

	<p style="text-align: center;">Audit and Standards Advisory Committee 6 February 2024</p>
	<p style="text-align: center;">Report from the Corporate Director of Governance</p>
	<p style="text-align: center;">Lead Cabinet Member N/A</p>
<p>Complaints & Code of Conduct Complaints Procedure</p>	

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Two: Appendix A: Complaints received over the last 12 months. Appendix B: Marked up copy of the Members' Code of Conduct Complaints Procedure (MCCP)
Background Papers:	None
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1.0 Purpose of the Report/ Executive Summary

1.1 This report provides an annual review of the complaints received pursuant to, and a review of the Members' Code of Conduct Complaints procedure.

2.0 Recommendations

2.1 That the Audit and Standards Advisory Committee consider and note the contents of the report and note that no recommendations are being made to the Audit and Standards Committee.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

3.1.1 The maintenance of high standards of member conduct supports the delivery of the borough plan by promoting confidence in the operation and good governance of the council.

3.2 Members' Code of Conduct Complaints Procedure (MCCCP)

Background

3.2.1 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.

3.2.2 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.

3.2.3 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

3.2.4 In terms of background, in the last 12 months, the Monitoring Officer has received complaints and made determinations regarding six councillors allegedly in breach of the Members' Code of Conduct. Of these complaints:

- a) three have been resolved at Initial Assessment Stage;
- b) three have been resolved at Assessment Criteria Stage;

- c) none have been upheld as a breach of the Code;
- d) three have been subject to review request, which have not been upheld; and
- e) none have escalated to hearing/formal investigation stage.

Attached as Appendix A is a summary of the complaints received in the last 12 months.

Overview

3.2.5 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) if the complaint is about a Member of the authority.
- b) If 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 is concluded.

3.2.6 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

3.2.7 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 a 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 a double check on the thoroughness and fairness of the decision-making.

- 3.2.8 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.
- 3.2.9 The Committee will see from Appendix A that the main finding at Initial Assessment Stage in respect of the complaints over the past 12 months is that the Councillor had "*remedied or made reasonable endeavours to remedy the matter and the complaint did not disclose sufficiently serious potential breaches of the Code to merit further consideration*" and no breach of the code, following the assessment stage. The main rationale for this finding has been that insufficient evidence has been submitted to support the allegations made and/or when considering the allegations in context, there was no evidence to suggest the Councillors had behaved in the manner complained off.
- 3.2.10 The Committee should note, the main recurring factor in relation to escalating complaints to the Assessment Criteria Stage have been based on the contents of the complaint there may be a serious issue to consider, with an opportunity for the councillor concerned to comment being necessary to establish if this is indeed the case.
- 3.2.11 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 being committed 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.
- 3.2.12 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

- 3.2.13 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 Member complaints received three complainants have sought a review.

Changes to the MCCCCP

- 3.2.14 Substantive changes to the MCCCCP require formal approval by the Audit and Standards Committee. Whilst no substantive changes are recommended as a result of this review, it is proposed to make three clarification amendments to the MCCCCP. These do not change the procedure to be followed from current practice:
- a) to add an indicative time frame of six months to the Initial Assessment Criteria "*If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue*". In line with the LGA Code and related guidance 6 months is already used as a rule of thumb in considering whether there is a significant period between the alleged behaviour and the complaint.
 - b) to make the applicability of the confidential request provisions clearer, in that if the allegations are such that considering them inevitably will reveal the identify of the complainant, for example they assert a tort or racism directed at an individual, it will not be possible to investigate the complaint further without the Councillor knowing who has made the accusation/complained. In these circumstances it will not be possible to agree a request for confidentiality.
 - c) a minor amendment to reflect the Council's organisational change from Chief Executive's to Governance Department. The proposed amendments appear in red on the MCCCCP attached as Appendix B.

4.0 Financial Considerations

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

5.0 Legal Considerations

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

6.0 Additional Considerations

6.1 There are no

- a) Equality, Diversity & Inclusion (EDI) considerations
- b) Stakeholder and ward member consultation and engagement
- c) Climate Change and Environmental considerations
- d) Human Resources/Property considerations (if appropriate)
- e) Communication considerations

Report sign off:

Debra Norman

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