

STANDARDS COMMITTEE



Report subject	Code of Conduct Complaints - Review
Meeting date	13 March 2023
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 this report, should be pursued in relation to the unresolved complaints identified in paragraphs 11-31 of this report. (c) the Committee appoint a Chair to consider complaint 121 at the next informal consultation stage of the process
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 and Parish Councils within the area.</p>

Portfolio Holder(s):	Not applicable
Corporate Director	Graham Farrant (Chief Executive)
Report Authors	Ingrid Brown (Head of Legal 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. The report also asks the Committee to consider those complaints where subject Councillors have been asked to apologise following informal resolution but have not done so.

Analysis

2. 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.
3. 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 Chair 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.
4. 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 Chair (following consultation), any informal resolutions agreed (where applicable), and the status of the complaint.
5. 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-097	<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 • 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 	<p>The complaint was initially assessed by the Monitoring Officer and was then to be referred to the Chair for consideration in consultation. Complainant advised. Subject Councillor to apologise in writing.</p>	<p>Determined on 16 January. Subject Councillor has responded with fresh evidence to be considered by the Chair in consultation on the 13 March 2023</p>
BCP-105	<ul style="list-style-type: none"> • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>The complaint was initially assessed by the Monitoring Officer and was then considered by the Chair in consultation. The decision of the Chair was communication to the subject Councillor and to the Complainant.</p>	<p>Determined.</p> <p>Waiting for confirmation from the subject Councillor that intends to comply with sanction and make a formal apology.</p>
BCP-108	<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 	<p>The complaint was initially assessed by the Monitoring Officer and referred to the Chair for consideration in consultation on 4 January 2023</p> <p>Complaint upheld and Subject Councillor to be asked to apologise.</p> <p>The decision of the Chair was communicated to the Subject Councillor and to the Complainant.</p>	<p>Determined.</p> <p>Waiting for confirmation from the subject Councillor that intends to comply with sanction and make a formal apology to standards.</p>
BCP-110	<ul style="list-style-type: none"> • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>Complaint considered by the Monitoring officer and then referred to the Chair for consideration in consultation. Chair determined that the complaint be upheld and that the subject Councillor should make a formal apology.</p> <p>The decision of the Chair was communicated to the Complainant and to the Subject Councillor</p>	<p>Determined.</p> <p>Waiting for confirmation from the subject Councillor that intends to comply with sanction and make a formal apology.</p>

Reference	Nature of allegation	Outcome / Decision	Status
BCP-112	<ul style="list-style-type: none"> • Failing to treat others with respect • Failing to have regard to the Council's Code of Publicity. 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-113	<ul style="list-style-type: none"> • Failing to treat others with respect • Intimidating or attempting to intimidate • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-114	<ul style="list-style-type: none"> • Failing to treat others with respect • Intimidating or attempting to intimidate • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-115	<ul style="list-style-type: none"> • Failing to have regard to the Council's Code of Publicity. • Failing to declare the existence and nature of a personal interest 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-116	<ul style="list-style-type: none"> • Failing to have regard to the Council's Code of Publicity 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-117	<ul style="list-style-type: none"> • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed
BCP-118	<ul style="list-style-type: none"> • Failing to treat others with respect • Intimidating or attempting to intimidate • Failing to have regard to the Council's Code of Publicity. 	<p>Complaint reviewed by Monitoring Officer and by Chair following consultation.</p> <p>Complaint determined. Not upheld. Complainant and Subject Councillor advised</p>	Closed

