

REVIEW OF CODE OF CONDUCT COMPLAINTS

Head of Service:	Amardip Healy, Chief Legal Officer
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1: Table of Member Code of Conduct Complaints from 1.2.2018 to 31.12.2020

Summary

To provide an update on complaints made under the Code of Conduct for Members from 1st February 2018 to 31st December 2020 and the steps taken to both promote and maintain high standards of conduct by Members.

Recommendation (s)

The Committee is asked to:

- (1) note the complaints from the 1st February 2018 to the 31 December 2020;**
- (2) note the actions taken to promote and maintain high standards of Conduct by Members.**

1 Reason for Recommendation

- 1.1 To assist and advise the Council in meeting its duty to promote and maintain high standards of conduct by its Members.

2 Background

Member Code of Conduct Complaints

- 2.1 For the period 1 February 2018 to 31 December 2020, Appendix 1 sets out the complaints made, their nature and the action taken or outcome.

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Action taken to date

- 2.2 Some of the learning from the early complaints, was that it would be useful to have one document which set out both the Code of Conduct for Members, explained the expectations and also the process for complaints.
- 2.3 One of the biggest sources of complaints from Complainants generally, is that their complaints are not dealt in a timely manner and the process lacks transparency. Having a clear complaints process allows those who may wish to complain consider whether the Members Code of Conduct is engaged and if it is what the process will be. This helps build confidence and trust in the process.
- 2.4 Following a period of review and picking up on the recommendations of the Committee on Standards in Public Life, a new Code of Conduct for Members was approved by Standards Committee in April 2019 and then by Council in the same month.
- 2.5 The new process now includes a guide to help the public understand the complaints process and also a standard complaints form which requires completion. This helps to ensure all the required information is provided at the time a complaint is made to enable complaints to be assessed in within a reasonable timescale.
- 2.6 The new Code has operated over the course of a number of complaints and has worked well. The first key success is by having the necessary information when a complaint is submitted means complaints are turned round in a timely manner. At some Councils this can take months.
- 2.7 The Code requires that the Monitoring Officer “will acknowledge receipt of a complaint within 10 working days of receiving it” (para 6.7 of the Code) and make a decision within 15 working days of receipt as to what action is to be taken (para 6.8 of the Code). These key performance indicators have been achieved.
- 2.8 In terms of the investigation process, although the time it takes cannot be controlled, it is important to instruct someone with the necessary experience of undertaking investigations. Investigations do have a cost attached to them and therefore, the ability to screen complaints to take a view on the proportionality of a complaint to the issues raised and the likely outcomes (para 6.5 of the Code) is an important part of the new Code.

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- 2.9 Having a Code with a clear complaints process again ensures the effective use of resources. A complainant may not be happy with an outcome if their complaint is not upheld or indeed not referred for investigation (because it fails to meet the tests or can be resolved by other means), but the fact a fair and transparent process has been followed allows the Monitoring Officer to close the complaint in a time appropriate manner (para 6.2 of the Code).

Learning Lessons from complaints to date

- 2.10 Some of the complaints the Council has received are of a harassing and or of a political nature. Although this is a new feature for the Council, these sorts of complaints have been commonplace for some time up and down the Country.
- 2.11 No Member (be they a complainant or the member complained of) or any Officer (be they a complainant or an investigator) of the Council, should be the subject of vexatious or unreasonable behaviours because they have some involvement in the complaints process. Nor should any such party act, encourage or allow others, to behave in a bullying or threatening manner towards other parties involved in the process. It is important to have in place safeguards to protect both Members and Officers from such conduct, as well as to safeguard the integrity of the complaints and investigation processes.
- 2.12 Another feature is the pressure Members are placed under by third parties to follow certain courses of action. Part 1 of the Constitution sets out at Para 8 “Citizen’s Rights”. This is further expanded in Part 2, Article 3. There is also a section on “Citizens’ Responsibilities”,
- “Citizens must not be violent, abusive, or threatening to Members or Officers . . . The Council will in appropriate cases be prepared to take action to protect its own rights and to support such action by its Members or Officers”.*
- 2.13 The roles and functions of Members is set out in Part 2, Article 5 of the Constitution. However, from some of the complaints it is clear that on some occasions those with an interest in a certain outcome, expect Members not to act with due regard to a Members’ wider role to the ‘whole community’. This is of considerable concern and one which needs to be addressed.

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- 2.14 In two of the cases the subject members (those who were complained of) were threatened or victimised for not bowing down to pressure from 3rd parties. This is unacceptable and needs to be addressed. Both cases involved Planning decision making. In one case internal processes have been improved and in the other further work needs to be undertaken to ensure that 3rd parties understand the role of a member within the wider context of all of a member's duties and obligations to the Borough as a whole. The suggestion is that this should be set out clearly in the Constitution within the Article 5.
- 2.15 The Council now has a "Managing unreasonable customer behaviour" (July 2019) Policy, and it specifically includes Members so as to address some of the learning arising from Member Code of Conduct complaints. The Policy is due for review in July 2021 and the Committee may wish to consider further additions to this Policy to support and protect Members from vexatious and unreasonable behaviours.
- 2.16 It is also recommended that when the Committee considers the LGA's model Code of Conduct for Members, consideration be given to how best to address the issues set out in paras 2.10, 2.11 and 2.14 above.

Member Development

- 2.17 The new Code coupled with new Protocol for Managing Member/Officer Relations (Part 5, Section 3 updated July 2018) forms part of a framework for the promotion of high standards of conduct that the Authority expects of its Members. However, it is important that work to support Members in understanding both the Code and the Protocol remains a central part of a Member Development Programme.

Annual Reporting

- 2.18 An annual report on Code of Conduct Complaints brought in a calendar year will now be a standing item on a Standards' Committee agenda. This report will aim to be brought to a meeting either just before or after the start of the Municipal year, looking back at the previous calendar year. The next report will be after at the first meeting held in 2022.

3 Risk Assessment

Legal or other duties

3.1 Impact Assessment

3.1.1 None for the purposes of this report.

3.2 Crime & Disorder

3.2.1 None for the purposes of this report.

3.3 Safeguarding

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3.3.1 None for the purposes of this report.

3.4 Dependencies

3.4.1 None for the purposes of this report.

3.5 Other

3.5.1 None.

4 Financial Implications

4.1 None arising from the contents of this report.

4.2 **Section 151 Officer's comments:** None arising from the contents of this report.

5 Legal Implications

5.1 These have been incorporated within the body of the report.

5.2 **Monitoring Officer's comments:** These have been incorporated within the body of the report.

6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities:** The following Key Priorities are engaged: Effective Council.

6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.

6.3 **Climate & Environmental Impact of recommendations:** None

6.4 **Sustainability Policy & Community Safety Implications:** None

6.5 **Partnerships:** None

7 Background papers

7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Reports to Standards Committee, Revisions to Part 5 of the Constitution & to Council April 2019.

Other papers:

- "Local Government Ethical Standards. A Review by the Committee on Standards in Public Life", dated January 2019.

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<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

- Managing unreasonable customer behaviour, July 2019

https://www.epsom-ewell.gov.uk/sites/default/files/documents/council/Unacceptable%20Customer%20Behaviour%20Policy%20-%20July%202019_1.pdf