

Addendum

Standards Committee

Dear Councillor,

Standards Committee - Tuesday, 8 June 2021, 7.30 pm

I enclose, for consideration at the meeting of the Standards Committee to be held on Tuesday, 8 June 2021 at 7.30 pm, the following reports which were unavailable when the agenda was published.

Mari Roberts-Wood
Interim Head of Paid Service

6. Member Complaints 2020/21(Pages 3 - 18)

To receive a verbal report from the Deputy Monitoring Officer on the number of Member Complaints in the year 2020/21.

For enquiries regarding this addendum;

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TO	Standards Committee
DATE	8 th June 2021
LEAD MEMBER	Chair of Standards

KEY DECISION REQUIRED	No
WARDS AFFECTED	All Wards

SUBJECT	Member Complaints report (September 2020 – June 2021)
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RECOMMENDATIONS
1. That the Committee receives and notes the Member Complaints Report (September 2020 – June 2021)
REASONS FOR RECOMMENDATIONS
To demonstrate the promotion and maintenance of high standards of conduct by Councillors.
EXECUTIVE SUMMARY
This report summarises the discharge of the Standards function during September 2020 – June 2021. (This follows on from the Annual Standards report provided to the Committee on 1st September 2020). This report includes but is not limited to: <ul style="list-style-type: none"> • The Member Code of Conduct • Complaints against Members • The role of the Monitoring Officer • Maintenance of the Register of Interests

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The Standards Committee may receive and note this report

STATUTORY POWERS

The Localism Act 2011 requires Councils to have in place locally focussed processes for regulating the conduct of Members. The Act also imposes a duty on Councils to promote and maintain high standards of conduct by Members.

REIGATE AND BANSTEAD CODE OF CONDUCT

Code of Conduct

1. All Members were provided with Code of Conduct training after the local elections in May 2021.
2. The Member Code of Conduct was comprehensively reviewed during 2019/20 by the Monitoring Officer and the Governance Task Group, in accordance with the findings of the review conducted by the Committee on Standards in Public Life.
3. The Governance Task Group agreed the revised Code of Conduct in March 2020 and recommended the Code to Council for approval in July 2020 where it was duly approved. A summary of the revisions are set out below for ease of reference and the full amended code is attached.
 - Defining Bullying/harassment and examples of such behaviours
 - Consideration of the application of the Code of Conduct to Social Media
 - Introduction of a requirement to declare gifts and hospitality over £25

Complaints against Members

4. The Council's Standards Committee is responsible for dealing with allegations that a member may have failed to observe the Council's Member Code of Conduct and has introduced procedures to ensure fairness and transparency whilst, at the same time, providing proportionate, cost effective and timely advice.
5. The procedure for dealing with complaints involves the following four stages:
 - initial consideration by the Monitoring Officer (Stage 1)
 - local resolution (Stage 2)
 - referral to an Assessment Panel (Stage 3)
 - determination by a Hearings Sub-Committee (Stage 4)
6. For the complaints received from September 2020 to June 2021, some met the criteria for complaints and concluded at Stage 1 with no further action. The other complaints failed to meet the criteria.
7. In October 2020, a complaint was made that alleged language used within tweets on Twitter were offensive and aggressive and promoting misinformation. Complainant alleged breach of the principles of honesty, integrity and accountability. The complaint was considered, including the tweets and an independent person was consulted. The complaint met the criteria and was resolved at Stage 1, no further

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action was taken, it was determined that the principles and the code were not breached.

