

	<b>1) Audit and Standards Advisory Committee</b> <b>2) Audit &amp; Standards Committee</b>  8 September 2020
	<b>Report from:</b> <b>Director of Legal, HR, Audit &amp; Investigations</b>
<b>Complaints &amp; Code of Conduct</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Not applicable
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	Three: 1) Appendix A – Complaints received over the last 24 months 2) Appendix B – LGA Consultation documentation 3) Appendix C- Members’ Code of Conduct Complaints Procedure
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	(1) Debra Norman, Director of Legal, HR, Audit & Investigations (ext. 1578) (2) Biancia Robinson, Senior Constitutional & Governance Lawyer (ext. 1544)

## 1.0 Purpose of the Report

1.1 This report provides an annual review of the Members’ Code of Conduct Complaints procedure; and updates the Committee on the Local Government Association (LGA) draft Member Code of Conduct consultation.

## 2.0 Recommendations

2.1 That the:

- a) Audit and Standards Advisory Committee consider and note the contents of the report and make recommendations to the Audit and Standards Committee in respect of the proposed changes to the Member Code of Conduct Complaints Procedure set out in Appendix C.
- b) Audit and Standards Committee consider the contents of the report and approve the proposed changes to the Member Code of Conduct Complaints Procedure set out in Appendix C.
- c) Committee note that upon approval by the Audit and Standards Committee, the Monitoring Officer will implement the changes in accordance with her delegated powers.

### 3.0 Detail

#### **Members' Code of Conduct Complaints Procedure (MCCCP)**

##### Background

- 3.1 The Council has a duty to promote and maintain high standards of conduct by Members and Co-opted Members pursuant to section 27(1) of the Localism Act 2011. As required by section 27(2) of the Localism Act 2011, the Council has adopted a Code of Conduct (Code) dealing with the conduct that is expected of Members and Co-opted Members when they are acting in that capacity.
- 3.2 Section 28 of the Localism Act requires the Council to have arrangements under which it can investigate and make a decision on an allegation of a breach of the Code. The MCCCP complies with this statutory obligation. Any alleged breach of the Brent Code is considered in accordance with the MCCCP, which is used as guidance in the consideration and determination of complaints and reviews.
- 3.3 In accordance with:
  - a) para 1.10 of the MCCCP, "*the Standards Committee will convene from time to time to review the handling of complaints, reviews and decisions made with a view to identifying trends or any improvements in this procedure and the application of it that may be desirable*"; and
  - b) annexe 1, para 1.3 of the MCCCP, the complaint Assessment Criteria are subject to "*an annual review by the Standards Committee*". This report sets out the annual review.

##### Complaints

- 3.4 In terms of background, in the last 24 months, the Monitoring Officer has received complaints and made determinations regarding six councillors allegedly in breach of the Members' Code of Conduct. Four complaints were received against one of the councillors about a single matter (treated as one complaint) and two complaints were received against another councillor about two separate but related matters. Four of these complaints have been received since May 2020. Of these complaints:
  - a) three have been resolved at Initial Assessment Stage;

- b) three have been resolved at Assessment Criteria Stage;
- c) one has been upheld as in breach of the Code;
- d) four have been subject to review requests; and
- e) none have escalated to hearing/formal investigation stage.

Attached as Appendix A is a summary of the complaints received in the last 24 months.

### Overview

- 3.5 The MCCCCP has a two stage assessment process. The first, **the Initial Assessment Stage**, requires an assessment of whether the alleged behaviour falls within the ambit of the Code of Conduct and in turn the Council's procedure. In particular it considers:
- a) the complaint is about a Member of the authority?
  - b) the Member was in office at the time of the alleged complaint? and
  - c) if proven, the complaint would disclose a breach of the Code?

If the alleged behaviour falls outside of the ambit of the Code or within one of the nine criteria set out in the procedure to be considered at the Initial Assessment Stage (see 3.2 of the MCCCCP), it will not progress to Assessment Criteria Stage, and, subject to a request for a review being received by the specified deadline, is concluded.

