

## PLYMOUTH CITY COUNCIL

**Subject:** Arrangements for Code of Conduct complaints  
**Committee:** City Council  
**Date:** 16 September 2013  
**Cabinet Member:** Councillor Peter Smith  
**CMT Member:** Tim Howes (Assistant Director for Law, Democracy and Governance)  
**Author:** Tim Howes, Assistant Director for Law, Democracy and Governance  
**Contact details:** Tel: 01752 305403  
Email: tim.howes@plymouth.gov.uk  
**Ref:**  
**Key Decision:** n/a  
**Part:** I

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**Purpose of the report:**

To update the process for handling complaints under the Councillors Code of Conduct pursuant to Section 28 of the Localism Act 2011

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**The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:**

This is a legal requirement but links to our values of 'we are responsible' and 'we are fair'.

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**Implications for Medium Term Financial Plan and Resource Implications:  
Including finance, human, IT and land:**

All resource implications will be met from existing budgets.

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**Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:**

None

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**Equality and Diversity:**

Has an Equality Impact Assessment been undertaken? No

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**Recommendations and Reasons for recommended action:**

The Council formally adopt these arrangements in accordance with section 28 of the Localism Act 2011.

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**Alternative options considered and rejected:**

None, this is a legal requirement.

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**Published work / information:**

None

**Background papers:**

None

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**Sign off:**

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Originating SMT Member Tim Howes													
Has the Cabinet Member(s) agreed the content of the report? Yes													

## **1.0 Introduction**

Under the Localism Act 2011, the Council must have in place arrangements under which allegations under the Councillors' Code of Conduct can be investigated, and under which decisions on allegations can be made.

Following the previous adoption of the new Code of Conduct these new arrangements have been drafted and were considered initially by the Standards Advisory Group who recommended minor amendments to give greater clarity to complainants. The arrangements were subsequently approved by the Constitution Review Group on 23 July 2013 with a minor amendment to include reference to the informal arrangement for Group Leaders and whips to be made aware of complaints by Councillors.

The document follows a standard process adopted throughout local government, but it has been adapted to match issues which are unique to Plymouth.

## **2.0 The Arrangements**

### **Arrangements for handling of allegation under the Code of Conduct against Members of Plymouth City Council ("the Council")**

#### **Introduction**

This procedure applies to complaints about alleged breaches of the Code of Conduct by Members of Plymouth City Council, pursuant to Section 28 of the Localism Act 2011.

For the purposes of this procedure the person who makes the complaint is described as "the Complainant" and the person about whom the complaint is made is "the Member". In this procedure "Member" includes "Co-opted Member".

The adopted code of conduct for Members is attached at appendix A to these arrangements and is also available in the constitution on the council's website.

#### **Summary of how the procedure works**

##### *Stage 1 – Making a complaint*

In order to make a complaint you must send your complaint in writing to the Monitoring Officer (see paragraph 1.1 below for details of how to do this and where to send your complaint).

##### *Stage 2 – Assessment of your complaint*

If informal resolution is not possible the Monitoring Officer will assess the complaint and decide whether to investigate the allegations contained in it. If the Monitoring Officer decides that the complaint should be investigated, he/she will undertake a process (details of which are set out below) to determine whether or not the complaint is upheld. If the complaint is not to be investigated the Monitoring Officer will write to you to explain why. In some cases the Monitoring Officer may consider informal resolution of your complaint if appropriate.

##### *Stage 3 – Investigation of the complaint*

If the Monitoring Officer does investigate your complaint, the final summary investigation report and finding will be published on the Authority's website. In cases where the Monitoring Officer upholds your complaint, he/she will consult with the Council's Standards Advisory Group on what if any sanctions should be imposed in respect of the breach.

There are no appeal mechanisms within this procedure. Should you be dissatisfied with the Monitoring Officer's decisions and/or actions at any point, a member of the public may complain to the Local Government Ombudsman or to the courts.

## **Stage I**

### **How to complain about Member conduct and what you and the Member are told after you have made a complaint**

#### **I.1 How to complain**

I.1.1 If you want to complain that a Member of the Authority has breached the Authority's Code of Conduct you must make your complaint in writing;

I.1.2 You can do this by completing a complaint form, which you can obtain by telephoning 01752 305403 or contacting the Monitoring Officer by email at [tim.howes@plymouth.gov.uk](mailto:tim.howes@plymouth.gov.uk) The complaint form explains what information you should include in the form.