Reference	Nature of allegation	Outcome / Decision	Status
BCP-121	<ul style="list-style-type: none"> • Act with integrity • Treat all persons fairly and with respect • Breach of Nolan principles. 	Referred to monitoring officer for initial assessment. Subject Councillor's response to complaint sought and obtained.	Pending
BCP-126	<ul style="list-style-type: none"> • Failing to treat others with respect • Bullying any person • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity 	The complaint was initially assessed by the Monitoring Officer and referred to the Chair for consideration in consultation. Chair determined part of the complaint upheld	Determined Waiting for confirmation from the subject Councillor that intends to comply with sanction and make a formal apology.
BCP 127	<ul style="list-style-type: none"> • Bringing the office of Councillor or the Council into disrepute while acting in an official capacity • Failing to treat others with respect 	The complaint was initially assessed by the Monitoring Officer. Referred to the subject Councillor for a response and will then be referred to the Chair for consideration in consultation.	Complaint sent to subject Councillor for response. To be considered by the Chair in consultation at an informal standards on the 13 March 2023
BCP 128A	<ul style="list-style-type: none"> • Failure to respond to emails 	Referred to monitoring officer. Informal resolution agreed. Complainant advised.	Closed
BCP 130	<ul style="list-style-type: none"> • Failure to treat others with respect 	Referred to monitoring officer. Informal resolution agreed. Complainant advised.	Closed
BCP 131	<ul style="list-style-type: none"> • Failure to treat others with respect • Intimidating or attempting to intimidate 	The complaint was initially assessed by the Monitoring Officer and referred to the Chair for consideration in consultation. Chair determined complaint upheld. Subject Councillor and complainant advised of outcome.	Determined Subject matter to make an apology at Full Council. Complaint then to be closed.
BCP 132	<ul style="list-style-type: none"> • Misuse of public funds 	The complaint was assessed by the Monitoring officer and referred to independent complaint	Considered by formal Standards Committee on the 28 February 2023

Reference	Nature of allegation	Outcome / Decision	Status
BCP 133	<ul style="list-style-type: none"> Failure to treat others with respect 	Complaint referred to monitoring officer for initial assessment	Pending
BCP 134	<ul style="list-style-type: none"> Bringing the office of Council into disrepute Failure to comply with informal resolution following Code of Conduct complaint 	Complaint referred to monitoring officer for initial assessment. Sent to subject Councillor and for response	Pending. Complaint to be considered by Chair in consultation at an informal meeting on the 13 March 2023
BCP 135	<ul style="list-style-type: none"> Compromising or attempting to compromise the integrity of those who work for the Council. Failure to declare a personal interest Seeking to improperly influence a decision 	Complaint referred to monitoring officer for initial assessment. Complaint sent to subject Councillor for response	Pending Complaint to be considered by Chair in consultation at an informal meeting on the 13 March 2022
BCP 136	<ul style="list-style-type: none"> Failure to treat others with respect Intimidating or attempting to intimidate Bullying any person 	Complaint referred to monitoring officer for initial assessment.	Pending
BCP 137	<ul style="list-style-type: none"> Failure to treat others with respect Bringing the Council into disrepute 	Complaint referred to monitoring officer for initial assessment	Pending

Non-Compliance with the request to provide an apology following informal resolution:

6. The Committee will note that there are a number of complaints referenced in the table above, complaints 97, 105, 108, 110 and 126, where the subject Councillors have not complied with the determination made by the Chair of standards following informal resolution.
7. In compliance with the Localism Act 2011, a procedure set out in its Constitution at Part 6, which is the process by which Code of Conduct must be considered.
8. The stages of the process provide as follows:
 - Complaint received by Monitoring Officer.
 - Upon receipt of a complaint under the Code of Conduct the Monitoring Officer (or their nominee) should undertake an initial assessment and may:-
 - (a) reject the complaint on the grounds that it falls outside the scope of a valid Code of Conduct complaint;
 - (b) determine that there is no breach of the Code and no further action should be taken; or
 - (c) where considered appropriate, enter into an early preliminary and

informal dialogue with the complainant and the Councillor complained of, and agree a speedy informal resolution of the complaint

- (d) refer the complaint to the Chair of Standards Committee for consideration in accordance with the procedure set out below.
- If mediation is unsuccessful, the Monitoring Officer will provide details of the complaint formally to the Councillor and seek an initial response. The Councillor will be advised of the right to speak to the Independent Person (IP).
- The Councillor, within five working days or longer at the discretion of the Monitoring Officer, should then provide an initial response to the complaint.
- The Chair of the Standards Committee in consultation with Councillors of the Standards Committee and the Monitoring Officer will then 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.

