

Slough Borough Council

Report to:	Standards Committee
Date:	19 July 2022
Subject:	Councillors' Code of Conduct and Standards Committee terms of reference
Chief Officer:	Sarah Wilson (Monitoring Officer)
Contact Officer:	Sarah Wilson (Monitoring Officer)
Ward(s):	All
Exempt:	No
Appendices:	Appendix 1 – Draft Part 2 and Part 3 of Part 5.1 Councillors' Code of Conduct of the Constitution Appendix 2 – Outcomes of Code of Conduct complaints determined up to 30 June 2022 in 2022/23 Appendix 3 – Draft Article 9A of the Constitution

1. Summary and Recommendations

- 1.1 The purpose of this report is to provide members with an update in relation to the Councillors' Code of Conduct and to seek a recommendation to full council to make amendments to the Standards Committee terms of reference and the procedure for resolving complaints to take account of the new Standards Committee.

Recommendations:

The Committee is recommended to:

1. Recommend to full council that the Constitution's Article 9A and Part 5.1 Councillors' Code of Conduct are amended as set out in Appendix 1 and 3.
2. Note the outcome of complaints determined to date in 2022/23 as set out in Appendix 2.

Reason:

The Councillors' Code of Conduct is a key code governing the behaviour of elected members and forms part of the Council's Ethical Framework. The Council has set up a separate Standards Committee to assist the Council to fulfil its duties to maintain high standards of conduct by members and co-opted members. The Council is recommended to make minor changes to the terms of reference to remove the requirement for independent members and to the procedure for determining complaints to reflect the role of the new Committee.

2. Report

Introduction

- 2.1 With effect from the municipal year 2022/23, the Council has set up a separate Standards Committee to assist the Council to meet its duty under s.27 of the Localism Act 2011. Part of the Committee's remit is to advise the Council on the adoption or revision of the Councillor's Code of Conduct and to determine written complaints made against an elected member alleging a breach of the Code of Conduct.
- 2.2 The Monitoring Officer should also produce bi-annual reports on Member Conduct Complaints.

Background

- 2.3 The Councillors' Code of Conduct is split into three parts, with the first part setting out the formal Code of Conduct and Part 2 and Part 3 setting out the process for determining a complaint. Parts 2 and 3 need amending to reflect the removal of the process from the Audit and Corporate Governance Committee. The process should also clarify the role of the Local Government and Social Care Ombudsman.
- 2.4 The proposed changes are summarised below:
- (a) Change the reference to Audit and Corporate Governance Committee to Standards Committee throughout the document.
 - (b) Complaints against Members – clarify that the Subject Member will be notified once the Monitoring Officer has clarified that a complaint should be dealt with under the complaints procedure and the complainant has understood that their details will be disclosed to the complainant. The amendment clarifies that there may be situations when the Subject Member has not been notified about a complaint, for instance if it has been determined that no formal investigation is required, due to the complainant not wishing for the detail of the complaint to be provided to the Subject Member and it not being possible to investigate it on an anonymous basis.
 - (c) Part 3 – change reference to Standards Determination Sub Committee to Standards Committee.
 - (f) Appeals – confirm that the complainant has the right to refer the matter to the Local Government and Social Care Ombudsman.
- 2.5 The Local Government and Social Care Ombudsman (LGSCO) investigates complaints of injustice caused by maladministration or service failure in accordance with the Local Government Act 1974. There have been several complaints about other local authorities to the LGSCO in relation to the process for determining complaints against councillors in 2021/22. These have been reviewed and the relevant findings include the following:
- (a) a failure to record the considerations in the minutes of a sub-committee.
 - (b) delay in investigating complaints.
 - (c) a lack of clarity in the complaints process.
- 2.6 The Council's process makes it clear that there is no appeal against a determination by the Monitoring Officer or the Standards Committee, however it does not clarify the

right of the complainant to complain to the LGSCO if they are concerned that maladministration or a service failure has occurred. It is recommended that the procedure is amended to confirm this right.

