

	Audit and Standards Advisory Committee 4 February 2025
	Report from Corporate Director, Law & Governance
	Lead Cabinet Member (N/A)
Complaints & Code of Conduct Complaints Procedure	

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:	Three: Appendix A: Complaints received over the last 12 months. Appendix B: Marked up copy of the Members' Code of Conduct Complaints Procedure (MCCP) Appendix 3: Government Consultation - Strengthening the standards and conduct framework for local authorities in England.
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Debra Norman, Corporate Director, Law & Governance 020 8937 1578 debra.norman@brent.gov.uk Biancia Robinson, Senior Constitutional & Governance Lawyer 020 8937 1544 biancia.robinson@brent.gov.uk

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. It also

draws the attention of the committee to the current Government consultation on potential changes to the current Standards regime.

2.0 Recommendations

2.1 That the:

- a) 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.
- b) Audit and Standards Advisory Committee note the government consultation process referred to at paragraphs 3.17 – 19 and consider whether the committee wants to submit a response.

3.0 Detail

Contribution to Borough Plan Priorities & Strategic Context

3.1 The reviewing and 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.

Members' Code of Conduct Complaints Procedure (MCCCP)

Background

- 3.2 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.
- 3.3 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.
- 3.4 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

- 3.5 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) two have been resolved at Initial Assessment Stage;
 - b) three have been resolved at Assessment Criteria Stage;
 - c) one is still currently under investigation;
 - d) two have been upheld as a breach of the Code;
 - e) two have been subject to review requests, which have not been upheld; and
 - f) one has escalated to formal investigation stage (at the request of the Councillor).

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

Overview

- 3.6 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) is the complaint 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.

- 3.7 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

- 3.8 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 is 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.
- 3.9 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.
- 3.10 During consideration of the previous complaints review report last year, the committee asked that future monitoring reports provide an outline of any trends being identified in terms of complaints and outcomes.
- 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 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. The Committee will see from Appendix A that one of the main findings at Initial Assessment Stage in respect of the complaints over the past 12 months is that the Councillor "was not acting in their capacity as councillor. This trend may reflect changing public expectations. Members of the committee will note that one element of the consultation referred to in this report is the possibility of extending the Code to some categories of behaviour by members outside their role as a councillor.
- 3.12 The other main reason for complaints not proceeding beyond initial assessment stage is that the complaint did *not disclose sufficiently serious potential breaches of the Code to merit further consideration*". 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 significant evidence to suggest the Councillors had behaved in the manner complained off. Indeed, in some cases the evidence indicated aggressive or otherwise unreasonable behaviour by the complainant towards the councillor.
- 3.13 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 and that 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.

- 3.14 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 and possible additional sanctions are included in the current Government consultation. 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

- 3.15 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 two complainants have sought a review.

Changes to the MCCCCP

- 3.16 Substantive changes to the MCCCCP require formal approval of the Audit and Standards Committee. Whilst no substantive changes are recommended as a result of this review, it is proposed to make 3 clarification amendments to the MCCC:
- a) to build in an explicit option for informal action (following consultation with the Independent Person) after an investigation, especially where upon investigation the facts lend themselves to an informal resolution. This is in line with the LGA on complaints procedures which provides that "*When dealing with allegations, an authority can decide that some form of action other than investigation or 'informal resolution' is needed at a local level. The authority may also decide that informal resolution may be more*

appropriate than referring a matter to a hearing following completion of an investigation. Where the authority has delegated such a decision to the monitoring officer, we would expect the monitoring officer to seek the views of an Independent Person before taking such a course of action. Where the delegation is held by a committee, we would expect the committee to consult its monitoring officer and an Independent Person before reaching that decision. You may also consider seeking an informal resolution part way through an investigation rather than completing an investigation if it becomes clear the matter could be resolved amicably. Where informal resolution relates to a formal investigation you must seek the views of an Independent Person before halting or pausing the formal investigation”.

- b) to make clearer in the procedure the requirement for completion of the complaints form and the limited exceptional circumstances, where the complainant is unable to complete the form, for the complaint to be submitted in writing other than on the form or may be supported in completing the form.
- c) to change the references from Standards Committee to “Audit and Standards Committee” in line with the terminology actually used by the Council and officers. The proposed amendments appear in red on the MCCP attached as Appendix B.

Government Consultation - Strengthening the standards and conduct framework for local authorities in England

3.17 As mentioned above the Government is currently consulting on potential changes to the Standards regime. The details of the consultation are here <https://www.gov.uk/government/consultations/strengthening-the-standards-and-conduct-framework-for-local-authorities-in-england> and a copy of the consultation questions is contained in Appendix 3. Specific proposals being consulted upon for legislative change include:

- the introduction of a mandatory minimum code of conduct for local authorities in England
- a requirement that all principal authorities convene formal standards committees to make decisions on code of conduct breaches, and publish the outcomes of all formal investigations *
- the introduction of the power for all local authorities (including combined authorities) to suspend councillors or mayors found in serious breach of their code of conduct and, as appropriate, interim suspension for the most serious and complex cases that may involve police investigations.
- a new category of disqualification for gross misconduct and those subject to a sanction of suspension more than once in a 5-year period
- a role for a national body to deal with appeals.

3.18 In addition, the consultation seeks views on how to empower victims affected by councillor misconduct to come forward and what additional support would be appropriate to consider.

3.19 The consultation is open until the end of 26 February and may only be responded to online. Councillors, officers and members of the public are able to respond individual and it would be possible for a response from the committee to be submitted if the committee wishes. Should the committee wish to respond as a body, it may wish to discuss the topics mentioned above and it is proposed that the Corporate Director Law & Governance prepare a response in consultation with the Chair and Vice-Chair of the Committee for discussion at the Committee meeting on 24 February 2025.

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) Equity, 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

Corporate Director Law & Governance