Outstanding Complaints

9. Complaint 121 is ready to progress to the informal stage of the complaints process. Because of the nature of this complaint both the current Chair and Vice Chair of Standards Committee are not in a position to consider it. In accordance with the procedure rules set out in Part 4 of the Constitution therefore the Committee is requested to elect a Chair for the purposes of the Informal consultation meeting that to consider this complaint only.
10. The Committee will see that it has not been possible to conclude a number of complaints due to the subject Councillor having not made the apology requested of them following informal resolution. The circumstances of each of these complaints differ and I have addressed them each in turn below:

Code of Conduct Complaint 97

11. In accordance with the procedure this complaint was initially assessed by the Monitoring Officer. The subject Councillor was written to on the 15 September and asked to respond to the complaint. A further email was sent to the subject Councillor on the 12 January 2023 asking that she respond to the complaint and advising her that the Chair of Standards would be considering this complaint in consultation at a meeting on the 16 January 2023.
12. No response was received from the subject Councillor and at an informal consultation meeting on the 16 January 2023 it was determined that an apology in writing to the complainant would be an appropriate remedy. The complainant and the subject Councillor were made aware of this determination in writing on the 27 January 2023.
13. On the 20 February 2023 an email was sent to the subject Councillor asking whether she intended to apologise in accordance with the determination made by the Chair in consultation.
14. On the 27 February 2023 the subject Councillor responded indicating that she had just had sight of the Chair's letter of determination sent on the 27 January. She

referred to receiving a very high volume of emails. She indicated that she did not agree either with the determination or the detail of the complaint and she provided fresh evidence for consideration.

15. In view of the fresh evidence provided this complaint will be considered again by the Chair in consultation at the next informal consultation meeting.

Code of Conduct Complaints 105

16. This complaint was initially assessed by the Monitoring Officer and sent to the subject Councillor for a response on the 15 September 2022. No response was received and a further email was sent requesting a response on the 6 December 2022. On the 20 December 2022 the subject Councillor provided his response to the complaint in two emails.
17. This complaint was considered by the Chair of Standards in consultation at an informal meeting on the 17 January 2023. The Chair in consultation determined that the complaint be upheld and that a formal apology should be made to Overview and Scrutiny and also to Full Council at the next meetings of both. A letter was sent to the complainant and to the subject Councillor advising them of the outcome of this complaint on the 27 January 2023.
18. On the 8 February the subject Councillor wrote to the Monitoring Officer indicating that he had some issues with the determination made. He subsequently had a telephone conversation with the Monitoring Officer and indicated that he did not agree with the determination. The Monitoring Officer responded and invited the subject Councilor to provide any additional evidence which, following the laws of natural justice, might trigger a review of the determination. No such evidence has been received.

Code of Conduct Complaint 108

19. This complaint was initially assessed by the Monitoring Officer and sent to the subject Councillor for a response on the 15 September 2022. A response was received from the subject Councillor on the 3 October 2023. The matter was considered by the Chair in consultation at an informal meeting on the 4 January 2023 and the complaint was upheld. It was determined that the subject Councillor should make a formal apology for her actions at the next Standards Committee meeting. The complainant and the subject Councillor were advised of the outcome of this complaint on the 15 February 2023.
20. In response to the letter from the Chair, the subject Councillor advised that she would not be available for the next meeting of Standards. In email correspondence dated the 20 February and 1 March 2023, the subject Councillor has been asked to confirm whether or not she will be making the requested apology. She has responded to email correspondence from the Deputy Monitoring Officer indicating her view that the determination is flawed but that for a number of reasons she has not yet had the opportunity to set out her reasons. She has indicated that she will do so in advance of the next formal Standards Committee.

Code of Conduct Complaints 110

21. This complaint was initially assessed by the Monitoring Officer and sent to the subject Councillor for a response on the 15 November 2022. No response was received from the subject Councillor and a further email was sent requesting a response on the 22 December 2022. On the 9 January 2023 the subject Councillor provided his response in an email.

22. This complaint was considered by the Chair of Standards in consultation at an informal meeting on the 17 January 2023. The Chair in consultation determined that the complaint be upheld and that by way of informal resolution the subject Councillor should make an apology to Full Council at the next meeting. A letter was sent to the complainant and to the subject Councillor advising them of the outcome of this complaint on the 27 January 2023.
23. On the 8 February the subject Councillor wrote to the Monitoring Officer indicating that he had some issues with the determination made in respect of this complaint. He subsequently had a telephone conversation with the Monitoring Officer and indicated that he did not agree with the determination. The Monitoring Officer responded and invited the subject Councilor to provide any additional evidence which, following the laws of natural justice, might trigger a review of the determination. No such evidence has been received.