8. In November 2020, a complaint was made that alleged a member had breached the code in respect of their behaviour. The complaint met the criteria and was resolved at Stage 1. It was determined that the principles and the code were not breached. The member did reflect on the alleged event and offered a written apology for any unintended offence.
9. In January 2021, a complaint was made that alleged comments by a member within a resident WhatsApp group and website caused offence and was also a misuse of personal data. The complaint met the criteria and was resolved at Stage 1. It was determined that the principles and the code were not breached, no further action was required.
10. In April 2021, a complaint regarding a publication/article that is alleged to have caused offence to the complainant and to breach all elements of the code. This is ongoing and is linked to the complaints referred to in paragraphs 9, 11, 12 and 13.
11. In May 2021, a corporate complaint was made against the legal team that relates to an ongoing member complaint. Further information sought from complainant in order to progress, no response received.
12. In May 2021, a data protection complaint relating to a planning matter and linked to an ongoing member complaint was made to the Local Government Ombudsman. The LGO complaint case was closed in May 2021 upon agreeing actions and a remedy, namely a written apology and £100 for time spent and any distress caused.
13. In May 2021, A freedom of information request concerning the complaint history of a member. This was linked to an ongoing member code of conduct complaint. The FOI was resolved satisfactorily, no information was released.
14. Due to the frequency, nature and duration of the complaints cited in paragraphs 9 – 13 above that were all made by a single individual, and have mostly been made against the same member (except the complaint in paragraph 9), there are grounds to consider whether the complaints are vexatious. In particular, the complaints against the member have either not met the criteria or have not gone further than Stage 1 of the procedure. Determining whether the complaints and behaviour of the complainant is vexatious, is being considered and will be determined and actioned in due course.
15. Relevant indicators that support whether behaviour or conduct is vexatious or repeated are:
 - Burden on the authority: The effort required to respond to a person is grossly oppressive in terms of strain on time and resources.

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- Unreasonable persistence: A person is attempting to reopen an issue already comprehensively addressed.
- Unfounded accusations: There have been unsubstantiated accusations against specific employees or councillors.
- Intransigence: The continued communications in the context of the full history of this matter demonstrates an unreasonable entrenched position.
- Repeated content: The content of the communication is substantially like ones previously received and is from the same person.

Learning points

16. All but one of the complaints in this time period have related to communications or interactions with the public either online generally or on specific social media platforms.
17. The complaints described in paragraphs 9 – 13, led to the two members having concerns about their personal safety, one member contacted the Police to seek advice and reassurance in this regard with support of the Deputy Monitoring Officer, Monitoring Officer and Group Leader. This concern thankfully abated over time.
18. Online communications and social media use by members with Group Leaders and included guidance for members within the training material of the May 2021 member induction programme. This is to support members with their communications with residents or the general public in an effort to reduce the occurrence of the type of complaints received.

Role of the Monitoring Officer

16. The Role of the Monitoring Officer is held by the Commercial and Investment Director, a qualified lawyer. The Deputy Monitoring Officer is the Head of Legal and Governance.

Maintenance of the Register of Interests

17. The register of interest forms are completed by Members electronically, verified, and published on the Council's website.

LEGAL IMPLICATIONS

18. The Constitution sets out the role of the Standards Committee, and the Monitoring Officer, in promoting high standards of conduct. This committee helps to promote and maintain the highest standards of conduct amongst members of the Council, and ensures that Councillors act in accordance with the Local Government Code of Conduct

BACKGROUND PAPERS

19. Members Code of Conduct - https://www.reigate-banstead.gov.uk/info/20400/your_council_documents/1236/member_code_of_conduct
20. Procedures for dealing with complaints under the member code of conduct process (appendix 1).
21. LGA Guide for Councillors on handling intimidation (includes advice on using social media) - https://www.local.gov.uk/sites/default/files/documents/Councillors%20guide%20to%20handling%20intimidation%20updated%20Apr%202021_0.pdf
22. LGA Councillors workbook on supporting residents with complex issues - https://www.local.gov.uk/sites/default/files/documents/11%2058_LGA%20Cllr%20Workbook_Supporting%20residents%20with%20complex%20issues_July%202017.pdf

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Reigate and Banstead Borough Council

