

<b>Report To:</b>	<b>STANDARDS AND PERSONNEL APPEALS COMMITTEE</b>	<b>Date:</b>	<b>29 JULY 2020</b>
<b>Heading:</b>	<b>ANNUAL ETHICAL GOVERNANCE UPDATE</b>		
<b>Portfolio Holder:</b>	<b>NOT APPLICABLE</b>		
<b>Ward/s:</b>	<b>NOT APPLICABLE</b>		
<b>Key Decision:</b>	<b>NO</b>		
<b>Subject to Call-In:</b>	<b>NO</b>		

### Purpose of Report

- To give the Committee an overview of the work of the Standards and Personnel Appeals Committee during 2019/2020.
- To consider work plan items for 2020/2021.
- To note Member attendance during 2019/2020.
- To note the update in relation to Member Code of Conduct complaints to date.
- To consider the recommendations of the External Investigator in respect of various Member Code of Conduct complaints.

### Recommendation(s)

**Committee is asked to:**

- 1. Note the progress made in relation to the agreed 2019/20 work plan;**
- 2. Consider future work plan items;**
- 3. Note the number of Member complaints received during 2019/20 and 2020/21 to date as summarised in the report and the current outstanding complaints as set out in Appendix 1 to the report;**
- 4. Consider the recommendations of the Investigator in respect of various Member Code of Conduct complaints as detailed in the report;**
- 5. Note the position in relation to attendance at meetings during 2019/20.**

## **Reasons for Recommendation(s)**

To enable the Committee to carry out its role in monitoring ethical governance.

## **Alternative Options Considered**

*(with reasons why not adopted)*

Options are considered within the body of the report.

## **Detailed Information**

### **WORK PLAN – 2019/2020**

At its meeting in July 2019, the Committee agreed a programme of work for the 2019/2020 year.

The table below sets out the work item, the agreed timeframes and an update in relation to the progress made.

<b>Proposed Work Item</b>	<b>Timeframe</b>	<b>Progress</b>
<b>Quarterly Complaint Update</b> <ul style="list-style-type: none"><li>A report to Committee to keep it updated in respect of new and ongoing complaints made relating to the conduct of Members.</li></ul>	July 2019 October 2019 December 2019 March 2020	Reports have been submitted to each Committee meeting and Members have commented on the information provided.  The Committee meeting in December 2019 was cancelled due to the unscheduled Parliamentary Election.  The Committee meeting in March 2020 was cancelled due to the COVID19 pandemic restrictions.  An update is also included in this report.
<b>Members' Attendance – Update</b> <ul style="list-style-type: none"><li>To update Members in relation to attendance at meetings during the past municipal year and the implementation of the attendance element of the Members' allowance.</li></ul>	July 2019	A report was presented to the Committee in relation to Members' attendance.  A further update is contained within this report.

<p><b>Members' Use of Resources Policy</b></p> <ul style="list-style-type: none"> <li>To produce detailed guidance regarding the Use of Resources by Members for recommendation to Council</li> </ul>	<p>October 2019</p>	<p>A report was presented to the Committee. Delegated authority was granted to the Director of Legal and Governance (and Monitoring Officer), in consultation with the Chairman of the Committee, to make any appropriate changes to the draft Use of Resources Policy prior to its submission to Council for ratification taking into account the views of the Committee (Min. Ref. SP.10).</p> <p>It is planned that the final version will be presented to the next Ordinary Council meeting.</p>
<p><b>Report of the Committee on Standards in Public Life</b></p> <ul style="list-style-type: none"> <li>To consider the Report of the Committee on Standards in Public Life</li> </ul>	<p>July 2019 October 2019</p>	<p>Reports were presented to the Committees and informal working groups have also taken place during the year.</p> <p>A further update report is presented elsewhere on this Agenda.</p> <p>This work will be ongoing during 2020/21.</p>
<p><b>Review of the Nottinghamshire Authorities Protocol with Nottinghamshire Police</b></p> <ul style="list-style-type: none"> <li>To review the Nottinghamshire Authorities Protocol with Nottinghamshire Police regarding the reporting of potential breaches of the Code of Conduct relating to Disclosable Pecuniary Interests</li> </ul>	<p>December 2019</p>	<p>This work item remains outstanding.</p> <p>The Monitoring Officer is tasked with leading on this across the County.</p> <p>Progress has been delayed initially due to the unavailability (due to work pressures) of the Police Officer dealing with this matter and then due to the COVID19 pandemic.</p> <p>This item will roll forward to the 2020/21 Work Plan.</p>

