

Members Code of Conduct and Standards Update

Corporate Priority:	All
Relevant Ward Member(s):	All
Date of consultation with Ward Member(s):	N/A
Exempt Information:	No

1 Summary

- 1.1 To update members on issues relevant to the Members' Code of Conduct and Member standards.

2 Recommendation(s)

That Committee:

- 2.1 **Note and endorse the new Code of Conduct Complaints form and updated process arrangements which will be effective immediately.**
- 2.2 **Delegate authority to the Monitoring Officer to keep the process under constant review and make any necessary changes.**
- 2.3 **Note the information presented in relation to Code of Conduct Complaints for 2021-2022.**

3 Reason for Recommendations

- 3.1 It is important to ensure that high standards of probity and ethical framework are at the heart of corporate governance of the authority and to ensure transparency and accountability.

4 Background

4.1 Members Code of Conduct

- 4.1.1 Section 27 of the Localism Act 2011 requires that relevant authorities have a statutory duty to promote and maintain high standards of conduct by Members and co-opted Members of the authority
- 4.1.2 Authorities are required to adopt a Code dealing with the conduct that is expected of Members when they are acting in that capacity.
- 4.1.3 Section 28 of the Localism Act 2011 requires that Councils in England have in place arrangements under which allegations can be investigated and on which decisions on allegations can be made.
- 4.1.4 At its meeting on 16 December 2021, Council adopted a new locally amended Code of Conduct which resulted in a review of the associated documents.

5 Main Considerations

5.1 Code of Conduct Review

- 5.1.1 Following Council adoption of the new code on 16 December 2021, a complete review of the Council's operational arrangements was commenced by the Monitoring Officer to establish whether the procedures which would sit behind the Code were still fit for purpose, effective and in line with the new LGA guidance.
- 5.1.2 Feedback from members has confirmed that the arrangements should be clear for both Members and the public in terms of what the steps are when an allegation is received against a Member or co-opted Member that they failed to comply with the Council's Code of Conduct.

The guidance has been produced in line with the LGA guidance and the review has produced:

- a) a more user-friendly complaint form. The form is designed to assist those who wish to make a complaint and to assist the Monitoring Officer to identify the content of the complaint and respond accordingly. Support and guidance will be provided to anyone who requires assistance in completing the form or making a complaint. This form has

been trialled with members of the public and the feedback has been positive –
Appendix 1

- b) a more user-friendly guide to assist those Councillors or members of the public who have made a complaint and those who are subject to a complaint. The Council's guidance document has been created from the LGA's comprehensive guide and is attached at– Appendix 2
- c) a flow chart outlining the Council's arrangements will be produced as a quick reference step-by-step guide. It will clearly illustrate the likely timescales involved and those who will be informed of the complaint throughout the process. Timescales are noted in the arrangements and wherever possible the Monitoring Officer shall seek to conclude the process within 3 months of receipt of the complaint.
- d) further clarity on the website about how to make a complaint

5.1.3 It was considered necessary to consult with Members of this Committee and the Independent Person to ensure comprehensive feedback was received.

5.2 **New Arrangements:**

5.2.1 The main differences between the current and proposed new arrangements concern:

- a) **Greater clarity:** The proposed new procedure will include a straightforward flow chart illustrating at a glance how the procedure operates. It also describes in a more structured way than the previous procedure:
 - i) Who can be complained about
 - ii) What can be complained about
 - iii) What cannot be complained about and
 - iv) How to complain
- b) **Anonymity and confidentiality:** As at present, any complaint should be in writing and anonymous complaints would not normally be accepted. As under the current arrangements there is the ability for a complaint to be made confidentially so that only the Monitoring Officer and the Independent Person know the identity of the complainant but this is now an exceptional circumstance. In fairness to the councillor complained about the expectation is that the councillor should know who has complained about them if the complaint is accepted.

- c) **Emphasis on local resolution:** Experience has shown that people escalate complaints about Borough and Parish Councillors without attempting a local or informal resolution. The proposed new arrangements place greater emphasis upon local resolution.

d) **How complaints are assessed:**

- i) **Initial Filtering:** All complaints will be initially filtered/assessed (jurisdictional test) by the Monitoring Officer in consultation with an Independent Person. This will link to stricter timescales for informing complainants whether their complaint has been accepted. The initial assessment involves the following questions being considered:

Stage 1 – Jurisdictional Test:		
a. Does the complaint relate to a Councillor of Melton Borough Council?	<input type="checkbox"/> <input type="checkbox"/>	Yes No
b. Was the named Councillor in office at the time of the alleged conduct?	<input type="checkbox"/> <input type="checkbox"/>	Yes No
c. Is this a private matter?	<input type="checkbox"/> <input type="checkbox"/>	Yes No
d. Was the Councillor acting in their capacity as a councillor or as a representative of the Council at the time of the conduct complained of?	<input type="checkbox"/> <input type="checkbox"/>	Yes No
e. If proven, would the complaint be a potential breach of the Members' Code of Conduct?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Yes No N/A
<p>Note: If the complaint fails one or more of the tests above it cannot be investigated as a breach of the Code and the complainant should be informed that no further action will be taken in respect of the complaint. If there is any doubt the allegation may proceed to the second stage criteria</p>		

