

Meeting: OVERVIEW AND SCRUTINY COMMITTEE

Date: 16 December 2014

Subject: Councillor Code of Conduct Complaints

Report of: Melanie Clay, Chief Legal and Democratic Officer and Monitoring Officer

Summary: The report requests the Committee to consider the changes proposed to the Councillor Code of Conduct Complaints processes and procedures by way of an update of the current position.

Advising Officer: Melanie Clay, Monitoring Officer

Contact Officer: Melanie Clay, Monitoring Officer
Maria Damigos, Corporate lawyer

Public/Exempt: Public

Wards Affected: All

Function of: Monitoring Officer

CORPORATE IMPLICATIONS

Council Priorities:

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| <ol style="list-style-type: none"> 1. The effectiveness of the Council's governance arrangements contributes to the overall achievement of all Council priorities. |
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Financial:

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| <ol style="list-style-type: none"> 2. There is a limited resource available for this work and given the increase and fluctuations in the number of complaints this report is aimed at providing a more streamlined and cost effective way of managing this statutory obligation within the limited resources available. |
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Legal:

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| <ol style="list-style-type: none"> 3. Under the Localism Act 2011, the Council introduced arrangements governing ethical standards, including a Code of Conduct for members and handling complaints made against both Central Bedfordshire Councillors and Town and Parish Councillors. As reported to General Purposes (GP) Committee, (as the relevant committee) on 17 July 2014, the number of complaints has markedly increased and this has in turn generated issues with requests for advice and assistance from Town and Parish Councils (T&PCs) and their clerks on a range of procedural and legal queries, and how best these can be addressed. |
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Risk Management:

4. It is crucial that the Council has in place an effective local framework to secure high ethical standards in its conduct of its business. It is equally important to ensure that the framework is amended (as appropriate) to manage expectations and achieve as efficient a process as possible to minimise the risks of costs and delay.

Staffing (including Trades Unions):

5. There are no specific staffing issues arising from this report, however members are reminded that the Councillor Code of Conduct is complemented by the Protocol for Member/Officer Relations. Any Standard Complaint made by an officer will have regard to the process under that Protocol.

Equalities/Human Rights:

6. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These requirements are recognised in the accountability principle of public life which forms part of the Members Code of Conduct.

Public Health

7. Not applicable.

Community Safety:

8. Not Applicable.

Sustainability:

9. Not Applicable.

Procurement:

10. Not applicable.

RECOMMENDATION(S):

- 1 The Committee is asked to consider and comment on changes to the Councillor Code of Conduct processes, and documentation proposed, being in response to the need to be more efficient in addressing the increased volume of Standards Complaints.**

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Introduction:

11. The purpose of this report is to inform Members of the various strands and themes of work in relation to Councillor Code of Conduct Complaints. It includes practical steps for moving forward, bearing in mind the Council's statutory responsibilities. The Monitoring Officer needs to ensure the robustness of the Ethical Standards process, taking into account the pressures put upon that process from the number of complaints. The efficiencies of that process are being improved to reduce costs and manage expectations due to the substantial increase in the volume of complaints and their increasingly complex nature.
12. The Monitoring Officer has delegated authority, in consultation with the Chair of General Purposes Committee, to amend the Council's Arrangements for Dealing with Standards Allegations under the Localism Act 2011. However, Members' comments and endorsement are sought on these proposals due to the scale of the changes proposed.
13. It is intended to report this Committee's comments to GP Committee at its meeting in January 2015. GP Committee will be in a position to make any recommendation to Council, as necessary.
14. T&PCs are self governing, independent, legal entities and as such are responsible for running their own business. They are financed to do so through the annual precept, and have their own governance arrangements. If they have financial queries, they have their own auditors to advise them (not CBC's statutory finance officer) and, similarly, if they require legal advice on their procedures or other query, they need to seek their own legal advice. In addition, they can also draw on the knowledge and experience of the National Association of Local Councils (NALC) (if they have membership) which provides advice notes and training to Councils to support them in their day-to-day business, and the Society of Local Council Clerks (SLCC).
15. It is not a statutory function of the Monitoring Officer to be legal adviser to T & PCs. The Monitoring Officer's role is limited to Code of Conduct issues and, as part of that role, to ensure that Councillors complete their published register of interests, and to consider complaints under the Councillor Code of Conduct.

