



Audit Committee
DATE: 28 September 2012

Report of: Service Director: Legal Services

Title: Code of Conduct for Members

Ward: City-wide

RECOMMENDATION:

Following changes to the Terms of Reference to Audit Committee, it is recommended that the committee adopt a procedure for dealing with alleged breaches of the Code of Conduct for Members. A draft procedure is attached for consideration by the Committee.

Summary:

The Localism Act 2011 requires the Council to adopt a Code of Conduct for Members and a procedure for dealing with complaints alleging a breach of that Code.

The significant issues in the report are:

- The development of a complaints procedure/protocol for dealing with alleged breaches of the Code of Conduct for Members (provided at Appendix A)
- The roles of the Monitoring Officer and Audit Committee in dealing with any such complaints (Paragraphs 2 and 3 of Appendix A)
- Sanctions available to the Audit Committee should it be determined that a Member has failed to comply with the Code of Conduct. (Paragraph 4.3 of Appendix A)

Policy

Adopting a procedure to deal with such complaints is a statutory requirement under the Localism Act 2011.

1.Context

1.1 The Localism Act 2011 places a duty on all councils to promote and maintain high standards of conduct for elected and co-opted Members. This includes the requirement for all councils to have a Code of Conduct, which sets out the behaviour expected of all members.

1.2 A new Code of Conduct for Members was adopted by Full Council on 19th June 2012 (Appendix C attached)

1.3 The Act also requires local authorities to adopt arrangements for dealing with complaints that elected and co-opted Members have failed to comply with the Council's Code of Conduct.

1.4 These arrangements must include the provision for the appointment of at least one independent person who:

- must be consulted by the Council before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member
- may be consulted by the Council in respect of a standards complaint at any other stage
- may be consulted by a Member or co-opted Member of the Council against whom a complaint has been made.

1.5 The complaints procedure as attached at Appendix A sets out a proposed procedure for dealing with complaints and details the Audit Committee's role within this. It is envisaged that, if necessary, Members of the Audit Committee will be provided with training to assist them in this role.

2. Proposal

2.1 That the proposed procedure for dealing with complaints alleging breach of the Code of Conduct for Members be adopted.

3. Other Options Considered

3.1 Audit Committee could be asked to consider all complaints rather than the Monitoring Officer

4. Risk Assessment

4.1 The proposed procedure is an attempt to simplify the current procedure for dealing with such complaints and aims to satisfy Party Group Leaders request that any new procedure be 'light touch'.

5. Public Sector Equality Duties

5.1 Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to -
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a

relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –

- tackle prejudice; and
- promote understanding.

6. Equalities Impact Assessment

None undertaken

7. Legal and Resource Implications

Legal Implications

As set out in the report

8. Financial Implications

None

Appendices.

Appendix A Proposed procedure

Appendix B Complaint form

Appendix C Code of Conduct for Members

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers

None

**BRISTOL CITY COUNCIL STANDARDS COMMITTEE
COMPLAINTS PROCEDURE**

1.0 Making a Complaint

- 1.1 If you wish to make a complaint about a councillor or co-optee of Bristol City Council you must complete the [Complaint Form](#) (Appendix A), and provide relevant evidence to substantiate your allegation(s). The form is also available from the Monitoring Officer.

Head of Legal Services
c/o Democratic Services Team
Room 220
Bristol City Council
The Council House
College Green
Bristol, BS1 5TR

2.0 Written Allegations

- 2.1 The Monitoring Officer will receive all complaints. The Monitoring Officer may find that an allegation does not fall to be considered under the [Code of Conduct for Councillors](#) (appendix B) as adopted by Full Council on 19th June 2012. If this is the case, the Monitoring Officer may request further information, or direct the matter through a more appropriate channel.
- 2.2 There are some instances where it is not appropriate to complain through this complaints process eg
- People employed by the Council or Authority or a decision made by an Officer of the Council
 - Incidents that happened before a Member was elected or chosen to serve.
 - The way an Authority conducts or records its meetings.
 - The way an Authority has or has not done something. This might be a matter for the Local Government Ombudsman if the Authority has not dealt with the matter properly and it has not been resolved locally.
 - Complaints about someone who is no longer a Councillor or conduct during their private life, will not be dealt with under this procedure.

