

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	9 DECEMBER 2020
Heading:	QUARTERLY COMPLAINTS MONITORING REPORT		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

This report provides an update in respect of Members' Code of Conduct complaints.

Recommendation(s)

The Committee is requested to:

1. Note the updated position in respect of Members' Code of Conduct complaints as set out in the Appendix;
2. Consider the recommendations of the Investigator in respect of various Member Code of Conduct complaints as detailed in the report.

Reasons for Recommendation(s)

To reflect good practice. To enable Members to monitor the volume and progress of complaints.

Alternative Options Considered

Members are asked to consider and comment on the recommendations of the Investigator in relation to the complaints detailed in the report.

Detailed Information

Complaints Update

This report outlines in the Appendix the number of complaints of alleged Member misconduct which remain outstanding and a summary overview of the status of ongoing complaints.

Since the last update to the Committee:

- 2 complaints relating to District Councillors has been concluded with summary details contained in the report;
- There have been 3 new formal complaints in this period. These are detailed in the Quarterly Complaints Schedule attached as appendix 1.

The Committee is requested to note the updated position in respect of Members' Code of Conduct complaints.

COMPLAINTS ADC2019-04 – 2019-10

The outcome of complaints ADC2019-04 to 2019-10 were reported to the Committee in July. At that meeting the Committee resolved that:

“consideration of the recommendations of the Investigator in respect of Member Code of Conduct complaints ADC2019-04 – 2019-10, as presented, be deferred to enable more detailed discussions to take place and to allow Members to seek the views of the Director of Legal and Governance (and Monitoring Officer) prior to any decisions being taken” (SP.3(c)refers).

To remind Members, 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 4th 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.

Implications

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

There are no legal implications associated with this monitoring report

Finance:

Budget Area	Implication
General Fund – Revenue Budget	The Authority incurs costs in investigating complaints of alleged Member misconduct if investigations are carried out externally, and these charges are borne by the General Fund. The Council investigates complaints in house as far as possible to reduce costs. Where complaints need to be investigated externally these costs are expected to be contained within existing budgets. One investigation is currently being carried out externally as set out in the Appendix.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
<p>The Council has recognised the following Corporate Risk:</p> <p>Ethical Governance – failure/delay to implement changes to the Members' Code of Conduct and recommendations of the Committee on Standards in Public Life (CSPL) and Peer Challenge (CR003)</p> <p>Significant resource to deal with implications of proposed Code of Conduct changes.</p> <p>Significant resource to deal with implications of implementing the recommendation of the CSPL</p> <p>Potential for negative perception of the Council which impacts upon the Council's reputation</p> <p>Potential for adverse impact upon the workings of the Council</p>	<p>Ongoing work by the Standards and Personnel Appeals Committee in relation to the Committee on Standards in Public Life – report on Local Government Ethical Standards</p> <p>Present Quarterly Complaint Monitoring reports to Standards and Personnel (Appeals) Committee</p> <p>Members received training regarding the Code of Conduct, their behaviours and roles and responsibilities as part of the induction in May 2019. In line with the Corporate Peer Challenge recommendation further training will be organised.</p> <p>Responding to the LGA's consultation on its draft Model Code of Conduct</p>

Without new legislation does not provide holistic response to the recommendation of the CSPL	
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Human Resources:

There are no HR issues relating to this monitoring report

Environmental/Sustainability

There are no environmental/sustainability issues relating to this monitoring report.

Equalities:

There are no equalities issues relating to this monitoring report.

Other Implications:

None

Report Author and Contact Officer

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