I.1.3 You are not, however, required to use the complaint form, and can make your complaint in writing to: The Monitoring Officer, Plymouth City Council, Civic Centre, Plymouth, PL1 2AA or [tim.howes@plymouth.gov.uk](mailto:tim.howes@plymouth.gov.uk)

I.1.4 If you do not use the complaint form and write to the Monitoring Officer instead you should clearly set out the following information in your letter:

- the name of the Member you believe has breached the Code of Conduct;
- what the Member has done that you believe breaches the Code of Conduct, and which paragraphs of the Code you believe they have breached. (If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct).
- you should be specific, wherever possible, about exactly what you are alleging the Member said or did;
- you should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe;
- you should confirm whether there were any witnesses to the alleged conduct and provide their names and contact details if possible;
- you should provide any relevant background information;
- you should say what action you think would be appropriate to resolve your complaint;
- you should say whether you would like your identity and the details of your complaint to be kept from the Member(s) you are complaining about and, if so, explain why. Any such request will be taken into account but your anonymity cannot be guaranteed.

#### **I.2 What happens once you submit a complaint?**

I.2.1 All complaints about Member conduct will be dealt with by the Authority's Monitoring Officer.

I.2.2 If the Monitoring Officer is unsure whether you are actually making a complaint, or any details of your complaint, he/she will contact you to clarify.

1.2.3 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police or other regulatory agencies. In particular a breach of the process around Disclosable Pecuniary Interests is in most instances a criminal offence which should be investigated by the Police.

### **1.3 What you and the Member are told next**

1.3.1 If the Monitoring Officer is clear that you are making a complaint that a Member of the Authority has breached the Authority's Code of Conduct, where the Monitoring Officer considers it appropriate, he/she will try to resolve your complaint informally (see Stage 2 below).

1.3.2 If informal resolution is not appropriate or is unsuccessful, the Monitoring Officer will:

- (i) write to you to acknowledge that he/she has received your formal complaint and to inform you that the Member you are complaining about will usually be provided with your identity, unless you write back within 5 working days asking for this not to happen; and
- (ii) unless there are good reasons not to, write to the Member you are complaining about:
  - (a) stating that a formal complaint has been made against them;
  - (b) providing them with your name (unless you have asked that this information is not provided and/or the Monitoring Officer considers there are good reasons not to provide it);
  - (c) stating the relevant paragraphs of the Code you believe the Member has breached; and
  - (d) stating that the complaint will be considered by the Monitoring Officer.

## **Stage 2 – Assessment**

### **2.1 Assessing your complaint and making a decision**

2.1.1 The Monitoring Officer will assess all complaints on a case by case basis and, in doing this, will also take into account relevant guidance, professional advice and the criteria set out below and may seek the views of the Independent Person (see paragraphs 3.1.2. and 3.2 below).

2.1.2 The Monitoring Officer will also take into account any relevant criteria and factors.

2.1.3 Given the limited sanctions available to the Monitoring Officer to apply in the event of a breach of the Code, the Authority expects this complaints procedure to be proportionate to the issues raised and the expected outcomes.

The following criteria will be considered in deciding what action, if any, to take:

- a) **Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

- b) **Is the complaint about someone who is no longer a member of the Council, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?**

If yes:

The complaint will be referred to the monitoring officer of that other authority to consider.

- c) **Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

- d) **Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

- e) **Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

- f) **Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:

Further action will not normally be warranted.

- g) **Is the complaint anonymous?**

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

- h) **With respect to complaints made by a Councillor, has the complaint been referred to the respective groups for informal resolution?**

If no:

The complaint will be referred to the Group Whips and Leaders for resolution without the requirement for a formal complaint process.

2.1.4 After reviewing your complaint, the Monitoring Officer will do one of the following:

- (a) decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or
- (b) decide that informal resolution is appropriate; or
- (c) decide to investigate your complaint (and inform you of this decision and the related reasons); or
- (d) pass the matter to the Police or other regulatory agency. (see Disclosable Pecuniary Interests at paragraph 3.4)

## **2.2 How are you told about the Monitoring Officer's decision?**

2.2.1 Within 5 working days of making a decision, the Monitoring Officer will provide you and the Member you are complaining about with a written document, containing his/her decision. This is called a "Decision Notice".

## **2.3 What information will the Decision Notice contain?**

2.3.1 This will be prepared having regard to any professional advice and the information it contains will depend upon what information the Monitoring Officer decides should be provided. Normally, however, the Decision Notice will:

- contain your name and a written summary of your complaint;
- contain the Monitoring Officer's decision;
- record the main points the Monitoring Officer considered, the conclusion and the reasons.

2.3.2 the Monitoring Officer will first consider whether providing these or any details is in the public interest or would undermine a person's ability to investigate your complaint (as this may be necessary at a later stage).

2.3.3 If there has been no finding against the Member, the Decision Notice will not contain the name of the Member.

## **2.4 Decision Notices are made public**

2.4.1 After the Decision Notice has been sent to you and the Member you are complaining about, the Authority will publish the Decision Notice on its website.

## **2.5 A decision of 'no action' and your right to ask for a review of that decision**

2.5.1 The Monitoring Officer's decision is final. Where the Monitoring Officer has decided that no action should be taken on your complaint, there is no right to ask for a review of the decision. In these circumstances, a member of the public may complain to the Local Government Ombudsman at [www.lgo.org.uk](http://www.lgo.org.uk) or in writing The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH.