- ii) **Initial Assessment** – Where the complaints meets the criteria set out above, the Monitoring Officer will notify the subject member and provide an opportunity for representations to be made. The Monitoring Officer will then review the complaint together with any representations received from the Subject Member and, after consultation with the Independent Person, take a decision as to whether:
- (i) No further action should be taken on the allegation
 - (ii) The matter should be dealt with through informal resolution (see below)
 - (iii) The matter should be referred for formal investigation

(iv) A decision to take no further action may be made where the allegation discloses a potential breach of the Code but it is not considered to be in the public interest to pursue the matter further. The decision in these cases will set out the reasons for the taking no further action, but will not make a finding of fact in relation to the allegation(s).

iii) **Full investigation** - If the Monitoring Officer decides that the complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.

iv) **Resolution / Hearing** - The Monitoring Officer will review the Investigating Officer's report and will then, after consulting the Independent Person, either seek to informally resolve the matter or if it is in the public interest send it for local hearing before the Hearing Panel ("the Panel"):

Local Resolution:

- (i) Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and
- (ii) offering an apology;
- (iii) agreeing to attend a training course;
- (iv) agreeing to engage in a process of conciliation; or
- (v) the Council introducing some other remedial action (such as changing procedures).

Hearing:

If following consultation with the Independent Person and the Chair of the Audit and Standards Committee (where appropriate) the Monitoring Officer considers:

- that local resolution is not appropriate,
- accepts the reasons the Complainant provides for being dissatisfied by the proposed resolution,
- the Subject Member is not prepared to undertake any proposed remedial action, such as giving an apology

then the Monitoring Officer will report the Investigating Officer's report to the Hearing Panel which will conduct a local hearing to decide whether the Subject Member has failed to comply with the Code of Conduct and, if so, what (if any) action to take.

- e) **Timescales:** Whilst it is always difficult to attach timescales to processes such as these the following indicative processes have been included to provide transparency and confidence in the process:
- i) Complaints will be acknowledged within 5 working days.
 - ii) The Monitoring Officer may request further clarity or additional information and will provide a 2-week window for this information to be provided.
 - iii) The Monitoring Officer will undertake an initial filtering exercise (paragraph d(i) above) within 10 working days where possible and subsequently liaise with the Independent Person.
 - iv) Where the complaint is accepted the Monitoring Officer will review the complaint in detail and notify the Subject Member who will be provided between 2-4 weeks to respond (paragraph d(ii) above)
 - v) The Monitoring Officer will consider the representations from the Subject Member and the Independent Person and provide a decision on whether the complaint warrants an investigation within 20 working days of the receipt of all the representations (paragraph d(iii) above).
 - vi) Upon receipt of the investigation report and where it is decided a hearing is required the sub-committee procedure will be followed (paragraph d(iv) above)
 - vii) The LGA recommends the process should be concluded within 6 months of a complaint being referred for an investigation wherever possible.
- f) **How will complaints be monitored:** Going forward, it is proposed that the Audit and Standards Committee will be updated every 6 months and that the March meeting will receive an annual report.

5.3 Training

- 5.3.1 Councillors receive Code of Conduct training when they are elected as Members of the Council however until a Councillor submits a complaint or are the subject of a complaint they are often not familiar with the arrangements for dealing with the same. The arrangements are drafted in such a way as to ensure compliance with the requirements of the legislation.
- 5.3.2 Code of Conduct training was undertaken by all Borough members on 04 May 2022. A further session will be scheduled as part of the induction following the Borough/Parish Elections in 2023.
- 5.3.3 Parish Council members training was provided on Thursday 13 October 2022.

5.4 Member Complaints Update 21-22

- 5.4.1 **Numbers of complaints** - The number of complaints received in 21-22 decreased from those received in 20-21 as per the table below which sets out the types of members complaints were made against.

	Number of Complaints Received	
Type	2020/21	2021/22
Non-Executive	12	3
Executive	3	7
Parish	1	2
Total	16	12

- 5.4.2 **Origin of complaints** – most complaints are made by members of the public although there has been a small increase in the number of complaints received by members against members for 21/22

	Number of Complaints Received	
Type	2020/21	2021/22
Public	15	9
Elected Member (Borough / Parish)	1	3
MP	0	0
Council Employee (Borough / Parish)	0	0
Other	0	0
Total	16	12

- 5.4.3 **Types of complaints** – whilst it is not possible to identify particular trends in the nature of the complaints, the following table provides an overview of the types of complaint received over the past two years:

