

Public Forum

Value & Ethics Sub- Committee

9 October 2023 at 12pm



1. Members of the V&E Sub Committee

Questions & Responses from 25 September Sub-Committee		
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1 Joanna Booth

I note that in the Cabinet response to the Bundred review, members were reminded of the following:

The Council has a duty under the Local Government Act 1999 to put in place proper arrangements for:

- *the continuous improvement of the authority's functions*
- *the governance of the authority's affairs, which includes arrangements for the management of risk.* <https://democracy.bristol.gov.uk/documents/s13847/12%20Response%20to%20the%20Bundred%20Review%20-%20Cabinet%20Report%20Exec%20Summary%20160517%20v2.pdf>

All my questions are intended to better understand the risks the council is putting the public's money and services in by not adhering to rules and laws about member conduct. We have seen in Birmingham the effect of not adhering to what is legally required.

1. What procedures does the council have in place to manage conflicts of interest when the monitoring officer is involved in the decision being complained about?

Paragraph 1.4 of the new procedure for dealing with complaints states that where there is a potential conflict of interest, following consultation with an Independent Person, the Monitoring officer may arrange for a complaint to be dealt with by an alternative Monitoring Officer

2. How can the public ensure the complaints procedure is complied with when all the factors of cases, including the members involved, are kept confidential?

Confidentiality in the complaints process is essential to ensure fairness to the complainant and the councillor that is the subject of the complaint.

3. How does the legal team and the monitoring officer ensure that the complaints procedure is adhered to by the members and officers who have been found to have breached their code of conduct?

All members receiving training on the Code of Conduct which is delivered by the Monitoring Officer. All members are able to seek confidential advice from the Monitoring Officer about any matter relating to the Code of Conduct. A decision notice will set out any action that a member needs to take following a complaint and this will be followed up as appropriate by the Monitoring Officer.

4. How many complainants have been told to keep the outcome of their complaint confidential over the last 12 months?

All complaints are treated confidentially by the Monitoring Officer to ensure fairness to the complainant and the councillor that is the subject of the complaint and there is an expectation that complainants will respect the confidentiality of the process.

5. At July's audit meeting, there was reporting of a revised Conflicts of Interest Policy and Gifts and Hospitality Policy; How does that affect the current members who have not updated their register of interests for years and have in that time become directors of companies or even accepted money from the council for their companies?

All members are aware of the requirement to register gifts and hospitality received and details are published on the Council's website.

Members who are appointed to the Council's companies do not receive any remuneration for those duties.

6. In December 2022, I was told by the head of legal services that there was a private register for members' interests. This would go against the legislation that requires the website be maintained by the monitoring officer and for it to be public. Can you let me know whether there is still a private register for members interests and how many members have separate items disclosed publicly and privately?

Under the Localism Act 2011, members can declare a 'sensitive interest' to the Monitoring Officer. This will be shown on the publicly available register of interest as a 'sensitive interest' and usually refers to the member's own private residence. The register of declarations of sensitive interests is maintained by the Monitoring Officer.

7. Does the new policy address the legal requirement for the monitoring officer to maintain a public register of interest on a public website?

The Council already meets the legal requirement to publish registers of interests and will continue to do so.

2 Suzanne Audrey

In relation to the draft procedure for complaints about breaches of the code of conduct, this seems almost entirely dependent on the opinion of the Monitoring Officer who almost always concludes that no further action should be taken.

1. Who is the 'independent person' invited to give their views prior to the initial assessment being finalised? In the interests of transparency, this person or at least their post should be identified.

The Council has appointed 3 Independent Persons from outside the Council to assist the Monitoring Officer in considering complaints. This is statutory requirement under S28 of the Localism Act 2011.

The function of the role is to provide an independent view on a complaint against a Councillor before the Council takes a decision on allegations made and whether it ought to be investigated and also to provide a view if the matter goes to investigation. The Independent Person may also be consulted by a Councillor who is subject to an allegation. The Independent Person must not, in the past 5 years prior to the appointment, have been an elected member, co-opted member or officer of the Council. They must not be related to or have a close friendship or relationship with a councillor or employee of the Council or be a member of a political party.

