

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	28 MARCH 2018
Heading:	UPDATE ON THE REVIEW OF THE MEMBERS' CODE OF CONDUCT COMPLAINTS PROCESS AND SOCIAL MEDIA POLICY		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

The report is to update the Committee on the review of the Members' Code of Conduct Complaints Process and Members' Social Media Policy.

Recommendation(s)

Committee is asked to:

- 1. Note the work undertaken by the Members' Working Group;**
- 2. Consider and comment on the suggested changes to the Members' Code of Conduct Complaints Process and Members' Social Media Policy;**
- 3. Instruct the Monitoring Officer to draft changes to the policies in line with the suggested amendments for approval by Council.**

Reasons for Recommendation(s)

The review of the Members' Code of Conduct Complaints Process and Members' Social Media Policy is a work plan item for the Committee during 2017/2018.

The Peer Challenge suggested making changes to the complaints process to address the volume of trivial or low level complaints being made relating to Member conduct which is a drain on Council resources to consider and process.

Members also suggested a review of the Members' Social Media Policy in light of a significant number of complaints being made about Members' use of social media.

The Committee is asked for its views in relation to the suggestions of the Member Working Group to enable the Monitoring Officer to draft appropriate changes to the policies for Council to approve.

Alternative Options Considered

(with reasons why not adopted)

The Committee may wish to suggest alternatives or additional changes to the policies.

Detailed Information

Committee on 11 December 2017

Members will recall that an update on the progress made by the Working Group was reported to the Committee on 11 December 2017. An extract from the minutes is set out below (SP.7)

Complaints Process

- *Complaints made by a Councillor against a fellow Councillor to be referred to the Group Leaders of the relevant Political Groups to resolve the complaint if possible.*
- *In the event that the matter cannot be resolved by the Group Leaders the complaint be referred to a Panel of the Standards Committee (3-5 Members subject to Political Balance and including the Independent Person) for consideration and determination. Group Leaders would be expected to attend to speak on the position.*
- *If a non-aligned Member is involved in a complaint the matter be referred to a Panel of the Standards Committee for consideration and determination and the non-aligned Member would attend in place of the Group Leader.*

Social Media Policy

- *The Policy be reworded to ensure that Members are more aware that they are responsible for the content of their own posts on social media accounts and also responsible for deleting inappropriate content both written and sent by other people.*
- *An "Idiots Guide" on the use of social media be produced to include advice on privacy settings.*

The Director of Legal and Governance added that the Working Group would be carrying out further work in respect of local sanctions, apologies and presumptions based on non-cooperation with the process and the findings would be presented to the next meeting.

RESOLVED that

a) the work undertaken to date by the Members' Working Group be noted;

b) the Monitoring Officer be instructed to draft changes to the Members' Code of Conduct Complaints Process and the Members' Social Media Policy, in line with the suggested amendments, and a further report be submitted to the next meeting of this Committee for consideration and approval.

At the meeting the Committee raised a number of points which it wished the Working Group to consider further:

- If the complaint involves the Group Leaders who would the complaint be referred to?
- Should the Panel be politically balanced?
- How many should be on the panel ideally? Committee suggested 4 or 5

- Committee suggested the Independent Person should be on the Panel and asked if they could vote?
- Could the Panel be a standing Sub-Committee?
- Apologies – should recognise they have done wrong and be genuine/sincere
- Should not create further delays in the process

Cross Party Update Meeting

The Monitoring Officer attended the Cross Party Update Meeting on 19 January 2018 to update those present on the work of the group and to ask for their observations. All Group Leaders agreed that it was necessary to look for an alternative approach and that the suggestions put forward by the Standards Committee was a good approach in principle. There was an acknowledgement that there may be further issues created as a result and this may mean the approach needs amending once the process has been put in to practice. The Group Leaders were happy for the Committee to continue with this work with a view to taking a report to the AGM for Council approval.