If your complaint or comment is regarding one of the options above, please refer to our **Fair Comment** system.

Decisions relating to Planning or Licensing matters where you are unhappy with the decision made should be challenged by way of judicial review.

- 2.3 On receipt of a complaint, a letter of receipt will be sent to the complainant within five working days, with details about how the complaint will be dealt with and in what timescales.

- 2.4 A letter of notification will be sent to the Councillor within five working days, with a copy of the complaint and the name of the complainant, if anonymity has not been requested.
- 2.5 The Councillor will be invited to submit a written statement of fact in reply to the complaint.
- 2.6 The Monitoring Officer may also source further information to help such as (1) copies of acceptance of office and code of conduct forms (2) minutes of meetings (3) copy of register of interests forms (4) info from companies house or land registry (5) other easily obtainable documents in the public sphere. The Monitoring Officer could also contact complainants for clarification of their complaint, or further information.
- 2.7 The Monitoring Officer will consider any request for confidentiality. If confidentiality is refused, the complainant will be given the opportunity to withdraw the complaint before the subject member is informed.
- 2.8 The Monitoring Officer will consider whether, on the basis of the complaint and additional information, there appears to have been a breach of the Code of Conduct.
- 2.9 The Monitoring Officer would in the first instance and where appropriate, seek informal resolution of the case by way of apology or mediation.

3.0 Consideration by the Monitoring Officer

After considering the information provided, the Monitoring Officer may make one of three decisions;

- i) Decide that no action should be taken- with reasons for this decision OR
- ii) Take other action OR
- iii) May refer the matter for investigation

3.1 If the Monitoring Officer decides that no action should be taken then reasons will be stated and the complainant informed. It is likely that no action will be taken where;

- a. there is no prima facie evidence that the Code has been breached;
- b. taking into account the nature of the allegation, using public funds to examine the matter further would be disproportionate;
- c. the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- d. the conduct complained about has already been the subject of investigation or enquiry by another public body;

- e. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and there is nothing further to be gained;
- f. there is not enough information to take the matter further;
- g. the complaint was made anonymously;
- h. the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances;
- i. the member has already apologised for the action that was the subject of the complaint, and that is sufficient to dispose of the complaint;
- j. the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).

3.2 The Monitoring Officer could refer a matter for other action where it would not be in the interests of good governance to conduct an investigation. Other action may be more appropriate where a number of Members have failed to comply with the same paragraph of the Code of Conduct, officers have given incorrect advice leading to the breach or where there has been a breakdown in relationships in the Authority. Examples of other action include training, conciliation and mediation or changes to Council procedures.

3.3 In order to investigate, the Monitoring Officer can make enquiries of people and request them to provide information or explanation. After consultation with the Independent Person, a written report will then be submitted to the Monitoring Officer for consideration. If there is no finding of a breach of the Code of Conduct then that will be an end to the matter. If there is a finding of a breach and the Monitoring Officer is unable to negotiate an informal resolution between the parties then the matter will be referred to the Audit Committee for consideration.

4.0 Referral to Audit committee

4.1 The Audit Committee will decide whether a formal hearing is required and consider whether this should be dealt with by the full committee or delegated to a Sub-Committee. It will decide upon who should attend and the procedure to follow after considering representations from the complainant and the councillor.

4.2 The Committee/Sub-Committee has the power to reach one of three decisions:

1. The person had NOT failed to comply with the Code of Conduct
2. The person HAD failed to comply with the Code of Conduct, but no action needed
3. The person HAD failed to comply with the Code of Conduct, and a sanction should be imposed.

4.3 Possible sanctions that will be available include

- **To Report on findings to Full Council i.e. “naming and shaming”.**
- **To Recommend to a Group Leader that the member concerned be removed from any committee or sub-committee.**
- **To recommend, In relation to any members of the executive that the member concerned be removed from the Executive.**
- **to recommend the Monitoring Officer to arrange appropriate training for the member concerned.**
- **to recommend removal of any member concerned from any outside body appointments.**
- **to require the withdrawal of Council facilities e.g. use of computer or internet.**
- **to exclude a member from the Council’s offices or other premises except for the purpose of attending formal meetings.**

4.4 Where a breach is found, the Decision Notice will be published on the Council's website.

4.5 The Committee reports and minutes shall be available for public inspection for 6 years after the Hearing unless parts of the Hearing were held in private in which case those parts will not be available for public inspection.

