

To: Standards Committee
Date: 22nd June 2021
Report of: Monitoring Officer
Title of Report: Code of Conduct: summary of complaints and individual dispensations – 1 October 2020 to 14 June 2021

Summary and recommendations	
Purpose of report:	To advise the Committee of: <ol style="list-style-type: none">1. The number and status of complaints received under the Members' Code of Conduct which have been considered by the Head of Law and Governance (in her statutory capacity as the authority's Monitoring Officer) in consultation with an Independent Person, from October 2020 to date.2. The number of dispensations to an individual member, granted under Section 33 of the Localism Act 2011, by the Monitoring Officer, following consultation with an Independent Person.
Recommendation:	That the Standards Committee notes the content of the report.
Appendix 1: List of individual complaints and Monitoring Officer decisions	

Introduction and background

- 1. In compliance with legislation relating to the standards and conduct of elected councillors, the Council has in place complaints handling arrangements to enable an individual to make a formal complaint that an elected or co-opted member of the City Council, or of a Parish Council within the City Council's area, has failed to comply with the authority's Members' Code of Conduct.**
- 2. The Standards Committee is responsible for promoting high standards of ethical behaviour by monitoring and making recommendations to Council on complaints handling arrangements. This report from the Monitoring Officer which identifies any issues or learning points arising from the complaints received contributes to that monitoring process.**

3. The key stages of the complaints handling arrangements can be summarised as:

<p>Initial tests</p>	<p>The Monitoring Officer will apply the following “initial tests” to the complaint:</p> <ul style="list-style-type: none"> • It is a complaint against one or more named councillors of Oxford City Council or a Parish Council within the city boundaries; • The named councillor 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, could be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
<p>Assessment</p>	<p>The complaint will be assessed and a decision made by the Council’s Monitoring Officer in consultation with an Independent Person as to the next steps. At this stage the options open to the Monitoring Officer are:</p> <ul style="list-style-type: none"> • No further action • Informal resolution brokered by the Monitoring Officer and/or Group Leader • Referred for investigation • Referred to the police or other regulatory agency
<p>Investigation</p>	<p>A formal investigation may be conducted by an officer from Oxford City Council, an officer from another local authority or an independent investigator.</p> <p>The investigating officer will review the complaint and supporting evidence and may interview some or all of the people concerned.</p> <p>The investigating officer will then produce a draft report. The complainant and the subject councillor concerned will normally have an opportunity to comment on the draft report. The investigating officer will then submit the report to the Monitoring Officer.</p>
<p>Local Hearing</p>	<p>The Monitoring Officer will consider the findings of the investigation and, in consultation with the Independent Person(s), determine what action to take. At this stage the options open to the Monitoring Officer are:</p> <ul style="list-style-type: none"> • Local Hearing – complaint to be determined by the Standards Committee; • Local Resolution - a fair resolution of the complaint which is acceptable to all parties brokered by the Monitoring Officer; or • No action - complaint dismissed

Complaints made against members of Oxford City Council or a Parish Council

4. In the period 1 October 2020 up to and including 14th June 2021 the Monitoring Officer received 16 separate complaints relating to 12 current or retired city councillors. A list of the individual complaints and the outcome, where determined, is attached at Appendix 1. No formal complaints were received in respect of any Parish Councillors.
5. In all cases the Monitoring Officer consulted with an Independent Person before reaching a decision on the Assessment process. In all cases the Complainant and Subject Councillors were notified of the decision and the Monitoring Officer's Decision Notice was placed on the case file.
6. It should be noted that 10 of the 16 complaints, received in April and May 2021, were submitted by the same individual complainant and related to 9 current or retired councillors.
7. In respect of most of these complaints the Subject Member was not acting in their capacity as a Councillor at the relevant time and therefore the code was not engaged and the Council had no jurisdiction to investigate the complaints. The complaints were therefore rejected on that basis.
8. The Monitoring Officer did go on to consider whether the complaints brought were vexatious or malicious, noting that it is the complaint, rather than the complainant, that would need to be malicious or vexation to justify dismissal of a complaint. Although these complaints were submitted at a similar time, and there were some cases of multiple complaints against the same councillor, the Monitoring Officer took the view that there was insufficient evidence to conclude that these complaints were malicious or vexatious, noting that each case should be considered on its own merits.
9. A further common theme for the majority of these 10 complaints was that alleged breaches of the code took place more than 6 months prior (in some cases over two years). The Monitoring Officer therefore considered that, even if the Subject Members had been acting in capacity at the relevant time, there was little public interest in investigating such complaints due to the time that has elapsed, particularly bearing in mind potential time and resource implications in carrying out an investigation.

Learning points

10. However, the Monitoring Officer is of the opinion that these complaints, although very different in regard to the detail of the alleged behaviours, raise some wider learning points for all members of the City Council.
11. Essentially almost all of these complaints were triggered by or in response to social media posts, press statements or alleged remarks in a public setting by the Subject Councillor. Several complaints related to Councillor conduct at Political Group meetings when Councillors were attending as a member of a local political group rather than as a member of the City Council.
12. The most relevant of the assessment criteria in respect of these complaints is whether the Subject Councillor was acting in their official capacity as a Councillor at the relevant time. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a

councillor 24 hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person's membership of their authority and specifically their role as a councillor is needed.

