

23 November 2021

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Annual review of the Members' Code of Conduct and the Council's Localism Act Arrangements		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 This report requests the Committee to review the Councillors' (Members') Code of Conduct, the Council's Localism Act Arrangements for dealing with complaints made regarding councillors and to make recommendations to Full Council regarding any suggested amendments.
- 1.2 The report also provides an update on the number and types of complaints received under the Members' Code of Conduct.

2. Recommended Decisions

- 2.1 To note the contents of this report.
- 2.2 To review the Members' Code of Conduct and the Council's "Arrangements" and consider whether to make any recommendations in relation to any amendments to the Members' Code of Conduct and the Council's "Arrangements" to Full Council.

3. Background

- 3.1 The Localism Act 2011 ("the Act") introduced the current system of regulation of standards of conduct for elected and co-opted Members. These arrangements came into effect on 1st July 2012. The Act requires local authorities to adopt a code of conduct consistent with the seven Nolan Principles of public life and that Principal Authorities put in place "Arrangements" to deal with allegations that Councillors had failed to comply with the Members' Code of Conduct. Principal Authorities are also required to appoint at least one "Independent Person" who are to be consulted as part of the Council's "Arrangements".
- 3.2 The Full Council at its meeting on 25 June 2012 formally adopted the Borough Council's Members' Code of Conduct and its "Arrangements" which are attached to this report at Appendix 2 and Appendix 3 respectively. As part of its "Arrangements", the Full Council at its meeting on 24 May 2017 re-appointed Barbara Pears and Sarah Greatorex as the Council's Independent Persons for a further term of four years.
- 3.3 The Act also introduced the current interest's regime which included the register of Members' interests. The Government published amended guidance in September 2013 for councillors on interests ("Openness and transparency on personal interests – a guide for councillors") which was circulated to all Borough Councillors and to every Town and Parish Council within the Borough.
- 3.4 The Act places on the Borough Council a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. The Full Council has in turn delegated this function to this Committee as part of its terms of reference.

- 3.5 The Committee at its meeting on 24 November 2020 last reviewed the Council's Localism Act processes and this report seeks to review our subsequent experience to date.

4. Review of the Code

- 4.1 The Act did not prescribe the contents of the Code (save that it should be consistent with the seven Nolan Principles) and accordingly the version of the Members' Code of Conduct adopted by Full Council was the version promoted by the Public Law Partnership. This was to ensure a consistent approach across the County and to ensure that all council's (county, districts and parishes) adopted the same version of the Code to provide a sense of clarity for Councillors.
- 4.2 The Borough Council's Code was also adopted by the majority of the Town and Parish Council's in the Borough. Several Parish Councils have subsequently changed their Code. The Borough Council's Code has been operating successfully in the past year without any apparent difficulties or concerns and I would propose that the Committee continues to keep the Code under annual review and considers whether to make any recommendations to Full Council regarding any required amendments in the light of experience.
- 4.3 The Act requires the Monitoring Officer to compile and publish on the Borough Council's website a Register of Members' Interests. This includes Disclosable Pecuniary Interests for both Councillors and their partners and pecuniary and non-pecuniary interests just for Councillors. All the Borough Councillors interests are published and most of those of the Town and Parish Councillors in the Borough have also been published on the Borough Council's website. The Act does make it an offence for a councillor to fail to register their declarable interests within a period of 28 days of becoming elected.
- 4.4 The Borough Council's Committee Management Information System (CMIS) enables the Register of Members' Interests to be published in line with the Government's transparency agenda so that all Councillors' information is in one place on the website. The Monitoring Officer has the ability to agree with a Councillor that certain interests can be redacted from the public register as being a "sensitive interest" in specified circumstances. This has recently been brought to the attention of all Borough and Parish Councillors in the light of recent events.
- 4.5 Training on the Code on Conduct is offered regularly by the Monitoring Officer for Borough Councillors together with refresher training for Parish Councils.

5. Review of the Arrangements and the Code of Conduct

- 5.1 The Act required the Council to adopt "Arrangements" for dealing with allegations that Councillors have potentially failed to comply with the Code. Any allegations that Councillors have not complied with the Disclosable Pecuniary Interests regime under the Act are not dealt with under the Council's "Arrangements" as they are potentially criminal offences and need to be dealt with by the Police. As at the date of this report there have been no such allegations or referrals.
- 5.2 The Council's "Arrangements" are made publicly available on the Borough Council's website and have been implemented in relation to both Borough and Parish Councillors. All allegations are received by the Monitoring Officer who makes an initial assessment of the merits of the complaint in consultation with an Independent Person in accordance with the "Arrangements".
- 5.3 The table at Appendix 1 below details the number, type and outcome of allegations received since 1 July 2012. The table indicates a slight increase in the numbers in the past year. This cannot be attributed to a particular reason. The Localism Act states that the

Code of Conduct only applies when a Councillor is acting in their official capacity as a councillor. This has been upheld by subsequent case law which has confirmed the position. Accordingly, the Code can only be used to regulate Councillors' conduct when they are acting in that capacity. The Council's Code of Conduct is compliant with the law; however the Committee may wish to review its wording.

