

ADMINISTRATION COMMITTEE

Monday 27 June 2022

Code of Conduct – Annual Review

Report of the Executive Head of Governance (Monitoring Officer)

Recommendations:

It is recommended that the Administration Committee:

- (1) Note the report and make any observations to the Monitoring Officer, and;**
- (2) Note and agree the updates to the Code of Conduct Complaints Procedure.**

Summary

In November 2021 the Council adopted a new Code of Conduct for dealing with standards matters as required by the Localism Act 2011. This included delegating the power to investigate complaints that a Councillor has breached the Code of Conduct to the Monitoring Officer. As part of this delegation, it was agreed that the Monitoring Officer report to the Administration Committee annually on complaints received and actions taken. This report covers the period 1 April 2021 to 31 March 2022.

The Monitoring Officer has also reviewed the process for dealing with Code of Conduct Complaints (Appendix 2) and additions have been made regarding the appointment of Independent Persons. The Administration Committee is asked to approve this revised Policy.

Statutory Powers

Local Government and Housing Act 1989

Local Government Act 2000

Section 28 Localism Act 2011

Strategic Implications

1. This report deals with the arrangements for Councillor Code of Conduct Complaints and their behaviours. Members of the public have a right to expect that all Councillors will behave professionally and appropriately. The role of a Councillor is a vital part of our system of democracy and underpins all that the Council does.

Background

2. All councils are legally required to appoint a Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act 1989. The responsibilities of the Monitoring Officer are prescribed by the 1989 Act and the Local Government Act 2000 and are described in the Council's Constitution and includes responsibility for investigating Code of Conduct Complaints. On 20 May 2021, Council appointed the Executive Head of Governance as the Monitoring Officer following the retirement of the previous Monitoring Officer.
3. The Localism Act 2011 required local authorities to adopt new Codes of Conduct for governing the behaviour of Councillors and new procedures for dealing with complaints that Councillors have breached this Code of Conduct. The [Code of Conduct for Councillors](#) (section 5 of the Constitution) was reviewed and updated during 2021 and approved by Council on 11 November 2021.
4. The Monitoring Officer is required to report annually on the complaints received and the action taken.

Code of Conduct Complaints 2021/22

5. During the period 1 April 2021 to 31 March 2022, 10 formal complaints in respect of Borough Councillors and two formal complaints regarding Parish Councillors were received. All were investigated by the Monitoring Officer in line with the ["Process for dealing with complaint that a Councillor has breached the Code of Conduct"](#). Where necessary the Monitoring Officer sought the views of the Independent Person (see paragraph 9 below for further explanation of this role). After investigation, one complaint was concluded as a breach of the Code of Conduct. The following table provides a summary of the number of complaints received during 2021/22.

Ref	Date	Summary	Outcome
Complaints regarding the Conduct of Borough Councillors			
1	7 April 2021	Complaint about language used by Borough Councillor on social media tweet.	No breach. Statement had been misinterpreted.
2	17 May 2021	Complaint about a Borough Councillors residency and accuracy of Register of Interests.	No breach. Residency requirement only needs to be satisfied at nomination and does not need to be maintained throughout

Ref	Date	Summary	Outcome
			<p>an elected Councillors term of office.</p> <p>Administrative error with regards to the Register of Interests which prompted full internal review of records.</p>
3 & 4	10 and 12 May 2021	2 formal complaints against two Borough Councillors regarding conduct on Social Media post in response to allegations that there had been a misadministration of the postal voting system.	No breach however Councillors advised of complaint and asked to consider their responses carefully before responding on social media to avoid any misinterpretation. In addition, regular Social Media training will be provided to Councillors. Scheduled annually in the training programme.
5	26 April 2021	Complaint against a Borough Councillor about bullying through responses provided to queries.	No breach. Conclusion was complaint was a service complaint and Councillor was repeating the technical, legal and data protection advice of Officers.
6	23 September 2021	<p>Complaint that a Borough Councillor had breached the Code of Conduct:</p> <p>(2.2) Respect other and not bully a person.</p> <p>(2.5) Not conduct yourself in a manner which is likely to bring the Authority into disrepute.</p>	Insufficient evidence to determine if there was a breach. Investigation closed.
7	15 November	Concern that a Borough Councillor may have	No breach of Code of Conduct or

Ref	Date	Summary	Outcome
	2021	breached the Code of Conduct and Safeguarding through sharing a social media post.	Safeguarding. However, as a helpful reminder Guidance on the Use of Social Media for Councillors shared with all Councillors 19 November 2021.
8	14 January 2022	Concern that a Borough Councillor had breached the Code of Conduct through conduct during a meeting and that the decisions taken by a Committee of the Council breached various legislation.	No breach. No evidence to support any allegations of misconduct and a Councillor cannot be liable for the decision of a committee and not a matter that can be investigated as a Breach of the Code of Conduct. Complainant advised decision was lawful and of process to follow to challenge decisions.
9	28 February 2022	Complaint that a Councillor had breached the Code of Conduct during an online briefing through inappropriate and offensive language aimed at a fellow Councillor.	Breach of the Code of Conduct. Letter placed on file. Councillor asked to apologise and reminded of the Council's zero tolerance to the behaviour.
10	12 March 2022	Complaint that a Borough Councillor had breached the Code of Conduct through covert recording of a meeting, disclosing information provided during a confidential briefing and disclosing the contents of an email marked private and confidential.	No breach. Guidance provided for staff and Councillors on the recording of internal meetings and meeting etiquette.
Complaints regarding the Conduct of Parish Councillors			

Ref	Date	Summary	Outcome
1	19 November 2021	Complaint that a Parish Councillor had breached the Code of Conduct through failing to properly investigate a complaint.	No breach. Complainant advised that a complaint regarding a Parish Council not following its Complaints Policy was not a matter that could be investigated as a Breach of the Code of Conduct. Matter referred to the Parish Council.
2	15 February 2022	Complaint of failure in following due process and standing orders and lack of openness, transparency and accountability in accordance with the Nolan Principles for Public Office.	No breach. Complainant advised that a complaint alleging that a Parish Council had not followed due process on a decision that had been taken was not a matter that could be investigated as a breach of the Code of Conduct. Matter referred to the Parish Council.