	Number of Complaints Received	
Type	2020/21	2021/22
Respect	3	-
Bullying, Harassment & Discrimination	1	3
Impartiality of Officers of the Council	-	-
Confidentiality & Access to Information	-	-
Disrepute	1	6
Use of Position	-	1
Use of Council Resources & Facilities	-	-

Making Decisions	3	-
Complying with the Code of Conduct	-	1
Interests	8	1
Gifts & Hospitality	-	-
Dispensations	-	-
Total	16	12

5.5 Investigation of complaints - Complaints are subject to a 2-stage consideration. The first stage requires preliminary consideration (initial assessment) of the complaint, in consultation with the Independent Person, to decide whether the complaint requires formal investigation. Formal investigation will include the appointment of an Investigating Officer to report to the Monitoring Officer, who will then report to the Standards Sub-Committee as to whether further action is recommended. The table below details the outcome of all complaints over the past two years:

	Number of Complaints	
Type	2020/21	2021/22
Rejected at initial stage – not acting in capacity	-	2
Rejected at initial stage – insufficient evidence	1	5
Rejected – Code not engaged	1	1
Informal Resolution	9	-
Other Action	-	4
Formal Investigation	4	-

5.6 Outcomes of Complaints

	Number of Complaints	
Type	2020/21	2021/22
Breach of Code	1	0
No Breach of Code	15	12

5.7 Lessons Learnt

- 5.7.1** The Council recognises that complaints are a valuable opportunity to gain feedback, learn and improve. The Monitoring Officer wants to ensure and provide a positive response to Member complaints and encourages feedback so the process remains fit for purpose.
- 5.7.2** An independent review was commissioned in 2021 to highlight where improvements to the process could be made. A number of recommendations were made and an update has been included at appendix 3.

5.7.3 A summary of the main changes are detailed below:

- a) The current arrangements were out of date and as such a review was undertaken following the issue of the LGA model Code of Conduct as detailed in paragraph 5.2 above.
- b) The complaints process has been amended to provide time periods for the different stages e.g. acknowledgements of complaints, time within which the subject member should respond to a complaint where informal resolution is not considered appropriate, investigations timings see paragraph 5.2(e) above.
- c) A separate assessment decision notice will be produced by the Assessment Subcommittee in addition to the minutes of the meeting setting out the complaint, what elements have been referred for investigation and reasons.
- d) The subject member and the complainant will be asked to comment on the investigator's draft report prior to a final report being issued, particularly where the facts are in dispute
- e) The agenda for the hearing sub-committee's will include
 - i) a covering report;
 - ii) the investigating officers report to include the schedule of evidence
 - iii) the members written response (identifying any facts in dispute)
 - iv) any representations made by the member and
 - v) all supporting documents including the rules of procedure, the code of conduct and any supporting documents as well as any views expressed by the IP
- f) Where the Subcommittee, having considered the circumstances of a particular case, considers that broader action to improve governance could be taken, such as training for all members, this be expressed by way of a consequential recommendation to Council rather than being termed a sanction.

5.8 The process will continue to be reviewed by the Monitoring Officer to ensure it remains fit for purpose.

6 Options Considered

6.1 This report is to update the Committee as such there are no alternative options.

7 Consultation

7.1 The Constitutional Review Working Group (CRWG) were consulted on the new operational process on 08 March 2022 and their comments were incorporated.

7.2 The Chair of Audit & Standards was consulted following the CRWG.

8 Next Steps – Implementation and Communication

8.1 To consult with the Independent Person

9 Financial Implications

9.1 There are no financial implications arising from this report.

Financial Implications reviewed by: Director for Corporate Services

10 Legal and Governance Implications

10.1 The legal background is set out at the beginning of this report. There are no additional legal implications

Legal Implications reviewed by: Monitoring Officer

11 Equality and Safeguarding Implications

11.1 Reasonable adjustments will be made for those who are unable to complete a complaints form and / or follow the process as set out.

12 Community Safety Implications

12.1 There are no community safety implications arising from this report.

13 Environmental and Climate Change Implications

13.1 There are no environmental and climate change implications arising from this report

14 Other Implications (where significant)

14.1 There are no other implications.

15 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	No process would pose a risk to the openness, transparency, fair and efficient handling of complaints	Low	Marginal	Low Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant				
	3 Low		1		
	2 Very Low				
	1 Almost impossible				

16 Background Papers

- 16.1 LGA Model Code of Conduct – Audit & Standards Committee 28.07.2020
- 16.2 Implementation of Best Practice Recommendations from the Committee on Standards in Public Life - Audit & Standards Committee 29.09.2020
- 16.3 Code of Conduct Update New Model Code – Audit & Standards Committee 09.03.2021
- 16.4 Revised Members Code of Conduct - Audit & Standards Committee 30.11.2021
- 16.5 Revised Members Code of Conduct - Council 16.02.2021

17 Appendices

Appendix 1 – Guidance on Complaints about alleged breaches of the Code

Appendix 2 – Revised Member Code of Conduct Complaint Form

Appendix 3 – Update on Best Practice Recommendations following Independent Review

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