- 3.6 The **Assessment Criteria** apply where the allegations appear to fall within the Code and are not excluded by the Initial Assessment Criteria. At this stage, further readily available details are sought to ascertain the facts, and the member who is the subject of the allegations is provided with the opportunity to provide a written response to the complaint. This is then considered and, following consultation with the Independent Person, a determination in respect of the complaint is made in accordance with the seven options set out in the Assessment Criteria in Annex 1 of the MCCCCP. This may conclude the matter (subject to a review request), or may lead to a referral for detailed formal investigation of the complaint.

### Decision Making

- 3.7 The Assessment Criteria are intended to be a guide and promote consistency in the decision-making. Consistency is also ensured as all complaints alleging breach of the Code are considered by the Monitoring Officer, (or in her absence the Deputy Monitoring Officer). This ensures a consistency of assessment and application of the criteria as the same officers are involved analysing and weighing up the allegations made in complaints. External scrutiny provided by the Independent Person involved in each complaint that reaches this stage provides double check on the thoroughness and fairness of the decision-making.
- 3.8 An advantage of Brent's MCCCCP is that it is very detailed in the procedure and guidance it provides. This is helpful for the Monitoring Officer, complainants and

Members who are complained about and supports a higher degree of transparency and consistency than might arise in a less detailed high level procedure.

- 3.9 The Committee will see from Appendix A that the main finding at Initial Assessment Stage in respect of the complaints over the past 2 years is that the complaints “*do not disclose a sufficiently serious breach of the Code to merit further consideration*”. The main rationale for this finding has been that no evidence has been submitted to support the allegations made; and when considering the allegations in context, the Councillors concerned were entitled to express the views which they did, be that orally or in writing.
- 3.10 Recurring factors in relation to escalating complaints to the Assessment Criteria Stage have been:
- (a) it is unclear whether the allegation relates to the Councillor in their personal or private capacity; or
  - (b) further information is required in order to understand the allegations, which necessitates making basic additional enquiries and seeking comment from the member concerned.
- 3.11 The Committee will be aware that the Code only permits the investigation of complaints against Members made in their “official capacity or when giving the impression [they] are acting as a member of the Council”, unless it relates to a serious criminal offence conducted in the Member's private capacity. Accordingly, any decision that purports to find a breach of the Code whilst the Member in question was acting in their private capacity, would be liable to challenge.
- 3.12 In the last 24 months, one complaint has been upheld as a breach of the Code. The Committee will be familiar with the facts of that complaint having considered and noted the Decision Notice at its last meeting. All Standards complaints which are upheld are normally published on the Council's website, which is important for transparency, accountability and demonstrating the commitment to “maintain a high standard of conduct” from all members.
- 3.13 As the Committee is aware, following implementation of the Localism Act 2011, the Council has limited powers against a Member who has been found to have breached the Code. Any changes to strengthen a sanction for breach of the Code requires a change to the existing legislation. Consequently, the sanctions presently available are:
- a) censuring or reprimanding the Member
  - b) publishing a notice in respect of the findings in a local newspaper, or on the Council's website.
  - c) asking the Member to apologise
  - d) asking the Member to undergo training
  - e) recommending to Council/Cabinet that the Member be removed from an outside body
  - f) recommending to the Member's group Leader ( or if independent – full Council) that they be removed from Cabinet/portfolio responsibilities

- g) recommending to the Member's Leader (or if independent – full Council) that the Committee recommends that they be removed from a Committee.
- h) Excluding the Member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council and Committee meetings.

### Reviews

- 3.14 Step 6 of Paragraph 3.5 of the MCCCCP provides that a "*complainant and the subject member of the complaint will ordinarily be given 10 working days from the date of notification of the decision to make a written request*" that the decision is reviewed. Of the nine Member complaints received and not upheld, four complainants have sought a review. One complainant submitted their request outside of the 10 working days timeframe by an excess of 20 working days. The remaining three requests did not provide any supporting documentation that was relevant and/or had not previously been considered.