2. The table shows the response to the majority of complaints is 'no further action taken' but we have no idea why. Should there not be a column indicating why no further action was taken?

The purpose of the report is to provide a summary of complaints only. It would not be appropriate to disclose any further details, to ensure fairness to the complainant and the councillor that is the subject of the complaint.

3. I am aware that where one informal resolution recommended the member apologise to a member of the public, no apology has ever been given. As well as a column explaining the decision, should there be a column indicating if the proposed resolution was completed e.g. training undertaken, apology given.

The purpose of the report is to provide a summary of complaints only. It would not be appropriate to disclose any further details, to ensure fairness to the complainant and the councillor that is the subject of the complaint.

3 Lesley Powell

Question:

With only a table summary of complaints and brief description of 'resolutions' available to us members of the public, it is difficult to understand how this committee determines whether complaints are being robustly investigated by the Monitoring Office, such that they are given the appropriate scrutiny to determine whether the complaint is valid, whether there are repetitive behaviours and that the penalty for those found to be in breach is a suitable deterrent?

The Monitoring Officer will make an initial assessment of a complaint in consultation with an Independent Person, to ensure that a complaint is considered robustly.

4 Jen Smith

Q1. How do those making a complaint know an independent person has been consulted? We receive no evidence of this whatsoever.

The decision notice will confirm to the complainant and the councillor that is the subject of the complaint that an Independent Person has been consulted.

Q2. How can members of the public know this person is genuinely independent? We are given no information on who has been consulted not what makes them independent

It is a legal requirement that the Independent Person must not, in the past 5 years prior to the appointment, have been an elected member, co-opted member or officer of the Council. They must not be related to or have a close friendship or relationship with a councillor or employee of the Council or be a member of a political party.

5 Dan Ackroyd

Question 1

I think it would aid the work of this committee if the amount of time taken to process complaints was listed in the 'Summary of Complaints' presented to this committee.

The current complaints process says: "The Monitoring Officer will consider the allegation within an average of 20 working days" My understanding is that the complaint that has a date of decision of 16/12/22 was made on 18th July 2022, which I believe is 108 working days.

I know that a complaint that was received on the 28th July 2023 had decision made on the 18th September 2023, which I believe is 37 working days.

I do not have faith that complaints are being dealt with in a timely fashion, and I do not think this committee has adequate information to be able to judge whether they are.

Obviously, some complaints would take longer than one might hope. It could be useful to this committee to know why some complaints were not considered in a timely manner, for example due to complicated nature of allegations or people being on holiday or otherwise slow to respond, so as to be able to determine if slow decisions are justified or not.

Does this committee agree that the process could be improved by adding those pieces of information to the 'Summary of Complaints' report?

Ideally, the time taken to make an initial assessment of a complaint will be 20 working days. However, it is often the case that complaints can take longer to process for a number of reasons, for example, response times from complainants and councillors that are the subject of the complaint, the amount of information that needs to be reviewed and the officer time required to deal with a complaint fairly and robustly.

Question 2

In the document "Appendix 2 Draft Procedure for Member Complaints" it is written: "The Council has a clear and straightforward public interest test"

Where is that documented please?

The Public Interest Test is a general principle that is considered by public bodies when making decisions and includes the seriousness of the matters complained about, the amount of resources required to deal with a complaint and the type of remedy available. It is not possible to prescribe in the procedure the public interest test as it will vary on a case by case basis.

Question 3

Is it acceptable for the monitoring officer to attempt to bind complainants into confidentiality in the decisions taken?

The principle of confidentiality is to ensure fairness to complainants and councillors who are the subject of complaints.

Question 5

How should the people of Bristol have confidence that the 'independent person(s)' will act in the interests of the people of Bristol, and not favour avoiding scandals?

I realise that it would not be reasonable to publish their names, but at the same time, what is to prevent the monitoring officer from choosing someone who wouldn't be able to provide an independent point of view? More fundamentally, how do we even know they exist or are consulted during complaints?

The Council has appointed 3 Independent Persons from outside the Council to assist the Monitoring Officer in considering complaints. It is statutory requirement under S28 of the Localism Act 2011 to appoint at least 1 Independent person.