## **2.6 What is informal resolution?**

2.6.1 Where the Monitoring officer decides that it would be appropriate to seek informal resolution, he/she will contact you to find out if your complaint can be resolved immediately, without recourse to formal investigation.

2.6.2 Unless there are good reasons not to, the Monitoring officer will normally advise the Member at this stage that a complaint has been received and provide the Member with such details as the Monitoring Officer considers appropriate.

2.6.3 There will be a whole range of actions that may be appropriate to try and resolve your complaint informally. Some examples are: the Monitoring Officer having a discussion with the Member you have complained about; arranging for the Member to do something which you have asked them to do; arranging a discussion between you and the Member; obtaining an apology from the Member.

2.6.4 It is important, therefore, that you tell us in your complaint what action you think would be appropriate to resolve your complaint.

### **Stage 3 Investigation following assessment**

#### **3.1 Monitoring Officer decides to investigate your complaint**

3.1.1 Where the Monitoring Officer decides that a complaint should be investigated further, he/she may ask you, the Member, any witnesses and any other relevant people to provide them with detailed information or explanations, possibly by way of an interview.

3.1.2 The Monitoring Officer may arrange for the investigation to be carried out on his or her behalf by another person. In determining the complaint the Monitoring Officer will seek and take into account the views of at least one Independent Member appointed by the Authority for such purposes. The Monitoring Officer may take into account the views of an Independent Person on any other matter concerning the investigation.

3.1.3 Information obtained in conducting the investigation will only be released to third parties where this will allow your complaint to be dealt with properly.

3.1.4 In addition to taking into account the views of the Independent Person, the Monitoring Officer will, when seeking to reach a finding on the complaint, take into account relevant guidance and professional advice. The Monitoring Officer may also consult with the Council's Standards Advisory Group which is comprised of six councillors.

#### **3.2 The role of the Independent Person**

3.2.1 The role of the Independent Person, under Section 28(7) Localism Act 2011, is:

- to give views, which must be taken into account by the Monitoring Officer before he/she makes a decision on an investigation he/she has decided to investigate;
- give views, if requested by the Monitoring Officer, on any other allegation;
- to give views to a Member if that person's behaviour is the subject of an allegation.

#### **3.3 What happens when your complaint is investigated and the investigation is completed?**

3.3.1 Once the investigation is completed, the Monitoring Officer will, after consulting with the Standards Advisory Group:

- (i) find that the Member has failed to comply with the Authority's Code of Conduct ("a finding of failure"); **OR** find that the Member has not failed to comply with the Authority's Code of Conduct ("a finding of no failure");
- (ii) prepare a written summary report of the investigation which contains a statement of the finding;
- (iii) send a copy of the report to you and the Member as soon as is reasonably practicable after making the decision; and



- (iv) publish a summary report and finding on the Authority's website. The name of the Member will only be published where there is a finding of failure on the part of the Member.

3.3.2 In cases where the Monitoring Officer upholds your complaint, he/she will consult with the Council's Standards Advisory Group on what if any sanctions should be imposed in respect of the breach.

3.3.3 The possible sanctions for breach of the code are:

- A reprimand of the Member by letter;
- Report to Council proposing a formal censure to Council;
- Refer findings to full council for information;
- Publication of the reprimand or censure by press release or other appropriate publicity;
- Recommendation to the Group Leader (or in the case of un-grouped members, recommend to council or committee) that he/she be removed from any or all committees of the Council;
- Recommendation to the Leader of the council that the Member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- Recommendation of training for the Member

There is no power to suspend or disqualify the Member or to withdraw member's allowances or special responsibility allowances.

3.3.4 The decision of the Monitoring Officer is final. There is no entitlement to appeal against the Monitoring Officer's decision on a complaint. In these circumstances, you may be able to complain to the Local Government Ombudsman.

### **3.4 Disclosable Pecuniary Interests**

3.4.1 If the complaint relates to a disclosable pecuniary interest, the Monitoring Officer will either pass the complaint directly to the Police or recommend that the Complainant contacts the Police.

3.4.2 In respect of disclosable pecuniary interests it is a criminal offence if, without reasonable excuse, a Member fails to tell the Monitoring Officer about his/her disclosable pecuniary interests, either for inclusion on the register if they are newly elected, co-opted or appointed member, or to update the register if they are re-elected, or re-appointed, or when they become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- That will be or is being considered at a meeting where they are present, or
- On which they are acting alone.

3.4.3 It is also a criminal offence for a Member to knowingly or recklessly provide false or misleading information, or to participate in the business of the authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which they have a disclosable pecuniary interest.

3.4.4 If the Member is found guilty of such a criminal offence, they can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.