13. The Livingstone judgment, upheld by the case of Sharratt, established that for a councillor to be acting in an official capacity:
 - The councillor should be engaged in business directly related to the Council or its constituents; and
 - The link between the Councillor's office and the conduct should have a degree of formality.
14. In all of these complaints the Monitoring Officer concluded that there was insufficient nexus between the content or context of the social media posts, press statements or alleged remarks in a public setting made by the Subject Councillors with that of their role as a Councillor or the business of the Council.
15. It is clear that the issue of capacity is sometimes difficult to determine and there is often a lack of clarity around the point in both the minds of Councillors and other complainants. Whilst the Localism Act 2011 provides that the code is only engaged when a Councillor is acting as a Councillor, it does not go on to define this and neither has any Government guidance been issued on the point.
16. Induction training for new Councillors and mandatory refresher training for re-elected Councillors has recently been undertaken and the issue of capacity was included, with examples, and an examination of the relevant case law. The standards complaint form is currently being reviewed with the issue of capacity to be emphasised on the form itself in a bid to discourage complainants from submitting complaints in respect of the conduct of a Councillor clearly not acting as a Councillor at the relevant time. The complainant who submitted 10 complaints all deemed to be about Councillors who were not acting in capacity has been contacted by the Monitoring Officer with specific advice around this point.
17. Feedback from the Independent Person has been that advice should be offered to complainants where their complaints have been rejected, beyond simply providing a decision notice and this approach has been adopted, where appropriate, by the Monitoring Officer.
18. Some complaints have been received against Councillors who could be considered to be more senior Councillors due to the position they hold, for example as being Leader of the Council or a Group, a member of the Cabinet, or a holder of Civic Office. The views of at least one Independent Person are that there should be an even higher standard of conduct expected from more senior Councillors and that this should be incorporated into the City Council's procedures. The Monitoring Officer intends to review the procedures later in the year and bring a further report to the Standards Committee with recommendations.
19. Feedback from some Councillors has raised a concern that they are keen that the Council would robustly take supportive action should there be serious, unjustified, malicious or vexatious complaints made towards them. This situation has not arisen but if it should the Monitoring Officer would consider any legal options available to the Council, and would consider reporting matters to the Police or external agencies where appropriate.

Dispensations granted to an individual Member

20. The Localism Act 2011 prevents Members from participating in any business of the Council where they have a Disclosable Pecuniary Interest (DPI) unless they have sought a dispensation under Section 33 of the Act. Applications must be made in writing and dispensations may be sought for a period of up to four years.
21. On 1 October 2018 Council granted a general dispensation, to remain in force for a period of 4 years (ending on 30 September 2022), to all Oxford City Council Members and co-opted Members, to speak and vote where they would otherwise have a DPI in the following matters:

- **Determining an allowance** (including special responsibility allowances), travelling expense, payment or indemnity given to Members
- **Housing:** where the Member (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the particular tenancy or lease of the Member (their spouse or partner);
- **Housing Benefit/Universal Credit:** where the Councillor (or spouse or partner) receives housing benefit;
- Any **Ceremonial Honours** given to Members;
- Setting the **Council Tax** or a precept under the Local Government and Finance Act 1992 (or any subsequent legislation); and
- Setting a **Local Council Tax Reduction Scheme** or Local scheme for the payment of business rates (including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation)

22. In October 2018 Council also delegated the granting of dispensations to an individual member under Section 33 of the Localism Act 2011 to the Monitoring Officer, following consultation with an Independent Person.
23. In the period covered by this report there have been no requests for an individual dispensation under Section 33 of the Localism Act 2011.

Sensitive Interests

24. Section 32 Localism Act 2011 provides that where a member of a local authority has an interest which they, and the Monitoring Officer, consider could lead to the member or a person connected to them, to be subjected to violence or intimidation if it were disclosed, it can be deemed by the Monitoring Officer to be a sensitive interest.
25. The effect of a sensitive interest is that the interest and details of it are disclosed to the Local Authority but only the existence of the interest is included in the public version of the register of member interests, with the details being withheld.
26. Government guidance to Monitoring Officers has provided that the threshold to be applied to determining violence and intimidation is low.

27. The Monitoring Officer can confirm that she has deemed the interest in land in Oxford to be a sensitive interest for several Members since they became Councillors, or were re-elected, in May 2021.

The Code of Conduct

28. Members will be aware that the LGA last year published a new model code of conduct for Local Authorities incorporating many of the recommendations made in the report written by the Committee on Standards in Public Life on Ethical Standards In January 2019.

29. The revised model code has led the Monitoring Officer to start reviewing the existing Oxford City Council Code of Conduct with colleagues across Oxfordshire. It is anticipated that a further report will be brought to the Standards Committee in September 2021 with proposals and recommendations in respect of the Code and the Council's procedures in respect of Member conduct issues.

Legal implications

30. The Localism Act 2011 requires the Council to have a Code of Conduct which sets out the standards expected of Members whenever they act in their official capacity. The Code must also have in place a suitable procedure at a local level to investigate and determine allegations against elected Members and co-opted Members and arrangements to deal with requests for dispensations. The Council is also responsible for having arrangements in place to investigate and determine allegations against Parish Councillors.

Financial implications

31. There is a cost to the authority when a complaint is referred for external investigation this is determined by market factors in terms of the availability of investigators identified through complaint procurement processes.

Risk management

32. If the Council fails to adopt and maintain a Code of Conduct and process for the investigation of complaints which is fit for purpose, robust and transparent then there are risks to the Council's reputation and also to the integrity of its corporate governance and decision-making processes as it will not be compliant with legislation. Formal consideration of requests for dispensation minimises the risk of the Council not following lawful procedures in respect of members' interests.

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