

**Report of:** Monitoring Officer  
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**Report Track:** Standards Committee:  
02/11/20

## **Standards Committee**

**2 November 2020**

### **CSPL Recommendations and Member Complaints Procedure**

#### **1 Purpose of Report**

- 1.1 To consider the recommendations made within the report by the Committee on Standards in Public Life (CSPL) and to agree the Member Conduct Complaints Procedure.

#### **2 Recommendation(s)**

- 2.1 That the Standards Committee considers the best practice recommendations made by the CSPL, along with the Monitoring Officer's comments in **Appendix 1**.
- 2.2 That the Committee approves the Member Conduct Complaints Procedure as set out in **Appendix 2**.

#### **3 Key Issues and Reasons for Recommendations**

- 3.1 The CSPL recently conducted a review of ethical governance within local government, and made 15 best practice recommendations for local authorities to adopt.
- 3.2 The Council's Member Conduct Complaints Procedure has been reviewed in light of these recommendations.

#### **4 Relationship to Corporate Priorities**

- 4.1 The promotion of ethical behaviour contributes to all the Council's priorities.

#### **5 Report Detail**

- 5.1 The Committee on Standards in Public Life (CSPL) advises the Prime Minister on ethical standards across the whole of public life in England. In 2018 the CSPL carried out a review into the ethical framework for local authorities and published a report on its findings in January 2019.

- 5.2 The CSPL report makes 26 recommendations to Government, the LGA and Parish Councils. Key recommendations include:
- the creation of a national model code of conduct,
  - that codes apply to councillors when they claim to act, or give the impression they are acting, in their capacity as a councillor, and
  - the introduction of sanctions for code breaches to include suspension from office (with a right of appeal to the Local Government Ombudsman),
- 5.3 The LGA is already consulting on the creation of a model code and this Committee considered its response to the consultation at its previous meeting on 6 July 2020.
- 5.4 The CSPL report also makes 15 best practice recommendations to local authorities, which it expects could, and should, be implemented. Details of those recommendations are set out in **Appendix 1**, together with officer comments. The recommendations are not statutory guidance. However, the Council does have a duty under section 27 of the Localism Act, to promote and maintain high standards of conduct by members of the Council.
- 5.5 Best practice recommendation 10 states that a local authority should publish guidance on how it handles member conduct complaints on its website. The Monitoring Officer has reviewed current procedures in light of the best practice recommendations, and a copy of the proposed procedures is attached at **Appendix 2**.

## **6 Implications**

- 6.1 None.

## **7 Appendices to the Report**

Appendix 1: CSPL Best Practice Recommendations 2019 and Current Position.

Appendix 2: Proposed Member Conduct Complaint Procedure.

## **Previous Consideration**

None.

## **Background Papers**

None.

CSPL Best Practice Recommendations 2019	Current Position
1. Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition	The LGA is currently consulting on a national code including these provisions, and it would seem premature to amend the existing code while a national code is being prepared. In the meantime: <ul style="list-style-type: none"> <li>The Council's current code has obligations to (a) treat other with respect and (b) not to bully any person.</li> </ul>
2. Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.	Requirement to comply with investigations is not currently included in the latest draft of the national code, but could be added locally when the national code is ready for adoption. The complaints procedure clarifies that trivial or vexatious complaints will be rejected.
3. Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.	The National code is intended to be reviewed annually.
4. An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.	Agreed. The current code is accessible on the website as part of the Councils Constitution.
5. Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.	Council has always required disclosure of gifts/hospitality over £25. Similar provisions are proposed in the model national code. The register is currently held in hard copy and open to public inspection when requested.
6. Councils should publish a clear and straightforward public interest test against which allegations are filtered.	Agreed. This has been included within the Councils Member Complaints Procedure.
7. Local authorities should have access to at least two Independent Persons.	The Council has been able to appoint one Independent Person despite advertising for more. This resource is shared with a neighbouring district council.
8. An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	Agreed. This is set out within the Council Member Complaints Procedure.

CSPL Best Practice Recommendations 2019	Current Position
9. Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.	Agreed.
10. A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.	Agreed. Council Member Complaints Procedure is published on the Councils website.
11. Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.	This would appear to be a recommendation for parish councils. The district council would still need to consider appropriate complaints made by the clerk.
12. Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.	Already part of the Monitoring Officer's role at this Council.
13. A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.	Agreed. Reference is made within the Councils Member Complaints Procedure.
14. Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.	N/A
15. Senior officers should meet regularly with political group leaders or group whips to discuss standards issue	Managing Director already meets regularly with all Group Leaders. Monitoring Officer meets to discuss standards issues as, if and when necessary.

