

BRISTOL CITY COUNCIL

Audit Committee

19th April 2013

Report of: Service Director, Legal and Democratic Services

Title: Update on Code of Conduct matters

Ward: All

RECOMMENDATION

- 1 Audit Committee to consider adopting a procedure for hearings into whether or not a Member has breached the Code of Conduct and
- 2 To note the complaints received to date.

Summary

The Localism Act 2011 removed the requirement for the Council to have a Standards Committee. Full Council therefore delegated investigations of alleged breaches of the Code of Conduct to the Monitoring Officer and, where necessary, hearings to be held by Audit Committee.

The significant issues in the report are:

As set out in the report.

Policy

Not applicable

Consultation

None

Context

1 The current procedure for dealing with alleged breaches of the Code of Conduct is attached at Appendix 1.

2 This states that, after consideration of information provided in response to an alleged breach of the Code of Conduct, 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) Refer the matter for investigation

3 If there is no finding of a breach of the Code of Conduct then that is 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 is referred to Audit Committee for consideration.

4 The current process states

“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”.

5 To aid transparency, the Committee is asked to consider adoption of the procedure followed previously by the Standards Committee when conducting hearings (attached at Appendix 2) instead of dealing with each case as it arises.

6 A table of complaints dealt with since the last meeting of the Committee is attached at Appendix 3 and will be provided as an item for information to future meetings.

Other Options Considered

That a hearing procedure be agreed every time a hearing is required.

Public Sector Equality Duties

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:

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.

Legal and Resource Implications

As described above.

Appendices:

Appendix 1 - Code of Conduct

Appendix 2 - Standards Sub Committee (hearing) Procedure

Appendix 3 - Complaints Received – Code of Conduct

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None

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
City Hall
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.

Agreed at Audit Committee 28th Sept 2012

STANDARDS SUB COMMITTEE (HEARING) PROCEDURE**1. Purpose of hearing**

To consider the report of the Monitoring Officer concerning the complaint made about the conduct of Councillor X.

2. Material to be provided to the hearing

The Monitoring Officer will provide a report which will include:-

1. Relevant extracts from the Code of Conduct for Members.
2. The factual material and conclusions of the person undertaking the investigation (which may be the Monitoring Officer or someone authorised by him).
3. Any material and information provided by Councillor X.

3. Procedure

a) In attendance:-

Sub-committee Members, Democratic Services Officer, Sub-committee Adviser, Monitoring Officer and/or his representative, any other witnesses, Councillor X, his or her representative (if any) and his or her witness(es), the Complainant (if present).

1. The Chair introduces the Sub-committee, its advisers, checks quorum. Any declarations of interest? Proceed in absence of Councillor?
2. Chair indicates what material the Sub-committee has before it.
3. Chair explains the procedure to be followed:-
 - (i) Exclude press/public?
 - (ii) The Monitoring Officer/representative introduces his report and explains the conclusions he has reached. The presenter of the report may call witnesses to give evidence although it is hoped in the majority of cases this will not be necessary.
 - (iii) The Sub-committee to ask Councillor X if he/she requires clarification of any points in the report. If so, and the Sub-committee feels this is relevant, the Subcommittee to seek such clarification.
 - (iv) The Sub-committee will seek clarification of any points to help it form a view on whether the complaint has been properly investigated and whether it has sufficient information to enable it to make a properly informed judgement.

- (v) If present, the complainant says what he/she wishes to say.
- (vi) The Sub-committee may allow questions to be asked of the Complainant through the Chair.
- (vii) Councillor X says what he/she wishes to say. Are there any new issues?
- (viii) The Sub-committee then questions Councillor X.
- (ix) Councillor X calls any witnesses who have information to give relevant to the issue before the Sub-committee.
- (x) Sub-committee then ask questions of those witnesses.
- (xi) The Chair asks the Monitoring Officer for any final comments.
- (xii) Final comments are made by Councillor X. (no new material)
- (xiii) Sub-committee retires to consider decision.
- (xiv) Wherever possible legal advice will be given publicly but the Sub-committee reserves the right to seek it privately in exceptional circumstances.
- (xv) Decision with brief reasons announced.
- (xvi) Minutes of meeting are prepared and published in accordance with the usual Sub-committee requirements.

Notes:

- (1) The Committee, subject to the above, will regulate its own procedure having regard to the principles of natural justice and the law.
- (2) Issues such as relevance of material before the Committee, objections and so on will be determined by the Chair.
- (3) The Committee will consider carefully the position covering public/private business in accordance with the requirements of the Local Government Act 1972 (as amended), The Freedom of Information Act and relevant regulations.

COMPLAINTS RECEIVED – CODE OF CONDUCT

Case	Date Received	Complaint Summary	Paragraphs allegedly breached	Independent Person consulted?	Accepted under the CoC procedure?	Conclusion	Date Closed
Councillor A	28 th January	Complaint about the behaviour of Councillor A during a telephone conversation	Treat with respect, Integrity and Equality	Yes -	Yes	No Action - Subjective nature of how the telephone call was perceived. That no action be taken in accordance with para.3 of the procedure. Taking account of the nature of the allegation and the subjective nature of how the conversation was perceived, using public funds to examine the matter further would be disproportionate.	Letters sent 27 th February
Councillor B	4 complaints received between 5 th and 19 th February	Complaint regarding the chairmanship and procedure of a meeting	Openness, Accountability, Equality, Leadership Objectivity	Yes	No	No Action - Complaints about the way an authority conducts or records its meetings are not dealt with under the Code of Conduct. A MO review of the meeting was conducted and sent to complainants for information.	Letters sent 4 th March and 12 th March. Emails received in response.
Councillor C	4 complaints received between 5 th and 19 th February	Allegation that a Councillor had a DPI at a planning meeting	DPI	Yes	No	No Action - Councillor C did not have a disclosable pecuniary interest as defined by the Localism Act 2011. He also confirmed at the beginning of the meeting that he would approach the issue with an open mind.	Letters sent 4 th March.
Councillors D	26 th February	That Councillor D left answerphone on complainant instead of Councillor E's	Treat with respect	Yes	Yes	No Action – phone number was private number and web/poster is correct so user error.	Email/ Letter sent 29 th March

		answerphone, without adequate apology.				Apology deemed adequate. No Action be taken in accordance with para.3 of the procedure, Taking account of the nature of the allegation, using public funds to examine the matter further would be disproportionate.	
Councillor E	26 th February	Phone number of Councillor E too similar to complainants. Councillor E didn't respond to an email	Treat with respect	Yes	Yes	No Action No requirement/service standard for response to correspondence by Councillors. Misdial was user error, Councilor E phone number was not provided by the council and Cllr E did not wish to change phone numbers.	Email/ Letter sent 29 th March