Complaints and how we deal with them

16. The Arrangements for Dealing with Code of Conduct Allegations under the Localism Act 2011 is attached as Appendix A(i) and Flow Chart at A(ii).
17. The complaints procedure form has been amended so that it more clearly explains the complaints process, from initial assessment to final hearing; makes reference to the referral criteria and sanctions that can be imposed. Hopefully, this will allow us to better manage the expectations of those who are making complaints with greater clarity on timescales and possible outcomes. The amended form will be uploaded to pilot its use on the website following this Committee Meeting.
18. A summary of the number of complaints received against Councillors is attached as Appendix B.

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19. The number of Councillor Code of Conduct complaints has increased significantly since the introduction of the Localism Act in summer 2012. In November 2013, there were a total of 17 open matters which steeply increased to a peak of 42 by July 2014. The average number of new cases in 2012/13 was 1.3 per month and, during 2013/14, this increased to 2.08 per month and, in 2014/15, it has more than doubled to 5.75 new complaints per month.
20. A total of 84 complaints have been considered under the current regime which were in respect of 12 T&PC's and Central Bedfordshire (CBC). It should be noted that some complaints are repeated (by more than one complainant) and, in respect of those, there are currently 14 separate complaints which relate to just two issues and 62 of those complaints were against Councillors from just 4 Councils.
21. What has emerged is that the complaints received are often a good indicator of underlying issues experienced within individual T&PCs, and a reflection of how they interact with their communities. In this respect the Monitoring Officer is working to facilitate a conciliatory approach by T&PCs to allow for swift local resolution of issues generally. It should be borne in mind that as indicated above neither the Monitoring Officer nor CBC has any separate jurisdiction over T&PCs and nor is the CBC legal team formally retained to provide legal advice to them. It is, however, in CBC's interest that T&PCs are assisted in ensuring they have effective governance in place.
22. It is anticipated that the number of complaints received may increase as more people become aware of the availability of this complaints procedure and also possibly around the time of the elections in 2015. By making better use of the available resources to deal with the most serious complaints, and supporting the T&PC's with other matters, the complaints should be dealt with in a more efficient and timely manner.

Themes of complaints

23. Looking at the complaints dealt with since March 2014 (69 complaints) by far the main theme of complaints received is courtesy and respect to others (34) (which includes setting an example by behaviour, bringing the council into disrepute and valuing council officers). Acting in accordance with legal obligations and Council policies (this includes voting procedures) coming out next (18). After this comes dis-closable pecuniary interests and conflicts of interest (11) with the fewest complaints being received on the themes of an improper advantage being obtained or breaches of confidentiality (3 each).

Outcomes

24. The majority of complaints are dealt with at the initial assessment stage. In relation to completed matters, at this stage results are fairly equal between either no breach or a potential breach/local resolution outcome (18/17 respectively) with approximately 8% of complaints not coming under the Code of Conduct (either because they relate to non-Councillors or to Councillors not acting in their capacity as a Councillor) or being withdrawn.

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25. In respect of the total number of complaints, just over a quarter of complaints have proceeded to investigation. So far, only one matter has resulted in a Standards Sub Committee full hearing which lasted 2 days.

Sanctions

26. One of the issues that has become evident from the cases to date is that it is in the interests of all parties involved to find a means of local resolution as early as possible, i.e. where there is a potential breach of the Code a genuine apology is given and graciously accepted. Complainants' dissatisfaction and frustrations often stem from the time taken to carry out a full investigation and the limited sanctions (see Appendix A (i) – the most severe sanction available is a public censure, as suspension of a councillor is no-longer possible, if a breach is proven. Experienced external investigators/Independent Persons have advised that Code investigations generally require 4 to 6 months to complete.
27. At any stage in the process there is also opportunity for a Member to commit to refresh their understanding of Standing Orders or the Code etc. via briefings/training from their clerk, NALC or other expert, where a lack of knowledge has contributed to their breach of the Code.

Costs

28. Standardisation of the process will reduce costs as it will allow the process to be more administrative and focus the input of the Monitoring Officer on those instances where decisions are required:-
- (a) The revised complaints form will ensure that those who make a complaint understand the process and possible outcomes, and it should reduce the number of complaints referred that fall outside the Code of Conduct; and
 - (b) All template letters in relation to acknowledgements and service to be an administrative process as far as possible so that legal officer time is also kept to a minimum.