## **Proposed Member Complaints Procedure**

### **Introduction**

These procedures set out how a complainant (“Complainant”) may make a complaint (“Complaint”) that an elected or co-opted/appointed member of this Council, or of a parish/town council within its area, (“Subject Member”) has failed to comply with their council’s Code of Conduct for Members (“Code”).

The procedures also set out how the Council will deal with a Complaint.

### **The Codes of Conduct**

The Council has adopted a Code of Conduct for Councillors, which is available on the Council’s website and on request from Democratic Services (see contact details below).

Each parish council is also required to adopt a Code of Conduct for Councillors. The parish councils’ Codes are available on request from the respective parish clerk (“Clerk”).

### **Making a Complaint**

In order to ensure that we have all the information which we need to be able to process a complaint, Complaints must be submitted on the Standard Complaint Form, which can be downloaded from the Council’s website and is available on request from Democratic Services (see contact details below).

Complaints must be sent to the Monitoring Officer (see contact details below).

If a Complaint is received other than on the Standard Complaint Form, we will not consider it but we will send the Complainant a copy of the form for completion. If anyone needs assistance completing the form, they can contact Democratic Services (see contact details below).

Complainants should give us their name and a contact address or email address, so that we can acknowledge receipt of the Complaint and keep them informed of its progress. If a Complainant wants to keep their name and address confidential, they should indicate this on the Standard Complaint Form. In this case we would not disclose their name and address to the Subject Member without the Complainant’s prior consent. However, the Council does not normally investigate anonymous Complaints or complaints where the Complainant wishes to remain confidential, unless there is a clear public interest in doing so.

Within 5 working days of receiving a Complaint, the Monitoring Officer will usually:

- acknowledge receipt to the Complainant;
- send a copy of the Complaint to the Subject Member, unless the Monitoring Officer considers that this may prejudice investigation;

- send a copy of the Complaint to the Clerk (if appropriate).

The Monitoring Officer will keep the Complainant, the Subject Member and the Clerk (if appropriate) informed of the progress of the Complaint, unless the Monitoring Officer considers that this may prejudice any investigation.

### **Initial Assessment**

The Monitoring Officer will review the complaint and decide whether it should be rejected, or merits further consideration. The Monitoring Officer may seek the views of the Independent Person to aid consideration and may also request further information.

A complaint will be rejected if:

- (a) The complaint is about a member of a Council outside of the Borough/District
- (b) The Subject Member was not in office at the time of the alleged misconduct, or at the time of the complaint
- (c) The complaint is made anonymously
- (d) The complaint is the same or substantially the same as a complaint previously dealt with
- (e) The complaint is about an incident occurring more than 6 months ago and/or the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- (f) Following consultation with the Independent Person, the complaint is considered to be without merit, vexatious, trivial, or discloses such a minor breach of the Code that it is not in the public interest to pursue
- (g) The member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and it would not be in the public interest to pursue the complaint further

If the complaint is rejected the complainant will be advised of the decision.

If the complaint is not rejected, the Monitoring Officer will then go on to consider whether it merits formal investigation.

### **Will the Complaint be Investigated?**

The Monitoring Officer will review every Complaint received and take a decision as to whether it merits formal investigation. The following criteria will be used to assist the Monitoring Officer in deciding how the complaint should be progressed:

- (a) Whether the allegation discloses a potential breach of the code of conduct, but the complaint is not serious enough to merit any recommendation other than an apology;
- (b) Whether the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;

- (c) Whether, in all the circumstances, there is no overriding public interest in carrying out an investigation;
- (d) Whether training or mediation would be the appropriate response.

Where possible and appropriate, the Monitoring Officer will seek to resolve the Complaint informally, without the need for a formal investigation. Such informal resolution may include:

- Advising the Subject Member about matters of conduct
- Arranging training for the Subject Member
- Advising the Subject Member that an apology might be appropriate
- Suggesting a mediation meeting between the Subject Member and the complainant

Where the Monitoring Officer requires additional information in order to come to a decision, they may ask the Complainant, the Subject Member or the Clerk (if appropriate) for such information.

If the Complaint alleges criminal conduct or breach of a regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory agencies. In such cases it may be necessary to postpone consideration of the Complaint until the Police or other action has been concluded.

