEVANCE AGAINST A MEMBER OF THE COUNCIL

Report of: Monitoring Officer

1 PURPOSE OF REPORT

- 1.1 To present for consideration an updated procedure to be followed in event of a grievance against a Member of the Council.

2 RECOMMENDATION

Council agrees to adopt the procedure (as attached at Appendix 1) to be followed in event of a grievance against a member of the Council.

3 BACKGROUND

- 3.1 The Council's Constitution contains provisions to be followed if a grievance is made against a Member of the Council. Although rarely used it is an important procedural process when either an Officer or a Member believes that they have been treated unfairly by another Member of the Council. Recent experience has shown that it is in urgent need of revision as it has not been updated since 2002.

4 COMMENTARY

- 4.1 A draft of the new procedure has been shared with all Groups of the Council and all comments received have been considered in preparing this final draft. Unison has also been consulted.
- 4.2 The draft procedure now gives greater clarity on how grievance complaints should be processed both in interpretation and procedure. There is a clear emphasis on seeking an informal approach before any grievance is formalised. This puts facilitation and mediation at the heart of any resolution approach.
- 4.2 In term of the Hearing itself, it is now seen as a last resort, but it remains an avenue that will remain open to any person who wishes to pursue a grievance. The emphasis is again on an informal but also inclusive approach that allows all parties to respond to any questions and to let everyone make their case known.

5 ACTION

- 5.1 Should Council agree to the adoption of the new Procedure it will immediately replace the current arrangements that are contained within the Constitution.

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Appendix 1 – draft updated procedure to followed in event of a grievance against a Member of the Council

PROCEDURE TO BE FOLLOWED IN EVENT OF A GRIEVANCE AGAINST A MEMBER OF THE COUNCIL

Councillors are expected to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. Whilst it is recognised that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally.

This procedure is to be used to raise a grievance where either an officer or a Councillor has reason to believe that they have been treated unfairly by another Councillor. Unfairness for example, includes not having been given a proper and reasonable right of reply or right of correction to defend oneself against unreasonable public criticism.¹

This procedure should not however be used to make

- Vexatious, malicious, frivolous, or trivial complaints²
- Members' complaints about officers³
- Other Code of Conduct matters⁴.

THE INFORMAL APPROACH

Many problems can be resolved informally, for example through a quiet chat. It does not have to be in writing at this stage. An informal approach is often appropriate in cases where the allegations are less serious, or the problem is based on miscommunication or a misunderstanding. For the Officer any concerns should be raised with their Head of Service and for a Member it should be raised with their Group Leader (or for Independent Members, the Leader of the Council). Solving the problem this way should be a two-way process so that the aggrieved is able to explain the problem and say what they would like done about it. In return they can listen to advice on how best deal with the matter.

Notwithstanding the opportunity for an informal approach the aggrieved has the right to pursue a formal complaint at any time. The Council also accepts that in line with this procedure, officers have the right to raise a grievance without fear that it will

¹ Nothing in this procedure seeks to prevent the expression, challenge, criticism and disagreement with views, ideas, opinions and policies but it must be done in a civil manner. Individuals must not however, be subject to unreasonable or excessive personal attack

² The Grievance process should not be used to pursue political or private differences or to make 'tit for tat' complaints. It should also not be used for complaints which are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

³ These should be dealt with using the Council's internal complaints process. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable particularly as Officers do not have the right of reply. Neither is it acceptable to do so in the media, in personal publications or using blogs, tweets, Facebook or other social media.

⁴ This grievance procedure is directed at more "workplace" related grievances. Code of Conduct complaints are more external facing and can be made by following this link: <https://www.hart.gov.uk/help-advice-1>

impact on their career development, future promotion or any other aspect of their employment.

FORMALLY RAISING A GRIEVANCE

The aggrieved may raise the grievance formally if:

- they feel raising it informally has not worked
- it's a serious issue
- they do not want to resolve it informally.

It should be made in writing⁵ to the Joint Chief Executive (or the Leader of the Council in the event that the complaint is about a Joint Chief Executive) within 15 working days from the date of

- a) the event, which is the subject of the complaint, or
- b) when the event came to the knowledge of the aggrieved.

It should

- outline what the problem is; and
- be copied to the Member against whom the complaint is made.

STAGE 1 – FACILITATED RESOLUTION

1. The Joint Chief Executive and the Group Leader of the member who is the subject of the complaint (or for Independent Members, the Leader of the Council) ("the Facilitation Team") will decide, first, if the complaint has substance⁶. If they:
 - a) agree the complaint has substance, the complaint will move to Step 2; or
 - b) agree the complaint has no substance, the complaint will be closed, with reasons given; or
 - c) cannot agree on the question of substance it will be referred to the Chairman of the Council for adjudication. The decision of the Chairman of the Council will be final.
2. The Facilitation Team will meet with the Officer and the Member complained about to see if on an informal basis the complaint can be resolved. No formal note of the meeting will be made but a note on the outcome will be sent to all participants on a private and confidential basis.

