



Audit and Standards Committee Report

Report of: Interim Director of Legal and Governance and Monitoring Officer

Date: 16th February 2022

Subject: Review of the Procedure for Dealing with Standards Complaints and Members Code of Conduct

Author of Report: Sarah Hyde, Democratic Services Team Manager

Summary:

The Code of Conduct and Procedure is reviewed on an annual basis by the Monitoring Officer in consultation with the Independent Persons. This report set out any revisions that are recommended for the Committee to consider.

Recommendations:

 That the Audit and Standards Committee:

- (a) Comment on the proposed revisions (if any) to the Procedure for Dealing with Standards Complaints;
 - (b) With the inclusion of any additional revisions arising from the meeting, recommends to Full Council the adoption of the revised Procedure and that the Constitution is amended accordingly; and
 - (c) Refers the revised Procedure to the Parish and Town Councils for consideration and adoption.
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Background Papers:

Report by the Committee on Standards in Public Life on Local Government Ethical Standards dated January 2019

Report to Audit and Standards Committee on 24th October 2019

Review of Members Code of Conduct Report dated 30th July 2020

Report to Full Council on 14th September 2022

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
NO
Legal Implications
YES Cleared by
Equality of Opportunity Implications
NO
Tackling Health Inequalities Implications
NO
Human rights Implications
NO
Environmental and Sustainability implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications
NO
Area(s) affected
None
Is the item a matter which is reserved for approval by the City Council?
YES
Press release
NO

REVIEW OF THE PROCEDURE FOR DEALING WITH STANDARDS COMPLAINTS AND MEMBERS CODE OF CONDUCT

1.0 INTRODUCTION

- 1.1 The latest version of the Procedure for Dealing with Standards Complaints was approved by Full Council in November 2022 as part of the Monitoring Officer Protocol.

2.0 BACKGROUND

- 2.1 The Local Government Association (LGA) published a new model code of conduct for all councils to consider using in December 2020. The model code strengthened the best practice around bullying, harassment and social media.
- 2.2 Extensive revisions in line with the best practice recommendations were made to both the Members' Code of Conduct and the Procedure in 2020 and minor revisions were made from observations made in the Complex Complaints Workshop that was held in November 2021. The detailed changes are contained in background reports to the Audit and Standards Committee in January 2019, October 2019 and July 2020.
- 2.3 Only minor changes have been made more recently to reflect a change in Monitoring officer and Independent persons. The minor amendments were agreed at full council in November 2022 and will be subsequently updated in the Council's constitution.
- 2.4 We are still awaiting a further response from Government on the recommendations put forward in the 2019 report on Local Government Ethical Standards, A Review by the Committee on Standards In Public Life and if and when this is available we will report this back to the committee.
- 2.5 In 2022, the term of the Independent Persons at that time were due to come to an end therefore a recruitment campaign was carried between Sheffield City Council and Barnsley Metropolitan Borough Council to appoint at least two Independent Persons for a four-year term. After recruitment was completed, Full Council on the 14th September 2022 agreed the appointments of Mr David Waxman and Mrs Karen Widdowson to act as the council's independent persons for standards.
- 2.6 It is important to note that one of the IP appointments was a person that had worked with the Councils as an Independent for a number of years. The interview panel considered whether this person could maintain independence after such a period of time in post and were satisfied that as there was a turnover of Monitoring Officers within the Authorities, the independence could be maintained and that both Authorities would benefit from having an experienced voice to provide support to both councillors and Monitoring Officers. However, the panel were also of the opinion that it may be beneficial to appoint additional IPs to ensure the continuation of an independent voice and to increase diversity.

3.0 REVISIONS TO THE CODE OF CONDUCT AND PROCEDURE

- 3.1 As the extensive changes were made to the code of conduct and procedure in 2020 and with minor tweaks more recently there are no proposed amendments to the code of conduct at this time. There are some minor changes proposed to the procedure to add clarity and reflect current practice.
- 3.2 Both documents can be found attached at appendix A.
- 3.3 Recently an email arrived to the Monitoring Officer from the Local Government and Social Care Ombudsman drawing attention to a public report on a Standards Complaint. The report was about the way Teignbridge District Council investigated the actions of a councillor and wanted other Councils to ensure standards investigations into the actions of councillors are conducted fairly and properly.