The Monitoring Officer will consult the Independent Person before making any decision to refer the complaint for formal investigation. When the Monitoring Officer has taken a decision, they will inform the Complainant, the Subject Member and the Clerk (if appropriate) of their decision and the reasons for that decision. A decision regarding whether the complaint merits formal investigation or another course of action will normally be taken within 20 working days of the Monitoring Officer receiving the complaint or, if the Monitoring Officer has requested further information from the Complainant/Subject Member in order to consider their decision, within 20 working days of receipt of that further information.

### **How is an Investigation Conducted?**

If the Monitoring Officer decides that a Complaint merits formal investigation, they will, where appropriate after consultation with the Independent Person, appoint an Investigating Officer who may be another officer of the Council, an officer of another Council or an appropriately experienced external investigator.

The Investigating Officer will decide whether they need to meet or speak to the Complainant to understand the nature of the Complaint and so that the Complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who they need to interview.

The Investigating Officer would normally write to the Subject Member and ask them to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who they need to interview. In exceptional cases, the Investigating Officer may delay notifying the Subject Member until the investigation has progressed sufficiently.

At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and to the Subject Member, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they believe requires more consideration.

Having received and taken account of any comments on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

**What happens if the Investigating Officer concludes that there is No Evidence of a Failure to Comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will send a copy of the Investigating Officer's final report to the Complainant, the Subject Member, the Chairman of the Standards Committee, the Independent Person and the Clerk (if appropriate) and notify them that they are satisfied that no further action is required. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider their report.

The outcome of such investigations will be reported to the next ordinary meeting of the Standards Committee and the relevant parish council (if appropriate) for information.

**What happens if the Investigating Officer concludes that there is Evidence of a Failure to Comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing by the Standards Committee or, after consulting the Independent Person, seek Summary Resolution (see below).

**Summary Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Chairman of the Standards Committee, the Independent Person and with the Complainant and seek to agree what they consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such a resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council or the relevant parish council (if appropriate).

If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the relevant parish council (if appropriate) for information, but will take no further action.

**Referral for Hearing**

If the Monitoring Officer considers that Summary Resolution is not appropriate, or the Subject Member does not comply with any suggested resolution, then the Monitoring Officer will refer the Investigating Officer's report to the Standards Committee for a hearing to decide whether or not the Subject Member has failed to comply with the respective Code of Conduct and, if so, whether to take any action in respect of the Subject Member.

## Hearing Procedure

The Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their written response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

The Chairman of the Standards Committee may issue directions as to the manner in which the hearing will be conducted.

The Investigating Officer may ask the Complainant to attend the hearing to give evidence. The Complainant does not otherwise have the right to speak at the hearing but they may usually attend as a member of the public.

## What action can the Standards Committee take where a Councillor has Failed to Comply with the Code of Conduct?

The Council has delegated to the Standards Committee such of its powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct.

The sanctions available to the Standards Committee include:

- Report its findings to the Subject Member’s Council for information
- Recommend to Council that the member be censured
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer (or recommend to the Parish Council) to arrange training for the Subject Member;
- Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

## What happens after a Hearing?

As soon as reasonably practicable, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chairman, and send a copy to the Complainant, the Subject Member and the Clerk (if appropriate). They will also make that decision notice available for public inspection on the Council’s website for at least 12 months after the hearing.

### **Who are the Standards Committee?**

The Standards Committee is a committee of the District Council. It is appointed by the Council and comprises:

- a) 7 District Councillors,
- b) 8 Town/Parish Councillors as non-voting members.

### **Who is the Independent Person?**

The Independent Person is a person who has been appointed by a majority of all the Councillors on the District Council.

The Independent Person is invited to attend all meetings of the Standards Committee. Their views are sought and taken into consideration:

- before the Monitoring Officer decides to investigate a Complaint;
- before the Monitoring Officer decides whether to refer an investigated Complaint for hearing or for Summary Resolution;
- before the Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the respective Code of Conduct; and
- as to any action to be taken following a finding of failure to comply with the respective Code of Conduct.

### **Appeals**

There is no right of appeal for the Complainant or for the Subject Member against a decision of the Monitoring Officer or of the Standards Committee.

### **Conflict of Interest**

If the Monitoring Officer is unable to act in relation to a particular complaint due to a conflict of interest, he may arrange for another officer to carry out any of his duties (which may include external support where appropriate).

### **Contact Details**

Monitoring Officer:

Mr Ian Curran, Stafford Borough Council, Civic Centre, Riverside, Stafford ST16 3AQ  
Tel: 01785 619220 Email: [icurran@staffordbc.gov.uk](mailto:icurran@staffordbc.gov.uk)

Democratic Services:

Democratic Services, Cannock Chase District Council, Civic Centre, Beecroft Road, Cannock, WS11 1BG Tel: 01543 464589