

To: Standards Committee
Date: 25 February 2019
Report of: Monitoring Officer
Title of Report: Code of Conduct: “Complaints Handling Arrangements” and Assessment criteria.

Summary and recommendations	
Purpose of report:	To advise the Committee of the proposed changes to the “Complaints Handling Arrangements” documentation and the introduction of formal assessment criteria.
Key decision:	No
Recommendation:	
That the Standards Committee recommends Council to:	
1. Approve the proposed changes to the “Complaints Handling Arrangements” documentation as detailed in the report;	
2. Delegate authority to the Monitoring Officer to amend and agree the final text and design of the draft “Arrangements for dealing with code of conduct complaints against councillors ” documentation (as set out in Appendix 2); and	
3. Approve the proposed assessment criteria (as set out in paragraph 23) for use by the Monitoring Officer, in consultation with the Independent Persons, in the consideration of Code of Conduct complaints.	
Appendices	
Appendix 1	Current documentation: Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members
Appendix 2	Draft documentation: Arrangements for dealing with code of conduct complaints against councillors

Introduction and background

1. In compliance with The Localism Act 2011 the Council has in place arrangements to enable the public to make a formal complaint that an elected or co-opted member of the City Council, or of a Parish Council within the city boundaries, has failed to comply with that authority’s Members’ Code of Conduct.

2. Those arrangements, known as the “Complaints Handling Arrangements”, are publicised on the Council’s website and made available to individuals who submit a complaint.
3. The Council adopted the “Complaints Handling Arrangements” in May 2012 and in consultation with the other Oxfordshire local authorities developed a common set of documentation.
4. The Council’s “Complaints Handling Arrangements” have not been reviewed or updated in the last six years, although many other local authorities, including South, Vale and West Oxfordshire have published amended or expanded versions of the original documentation.
5. During 2018 the Monitoring Officer and Committee & Member Services officers have subjected the Complaints Handling Arrangements to a review to challenge whether the process and the supporting documentation remain fit for purpose. As a result of that exercise and in the light of recent casework it is proposed to make some revisions to provide additional rigour to the process and clarification to the supporting documentation.
6. The Committee on Standards in Public Life published the “Local Government Ethical Standards” report on 30 January 2019 and 13 of the 26 recommendations to Government relate to some aspect of the Code of Conduct and by association the complaints handling process. Additionally 7 of the 8 Best Practice recommendations relate to the Code of Conduct. These points are discussed in detail in a separate report to the Committee but it is important to note that the changes and improvements to the Council’s complaints handling process that are proposed here do not conflict with any of the recommendations or best practice observations made by the Committee on Standards in Public Life. Further changes will be required in due course if the Government accepts the recommendations made by Committee on Standards in Public Life

Proposed amendments to the “Complaints Handling Arrangements”

Documentation

7. The current documentation supporting the “Complaints Handling Arrangements” is attached for reference at Appendix A and comprises:
 - a) The guidance document (Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members)
 - b) The Complaint Form
8. The documentation references, and is intended to be read in conjunction with, the Codes of Conduct for the City Council and Parish Councils, as appropriate. The changes to the existing arrangements proposed in this report would not require any revision to the content of the current Oxford City Council Members’ Code of Conduct.

9. A revised set of the “Complaints Handling Arrangements” documentation is attached at Appendix B. A detailed explanation for the proposed changes is set in the following paragraphs.

The Guidance Document

10. The current guidance document is intended to explain to a member of the public a) how to make a complaint and b) the Council’s process for dealing with that complaint. It is also used to explain the arrangements to any councillor who might be the subject of a complaint.
11. The current guidance is quite detailed on some aspects of the complaints process and less detailed on others, for example on the Local Hearing procedure. It also introduces unnecessary background information on the Standards Committee and Independent Persons. Overall it is considered that the arrangements could provide more clarity to the public and councillors about what to expect from the process of submitting or being the subject of a complaint.
12. The revised guidance document has been given a new title (Arrangements for dealing with code of conduct complaints against councillors) and re-written and expanded as shown below:

Old version	New version	Comment
1	1	Sections combined. Minor rewording.
2		
3	2	Updated / reformatting / some change to content for clarification
	3	New content to provide context and general explanation of the complaint process
4	4	Updated / some change to content for clarification and includes proposed assessment criteria
5	5	Minor rewording
6	6	No change to content / reformatting only
7	7	Minor rewording / reformatting only Some content on Local Hearings moved to Appendix 3
8	8	Sections combined. Minor rewording.
9		
	9	New section on indicative timescales
10	10	Minor rewording
	11	New section on document retention
11		Summary of content moved to Appendix 2

12		Summary of content moved to Appendix 2
13	12	No change
	Appendix 1	flow chart detailing the complaint process
	Appendix 2	glossary of terms used during the complaint process
	Appendix 3	Procedure to be followed at the Standards Committee Local Hearing. This will give both the complainant and the subject councillor a much clearer idea of what to expect. It will also form part of the Local Hearing agenda to ensure that those hearings are conducted to a consistent standard.
	Appendix 4	Complaint Form

The Complaint Form

13. The current version of the form relies heavily on free text and this often results in long and unfocused submissions. This can make it difficult for the Monitoring Officer and Independent Persons to tease out the specifics of the complaint. The revised form requires the complainant to identify exactly which elements of the Code of Conduct they believe have been breached. It also uses the “Who?, Why?, What?, Where? When?” approach to provide context and structure to their complaint.
14. The revised form includes two new sections to establish whether there has been a previous complaint and to determine what possible remedy the complainant is seeking. It also asks the complainant to give some context to any request for anonymity.
15. It is intended to work with ICT colleagues to make the revised form available for on-line submission from the Council’s website.