Possible outcome for Steps 1 to 2

If an agreement is reached between all parties involved, then no further action is required. If no agreement is reached the aggrieved may ask to have the grievance heard at an Appeal Panel.

⁵ In writing means either by hard copy letter or by email from a Hart email account.

⁶ The complaint must have something in it and be of meaningful quality.

TIME FOR THE RESOLUTION OF THE STAGE 1 PROCESS

All the Steps should be completed as quickly as possible. Whilst exact timing will depend on the availability of individuals to attend the meetings it is expected that all parties will cooperate and to make themselves available to attend any meeting to ensure that the matter is dealt with speedily (i.e. within 10 working days of the complaint having been found to have substance). If a party fails to attend a meeting or prolongs securing a date for a meeting, without giving an acceptable reason, consideration will be given as to whether the complaint should be dismissed or whether it should continue straight to an Appeal Panel Hearing.

STAGE 2 – APPEAL PANEL HEARING (“the Hearing”)

The aggrieved should, within 10 working days of the completion of Stage 1 (Facilitated Resolution), give the Monitoring Officer written notice to ask to have the complaint heard by an Appeal Panel (“the Panel”).

Panel Membership and Chairmanship

Drawn from the Appeals Committee, the Panel will consist of cross-party membership and comprise three Members, and an Independent Person appointed by the Council under Section 28 of the Localism Act. The Independent Person will be invited to Chair the Hearing (the Panel Chairman).

Hearing Arrangement

The Hearing will normally and be arranged to take place within 15 working days of receipt of the request from the aggrieved to have the complaint heard by the Panel.

Confidentiality

Whilst the outcome of any Hearing will be made public, the Hearing, proceedings and any paperwork which it receives, will remain confidential to all the respective parties to the Hearing. Only those persons who need to know should be given access to relevant information and they in turn, should treat that information as confidential.

Hearing Participation

The parties will be asked to attend the Hearing and they each may be accompanied by a companion⁷. In the absence of a party it will be a matter for the discretion of the Panel as to whether it continues or is rescheduled⁸.

It is not anticipated that any party will bring legal representation. The Hearing is not a form of legal proceedings and grievances should not normally raise points of law.

The aim of the Hearing is:

- reconciliation

⁷ It is anticipated that the companion will not be a legal representative. For a Member the companion may be a fellow Member of the Council or a colleague from a recognised local party association. For an Officer the companion may be a work colleague (i.e. someone employed by the Council) or a Trade Union representative.

⁸ If a party cannot be available at the time proposed for the hearing the hearing may be postponed at the sole discretion of the Panel and an alternative time set not more than five working days after the date originally proposed. Only one deferment per party is allowed.

- to put right things that may have gone wrong.

The Monitoring Officer will attend to advise the Panel. A Joint Chief Executive may attend to observe but not participate in the Hearing.

Hearing Principles

Both parties may present their own case, or they may be represented by a companion. The companion can:

- present and/or sum up the respective party's case and say things to support their case
- Make notes and speak to their respective party during the hearing.

Both parties can if they choose, submit a written explanation of their respective case. This must be sent to the Monitoring Officer not less than 5 working days before the Hearing. The submission will be circulated and by the Monitoring Officer to the Panel and the other party subject to the Hearing. No further submissions will be accepted after that.

Neither party (nor any of their respective companions if present) will be allowed to cross-examine or directly question the other party– all comments must be put through the Panel. No party will be allowed to do anything that prevents the other party from explaining their side of things.

HEARING PROCEEDINGS

The Panel Chairman will decide the procedure for the hearing and will reinforce the message that there should be no formal presentation of evidence. It will take the form of a round-the-table discussion managed by the Panel Chairman. It is intended to be an informal process and allows for all parties to respond to any questions that the Panel might have, and to let everyone make their case known.

The Panel Chairman will ensure that while Panel questioning may be thorough, all questioning must be fitting for the relative informality of the Hearing. No questioning shall be leading, argumentative (e.g. badgering), or aggressive. A party may decline to answer a question if they consider the question to be inappropriate.

After the respective cases have been explained and the questioning completed, the Panel Chairman will bring the Hearing to a close. The aggrieved and the Member (and any companions if present) will then leave the room. The Panel and the Monitoring Officer will remain to deliberate and frame the Panel's decision.

THE DECISION

The Panel's decision will be final. The Panel will give a decision as soon as possible after the hearing. An informal decision may be communicated immediately but a formal written note confirming the Panel's final decision will be sent to the aggrieved and the Member within 5 working days of the hearing.

DECISION TO UPHOLD A GRIEVANCE

If a Grievance against a Member is upheld, the Member shall send a suitable written note of apology to the aggrieved within 5 working days of receiving the Panel's decision. The Member must also make a public apology at the first available meeting of Full Council following the Hearing decision.

The Panel may also in serious cases consider recommending to Council (or recommend to the Leader of the Council in respect of a Cabinet member) that consideration should be given to relieving the Member of special duties such as portfolio holder, chairman of a committee or panel, Member of working party, etc.

The Monitoring Officer should also remind the Member that, notwithstanding the action taken under the Grievance Procedure, individuals may have a right to pursue the matter through the relevant legal channels.