Details of legal and officer time spent

29. In addition to the time spent by the Monitoring Officer on complaints matters, resources currently are 1.2 FTE corporate lawyers, assistance from the Democratic Services Team Manager amounting to the equivalent of 1 day a week, and 1 FTE administrative assistant. In the first eight months of 2014/15, 915 c. hours have been spent on complaint files:-

Equates to 115 c. hrs month or 0.75 FTE = c. £10k in lost potential fee earning activities.

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- In 2014/15 432 officer hours on specific complaints
- A further 227 officer hours on general T&PC issues
- 256 c. hours of the Monitoring Officer time

In comparison, over the period June 12 to March 14 there were:-

- 122 officer hours recorded as directly attributable to T&P cases.
- this does include the previous Monitoring Officer's time, where he personally handled 15 complaints and we have no way to estimate this.

Therefore, we cannot make any direct comparison with previous years.

Charging

30. Bearing in mind the impact on CBC resources officers have explored the options for recovering the costs involved where a breach is proven.

There is a charging power under Section 93 of the Local Government Act 2003 in relation to "discretionary services" only, being those "services that a local authority is not required to provide but may do so voluntarily". Under Section 27 of The Localism Act 2011, CBC is under a duty to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging that duty, a Code is to be adopted. Having done that, arrangements must be put in place under which allegations can be investigated, together with arrangements under which decisions on allegations can be made.

31. The above **does not** therefore come within the definition of a discretionary service and so there is no power to charge T&PC's, subject members or complainants in relation to officer time spent on complaints made and received.

Future Plans

32. Although streamlining the overall procedure for dealing with complaints and refreshing the website will assist with obtaining the correct information earlier and managing expectations of both complainants and subject members, having less complaints overall is the ultimate aim.
33. Ideally, T&PC's need to manage the majority of disagreements and complaints at a local level to allow speedier and more appropriate resolution with only the most serious Code of Conduct issues being escalated and dealt with by the Monitoring Officer. Such management is outside the remit of the Monitoring Officer but much can still be done to assist and facilitate T&PC's to deal with matters as soon as they arise and to increase the knowledge of councillors across the board.
34. The benefit of this will be a reduction in the time taken for complaints to be dealt with overall, as well as a reduction in the number of complaints referred to CBC.

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Training and Support for Town and Parish Councils

35. NALC and SLCC for Bedfordshire already provide some training to their members with some assistance from Peter Fraser as liaison and facilitator of the Member Conferences. As well as linking into and supporting this training (e.g. by the provision of venue), further training is intended to be provided by the Monitoring Officer dealing specifically with Code of Conduct issues to follow the 2015 elections.
36. Meetings with the Chairman of SLCC have identified training needs for both Clerks and Councillors. This is currently being addressed by way of guidance notes on specific topics, as well as future provision of training.

Conclusions and Next Steps.

37. T&PCs are also being encouraged to introduce best practice, in their policies, procedures and review their Standing Orders. It is important that all members are then briefed on any changes or updates to minimise the occasions when complaints arise from a lack of knowledge or mis-use of the councils' governance arrangements.
38. Again T&PCs are encouraged to link with NALC and SLCC to use their range of standard templates (together with guidance notes where appropriate).
39. The use of mediation as a tool is a further approach that the Monitoring Officer is promoting. Whether provided by the Chairman, Ward Members, or independent mediators this is a way forward for T&PC to independently resolve disagreements or, in a worse case scenario, to at least identify and collate the facts and any background information, if the matter is to be escalated to the Monitoring Officer.
40. A list of contacts who can offer mediation to T&PCs is being compiled, and specific training will also be considered, as mediation at an early stage is key to issues being effectively resolved. The involvement of Ward Members in this regard could be of great assistance to the T&PCs and Ward Members will be encouraged to liaise where appropriate.
41. To assist Ward Members in their awareness of matters in their Ward it is proposed that the statistical data of the number of case complaints per T&PC are circulated to CBC Members on a monthly basis in step with the Council's performance management "MIH Scorecard" arrangements. Details of any case will be shared as appropriate (on a case by case basis), subject to the requirements of confidentiality, data protection principles, and ensuring that the integrity of the complaints process is not compromised.

Appendices:

Appendix A (i) – Arrangements for dealing with Code of Conduct issues

Appendix A (ii) – Flowchart

Appendix B – Summary of number of complaints