

STANDARDS COMMITTEE



Report subject	Code of Conduct Complaints - Review
Meeting date	5 October 2021
Status	Public Report
Executive summary	<p>This report provides Members with an update on complaints regarding alleged breaches of the Code of Conduct against councillors received or concluded since the last meeting in July 2021.</p> <p>The Committee is responsible for maintaining high standards of conduct by Members of BCP Council and the Town and Parish Councils, monitoring the operation of the Code of Conduct, and considering the outcome of commissioned independent investigations.</p> <p>The report also brings to the attention of Standards Committee, a number of complaints made under the Code of Conduct for Councillors as set out in Part 6 of the BCP Council Constitution. In line with the provisions of Part 6 Appendix C of the Constitution, the Chair, in consultation with the members of the Committee, the Independent Persons and the Monitoring Officer has followed an informal resolution process for each of these complaints. This has not resulted in the successful conclusion of the complaints. This report asks the Committee to consider the next steps including a potential report to Council about the role and status of Standards at BCP Council.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none">(a) the outcome of concluded complaints and the progress of those still outstanding be noted;(b) the Committee determine which of the options, referred to in section 15 to this report, should be pursued in relation to the unresolved complaints identified in paragraph 13 to this report.
Reason for recommendations	<p>This is an opportunity for Members of the Committee to be appraised of details of completed complaints and any outstanding complaints of alleged breaches against the Code of Conduct. This is in accordance with the functions of the Committee and its duty to discharge functions in relation to the promotion and maintenance of high standards of conduct within the Council and amongst Town</p>

	and Parish Councils within the area.
Portfolio Holder(s):	Not applicable
Corporate Director	Graham Farrant (Chief Executive)
Report Authors	Richard Jones (Head of Democratic Services) Susan Zeiss (Service Director for Law and Governance and Monitoring Officer)
Wards	Not applicable
Classification	For Decision

Background

1. The purpose of this report is to provide a summary and update of completed and ongoing complaints received regarding alleged breaches of the Code of Conduct under the Localism Act 2011 against Councillors for the Bournemouth, Christchurch and Poole area, including parish and town councils.
2. A similar report has been presented to previous meetings of the committee and now form a regular item at committee meetings.

Analysis

3. Details of allegations/complaints in relation to the Code of Conduct are outlined in the table set out in paragraph 6 to this report. Cases which were shown as closed in the previous report have been removed from this report.
4. The adopted arrangements for dealing with allegations of breach of the code of conduct for councillors now provides for an initial filtering process for the Monitoring Officer to mediate in appropriate cases between the parties concerned in an attempt to identify a mutually agreeable remedy. Where this is not possible, complaints then proceed to the Chairman of the Standards Committee in consultation with councillors of the Standards Committee and Monitoring Officer (or their Deputy) to decide whether:-
 - (a) There is no breach of the Code and no further action should be taken; or
 - (b) There is a potential breach of the Code and informal resolution is appropriate, to include for example mediation, training, apology, advice; or
 - (c) There is a potential breach of the Code and the Monitoring Officer should undertake or commission an investigation into the complaint with a view to a report then being considered by the Standards Committee.
5. The analysis provides details of the nature of the complaint, the early intervention of the Monitoring Officer (where appropriate), the initial filtering decision of the Chairman (following consultation), any informal resolutions agreed (where applicable), and the status of the complaint.

6. Certain specific detailed information regarding pending complaints has not been provided as this may be prejudicial to the conduct of the ongoing complaints process. Personal details have also not been included to protect both the identity of councillors and the complainant, unless specific direction to the contrary has been expressed.

Reference	Nature of allegation	Outcome / Decision	Status
BCP-021	<ul style="list-style-type: none"> • Failing to treat others with respect • Bullying any person • Intimidating or attempting to intimidate • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>The complaint is continuing to be considered. Mediation was sought between the parties concerned but was not agreed.</p> <p>Complaint has been referred for independent investigation.</p>	Pending
BCP-022	<ul style="list-style-type: none"> • Failing to treat others with respect • Bullying any person • Intimidating or attempting to intimidate • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>The complaint is continuing to be considered. Mediation was sought between the parties concerned but was not agreed.</p> <p>Complaint has been referred for independent investigation.</p>	Pending
BCP-039	<ul style="list-style-type: none"> • Failing to treat others with respect • Bullying any person • Intimidating or attempting to intimidate • Unlawfully disclosing confidential information or information believed to be of a confidential nature • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>Initial assessment completed.</p> <p>Apology requested from subject councillor but not currently complied with.</p> <p>Complaint has been referred for independent investigation.</p>	Pending
BCP-040	<ul style="list-style-type: none"> • Failing to treat others with respect • Bullying any person • Intimidating or attempting to intimidate • Bringing the office of Councillor or the Council into disrepute while acting in an official 	<p>Initial assessment completed.</p> <p>Apology requested from subject councillor but not currently complied with.</p> <p>Complaint has been referred for independent investigation.</p>	Pending