The function of the role is to provide a view on a complaint against a Councillor before the Council takes a decision on allegations made and whether it ought to be investigated and also to provide a view if the matter goes to investigation. The Independent Person may also be consulted by a Councillor who is subject to an allegation.

The Independent Person must not, in the past 5 years prior to the appointment, have been an elected member, co-opted member or officer of the Council. They must not be related to or have a close friendship or relationship with a councillor or employee of the Council or be a member of a political party.

The decision notice will confirm to the complainant and the councillor that is the subject of the complaint that an Independent Person has been consulted and their view.

Question 6

In some cases, the monitoring officer might recommend that a councillor provides a personal apology. But there appears to be no guarantee that the councillor would actually make that apology, or that the apology wouldn't be a 'non-apology'.

For those that don't know the term, consider the difference between "I apologise for the offence I caused you" vs "I apologise for any offence taken" or see

https://urldefense.com/v3/_https://en.wikipedia.org/wiki/Non-apology_apology_;!KUxdu5-bBfnh!

4aK913XVT8rLIF6xz49993bcQdb1j8Z6slmZrRcSVkHQqGKyakTreCTyFMRuwWLyVhqfA2AeQaRAU9O5srmW8Od2x9rzJe2\$

Is it an acceptable situation that the resolution of a complaint can be optional, and could be done in a way that avoids giving a meaningful apology?

All members have an obligation to adhere to the Member Code of Conduct and to cooperate with any investigation, including any sanctions imposed.

6 Mike Oldreive

Agenda item 6- Summary of Complaints Against Councillors

1. Is the MO confident that his team is working efficiently and effectively on the complaints process and that proper arrangements are in place for managing & recording member complaints?

The Monitoring Officer is satisfied that there is sufficient resources available to manage member complaints effectively.

2. Does the MO believe that the report by HOLS is of an acceptable standard and level of detail to provide members with all the information they need for effective scrutiny of the member complaints process?

[The report misses out key information needed for robust performance management of the Member complaint process and for scrutiny (eg time taken to resolve complaints). I would expect this information to be reviewed by the MO on a regular basis to improve the complaints procedure.]

The report of the Head of Legal Services is a summary of complaints only and is in a similar format to previous reports to the V&E Sub-committee.

3. Why does the HOLS report not disclose whether performance targets set by the Council have been met? Council policy is that a response should be given in 20 working days.

Ideally, the time taken to make an initial assessment of a complaint will be 20 working days. However, it is often the case that complaints can take longer to process for a number of reasons, for example, response times from complainants and councillors that are the subject of the complaint, the amount of information that needs to be reviewed and the officer time required to deal with a complaint fairly and robustly.

4. What was the response time for each of the cases in the HOLS report & what were the reasons for any delays above the agreed deadline (20 working days)?

It would not be appropriate to disclose details of the specific reasons for a delay in dealing with any particular complaint as the complaints process is confidential between the complainant and the councillor that is the subject of the complaint.

5. Can the HOLS confirm that every complaint about a councillor received has been included in her report? [I am concerned about the quality of record keeping by the MO and his team, as I can't identify my complaint from the dates/refs given]

The report contains a summary of all complaints made about councillors for the period covered by the report.

6. Complaints Rejected- does this mean they were not a valid complaint? (i.e., failed the first stage of initial assessment)? What were the reasons?

A complaint may be rejected for a number of reasons, as set out in the procedure for assessment of complaints, for example where a complaint is vexatious and politically motivated.

7. Can you provide more detail on the cases identified as "No further action"? What were the specific reasons identified, as per the Complaints policy?

The purpose of the report is to provide a summary of complaints only. It would not be appropriate to disclose any further details, to ensure fairness to the complainant and the councillor that is the subject of the complaint.

8. What procedures are in place to ensure that actions agreed as part of "informal resolution" take place? How are they followed up by the MO and what happens if the member involved does not comply? [the policy does not explain this]

A decision notice will set out any action that a member needs to take following a complaint and this will be followed up as appropriate by the Monitoring Officer.