Procedures for Dealing with Complaints Under the Member Code of Conduct

Introduction

1. The Council takes all allegations of Member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times.
2. The Council's Standards Committee is responsible for dealing with allegations that a Member may have failed to observe the Council's Member Code of conduct and has introduced procedures to ensure fairness and transparency whilst, at the same time, providing proportionate, cost effective and timely action.
3. The Committee has therefore introduced the following four stage procedure:
 - initial consideration by the Monitoring Officer (Stage 1)
 - local resolution (Stage 2)
 - referral to an Assessment Panel (Stage 3)
 - determination by a Hearings Sub-Committee (Stage 4)

(Note: Not all stages may be required. See also paragraph 5 below).
4. The aim is to resolve complaints within 3 months of receipt although in complex cases requiring investigation this may not always be possible. All interested parties will be kept informed of progress in dealing with the complaint through the above stages.
5. In advance of the four stages referred to under paragraph 3 above, it is open to any person who is concerned about a Member conduct issue, to contact the Council's Monitoring Officer for informal confidential advice.

Criteria for Complaints

6. Complaints must:
 - relate to a serving Member or co-opted Member of the Council
 - name who the complaint is against
 - relate to conduct within the last six months
 - relate to conduct that occurred at a time when the person against whom a complaint is made was a Member of the Council

- explain the alleged breach of the Member Code of Conduct
- be made in writing and, where appropriate, provide relevant documentation

7. Complaints must not:

- be vexatious, frivolous or politically motivated
- be anonymous
- relate to the Member's private life

Initial Consideration by the Monitoring Officer (Stage 1)

8. All allegations of Member misconduct must be referred to the Council's Monitoring Officer to consider and determine whether:
- the criteria set out above are met
 - no further action is required
 - the complaint appears to show a breach of the Code
 - a local settlement is appropriate or
 - referral of the allegation to an Assessment Panel, if necessary
9. Complaints will be acknowledged in writing within five working days of receipt. At the same time the Member against whom the allegation is made will be provided in writing with details and his or her initial views sought. The Member involved will also be informed of his/her right to consult with an Independent Person.
10. The Monitoring Officer will consult with one of the Council's Independent Persons giving an initial indication that the complaint is either to be rejected ("no further action"); or accepted as meeting the required criteria leading to local resolution (Stage 2) or referral to the Assessment Panel (Stage 3). Having consulted the Independent Person the Monitoring Officer will determine what course of action is to be taken and notify in writing the Independent Person accordingly.
11. Interested parties will also be notified in writing of the proposed action, procedures involved, where appropriate, and the reasons for the decision. Determinations under this delegation will be reported to the Standards Committee by the Monitoring Officer on a quarterly basis. In the case "no further action" on a complaint the decision of the Monitoring Officer is final. Information about the complaint may be shared by the Monitoring officer with the Chairman of the Standards Committee, Leader of the Council and relevant group leaders.

Local Settlement (Stage 2)

12. The Standards Committee is aware that the formal investigation of complaints is both costly and time consuming. Whilst formal investigation may be necessary in some cases, it may be possible for complaints to be dealt with more rapidly and effectively through early informal resolution of the matter.

13. The Monitoring Officer is therefore authorised, upon receipt of a complaint, to consider and, if appropriate, explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for referral to the Assessment Panel. Any attempt at local resolution at this stage does not take away the complainant's right to have the complaint of Member misconduct considered by the Assessment Panel.
14. In dealing with a complaint and whether it is capable of local resolution, the Monitoring Officer will consult an Independent Person appointed for this purpose. A key factor in local resolution will be the nature and complexity of the allegation and, typically, whether an apology and/or training would bring matters to a close. Local resolution is not, however, solely limited to these remedies.
15. The decision to proceed with local resolution rests with the Monitoring Officer following consultation with the Independent person and with the agreement of the complainant and the Member involved. This decision will be confirmed in writing to all parties.