Reference	Nature of allegation	Outcome / Decision	Status
	capacity		
BCP-053	<ul style="list-style-type: none"> • Failing to treat others with respect • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	Initial assessment completed, and subsequently reviewed. Apology requested from subject councillor but not currently complied with.	Pending
BCP-061	<ul style="list-style-type: none"> • Failing to treat others with respect • Causing the Council to breach equality laws • Bullying any person • Intimidating or attempting to intimidate • Compromising or attempting to compromise the impartiality of those who work for or on behalf of the Council • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity • Using or attempting to use the position as a Councillor improperly to confer on or secure an advantage for him or anyone else • Failing to have regard to the advice of the Monitoring Officer or Chief Finance Officer • In respect of a prejudicial interest, failing to withdraw from the room or chamber, exercising executive functions, or seeking to improperly influence a decision 	Initial assessment completed. No evidence of any new or additional information to warrant further investigation.	Closed
BCP-062	<ul style="list-style-type: none"> • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	Complaint reviewed and dismissed for the following reasons: <ul style="list-style-type: none"> • Insufficient information submitted to demonstrate a prima facie breach of the code; • The matter complained about was of a nature 	Closed

Reference	Nature of allegation	Outcome / Decision	Status
		<p>that it would not have be in the public interest or proportionate to pursue it further;</p> <ul style="list-style-type: none"> The conduct complained about had already been the subject of investigation or enquiry by another public body. 	
BCP-063	<ul style="list-style-type: none"> Disclosure of information given in confidence, or information acquired which it was believed, or ought reasonably to be aware, was of a confidential nature, without authorised consent; Using or attempting to use position improperly to confer on or secure for them or any other person, an advantage or disadvantage. 	<p>Complaint reviewed and dismissed for the following reasons:</p> <ul style="list-style-type: none"> Insufficient information submitted to demonstrate a prima facia breach of the code; The complaint was based essentially on hearsay evidence and not supported at the outset by detailed and verifiable supporting evidence; The matter complained about was of a nature that it would not have be in the public interest or proportionate to pursue it further. 	Closed
BCP-064	<ul style="list-style-type: none"> Disclosure of information given in confidence, or information acquired which it was believed, or ought reasonably to be aware, was of a confidential nature, without authorised consent; Using or attempting to use position improperly to confer on or secure for them or any other person, an advantage or disadvantage. 	<p>Complaint reviewed and dismissed for the following reasons:</p> <ul style="list-style-type: none"> Insufficient information submitted to demonstrate a prima facia breach of the code; The complaint was based essentially on hearsay evidence and not supported at the outset by detailed and verifiable supporting evidence; The matter complained 	Closed

Reference	Nature of allegation	Outcome / Decision	Status
		about was of a nature that it would not have been in the public interest or proportionate to pursue it further.	
BCP-065	<ul style="list-style-type: none"> The complaint regarded the application of a specific council policy and not the conduct of a councillor. 	Outside jurisdiction – Not a valid complaint under the code	Closed
BCP-066	<ul style="list-style-type: none"> Failing to treat others with respect 	Complaint reviewed and informal resolution agreed by the Monitoring Officer. Information provided by the subject councillor as requested by MO.	Closed
BCP-067	<ul style="list-style-type: none"> Failing to treat others with respect Causing the Council to breach equality laws Compromising or attempting to compromise the impartiality of those who work for or on behalf of the Council Preventing a person from getting information that the person is entitled to by law Bringing the office of Councillor or the Council into disrepute while acting in an official capacity Using or attempting to use the position as a Councillor improperly to confer on or secure an advantage or disadvantage for him or herself or anyone else 	Awaiting further information from the complaint to allow the Monitoring Officer to undertake initial assessment	Pending
BCP-068	<ul style="list-style-type: none"> Failing to treat others with respect 	The complaint is being considered by the Monitoring Officer	Pending
TPC-006	<ul style="list-style-type: none"> Failing to treat others with respect Bullying any person Intimidating or attempting to intimidate 	The complaint is being considered by the Monitoring Officer	Pending

Non-Compliance with Decision of Chairman

7. The Committee will note that there are a number of complaints referenced in the table above, where the subject councillors are refusing to comply with the decision of the Chair and the recommended informal remedy.
8. The BCP Council Constitution, Part 6 Appendix 6, sets out the arrangements for dealing with allegations of breach of the Code of Conduct for Councillors.
9. In compliance with the Localism Act 2011, BCP Council has a Code of Conduct, a procedure enshrined in its constitution for how complaints under the Code will be considered and an established Standards Committee to hear complaints referred to it.
10. The stages of the process provide as follows:
 - (i) Upon receipt of a complaint under the Code of Conduct the Monitoring Officer (or their nominee) should, where considered appropriate, enter into an early preliminary and informal dialogue with the complainant and the Councillor complained of with a view to providing early mediation which, with agreement of both parties, can promote a speedy resolution of the complaint.