Working Group

The Working Group has met on a further occasion to consider the outstanding issues and puts forward the following suggestion/responses for consideration by the Committee:

- If the complaint involves the Group Leaders who would the complaint be referred to?
The Working Group considers this would be the Group Whip or other nominated Member – for instance, the Conservative Group does not have a whip and so could nominate a Member for this purpose.
- Should the Panel be politically balanced?
Due to the potential size of the Panel being relatively small and current political balance, the Working Group considered this would be difficult in practice. The Working Group suggested that the Panel could be made up of four people in total – one from each of the political parties (three) and one of the Independent Persons.
- How many should be on the Panel ideally? (Committee suggested 4 or 5)
See above response. The Working Group was clear that any more than five Members and the whole Committee of nine might as well sit defeating the object of having a Panel.
- The Committee suggested the Independent Person should be on the Panel and asked if they could vote?
The Working Group agreed with this suggestion. There is no legal power for the Independent Person to vote.
- Could the Panel be a standing Sub-Committee?
The Committee noted that this was possible Constitutionally, however, practically could be problematic. A Standing Sub-Committee would be appointed by Council at the AGM. Constitutionally, as a regulatory committee there can be no substitutions if a Member is not available, as such, there could be significant problems in calling a Panel meeting if a Member is not available. Having a pre-selected set of Members could also be problematic in the event one of those Members is themselves the subject of a complaint. On balance, therefore, the Working Group felt the Panel should be appointed on an ad hoc basis from the Members of the Committee.
- Apologies – should recognise they have done wrong and be genuine/sincere.
The Working Group agreed.

- The new process should not create further delays.
The Working Group agreed.
- Could sanctions be imposed locally at District and Parish Council levels?

The Council currently has approved 10 sanctions as set out below:

1. *Censure or reprimand the member;*
2. *Publish its findings in respect of the member's conduct;*
3. *Report its findings to Council or to the Parish Council, or both for information;*
4. *Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;*
5. *Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;*
6. *Recommend to Council that the member be replaced as Executive Leader;*
7. *Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member;*
8. *Remove or recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;*
9. *Withdraw or recommend to the Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or*
10. *Exclude or recommend that the Parish Council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub Committee meetings.*

A significant amount of research was carried out by the Monitoring Officer during 2014/2015 in relation to sanctions. National advice was that following the repeal of the previously statutory sanctions, the sanctions set out above and adopted by the Council were the only ones left available to councils under Common Law. Members will be aware that previous powers to suspend or disqualify are no longer available.

When last researched in 2014/2015 there was very little variation to the sanctions adopted by this Council, any differences appeared to exclude sanctions rather than adding "stronger" sanctions. At this time advice was also obtained from the Local Government Association and external lawyers. A summary of their advice at the time is set out below:

The LGA

Sanctions

A Council has recently been successful in obtaining an injunction and a costs order against a Councillor. The Councillor had removed commercial, legally confidential and privileged material from a council meeting under a ruse/deception. He was likely to publish this information.

CEO Powers to Remove from the Premises

As the head of paid service, this post carries quite a lot of power and responsibilities in terms of managing the business of the council and in relation to staff. So, in many places it has been accepted that this post can take independent action, when warranted, to protect the staff and business of the council where this is perceived to come under threat.

This could be when a councillor is behaving in a threatening, abusive and or obstructive manner, for example they might be drunk and/or disorderly or in any instance justifying immediate action. The circumstances are likely to be **extreme**.

One would expect the ejection or removal of an elected member from the premises would be followed up with some form of correspondence indicating why such action was deemed necessary and also seeking or recommending a resolution or even a referral to the MO and or standards committee as appropriate. To ensure some fairness, there should be some follow up and/or review.

They were not aware of any council which had adopted this approach in a formal policy document, but it could form part of a member/officer protocol, as an acknowledgment of the powers/duties of the chief executive with respect to managing the business and his/her responsibility to staff.

External Lawyers

CEO Powers to Remove from the Premises

R v Broadland DC ex p Lashley

Establishes that a Council does have the power to take action that it considers **necessary to allow it to discharge its functions effectively** and to protect the safety and welfare of its staff.