4.6 The Monitoring Officer will consider the allegation within an average of 20 working days (30 working days during the purdah period of six weeks before an election).

4.7 The Monitoring Officer will report back to the Audit Committee quarterly regarding complaints (anonymised) and their resolution/ decision.

28th Sept 2012

**COMPLAINT FORM :
CODE OF CONDUCT FOR MEMBERS**

The Monitoring Officer can only deal with complaints about the alleged behaviour and conduct of a member. It will not deal with complaints about any of the Council’s departments or matters not covered by the Council’s Code of Conduct.

There are some instances where it is not appropriate to complain through this complaints process eg

- People employed by the Council or Authority or a decision made by an Officer of the Council
- Incidents that happened before a Member was elected or chosen to serve.
- The way an Authority conducts or records its meetings.
- The way an Authority has or has not done something. This might be a matter for the Local Government Ombudsman if the Authority has not dealt with the matter properly and it has not been resolved locally.
- Failure to disclose a disclosable pecuniary interest is a criminal offence and should be reported to the Police.
- Complaints about someone who is no longer a Councillor or conduct during their private life, will not be dealt with under this procedure.
- Decisions relating to Planning or Licensing matters where you are unhappy with the decision made should be challenged by way of judicial review.

If your complaint or comment is regarding one of the options above, please refer to our [Fair Comment](#) system.

A. Your details

1. Please provide us with your name and contact details.

Title:	□□□□
First name:	□□□□□
Last name:	□□□□□
Address:	□□□□□
Contact telephone:	□□□□□
Email address:	□□□□□
Signature:	
Date of complaint:	□□□□□

A brief summary of your complaint may be shared with the Member(s) you are complaining against. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section C** of this Form and also discuss your reasons or concerns with the Council’s Monitoring Officer.

2. Please tell us which complainant type best describes you:

- A member of the public
- An elected or co-opted Member of the Council
- A Member of Parliament
- A Monitoring Officer
- Other council employee, contractor or agent of the Council
- Other (□□□□□)

3. Equality Monitoring Form - please fill in the attached form.

B. Making your complaint

4. Please provide us with the name of the member(s) you believe have breached the City Council's Code of Conduct:

Title	First name	Last name
□□□□ □□	□□□□□□	□□□□□□
□□□□ □□	□□□□□□	□□□□□□

5. Please explain in this section (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done, with dates / witnesses to substantiate the alleged breach.

It is also important that you provide all the evidence you wish to have taken into account to decide whether to take any action on your complaint or not. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did.
- **You should quote which paragraphs of the Code of Conduct the Councillor has allegedly breached.**
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- If the allegation(s) being made occurred over 28 days since the alleged behaviour or conduct, clearly explain why the complaint was not made during that period of time.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

□□□□□

(Continue on separate sheet(s), as necessary)

C. Confidentiality of complainant and the complaint details

Only complete this next section if you are requesting that your identity is kept confidential

6. In the interests of fairness and in compliance with the rules of natural justice, members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him / her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:-
- you believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or
 - may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender / contract that you may have or are about to submit to the Council.

Please note that requests for confidentiality or requests for suppression of the personal and complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint and contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

However, it is important to understand that - in exceptional circumstances, where the matter complained about is very serious - we may proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to. Please note that

confidentiality requirements under section 63 of the Local Government Act 2000 are applied to information gathered by the Monitoring Officers in the course of the investigation.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

□□□□□

D. Remedy sought

7. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

Available Sanctions;

- To Report on findings to Full Council i.e. “naming and shaming”.
- To Recommend to a Group Leader that the member concerned be removed from any committee or sub-committee.
- To recommend, In relation to any members of the executive that the member concerned be removed from the Executive.
- to recommend the Monitoring Officer to arrange appropriate training for the member concerned.
- to recommend removal of any member concerned from any outside body appointments.
- to require the withdrawal of Council facilities e.g. use of computer or internet.
- to exclude a member from the Council’s offices or other premises except for the purpose of attending formal meetings.