<p><b>Whistleblowing Policy</b></p> <ul style="list-style-type: none"> <li>Annual report to consider amendments (if required) to the policy and to monitor the application of the policy</li> </ul>	<p>March 2020</p>	<p>A report was due to be presented to the Committee in March 2020 which was cancelled due to the COVID19 pandemic restrictions.</p> <p>A report is presented to this Committee meeting elsewhere on the Agenda.</p>
<p><b>Annual Review</b></p> <ul style="list-style-type: none"> <li>Report to consider the work of the Committee over the year compared to the agreed Work Programme.</li> <li>To consider an overview of the ethical governance of the Council.</li> </ul>	<p>March 2020</p>	<p>A report was due to be presented to the Committee in March 2020 which was cancelled due to the COVID19 pandemic restrictions.</p> <p>This report now provides the update to the Committee.</p>
<p><b>Constitution Review</b></p> <ul style="list-style-type: none"> <li>Consideration of proposed amendments to the Constitution for recommendation to Council.</li> </ul>	<p>March 2020</p>	<p>A report was due to be presented to the Committee in March 2020 which was cancelled due to the COVID19 pandemic restrictions.</p> <p>Changes to the Constitution were made at the AGM on 23 April 2020.</p>

**Committee is therefore asked to:**

- **Note the progress made in relation to the agreed work plan.**
- **Consider future work plan items for 2020/21**

**SUMMARY AND UPDATE OF MEMBER COMPLAINTS RECEIVED DURING 2019/2020 AND 2020/21 TO DATE**

I have received **14** formal complaints during 2019 and **5** in 2020 to date regarding the behaviour of Councillors. Of these **19** complaints:

- 13 complaints related to District Councillors during 2019
- 3 complaints relates to District Councillors during 2020
- 1 complaint related to Parish Councillors during 2019
- 2 complaints relate to Parish Councillors during 2020

Appendix 1 sets out the complaints in more detail.

Comparing the total number of complaints since 2011:

Year	Number of Complaints
2011	0
2012	13
2013	15
2014	8
2015	12
2016	4
2017	18
2018	24
2019	14
2020 (to date)	5

**Committee is therefore asked to note the number of Member complaints received during 2019/20 and 2020/21 to date as summarised in the report and the current outstanding complaints as detailed in Appendix 1.**

#### **COMPLAINTS ADC2019-04 – 2019-10**

Complaints ADC2019-04 – 2019-10 were investigated by an External Investigator due to their inter-relationship and complexity. The complaints all related to behaviours at a Council meeting on 4 March 2019.

In summary, the Investigator recommended that no further action be taken on any of the complaints made and her full reasoning was contained in a detailed report. The report has been discussed with the Independent Person and he and I have agreed to accept the report findings in accordance with the Complaints Process.

I invited the Investigator to make suggestions/recommendations on changes to the Constitution or any other issues which might help prevent similar issues arising in the future. Once the Committee has considered and approved a course of action in relation to the following recommendations, all interested parties will be informed of the final outcome and have access to the Investigator's report.

#### Suggestion 1

In future, no one is permitted to Chair any formal meetings of the Council without having undergone some training in Chairing skills. It is further suggested that, in the case of the Chair and Vice Chair of the Council, this training is undergone on a 1-2-1 basis. The Investigator explained the reasoning for this suggestion as follows:

*In all Authorities Full Council meetings are usually the most difficult meetings to chair. It is the opportunity for all Members of the Council, regardless of the roles they hold or the parties or positions they represent, to have their say on the issues affecting their areas and their constituents. Inevitably, this can lead to disagreements and more. An excellent Chair can prevent situations from escalating and it is vital that all Authorities, including Ashfield, train their Chairs appropriately in order to equip them to deal with meetings effectively.*

## Suggestion 2

All Members receive training on behaviours and the effect behaviours can have on others and themselves. It is suggested this is not a classroom-based approach but rather an interactive role-play session. It is recommended that all new Members undertake such training within their first year in office and that continuing Members undertake such training every four years. The Investigator explained the reasoning for this suggestion as follows:

*We live in a changing world and behaviours that were acceptable a few years ago are no longer acceptable. In most cases individuals do not set out to cause offence to others by the way they behave but sometimes unwittingly that is what they do. It would put Ashfield at the forefront of innovative practices in respect of member training and it could hold itself up as an exemplar of good practice in this area.*

## Suggestion 3

At the start of all Full Council meetings the Chairman reminds Members of the need for basic respect. In the event that it appears that that basic respect is not being shown between Members, then the Chairman should adjourn the meeting to allow a brief cooling off period. During this time he/she should speak, along with the Chief Executive, to the unruly Members. The Investigator explained as follows:

*It was noted that the right of the Chair to adjourn the meeting is already present in the Constitution at Ashfield. The suggestion is simply that Chairs should be strongly encouraged to use this power in the event of difficulties in a meeting. A brief adjournment can prevent a meeting escalating into the problems which occurred in the March Council meeting at Ashfield. In my experience some Chairs are reluctant to use this power but in the long run it can prevent challenging occurrences similar to those seen on the 4<sup>th</sup> March. If it is coupled with a short discussion with the relevant Members during the adjournment it can prove effective as a managing meetings tool.*

## Suggestion 4

Any other tools which can be provided to the Chairman of the meeting to make his/her role easier should be provided. The Investigator expanded further as follows:

*Some Authorities produce flow charts for all eventualities within meetings so that the Chair can easily refer to these during the meeting and take the appropriate action. Flash cards can be similarly useful. Whilst I am aware that some of these tools are already in use at Ashfield I would suggest action is taken to review these tools and see if anything in addition could be useful or if these need refreshing in any way.*

## Suggestion 5

The fifth suggestion relates to the intervention by officers during Council meetings. The detailed suggestion is as follows:

*[Intervention by officers] is always difficult, and I have heard during my investigations a number of different positions on this issue. There are some I have spoken to who feel that officers intervene too often at Council meetings and others who are of the view that they do not intervene enough. These are Member meetings and they should be conducted and managed by Members but there are occasions when either behaviours or comments are*

*such that it is vital that either the Monitoring Officer or the Chief Executive speaks up and either stops the proceedings or states that action is required by the Chair. Such occasions would be rare but either within the Constitution or simply as accepted practice, Members need to be clear with officers that they support such interventions.*

### Suggestion 6

The sixth suggestion relates to the Code of Conduct itself and the specific issue of unfair treatment. It is suggested that consideration is given to including within the Code of Practice a very specific requirement regarding treating people with respect. The Investigator explained that currently the Code simply says:

*“Do treat others with respect” It is unspecific in nature and for the reasons outlined in the recommendations earlier in the case of member to member requires a high threshold to breach. My suggestion is that this is amended to read:*

*“Do treat others with respect in particular do not make any personal comments to any individual about themselves, their appearance, their gender, sexuality, religion or belief that may cause offence to them or to others present.”*

*I suggest this only as starting point for discussion and not as a version for adoption as thought needs to be given as to how such a change would be managed within Ashfield.*

### Suggestion 7

This suggestion relates to actions that can be taken by the Standards Committee in the event that a Member is found to be in breach of the Code. The Investigator explains as follows:

*Since the abolition of the Standards Board and more recently local determination the powers available to Standards Committees have been reduced. Some may say that they have been removed all together and there is a good case for this view. One action that the Standards Committee could consider adopting is to name and shame Councillors who breach the code. My suggestion is that in the event of Standards Committee finding a Member in breach, they may, in the most serious cases, not only publish their findings on the Council website but also within local papers and the Ashfield Council newsletter. This would not be an action to be taken lightly but where a Member has been found, by his/her peers, to be in breach of the Code it is not unreasonable for members of the general public to be made fully aware of the breach. There are potential issues with this and clearly any such action would require checks and balances to be in place to ensure it was not abused politically but it is worthy of consideration. Again, to my knowledge few Councils have such a process in place formally. (Some breach cases do reach the local press via public hearings and the attendance of a local reporter.) Ashfield could place itself at the forefront of good practice on this issue.*

### Suggestion 8

This final suggestion relates to the makeup of the Standards Committee itself. The Investigator made this suggestion for two reasons:

*Firstly, because of the current political makeup of the Council and secondly, as part of the checks and balances required in the event that suggestion seven is considered.*

*Following the May [2019] election, the Council is currently one party dominated. The Ashfield Independents command a huge majority on the Council. The Council Leader himself said to me in interview that he was conscious how few opposition members there now were at the Council and that he wanted them to play an active role and had appointed one of them to a committee to ensure this happened.*

*It is very problematic for there to be a true and proper balance in dealing with Standards issues when a Council is so one party dominated. This is particularly so if there is a Standards problem with one of the few opposition Members as they may claim prejudice in any complaint on political grounds. The opposite can also apply for complaints about major party members when allegations of cover-ups can be made.*

*I acknowledge that in accordance with legal requirements Ashfield has appointed Independent Persons who offer advice and support in any standards issues. I understand that the Independent Persona may also attend meetings of the Standards Committee but only as an observer. My suggestion is that the Council appoints three independent members to its Standards Committee. These members should be recruited, interviewed and appointed for a four-year term renewable once. They should be remunerated appropriately and as agreed by the Independent Remuneration Panel. I would suggest that one of these independent appointees be appointed as Chair of the Committee; although this may well be unacceptable politically I would suggest it as good practice. For clarity these are not the same as the currently legally required Independent Persons and these appointees would act as full members of the Standards Committee. They would in effect be the balancing element to provide surety and to prevent claims of political bias in any Standards related decisions.*