The full report can be found on the LGSCO website - [Council investigation into member's conduct flawed, says Ombudsman - Local Government and Social Care Ombudsman](#)

There are a set of recommendations outlined by the LGSCO to Teignbridge District Council.

Council investigation into local councillor's conduct flawed



Councils need to ensure standards investigations into the actions of councillors are conducted fairly and properly.

We have issued a [report about the way Teignbridge District Council investigated the actions of a councillor](#) after the council alleged he had acted contrary to its Code of Conduct.

Who should read this report?

- Monitoring officers who are responsible for the council's standards complaints investigation processes.
- Council officers who deal with complaints about the conduct of local councillors.
- Local councillors who sit on standards committees.

What happened?

We found fault with a number of aspects of the council's investigation. We found the investigation was not prompted by a formal written complaint and was contrary to the law. The council also failed to give the councillor enough information about his alleged breaches of its Code.

The council introduced new allegations during the process, but the independent investigator appointed to look at the case did not make it clear to the councillor whether these were part of the investigation.

We also found the inquiry into the councillor's conduct was conflated with accusations levelled at another councillor who was being investigated at the same time.

The council failed to reflect on the investigation and consider whether due process had been followed after the councillor raised legitimate concerns about the way the investigation was being carried out. It also failed to consider the councillor's enhanced right to free speech as an elected representative, which was relevant when the council considered his justification for certain comments he acknowledged making or posted on social media.

We have made a number of recommendations to improve the council's processes following the investigation, but the council has not yet agreed to accept these.

Michael King, Local Government and Social Care Ombudsman, said:

"Local councillors have a key role in scrutinising their authorities' actions, and have an enhanced right of free speech to ask what might at times appear to be uncomfortable questions. Councils need to bear this in mind when deciding what constitutes a breach of their Code of Conduct."

"While both officers and members have a right to be treated with dignity and respect at work, and councils' desire to do more to protect them from poor treatment is to be encouraged, they still need to carry out investigations into councillor standards fairly and properly."

"I look forward to the council considering my report at a senior decision-making level and hope it accepts the recommendations I have made to improve its processes and procedures."

Can the Ombudsman investigate complaints from councillors?

We can investigate complaints from locally elected councillors where they allege they have suffered a personal injustice because of actions taken by a body in our jurisdiction. This is because where a councillor makes a complaint of this type, they are not doing so on behalf of the council or another public body, but in their own personal capacity. They are also not an employee, governed by a personnel relationship with a council, where there are legal limits on what we can investigate.

What can your council learn from this?

In the report we recognise that councils have a responsibility to protect the wellbeing of officers. This includes protecting them from overly critical comments from local councillors. However this needs to be balanced against a local councillor's right to freedom of expression which includes legitimate questioning and criticism of a council's actions.

We have recommended Teignbridge District Council has a written procedure for officers and any independent investigators asked to consider standards complaints that should include:

- having a record of complaints being made in writing;
- having a clear written record of consultation with an Independent Person to include their response;

- recording when the written complaint has been shared with the councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of and a record that this has been explained to the councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

Further information

In the report we said the council had failed to have regard to the local councillor's right to freedom of expression.

We have issued a [report on human rights](#) which explains why it is important that councils treat the people they serve with fairness, respect and dignity. This contains important guidance on how councils should consider human rights when delivering services as well as guidance for local councillors responsible for scrutinising the way councils carry out their functions.

4.0 LEGAL IMPLICATIONS

- 4.1 As the Code of Conduct and Procedure are included in the Constitution, any changes would require approval at Full Council. Any revisions made to the Procedure would also need to be approved by the Parish and Town Councils.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications.

6.0 EQUALITIES IMPLICATIONS

- 6.1 There are no equalities implications.

7.0 RECOMMENDATIONS

- 7.1 That the Committee:-
- (a) Comments on the proposed revisions to Dealing with Complaints Regarding City, Parish and Town Councillors and Co-opted Members;
 - (b) With the inclusion of any additional revisions arising from the meeting, recommends to Full Council the adoption of the revised Procedure and that the Constitution is amended accordingly; and
 - (c) Refers the revised Procedure to the Parish and Town Councils for consideration and adoption.

David Hollis Monitoring Officer/Interim Director of Legal and Governance

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