Can only justify such action in **extreme** cases.

Care should be taken to amass the evidence which supports the proposed action, otherwise there could be a challenge for ultra vires.

Sanctions

No sanction can interfere with the member's duties.

It is not possible to withhold an allowance.

It is not possible to withhold confidential information (unless the law restricts such access).

If behaviour amounts to harassment then criminal offences may have occurred and also it may be possible to seek a civil injunction.

Having reviewed the current position, there is very little change from that reported to Committee in 2014/2015. There has been no change in legislation or the common law position and as such it is the Monitoring Officer's view that the advice given to Committee three years ago and set out above remains the same.

Members will note that the Standards in Public Life consultation which appears in a separate report on this agenda is asking for comments in relation to the sanctions available for breaches of the Member Code and as such gives the Committee an opportunity to comment on the current position.

- At what stage should apologies be permitted in order to informally resolve complaints.
The Working Group was of the view that apologies should be allowable provided they are given as soon as possible and certainly pre-investigation stage. If a time limit was to be set, the Working Group suggested that an apology may be allowable if received within 14 days of the Member being notified of the receipt of the complaint by the Monitoring Officer. This should be pointed out to the Member in the notification letter.
- Could the political groups play more of a role in helping to prevent and resolve complaints?
The Working Group could only suggest that the Political Groups ensure they invoke party disciplinary principles.
- Would a presumption of guilt on those who refuse to co-operate with complaint investigations be permissible?
The Working Group agreed that if someone refuses to co-operate this could be taken into account, however, in the interests of fairness there would still need to be some checking of evidence and complaint details to try to corroborate a complaint. The Working Group felt the Member should be warned about this in the initial notification letter giving 14 days to contact the Monitoring Officer (or her nominee). If they do not respond, then the Group felt they should be sent a reminder letter giving them a further 14 days in which to respond. If there is no response over the four week period then the Monitoring Officer should proceed with the complaint. The Working Group felt these time limits should also apply to complainants and witnesses. The Working Group felt there would need to be some flexibility in very exceptional circumstances, for example, the Member is known to have been out of the country for an extended period.

The Committee is therefore asked to consider the suggestions and further work undertaken by the Working Group and instruct the Monitoring Officer accordingly to make suitable changes to the Members' Code of Conduct Complaints Process and the Members' Social Media Policy.

Implications

Corporate Plan:

We will promote positive and respectful behaviour, treating people fairly and respectfully.

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

Legal:

The complaints process must be open, transparent and fair.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	The Authority incurs costs in investigating complaints of alleged Member misconduct, 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.
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: <i>Members’ Ethical Framework – Failure to demonstrate high standards of behaviour (CR003)</i></p> <ul style="list-style-type: none"> • Significant resource to deal with implications of Code of Conduct Complaints. • Potential for negative perception of the Council which impacts upon the Council’s reputation • Potentially adverse impact upon the workings of the Council • New legislation does not provide “strong” sanctions for breaches to the Code which may make regulation of poor ethical behaviour difficult and leave complainants dissatisfied with outcomes 	<ul style="list-style-type: none"> • Standards and Personnel Appeals Committee approves an annual work programme which includes an annual review. • A review of the Members’ Code of Conduct Complaints Process will be carried out during 2017/2018 in accordance with the recommendations of the LGA Peer Challenge 2017. • Present Quarterly Complaint Monitoring reports to Standards and Personnel (Appeals) Committee. • The Standards and Personnel Appeals Committee has agreed in its 17/18 work plan to review the Complaints Process, the Code and guidance relating to social media use. • The Committee has established a working group of members from the Committee to work with the Monitoring Officer to review best practice and make recommendations to the Committee.

Human Resources:

There are no human resource issues relating to the recommendation contained in this report.

Equalities:

Reasonable adjustments would be considered and taken into account in relation to any specific complaint.

Other Implications:

None.

Background Papers

None.

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