### Independent Persons

- 3.15 Step 1 of paragraph 3.5 of the MCCCCP states: "*The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant unless any confidentiality request has been agreed, and also the name and contact details of the Independent Person who has been nominated for the complaint and who the subject member may contact to seek their views.*"
- 3.16 Presently this suggest the Monitoring Officer and Councillor would seek advice from the same Independent Person, which could place them in a difficult decision. For the purposes of ensuring impartiality, fairness and objectivity, it is recommended to amend Step 1, as per the wording below, so that it is clear that a Councillor can speak to a different Independent Person in relation to a complaint made against them:

*"...and also the name and contact details **for one of the Independent Persons** who has been nominated for the complaint and who the subject member may contact to seek their views."*

- 3.17 It is also proposed to make a few minor changes by way of including sanctions into the sub-heading at Annex 2, para 10 (in order to make a search for the word "sanctions" easier to utilise for complaints and Members) and updating the department/service details following previous organisational changes. Attached to this report as Appendix C is the MCCCCP with proposed changes marked in red.
- 3.18 Changes to the MCCCCP requires formal approval of the Audit and Standards Committee and this committee is asked to recommend the changes to the MCCCCP in Appendix 1 to that committee.

### Local Government Association Draft Model Code of Conduct

- 3.18 The Committee will recall from its meeting on the 26.05.2020 that The Local Government Association (LGA) launched its consultation on a draft Model Member Code that could be a template for councils to adopt in whole and/or with local amendments on the 08.06.2020. This was in response to the Committee of Standards in Public Life's (CSPL) report of January 2019 on the Local Government Ethical Standards recommendation that "*the Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government*". The consultation lasted 10 weeks and closed on the 17.08.2020.
- 3.19 A copy of the LGA Consultation draft and principles was noted by this committee at its meeting on the 26.05.2020. The LGA have since issued the Consultation documentation including the draft Model Code. It covers its purpose and application, refers to the seven Principles of Public life, states what model Member conduct as a Councillor is expected and sets out the minimum requirements through specific obligations of general conduct. In addition, under each of the specific obligations the LGA created additional guidance. A copy of the consultation documentation is attached as Appendix B.
- 3.20 The Monitoring Officer has considered the draft updated Model Code and notes that it is closely aligned to the current version that the Council already has in place.
- 3.21 The Lawyers in Local Government organisation, which represents Monitoring Officers, has prepared a collective response from Officers. Their initial concerns are around not including seeking statutory officers' advice on matters, the inability to sanction by way of suspension or disqualification and the rights of appeal to an independent body. The LGA also hosted a series of consultation webinars on the draft Model Member Code of Conduct that discussed the draft code. These webinars also explored a range of points, including the distinction between personal and private conduct of members especially in relation to the use of social media, recording unpaid interests on the register, using the term 'civility' as means of representing "the behaviour" the Code is seeking to promote, as well as sanctions and the need for the latter to be changed by legislation.
- 3.22 At present, there is no indication as to when a new updated Model Code of Conduct will be finalised; but the ability to tailor the Code to specific Councils' needs still appears to be an option that will be included.
- 3.23 The Committee will be kept informed as to the consultation outcome.

#### **4.0 Financial Implications**

- 4.1 There are no financial implications arising out of this report.

#### **5.0 Legal Implications**

5.1 The legal implications are contained within the body of this report.

**6.0 Equality Implications**

6.1 There are no equality implications arising out of this report.

**7.0 Consultation with Ward Members and Stakeholders**

7.1 Not applicable.

**8.0 Human Resources/Property Implications (if appropriate)**

8.1 Not applicable.

**Report sign off:**

Director of Legal, HR, Audit & Investigations