(Continue on separate sheet(s), as necessary)

E. Additional information

8. If your complaint is considered frivolous, vexatious or politically motivated then it is likely to be rejected. The corporate ‘guide to dealing with persistent complainants’ will be applied.

9. In line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
11. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

F. Process from here

12. Once a valid complaint relating to an alleged breach of the Code of Conduct for Members has been received by the Monitoring Officer, it will be considered in line with the procedure for complaints. The Monitoring Officer will decide either;
 - i) that no action should be taken- with reasons for this decision.
 - ii) It may refer the matter for investigation or other action
13. You will be notified after the meeting and given information on any further stage(s) in the process at that time.

Head of Legal Services (Monitoring Officer)

Bristol City Council
Council House
College Green
Bristol BS1 5TR

Equalities Monitoring

Model Categories

Bristol City Council works towards eliminating discrimination and promoting equal opportunities. Collecting the following information can help us to achieve this. Data collected will be used to help us to plan and deliver services more effectively to individual tenants and service users. It will also be used to report on the needs of different groups of people. Information provided will be treated confidentially and in accordance with the Data Protection Act 1998.

1. How would you describe your ethnic origin? (Please tick)

White

- British
- Irish
- Eastern European
- Western European
- Any other White background (please describe) _____

Dual Heritage/ Mixed Race

- White and Black Caribbean
- White and Black African
- White and Asian
- White and Chinese
- Any other Dual Heritage/Mixed background (please describe) _____

Black or Black British

- Caribbean
- African (non-Somali) (please describe) _____
- Somali
- Any other Black background (please describe) _____

South Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Asian African
- Any other Asian background (please describe) _____

Chinese or Chinese British

- Chinese

Other ethnic groups

- South East Asian (please describe) _____
- Irish Traveller
- Roma Gypsy/Traveller (please describe) _____
- Any other background (please describe) _____

- Prefer not to say

2. Are you:

- Female Male Transgender
- Prefer not to say

3. What is your age group?

- 15 or under 16 – 24 25 – 59 60 or over
 Prefer not to say

4. Do you consider yourself to be a disabled person? The Disability Discrimination Act 1995 defines disability as “a physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities.” this includes people with physical impairments, visual impairment, hearing impairments, Deaf BSL users, people with learning difficulties including people with specific learning difficulties like dyslexia, people with mental health needs and people living with a health condition e.g hiv, multiple sclerosis, cancer

- Yes No
 Prefer not to say

4b It helps us to know whether we are reaching all disabled people, please can you tick the relevant impairment (disability) group below and you are welcome to tick more than one box if appropriate.

- physical impairment, visual impairment, hearing impairment, Deaf BSL user, learning difficulties specific learning difficulties like dyslexia, mental and emotional distress A health condition e.g hiv, multiple sclerosis, cancer
 Prefer not to say

5. Please say how you would you usually describe your sexuality?

- Lesbian Gay
 Bisexual Heterosexual
 Prefer not to say

6. What is your religion? (Each category includes all denominations and sects)

- Buddhist
 Christian
 Hindu
 Jewish
 Muslim
 Sikh
 Any other religion (Please describe) _____
 No religion
 Prefer not to say

Not equal opps monitoring but may be of interest for access needs

7. What is your preferred format/type of communication,

- Community Language – please state language and dialect if appropriate
-
- Standard written
 Large print
 Audio tape
 Braille
 Visual (e.g. DVD)

- BSL video/DVD
- Video phone
- Easy English
- Compact disk (CD)
- Computer disk
- Text phone (eg Type Talk)
- Text messaging
- Other

(Please describe) _____

8. I do not wish to provide any of the information requested on this form

Code of Conduct

As a member or co-opted member of Bristol City Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

EQUALITY: Holders of public office should carry out their duties in a way that seeks to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between all individuals.

The Act further provides for registration and disclosure of interests and in Bristol City Council this will be done as follows:

As a Member of Bristol City Council, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the authority's area or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.