

To: Standards Committee
Date: 16 November 2021
Report of: Head of Law and Governance
Title of Report: Code of Conduct: summary of complaints and individual dispensations (15 June – 31 October 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 15 June to 31 October 2021.2. 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 15 June 2021 up to and including 31 October 2021 the Monitoring Officer closed one outstanding complaint and considered three new complaints relating to four city councillors. One complaint was received in respect of a Parish Councillor. That complaint is still active and has been referred for formal investigation. A list of the individual complaints and the outcome, where determined, is attached at Appendix 1.
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.

Learning points

6. The Monitoring Officer will brief the Committee at the meeting on any relevant learning points identified at the Assessment stage.
7. **Complaint #17257** related to alleged posts on social media. The Subject Councillor neither confirmed nor denied posting the images or attaching the offensive hashtag but asserted that they were acting in a private capacity. The Monitoring Officer was satisfied that the Subject Councillor was not acting as a representative of the Council, engaged on Council business nor acting 'as the voice' of the Council at the time of the alleged offences. The Monitoring Officer concluded that the Subject Councillor should be offered advice about their conduct in a private capacity and how it can impact on the reputation of the Council when they are known to be a Councillor.
8. **Complaint #17324** concerned the alleged failure of the Subject Councillor to respond to communications from a constituent; the timing of which may have coincided with a known service disruption to the delivery/receipt of councillor emails. The Monitoring Officer was satisfied that the Subject Councillor was in office at the time of the alleged conduct and that the Code of Conduct was in force at that time. However, the Monitoring Officer considered that the conduct complained of was not sufficiently serious for any action to be taken other than informal resolution of this matter. There is no learning point as such other than to encourage councillors to be mindful of any unexpected changes in the volume and frequency of email traffic.

Dispensations granted to an individual Member

9. 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.
10. 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)

11. 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.
12. 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

13. 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.
14. 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.
15. Government guidance to Monitoring Officers has provided that the threshold to be applied to determining violence and intimidation is low.
16. 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.

Legal implications

17. 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

18. 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

19. 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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Appendix 1: List of individual complaints and Monitoring Officer decisions (June – August 2021)

	Ref	Date	City/Parish	Code – alleged breach in behaviour	MO decision
1.	16985	Apr 2021	Oxford City	All: 3 - 19 inclusive	Complaint dismissed; July - Complainant failed to provide evidence or case number for Police complaint.
2.	17257	July 2021	Oxford City	<ul style="list-style-type: none"> • Honesty & Integrity • Respect for Others • Bullying • Confidential Information 	No further action; not official capacity. MO gave informal advice to Subject Councillor
3.	17324	Aug 2021	Oxford City	<ul style="list-style-type: none"> • Accountability • Openness • Honesty & Integrity • Knowledge • Professional Advice 	Official capacity; further action not in the public interest as the subject matter was not sufficiently serious. MO instructed Subject Councillor to respond to Complainant's emails
4.	17352	Aug 2021	Parish Council	<ul style="list-style-type: none"> • Respect for others • Bullying 	Official capacity. Referred for formal investigation