*There is a question mark over the ability of the Council to give non-elected members a vote. I have spent some time researching this issue and it is far from clear. The general assumption made by most Authorities is that co-opted members cannot be given the right to vote. I think there is however a possibility that they can. It is clear that non-elected members of Overview and Scrutiny Committees can be given voting rights. Section 11 of The Local Authorities (Committee System) (England) Regulation 2012 allows local authorities to permit co-opted members to vote if the Authority have in place a scheme making provision for such voting rights. The terms of reference of the Standards Committee could be amended to include Overview and Scrutiny powers and as such, subject to the terms of any scheme, co-opted members could be given voting rights. If this option was not acceptable then a form of informal voting could be agreed at Standards Committee itself in order that co-opted members could clearly express their views. The Monitoring Officer will need to advise further on this issue if it is to be pursued.*

**Committee is therefore asked to consider the recommendations of the investigator as detailed above.**

## **ATTENDANCE AT MEETINGS**

Members will recall that during 2016/2017 as a result of the Independent Remuneration Panel's recommendations an element of attendance related allowance was introduced (Performance Special Responsibility Allowance) from June 2017 onwards. The allowance consists of £500 which is paid to Members achieving 70% or greater attendance at all their formal meetings and mandatory training. This Committee developed and recommended a policy which was approved by Council relating to authorised absences which is taken into account when collating attendance data. Under the policy, this Committee received updates in relation to attendance levels.



## Summary Information - Quarters 1, 2, 3 & 4 (cumulative) - June 2019 to May 2020

	Q1	Q2	Q3	Q4
Members with 100% attendance	27	20	19	18
Members with attendance between 90% and 99%	0	7	8	8
Members with attendance between 80% and 89%	5	4	2	5
Members with attendance between 70% and 79%	1	0	3	2
Members with less than 70% attendance	2	4	3	2

Total	Q1	Q2	Q3	Q4
Authorised absences	20	22	16	5
Unauthorised absences	9	21	12	4
No apologies submitted	2	2	3	0

For the 2 Members with less than 70% attendance:

- 1 Member had 56% attendance
- 1 Member had 64% attendance

### Reasons for absences:

Reason	Number of times
Virtual Connectivity Issues (Authorised)	1
Family/Medical Emergency/Hospital (Authorised)	1
Illness (Authorised)	2
Meeting Changed at Short Notice/Work Commitment (Authorised)	1
Work Commitment (Unauthorised)	1
Personal (Unauthorised)	3

Holiday (Unauthorised)	0
Other engagement (Unauthorised)	0
Post Operation Recovery (Unauthorised)	0
No apologies submitted (Unauthorised)	0

Assessment for the payment of the Performance Special Responsibility Allowance occurred during early June 2020 and payments were made in accordance with the attendance data set out above.

Members may recall that the Council was subject to an Independent Remuneration Panel review during the early part of 2020 and the recommendations of the Panel were considered at the Council AGM on 23 April 2020 and its was:

*“RESOLVED that*

*a) the Performance Special Responsibility Allowance be discontinued and the Basic Allowance be reset to £6,717;”*

*(Min. Ref. C.13)*

In light of the Council resolution, Member Attendance will continue to be recorded and minuted but will no longer be reported to this Committee.

**The Committee is therefore asked to note the position in relation to attendance at meetings during 2019/20.**

### **Implications**

#### **Corporate Plan:**

To ensure we deliver high-quality public services we have adopted a set of corporate values which underpin the successful delivery of our priorities. How we work is as important as what we do. The Council’s values are: People Focussed; Honest; Proud; Ambitious.

#### **Legal:**

This report is presented in accordance with the Terms of Reference for this Committee as set out in the Constitution.

#### **Finance:**

<b>Budget Area</b>	<b>Implication</b>
General Fund – Revenue Budget	The General Fund budget includes funding to meet the maximum cost of Performance Special Responsibility Allowance.

General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

**Risk:**

Risk	Mitigation
Lack of transparency. Lack of monitoring. Failing to meet the duty of maintaining high standards of behaviour.	The work plan for this Committee, the quarterly update reporting and this Annual report ensures the Council is open and transparent in the way it deals with ethical governance. The reporting and work of the Committee demonstrates the Council’s commitment to maintaining high levels of ethical behaviour.

**Human Resources:**

There are no significant Human Resource issues identified in the report.

**Equalities:**

There are no significant equalities issues identified in the report.

**Environmental/Sustainability:**

There are no Environmental/Sustainability issues identified in this report.

**Other Implications:**

*(if applicable)*

None

**Reason(s) for Urgency**

Not Applicable

**Reason(s) for Exemption**

Not Applicable

**Background Papers**

None

**Report Author and Contact Officer**

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