9. Can the MO confirm that Members have complied with and fulfilled all the actions agreed for the informal resolutions noted in his report? If not, what action has been taken by the MO?

A decision notice will set out any action that a member needs to take following a complaint and this will be followed up as appropriate by the Monitoring Officer.

10. Can the MO provide a clear statement that he is confident that no conflict of interest existed for any of the cases presented in the HOLS report and that this has been documented on each case before any complaints work has taken place?

There was no conflict of interest in respect of any of the complaints referred to in this report.

11. Para 7 "no complaints have been upheld during this time". How does this wording fit with the Council's policy and LGA guidance? Does the HOLS mean that "no complaints have been investigated..."?

To clarify, no complaints have been referred for investigation.

Revised Complaints Procedure

12. Why have the Monitoring Officer (MO)/Head of Legal Service (HOLS) not mentioned that the review of the Member complaints Procedure is required as part of the Agreed Actions from an LGO investigation (dated 23.06.23)?

The procedure has been more widely reviewed and updated and the LGO recommendation has been included as part of this process.

13. Were members of V&E aware of this? Why is the MO withholding key information, including poor performance, from Members?

The LGO decision is publicly available.

14. Why has the LGO complaint & findings (and any others) not been reported to V&E along with the other information on member complaints in the HOLS report?

A summary of LGO decisions is made available to the Council on an annual basis and this is reported to the Audit Committee and Full Council. It is not within the Terms of Reference of the V&E Sub-committee.

Independent Person(s)

15. Is the identity of the IP kept confidential? How does this square with transparency?

To ensure the integrity of the complaints procedures, the identify of the Independent Persons is kept confidential.

16. Other Council's publish the criteria for appointment of the IPs, their names and CVS. Will BCC commit to this?

The Council has appointed 3 Independent Persons from outside the Council to assist the Monitoring Officer in considering complaints. This is statutory requirement under S28 of the Localism Act 2011 to appoint at least 1 independent person.

The primary function of the role is to provide a view on a complaint against a Councillor before the Council takes a decision on allegations made and whether it ought to be investigated and also to provide a view if the matter goes to investigation. The Independent Person may also be consulted by a Councillor who is subject to an allegation. The Independent Person must not, in the past 5 years prior to the appointment, have been an elected member, co-opted member or officer of the Council. They must not be related to or have a close friendship or relationship with a councillor or employee of the Council or be a member of a political party.

17. How is V&E committee involved in appointment of IPs? Is this purely the decision of the MO?

The appointment of the Independent Persons is carried out by the Monitoring Officer and the Head of Legal Services.

18. Can the MO confirm that he has fully met the statutory responsibility to appoint an IP during the period of the HOLS' report? During the period July- November 2022 how many Independent Persons were in place, and who were they? (Please provide the length of tenure of each, if they were not available for the whole period.)

An Independent Person has been available to advise on all complaints. To ensure the integrity of the complaints procedures, the identify of the Independent Persons is kept confidential.

19. The policy is not clear about the use of an IP: "The Council has appointed 3 Independent Persons from outside the Council to assist the Monitoring Officer in considering complaints. This is statutory requirement under S28 of the Localism Act 2011."

Is it a statutory requirement to appoint 3 IPs?

The legal requirement is to appoint at least 1 Independent Person.

"3.2 The Independent Person must be consulted at various stages in the complaints process: The Independent Person should be consulted on an allegation and should be given the option to review and comment on 1. allegations which the Monitoring Officer is minded to dismiss as being malicious, without merit, vexatious or trivial. 2. whether to undertake a formal investigation."

20. Can the MO confirm that BCC is adopting a policy of the IP being involved at all stages of each complaint? (This is not a requirement under statute/LGA guidance).

The Independent Person will be involved at all stages of a complaint.

Conflicts of interest

21. Is there a clear pro-forma process for sign off on conflicts of interest on the part of the Monitoring Officer and other BCC Legal team members involved in Member complaints process- before proceeding with any complaint is there a clear statement from the MO that potential conflicts of interest (and their perception by outside parties) have been considered, and is this signed off by the MO?

Can the MO provide a copy of this document, if it exists?