Email address

16. The simplest but possibly most effective change to all of the documentation is to the email address.
17. The original email address was too long and the presence of an underscore resulted in some problems with misdirected messages. The old email address (standards_monitoringofficer@oxford.gov.uk) has been “hidden” in documentation and on the website but it still works if it is accessed from an old cached address list and the message will be re-routed to the new email address.
18. The new email address is: standards@oxford.gov.uk.
19. The text on the Council’s website will be updated once these proposed changes have been approved.

Initial tests and assessment criteria

20. Before any assessment of a complaint begins, the Monitoring Officer must be satisfied that the complaint meets the following “initial tests”:
- It is a complaint against one or more named Members of Oxford City Council or a Parish Council within the city boundaries;
 - The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
 - The complaint, if proven, would be a breach of the Code of Conduct under which the Member was operating at the time of the alleged misconduct.
21. If the complaint fails one or more of the “initial tests” it cannot be investigated as a breach of the code and no further action will be taken.
22. If the “initial tests” are met the Monitoring Officer, in consultation with an Independent Person, will consider the complaint against possible breaches of the Code of Conduct, and determine what action should be taken. It is not always necessary to take action against each complaint. The Monitoring Officer has authority to decide the final action taken in respect of the complaint, having due regard to the advice of the Independent Person.
23. It is proposed that when reviewing Code of Conduct complaints the Monitoring Officer, in consultation with an Independent Person(s), should have regard to the following assessment criteria:

Adequate information

The Monitoring Officer must be satisfied that there is sufficient information available at the “initial test and assessment stage” to decide whether the complaint should be referred for investigation or other action.

The Monitoring Officer may provide other information which is readily available and which may assist in the consideration of the complaint “initial test and assessment stage”. This may include details of attendees at events, copies of agendas, reports and minutes of meetings or copies of the Members entry in the Register of Members’ Interests. It will not include conducting interviews with witnesses.

If insufficient information is available, the Monitoring Officer will not normally refer the complaint for investigation or other action.

Official capacity

The Monitoring Officer must be satisfied that that the Subject Member was acting in an official capacity.

Timescale

The Monitoring Officer will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional

circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.

Seriousness

The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, politically motivated or tit-for-tat.

Where the complaint appears to relate to the “rough and tumble of political debate” and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or officers, in most instances no further action will be taken.

Public interest

Consideration will be given as to whether the public interest would be served by referring a complaint for investigation or other action.

- the public interest would not normally be served where, for instance, a member has died, resigned or is seriously ill.
- If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.
- If the complaint relates to an ex-Member of Oxford City Council or one of the parish councils within the city boundary who is now a Member of another authority the Monitoring Officer may refer the matter to that authority for consideration.

Multiple Complaints

A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate the Monitoring Officer may decide that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

24. Each complaint will be assessed on its own merits and the proposed assessment criteria are not presented as an exhaustive list of the issues to be considered. But they do provide a framework for the Monitoring Officer, and Independent Persons, to use in reaching a decision on whether a complaint is appropriate to refer for investigation, informal action or no action.

25. The Monitoring Officer will not refer complaints for investigation where the complaint is not sufficiently serious to justify the cost of an investigation or it is not in the public interest to investigate.
26. The Monitoring Officer is required to refer the following matters to the police (or other regulatory agency):
- a failure to register interests in accordance with the provisions of the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
 - any complaint concerning a criminal offence

All referrals to the police or other regulatory agency will take place at the outset of the process and before the initial tests or assessment stage. No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

Legal implications

27. There is a legal requirement under Section 28(6) and (7) of the Localism Act 2011, for the Council to have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a parish council within the authority’s area or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.
28. The changes to existing arrangements detailed in this report will introduce further consistency and rigour to the initial assessment stage of the Council’s complaints handling arrangements.

Financial implications

29. There are no financial implications arising directly from the changes to existing arrangements detailed in this report. The Monitoring Officer must be mindful of the public money which may be incurred in arranging a formal investigation of a complaint. Investigations are costly and time consuming and in some circumstances, complaints may be more effectively dealt with by informal resolution or other action.

Risk management

30. Introducing the recommended assessment criteria would mean that the Monitoring Officer and Independent Persons would have a clear and objective framework against which to make an initial assessment and determine the validity of the complaint.

Equalities

31. The proposals detailed in this report and the supporting documentation provide a framework for a fair and consistent approach to handling complaints against councillors. Where appropriate practical adjustments to the arrangements may be made to accommodate specific requirements.

Report author	Catherine Phythian
Job title	Committee and Members Services Officer
Service area or department	Law and Governance
Telephone	01865 252402
e-mail	cphythian@oxford.gov.uk