

To: Council
Date: 29 April 2019
Report of: Monitoring Officer
Title of Report: Complaints handling arrangements and assessment criteria for code of conduct complaints against councillors.

Summary and recommendations	
Purpose of report:	This report recommends changes to the “complaints handling arrangements” documentation including the introduction of formal assessment criteria for code of conduct complaints.
Key decision:	No
Recommendation:	
That the Standards Committee recommends Full 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 1).	
Appendices	
Appendix 1	Draft documentation: Arrangements for dealing with code of conduct complaints against councillors
Appendix 2	Summary of changes between current and draft documentation for code of conduct complaints handling arrangements

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 ¹ within the city boundaries, has failed to comply with that authority’s Members’ Code of Conduct.

¹ Blackbird Leys Parish Council; Littlemore Parish Council; Old Marston Parish Council; Risinghurst and Sandhills Parish Council.

2. Those arrangements, known as the “complaints handling arrangements”, were adopted by Council in May 2012 and are published on the [Council’s website](#). The current documentation comprises:
 - A guidance document (Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members)
 - A Complaint Form
3. The documentation references, and should be read in conjunction with the Members’ Code of Conduct which forms Section 22 of the Council’s Constitution and is a shared Oxfordshire-wide Code that also applies to the Parish Councils within the city. The current guidance 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 code of conduct complaint.

2018 Review of the “complaints handling arrangements”

4. At the Standards Committee meeting on 11 September 2018 the Monitoring Officer undertook to review the “complaints handling arrangements” to determine whether the process and the supporting documentation remained fit for purpose. As a result of that exercise and in the light of recent casework the Monitoring Officer identified some necessary revisions to provide additional rigour to the complaint handling process and clarification to the supporting documentation.
5. The Monitoring Officer presented her findings in a report to the Standards Committee on 25 February 2019. The Standards Committee agreed the recommendations set out in that report.

Proposed revisions to the “complaints handling arrangements”

6. A complete set of the revised documentation for the “complaints handling arrangements” is attached at Appendix 1. The changes between the current and proposed documentation are summarised in the table at Appendix 2.
7. The main changes relate to:
 - the proposed introduction of assessment criteria to assist the Monitoring Officer and Independent Person in the initial assessment of a code of conduct complaint;
 - the expansion of the complaint form in order to establish more detailed information about the alleged breach of the code of conduct

Proposed assessment criteria

8. It is proposed that when considering 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
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	<p>assessment stage” to decide whether the complaint should be referred for investigation or other action.</p> <p>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.</p> <p>If insufficient information is available, the Monitoring Officer will not normally refer the complaint for investigation or other action.</p>
Official capacity	The Monitoring Officer must be satisfied that that the Subject Councillor 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	<p>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.</p> <p>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.</p>
Public interest	<p>Consideration will be given as to whether the public interest would be served by referring a complaint for investigation or other action.</p> <ul style="list-style-type: none"> • 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.

9. 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. They are intended to provide an objective 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.
10. 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.

The Complaint Form

11. The current version of the complaint 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;
 - state whether they believe there has been a previous complaint on the same issue;
 - indicate what possible remedy they are seeking;
 - provide some context to any request for anonymity.
12. It is intended to work with ICT colleagues to make the revised form available for on-line submission from the Council's website.

Future revisions

13. The changes to the existing complaint handling arrangements proposed in this report would not require any revision to the content of the current Oxford City Council Members' Code of Conduct. However, further changes to the Council's complaints handling process and to the Members' Code of Conduct will be required in due course if the Government accepts the recommendations made by Committee on Standards in Public Life in the "Local Government Ethical Standards" report (published on 30 January 2019).

14. Some 13 of the 26 recommendations to Government set out in that report relate to aspects of the Members' Code of Conduct and by association the complaints handling process. Additionally 7 of the 8 Best Practice recommendations relate to the Code of Conduct. 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.
15. The Monitoring Officer and Standards Committee will maintain a watching brief and submit further reports to Council as necessary.

Legal implications

16. 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.
17. 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

18. 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

19. 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

20. 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.

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