Code of Conduct Complaints Procedure

6. The Council adopted a Code of Conducts Complaint Procedure in 2012 and is published on the Council's website:

<https://www.eastleigh.gov.uk/media/1970/members-code-of-conduct-complaint.pdf>

7. It should be noted that the Local Government Association (LGA) produced a [Model Councillor Code of Conduct in December 2020](#) that was updated in January and May 2021. Although the Council has not adopted the LGA Model Code, some principles and elements of the Code were included within the revised Code of Conduct which was adopted by Council in November 2021. The LGA also produced [Guidance on Member Code of Conduct Complaints Handling](#) and this guidance has been considered when reviewing the Procedure.

8. The Monitoring Officer, Deputy Monitoring Officers and Independent Persons met on 7 June 2022 to review and reflect on the Code of Conduct complaints made during 2021/22 to:
 - determine if any further action was necessary to address behaviours, for example further training; and
 - to reflect on the LGA guidance and agree, where appropriate, revisions to the Code of Conduct Complaints Procedure.

9. The following changes have been made to the procedure:
 - References to him/his/he updated to them/their/they;
 - References to Member updated to Councillor;
 - New headings
 - New Paragraph 2 (introduction)
 - New paragraph 3
 - New paragraph 4
 - New paragraph 5
 - New paragraph 6
 - Paragraph 7a – within its legal jurisdiction added to the sentence
 - Paragraph 9 – updated a) to k) in line with LGA guidance
 - New Paragraph 11
 - New Paragraph 12
 - Paragraph 13 – New sentence added “There is no right of appeal against a decision not to take any further action”.
 - New paragraphs 14 – 17 regarding Informal Resolution
 - Paragraph 18 – additional sentence – “Councillors are required to cooperate with any Code of Conduct Investigation and respect the impartiality of officers and the Independent Person”.
 - Clarification that only 1 Independent Person will be consulted during an investigation (paragraph 19)
 - Paragraph 19 - New sentence “The subject of the complaint (Councillor) has a right to consult with the Independent Person.
 - New paragraph 20
 - Paragraph 21 – 3 additional bullet points (2nd, 6th, 10th)
 - Inclusion of annex 1 (complaint form) and annex 2 (the Protocol for the Independent Person(s));
 - Reference to the LGA Guidance where appropriate.

Independent Persons

10. The Localism Act 2011 requires the Council to appoint at least one Independent Person to assist, where necessary, the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process.

11. The Council currently has appointed two independent persons.

12. A protocol for the Independent Person has been drafted and included as annex 2 of the Code of Conduct Complaint Process (appendix 1).
13. It is recommended that this Committee endorses and approves the Code of Conduct Complaints Procedure and Independent Persons Protocol.

Councillor Development

14. In 2017, the Independent Review Panel considered that certain training courses, specifically those on development control, finance and standards/codes of conduct/ethical framework, would be mandatory for all Councillors. The Council agreed that training in these areas is important and all Councillors are encouraged to attend. The training and development attended by Councillors during 2022/23 will be monitored by the Democratic Services Manager and periodically reported to the Chair and Vice-Chair of this Committee.

Meeting Attendance

15. Councillors are democratically accountable to members of the public and agree to follow the Code of Conduct to ensure high standards in the way they undertake their duties. There is an expectation by members of the public that their elected representative will participate in scrutiny and decision making arrangements by regularly attending meetings of Council, Committees and Panels. Appendix 2 provides an overview of attendance to meetings during 2021/22.
16. A Councillor ceases to be a Member of the Council if they fail to attend a meeting of the Borough Council, its Committees, Outside Body or Joint Committee to which they are appointed for a period of six consecutive months commencing on the date of last attendance, unless the period of absence is approved by the Council prior to the expiry of that period.
17. In September 2021, the Administrative Committee agreed to a suspension pursuant to Section 85 of the Local Government Act 1972, of the six-month Councillor attendance rule, until the Council Annual General Meeting in May 2022 as a result of illness, social distancing, self-isolation or shielding as a consequence of the Covid-19 epidemic. This dispensation ceased in May 2022. It was agreed that any other attendance dispensations relating to non-covid matters would need to be considered separately by the Administration Committee. The Monitoring Officer can confirm that no other dispensation or reviews of attendance were required during 2021/22 and no Councillor failed to attend a meeting for a period of six consecutive months.

Financial Implications

18. There are no direct financial implications arising from this report.

Equality and Diversity Implications

19. The Equality Act is considered as part of any Code of Conduct review. Although therefore relevant, on this occasion it has not been necessary to conduct an Equality Impact Assessment.

Climate Change and Environmental Implications

20. There are no proposals within this report to assess with regard to climate change and environmental implications.

Conclusion

21. Councillors are invited to note the contents of this report and highlight any observations to the Monitoring Officer and approve the revised procedure for Code of Conduct Complaints.

JOANNE CASSAR
EXECUTIVE HEAD OF GOVERNANCE (MONITORING OFFICER)

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Appendices Attached: two