Code of Conduct Complaint 126

24. This complaint was initially assessed by the Monitoring Officer and sent to the Subject Councillor for a response on the 6 January 2023. The subject Councillor provided a full response on the 13 January 2023. In her response she raised a number of equalities issues.
25. This complaint was considered by the Chair in consultation at an informal meeting on the 31 January 2023. Part of the complaint was upheld and it was determined that the subject Councillor should make an apology to the next meeting of full Council.
26. In view of the fact the subject Councillor's response raised significant equalities issues before finalising this determination a meeting was arranged and took place on the 7 February 2023 between the Council's Equality, Diversity and Inclusion Officer (EDI Officer) the Chair of Standards and the Deputy Monitoring Officer. At this meeting the detail of the complaint was shared verbally with the EDI Officer. The Councillor's response was also shared in full. There was a full discussion about the equalities issues raised and they were given full consideration during this meeting. The EDI officer advised that the subject Councillor should be invited to provide further detail of the equalities issues she raised so that these can be referred to the Chief Executive and addressed. It was also agreed that the subject Councillor should be invited to make representations if she felt that to make the required apology would place her in a vulnerable position.
27. On the 8 February 2023 following consultation with the EDI officer a letter was sent to the subject Councillor and the complainant advising them of the outcome of this complaint.
28. Since receiving the letter referred to above, the subject Councillor has entered into email correspondence with the Deputy Monitoring Officer and the Monitoring Officer stating her view that the EDI Officer should have access to all written information pertaining to this complaint before a determination is made, making reference to the Council's equality policy.
29. The Deputy Monitoring Officer responded to the subject Councillor's initial email. The following is an extract from her response which references the relevant section of the Council's equality policy:

There is no provision in the Council's equality policy that information should be shared in writing. The policy refers to advice being provided to the Chair of standards where there are allegations of discrimination or matters of equalities. (see paragraph 9.3). This advice was sought and obtained. Equalities legislation provides that due regard must be given to any equalities issues at the time of

decision and I can confirm that during the consultation with the council's EDI officer the necessary regard was given to the equalities issues you raised. Accordingly, you were invited to provide further details of the concerns you raised so that these can be addressed. You were also invited to indicate if you felt an apology to Full Council would place you in a vulnerable position.

30. The subject Councillor did not agree with this position and has written to the Monitoring Officer expressing her views. She was offered a time to meet with both the Monitoring Officer and the Deputy Monitoring Officer on the 27 February 2023 but did not attend.
31. An email was sent to the subject Councilor on the 1 March 2023 asking that she confirm whether or not she intends to provide the apology as determined appropriate at informal resolution. No response to this email has been received.

Options

32. 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 as a result of Councillors not accepting a determination made at the informal resolution stage. This undermines the role and standing of Standards Committee.
33. The Committee must determine what course of action should now be taken to conclude the matters set out above. It is of note that there is no provision within the Constitution for an appeal against a determination made at the informal resolution stage of a complaint. The principles of natural justice require however that if new evidence is presented, it may well be just, reasonable and proportionate to review the determination made or to consider progressing the matter to formal investigation.

Options Appraisal

Option 1: Do Nothing

Option 2: Continue to try and resolve the complaints

Option 3: Review the determination made at the informal stage on the basis of fresh evidence

Option 3: Proceed to independent external investigation in relation to those unresolved complaints

Option 4: Report the position of non-compliance to full Council

Recommendation

34. The committee is asked to consider which of the options above to proceed with regarding those complaints referred to at paragraphs 11-31 in this report.
35. Doing nothing is not recommended as this will serve to further undermine the role and position of the Standards Committee.
36. In view of the efforts to date, it seems unlikely that any further attempts to seek agreement with the Councillors concerned would be successful and therefore referral to an independent external investigation, is not considered to be proportionate or cost effective.
37. 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 and would also allow these complaints to be drawn to a close.

Summary of financial implications

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

Summary of legal implications

39. 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.

40. The Committee is reminded of its equalities duties and requirement to ensure they are given the necessary regard in relation to each decision made.

Summary of human resources implications

41. 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

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

Summary of public health implications

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

Summary of equality implications

44. 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.

45. As indicated in this report Complaint 126 raises a number of equality considerations and the Committee should be certain that in reaching any decision in respect of this matter, the necessary regard has been to those considerations.

Summary of risk assessment

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

Background papers

There are no background papers.

Appendices

There are no appendices to this report.