Referral to an Assessment Panel (Stage 3)

16. Where local settlement cannot be achieved or is not appropriate (having regard to the nature and complexity of the allegation) the Monitoring Officer must arrange for referral to and consideration by an Assessment Panel.
17. The Assessment Panel shall be chaired by the Chairman or Vice-Chairman of the Standards Committee (but not both), and comprise the Chairman of the Panel together with two other Members of the Committee. In the event that a complaint relates to a Parish Councillor from Horley Town Council or Salfords and Sidlow Parish Council one of the members of the assessment panel shall be a member of the other Parish Council.
18. Interested parties will be advised of the date, time and location of the Panel and given the opportunity to provide written representations in advance of the meeting. No parties will be invited to the Assessment Panel at this stage. This is to ensure that the assessment of complaints is undertaken swiftly; additionally it is not expected that all the facts of the case need be considered in full at this preliminary stage.
19. The Panel (only) will be provided with a report by the Monitoring Officer, which will include the following:
 - details of the complaint
 - details of the Member's response to the complaint
 - any evidence which is available without the need for investigation
 - the outcome of consultation with the Independent Person
 - details of any attempt to negotiate a local settlement
 - written representations from any interested party
 - such other papers as the Monitoring Officer considers appropriate

20. Proceedings are at the discretion of the Chairman (upon advice from the Monitoring Officer or his/her nominated representative) but generally will be conducted as follows:

- introduction of Panel Members and others in attendance
- outline of purpose of the meeting and how it will proceed
- the Panel is not bound by the Access to Information rules and will not take place in public unless there are exceptional circumstances which dictate otherwise
- the Panel will consider the Monitoring Officer's report and determine whether or not, on the basis of the complaint, there appears to have been a breach of the Code
- in the light of these considerations, the Panel will recommend to the Monitoring Officer one of the following courses of action:
 - close the case on the basis that the evidence does not disclose an apparent breach of the Code of Conduct.
 - request that the complaint be formally investigated (on the basis that the alleged conduct appears sufficiently serious to merit the imposition of a penalty/sanction against the Member) leading to consideration by a Hearings Sub-Committee
 - other appropriate action short of formal investigation, for example requiring an apology, providing formal training (either individual or Council wide), securing conciliation or mediation or reviewing procedures to minimise conflict. This is not an exhaustive list and, in the main, will apply to less serious cases and where the parties involved are willing to engage in an amicable resolution.

21. The decision whether to close the case or take further action is delegated to the Monitoring Officer based on the recommendation of the Panel. The Monitoring Officer will write to all parties within 10 working- days to advise them of his decision based on the outcome of the Assessment Panel.

Determination by a Hearings Sub-Committee (Stage 4)

22. Where a formal investigation has been undertaken, the Monitoring Officer must arrange for the relevant report to be considered by a Hearings Sub-Committee. The Monitoring Officer can appoint an independent investigator or a senior officer of the Council for the purposes of conducting the investigation.
23. The Hearings Sub-Committee shall comprise the Chairman or Vice-Chairman of the Standards Committee (but not both), together with two other Members of the Committee. As far as possible, the Sub-Committee must reflect the political balance of the Council. In the event that a complaint relates to a Parish Councillor from Horley Town Council or Salfords and Sidlow Parish Council one of the members of the assessment panel shall be a member of the other Parish Council.
24. The conduct of Sub-Committee meetings shall be in accordance with the Council's Constitution as supplemented by these procedures.

Pre-hearing Process

25. Upon receipt, the draft Investigator's report shall be sent to the complainant and relevant Member so that they can comment on any matters of fact. Parties will have two weeks in which to comment. Absence of response will be taken as meaning that there is no disagreement on facts in the draft report.
26. Once the Investigator's final report has been submitted, the Monitoring Officer or an informal meeting of the Hearings Sub-Committee may conduct a pre-hearing process in order to narrow the issues between the parties and make appropriate provision for the smooth running of the Hearing. Where this happens the Monitoring Officer will provide a letter to all parties outlining the issues to be determined and the arrangements for progressing all such matters.