Complaints made under Code of Conduct to date in 2022/23

- 2.7 The former monitoring officer left on 20 May 2022 and was responsible for determining and managing complaints made up until that date. From 23 May 2022, the Monitoring Officer role is designated to the Principal Lawyer at Harrow Council, who is also the Council's lead legal advisor. The outcomes of complaints for 2021/22 were reported as part of the Council's annual report from the chairman of Audit and Corporate Governance Committee. The terms of reference for the Standards Committee confirms that the Monitoring Officer should report at least bi-annually on complaints made under the Code of Conduct. Appendix 2 provides an update up to end of June 2022.
- 2.8 The summary of complaints received to date is as follows:
- (a) 3 complaints received concerning SBC elected members
 - (b) 1 complaint received concerning a parish councillor
 - (c) No complaints have necessitated referral for formal investigation
 - (d) 2 of the complaints received concerning SBC elected members were found not to have involved a breach of the code of conduct
 - (e) 1 complaint has not been progressed due to lack of further information from the complainant.
- 2.9 It is difficult to draw themes from such a small number of complaints, however they mainly relate to use of language and whether this is disrespectful. This includes language used in conversations between members and in public meetings. The Code of Conduct confirms that members should treat other councillors, staff, partner organisations' staff, volunteers and members of the public with respect. The Code also makes clear that debate and having different views are all part of a healthy democracy and elected members should be able to express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. However, elected members should not subject individuals, groups of people or organisations to personal attack.
- 2.10 As part of the welcome evening and induction, 12 of the 14 members who were elected to office in 2022 attended training on the Code of Conduct. This training reminded members of the main requirements of the Code of Conduct, as well as the role of a councillor, rules on registering and declaring interests and the member officer relations protocol. With the first whole council elections in May 2023, the Council has an opportunity to run a comprehensive welcome and induction event for all elected members, which will include training on the Code of Conduct, interests, member officer relations and complaints process.

Recommendations to amend the Standards Committee terms of reference

- 2.11 It is recommended that minor changes are made to Article 9A which sets out the terms of reference for the Standards Committee. Two recommendations are made:

- (a) Removal of the requirement to have independent members appointed to the Committee.
- (b) Clarification that the parish councillors who are appointed to the Committee are non-voting and can only speak on parish council matters.

2.12 The requirement to have independent members on the Committee came about as this was a requirement for the Audit and Corporate Governance Committee. This is recommended as best practice. However, the Standards Committee already has an independent voice on the committee by means to the appointed independent person. There is therefore no requirement to have an independent member in addition to the independent person. In addition, the Council has attempted to recruit to the independent member role on this committee and has been unsuccessful.

2.13 The Committee consists of elected members on a politically proportional basis. In addition as the Committee determines complaints against parish councils, it is deemed appropriate to include the right for parish councillors to be appointed to the committee. However, it is recommended that the parish councillors are non-voting and can only speak on parish council matters. This ensures that the voting members of the committee are elected members of Slough Borough Council and the committee remains politically proportionate. In addition, it is not deemed appropriate to require a parish councillor to attend to ensure quoracy for extraordinary meetings. By having this rule, there is a risk that the Committee cannot make a decision due to the non-attendance of parish councillors.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 Accepting the recommendation will not involve any additional expenditure.

3.2 Legal implications

3.2.1 The Localism Act 2011 changes the system for maintaining standards amongst elected members by removing the Standards Board and placing responsibility with individual local authorities. Section 27 place a duty on local authorities to ensure that their members and co-opted members maintain high standards of conduct and require them to adopt a code of conduct for their members.

3.2.2 Section 28 confirms that the adopted code should be consistent with the seven “Nolan” principles of standards in public life and must set out the rules that the authority wants to put in place in relation to registering and disclosing pecuniary and non-pecuniary interests. The Council adopted the LGA’s model code of conduct in 2021.

3.2.2 Section 28 also requires local authorities to put in place arrangements under which it can investigate an allegation of a breach of the code made in writing and, if it considers that it warrants investigation, requires that the authority appoint at least one independent person whose views must be sought after it has made an investigation and before it takes a decision. The Council appointed Mr R Tomkinson as the Council’s independent person from 19 May 2022.

3.3 Risk management implications

- 3.3.1 Having an effective code of conduct in place setting out the standards of behaviour for elected members and an effective system for managing and monitoring such behaviour is a key part of the Council's ethical framework and risk management system. As a public body, the Council should act lawfully and in the public interest and failing to do so opens it up to challenge. Decisions of the council can be challenged where they have not been made on a rational basis or having followed a fair process. Ensuring that elected members take decisions in an appropriate and properly informed way, including declining to take part in decision-making when they have a relevant interest, will help ensure fair and lawful decisions and reduce the risk of successful legal challenge.

3.4 Environmental implications

- 3.4.1 There are no specific environmental implications arising from this decision.

3.5 Equality implications

- 3.5.1 Section 149 of the Equality Act 2010 requires public bodies to pay due regard to the need to
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - advance equality of opportunity between people who share a protected characteristic and those who do not;
 - foster good relations between people who share a protected characteristic and those who do not.
- 6.3 The Code of Conduct requires members to promote equalities and not discriminate unlawfully against any person. It explains the central role that elected members have in ensuring that equality issues are integral to the Council's performance and strategic aims and that there is a strong vision and public commitment to equality across public services.

4. Background Papers

None.