[it would be standard practice in other professional settings for conflicts of interest to be considered, and the process fully documented, before any significant work is carried out].

Conflicts of interests will be considered by the Monitoring Officer on a case-by-case basis and an alternative Monitoring Officer will be appointed if necessary.

Politically motivated complaints

22. Is there a clear definition of "politically motivated" complaints, particularly as relates to members of the public?

[There is no definition in the policy and no information on the Council's website. [LGA guidance on Member Complaints handling states: "The assessment criteria that the authority adopts should be made publicly available on its website."]]

It is a matter for the judgment of the Monitoring Officer in consultation with an Independent Person, to determine whether a complaint is politically motivated, which will depend on the specific circumstances of an individual complaint.

Public Interest Test

23. The BCC revised policy refers to a public interest test. Is there a "public interest" test and where is this documented?

[It is not on the Council's website. It is LGA best practice to provide this.]

The Public Interest Test is a general principle that is considered by public bodies when making decisions and includes the seriousness of the matters complained about, the

amount of resources required to deal with a complaint and the type of remedy available. It is not possible to prescribe in the procedure the public interest test as it will vary on a case by case basis.

24. "The Monitoring Officer may refer a matter for other action where it would not be in the interests of good governance to conduct an investigation. Examples of other action include training, conciliation and mediation or changes to council procedure "

Can the policy be revised to explain good governance and provide examples where it would not be in the interests of good governance to carry out an investigation? [As it stands the policy appears to presume in favour of informal resolution, which is not in the spirit of the LGA guidance?]

Good governance is a well-understood term and it is not necessary to prescribe what this is in the procedure. There is no presumption in the procedure of informal resolution as the preferred option.

25. Para 4.4 refers to "other action". Does this mean informal resolution? Can this be amended?

It is not necessary to change this definition.

Confidentiality

26. Para 4 states" All complaints will be treated as confidential to enable a fair process to be followed. The parties to the complaint must not publicise the fact or content or the complaint or the outcome without the agreement of the Monitoring Officer"

If everything that is the subject of the complaint is documented and in the public domain on social media (eg Twitter) then is it reasonable for a Councillor to expect confidentiality, in terms of the complainant solely publicising that a complaint has been made?

The principle of confidentiality is to ensure fairness to complainants and Councillors who are the subject of complaints.

27. Not allowing a member of the public to publicise the outcome of a complaint is essentially imposing a Confidentiality Agreement (NDA) on members of the public. Does the Council have legal powers to do this?

How is this appropriate ethically? How does it help good governance? How does it meet the Nolan principles?

The principle of confidentiality is to ensure fairness to complainants and Councillors who are the subject of complaints.

Agenda item 7 -Member Code of Conduct LGA Guidance

28. Why has the MO not complied with LGA best practice guidance for almost 3 years?

Is this an acceptable standard for a major local authority in the UK, that claims to be setting global policy?

[LGA guidance and best practice points were issued in Dec 2020) [This recommends: "Review of code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities"? (member complaints procedures have not been reviewed since 2012)]

The LGA Model Code of conduct and the findings from the Committee on Standards in Public Life were not available the last time that the Code of Conduct was reviewed in 2019.

BCC External social media Policy

29. Why is the Council's social media policy not linked to the Member Code of Conduct, given that several complaints relate to social media?

The social media policy is not a matter for the V&E Sub-committee.

30. Will the Council update its Social Media Guidance to Members to fully reflect the comprehensive LGA guidance?

[This is currently a 1-page document that focuses solely on the behaviours expected from the public and not those expected by Councillors or staff.]

The social media policy is not a matter for the V&E Sub-committee.

7 Sian Ellis-Thomas

Question for Public Forum at Values & Ethic Committee Meeting – Mon 25th September

Question:

Does the committee agree that the current complaints process and reporting does not appear to be working sufficiently in terms of its service to the public and that more needs to be done to improve reporting and transparency to give residents and community groups more faith in a robust and fair complaints process and to properly deter offenders?

Response

The Council's process for considering complaints against councillors strikes the right balance between the principle of confidentiality and fairness to complainants and councillors who are the subject of complaints.