Hearings Procedure

General

27. All interested parties will be:
 - notified in writing (no less than two weeks in advance) of the date, time and place of the Sub Committee (and Hearing)
 - provided with the Agenda and related reports for the Sub Committee (and Hearing)
 - allowed representation at the Hearing and given the opportunity to request the attendance of witnesses
28. The Investigator will be in attendance at the Hearing and will be given the opportunity to request the attendance of witnesses. The Council will be represented by the Monitoring Officer or his/her nominated representative. A representative of Democratic Services will be present.
29. Following election, the Chairman will:
 - introduce Members of the Sub-Committee and others in attendance
 - explain the purpose of the meeting and how it will proceed
30. The Monitoring Officer or his/her nominated representative will advise the Chairman whether the Hearing should be in public or private. The Access to Information Rules apply. In order to give confidence to the public it is expected that the Sub-Committee will take place in public unless there are exceptional circumstances which dictate otherwise.
31. The Sub-Committee will resolve any other issues or disagreements about how the Hearing should continue, which have not been resolved during the pre-hearing process.

Disagreements about facts

32. The Investigator will be invited to make representations to support the findings of his/her report and call supporting witnesses. The Member or their representative will be entitled to challenge the evidence given by any witness after each witness has completed their evidence.
33. Any Member of the Sub-Committee may then ask questions.
34. The Member or their representative will then be invited to make representations and give evidence to support their version of events. The Investigator will be entitled to challenge that evidence after the Member or representative has completed their evidence.
35. Any Member of the Sub-Committee may then ask questions.

36. The Member or their representative will then call any supporting witnesses in turn and may question them to ensure that their evidence on the facts is clear.
37. The Investigator will be entitled to challenge that evidence, after each witness has completed their evidence.
38. Any Member of the Sub-Committee may then ask questions.

Disagreement over facts that have not been identified by the Member in advance of the Hearing

39. The Sub-Committee will not allow the Member to raise a disagreement with the facts, which was not raised prior to the Hearing, unless the Member satisfies the Sub-Committee there are good reasons for not raising the disagreement before.
40. After considering the position and the Member's explanation for not raising the disagreement at an earlier stage the Sub-Committee may:
 - (a) continue the Hearing, relying on the information in the Investigator's report;
 - (b) allow the Member to make representations about the issue and invite the Investigator to respond and call any witnesses necessary; or
 - (c) adjourn the Hearing.

Determining whether the Member has failed to follow the Code

41. The Member or their representative will be invited to make representations as to why the Sub-Committee should not decide the Member has failed to follow the Code.
42. Any Member of the Sub-Committee may then ask questions.
43. The Investigator will be asked to make representations as to why the Sub-Committee should find there has been a breach.
44. Any Member of the Sub-Committee may then ask questions.
45. The Member or their representative will be invited to make any final points.
46. The Sub-Committee will adjourn and in private, with the Monitoring Officer or his/her nominated representative, consider its decision based on the facts presented.
47. The Hearing will reconvene and the Chairman will announce the Sub-Committee's findings of fact and whether the Member has failed to follow the Code of Conduct.

Procedure where there is a finding that the Code has been breached

48. The Investigator and then the Member or their representative will be invited to make representations as to:
 - (a) whether or not the Sub-Committee should set a penalty/sanction; and
 - (b) what form any penalty/sanction should take.
49. Any Member of the Sub-Committee may then ask questions of the Investigator or Member or his/her representative; and take advice from the Monitoring Officer or his/her representative.
50. The Sub-Committee will adjourn and in private, with the Monitoring Officer or his/her nominated representative, consider what if any, penalty/sanction should be imposed on the Member presented.

51. The Sub-Committee will reconvene and announce its decision(s) and confirm that a full written summary with the decision will be sent to all interested parties as soon as possible and in any event within the following ten working days.
52. The full written summary and decision will be placed on the Council's web for a period of four years or until the Councillor involved ceases to be a Member of the Council.

Withdrawing a Complaint

53. A complaint can be withdrawn at any stage by the complainant unless in the opinion of the Monitoring Officer it is in the wider interests of the Council that it be determined.

Procedure for Dealing with Complaints: Flowchart