Types of informal resolution following mediation might include:

- An explanation by the subject Councillor of the circumstances surrounding the complaint;
 - An apology from the subject Councillor;
 - Agreement from the subject Councillor to attend relevant training or to take part in a mentoring process or, where the complainant is also a Councillor, an agreement to participate in mediation involving the appropriate Political Group Leaders;
 - Offering to engage in a process of mediation or conciliation between the subject Councillor and the complainant;
 - Correcting an entry in a register;
 - Any other action capable of resolving the complaint.
- (ii) Following which, if the complaint remains unresolved, the Chair of Standards (in consultation with the councillors of the Standards Committee, the Independent Persons and the MO) shall consider whether:
 - There is no breach of the Code and no further action should be taken; or
 - There is a potential breach of the Code and informal resolution is appropriate, to include for example mediation, training, apology, advice; or
 - There is a potential breach of the Code and the Monitoring Officer should undertake or commission an investigation into the complaint with a view to a report then being considered by the Standards Committee.

Referral of a complaint to independent investigation incurs additional expenditure and is therefore reserved to allegations which are considered to be of a serious nature and where the additional expenditure would be proportionate to the potential outcome.

Outstanding Complaints - Next Steps

11. Despite there being a robust Code and process for considering complaints that are brought under it, a small number of complaints between Councillors have remained unresolved for unacceptably long periods of time. This is undermining the role and standing of Standards Committee.
12. The table below shows the relevant dates and highlights the length of time since each request for an apology or to participate in mediation or training was made. It is acknowledged that there have been periods during which officers and Committee members did not actively progress some complaints, due to the pressures of work caused by the Covid-19 pandemic, but the main cause of the delays has been the time and effort required to try and reach informal resolution.
13. The independent investigator of Complaints 039 & 040 has reported that it has been difficult for her to arrange a time to speak with the councillor concerned.

No	Date Received	Decision Letter	Refusal to Comply	Independent Investigation
021	13/06/2020	10/07/2020	07/08/2020	18/08/2021
022	15/06/2020	10/07/2020	19/08/2020	18/08/2021
039	22/01/2021	16/03/2021	16/03/2021	12/07/2021
040	22/01/2021	16/03/2021	16/03/2021	12/07/2021
053	30/03/2021	09/06/2021	11/07/2021	N/A

14. The Monitoring Officer has also had sight of emails from Councillors not directly involved in any process under the Code, in which they have expressed that they have no confidence in the Standards process or that they believe it to be flawed.
15. The Committee must determine what course of action should now be taken to conclude these matters which have reached an impasse. Four of the five unresolved complaints referred to in this section of the report have been made by Councillors against other Councillors.

Options Appraisal

- Option 1: Do Nothing
- Option 2: Continue to try and resolve the complaints
- Option 3: Instruct every complaint under the Code of Conduct to independent external investigation.
- Option 4: Report the position of non-compliance to full Council

Recommendation

16. The committee is asked to consider which of the options above to proceed with regarding those complaints which have now reached an impasse.
17. Doing nothing is not recommended as this will serve to further undermine the role and position of the Standards Committee.
18. It is questionable whether any further attempts to seek agreement with the councillors concerned would be successful and referral to an independent external

investigation, for those which have not already been referred, is not considered to be proportionate or cost effective.

19. Presenting a report to full Council from the Chair of Standards Committee at the earliest opportunity, setting out the position regarding these unresolved complaints, would clearly highlight the position of non-compliance but would also allow these complaints to be drawn to a close.

Summary of financial implications

20. There are no financial implications arising from this report.

Summary of legal implications

21. The Council has a legal duty to respond to complaints made against councillors of allegations of a breach of the Code of Conduct. The Council has adopted procedures for handling complaints.

Summary of human resources implications

22. There are no direct manpower implications arising from this report, however, the Committee will be aware that the handling and processing of complaints is resource intensive. A high volume of complaints could require the need for additional resources. It is therefore critical that the committee continuously seeks to promote and maintain high standards of conduct by all councillors to help limit the number of complaints.

Summary of sustainability impact

23. There are no sustainability implications arising from this report.

Summary of public health implications

24. There are no public health and wellbeing implications arising from this report.

Summary of equality implications

25. This report is reporting on the outcome of complaints made against councillors for alleged breaches of the Councillor's Code of Conduct and as a consequence there are no direct equalities implications arising from this report. The Code of Conduct includes a duty upon all councillors to promote equalities and to not discriminate unlawfully against any person. Equality implications are considered as an integral part of the complaints process.

Summary of risk assessment

26. There are no direct risks associated with this report.

Background papers

Records of complaints received by the Council since the last meeting – These records contain exempt information (Categories 1 (Information relating to any individual) and 2 (Information which is likely to reveal the identity of an individual)).

Appendices

There are no appendices to this report.