- 5.4 Overall the Council's Localism Act "Arrangements" appear to be operating satisfactorily and I would recommend that the Committee continues to keep them under annual review and to make any appropriate recommendations to Full Council on any required amendments to the "Arrangements" in the light of experience.
- 5.5 The Committee at its meeting on 28 July 2020 considered a report on the Local Government Associations' consultation on its proposed Model Code of Conduct. Subsequently the Local Government Association published its Model Code of Conduct in December 2020. Monitoring Officers of all authorities in Essex have met to discuss whether to recommend that their respective Council's should adopt the Model Code. Concerns were raised particularly about the clarity of the new interests provisions for Members and representations were made. The Local Government Association has subsequently revised its code twice to clarify issues and the latest version is attached at Appendix 4. The Guidance in the behaviours part of the Code is particularly welcome however, concerns remain regarding interests. Further representations are being made prior to any recommendation being made to this Committee as to whether the Council should adopt the Model Code. Currently no Council in Essex has adopted the Model Code. A further report will be submitted to the Committee in due course.

6. Strategic Plan References

- 6.1 The manner in which the Council governs its business is an underpinning mechanism in the Council's Strategic Plan priorities to set out the direction and future potential for our Borough.

7. Publicity Considerations

- 7.1 The Council's Code of Conduct and "Arrangements" are available on the Council's website www.colchester.gov.uk/standards

8. Financial, Equality, Diversity and Human Rights, Consultation, Health, Wellbeing and Community Safety, Health and Safety, Risk Management and Environmental and Sustainability Implications

- 8.1 None.

Appendices:

Appendix 1 – Code of Conduct Allegations received

Appendix 2 – Members' Code of Conduct

Appendix 3 – Localism Act Arrangements

Appendix 4 – Local Government Association's Model Code of Conduct

Councillor Code of Conduct Allegations received since 1 July 2012

Allegations	Jul12 – Mar13	Apr 13 – Mar 14	Apr 14 – Oct 14	Nov 14- Oct 15	Nov 15 – Oct 16	Nov 16 – Oct 17	Nov 17 – Oct 18	Nov 18 – Oct 19	Nov 19 – Oct 20	Nov 20 – Oct 21	Total
Number received	2	3	2	3	3**	13***	22****	3	6	9	66
Borough Councillor	1	3*	2	1	2	12	13*	3	5***	6***	48
Parish Councillor	1	1	0	2	0	1	9**	0	1	3	18

NB.

*one complaint was made against two councillors

** two complaints were made against one councillor

*** two persons made the same complaint against one councillor

**** two persons made same complaint against one councillor – one person made the same complaint against five councillors

* one person made the same complaint against three councillors - two persons made the same complaint against one councillor.

**one person made the same complaint against three councillors

*** one person made the same complaint against two councillors

The majority of allegations came under the heading of “treating others with respect” and two under the heading of “not to do anything which may cause the Authority to breach any of the equality enactments”.

Source of complaints	Jul12 – Mar13	Apr 13 – Mar 14	Apr 14 – Oct 14	Nov 14- Oct 15	Nov 15 – Oct 16	Nov 16 – Oct 17	Nov 17 – Oct 18	Nov 18 – Oct 19	Nov 19 – Oct 20	Nov 20 – Oct 21	Total
Member of the public	2	6	2	2	1	9	14	3	5	5	49
Borough Councillor	0	0	0	1	1	1	1	0	0	2	6
Parish Councillor	0	0	0	0	0	2	2	0	1	2	7
County Councillor	0	0	0	0	0	0	0	0	0	0	0
Member of Parliament	0	1	0	0	0	0	0	0	0	0	1

	Jul12 – Mar13	Apr 13 – Mar 14	Apr 14 – Oct 14	Nov 14- Oct 15	Nov 15 – Oct 16	Nov 16 – Oct 17	Nov 17 – Oct 18	Nov 18 – Oct 19	Nov 19 – Oct 20	Nov 20 – Oct 21	Total
Referrals to Governance and Audit Committee	0	0	0	1	1	1	0	0	0	0	3

Outcome	Jul12 – Mar13	Apr 13 – Mar 14	Apr 14 – Oct 14	Nov 14- Oct 15	Nov 15 – Oct 16	Nov 16 – Oct 17	Nov 17 – Oct 18	Nov 18 – Oct 19	Nov 19 – Oct 20	Nov 20 – Oct 21	Total
Not within remit of Code of Conduct	0	0	0	1	0	5	0	1	0	0	7
Merits no further investigation	2	3	2	2	3	8	14	2	6	6	48
Merits further investigation	0	0	0	0	0	0	1*	0	0	1**	1

NB.

*The complaint which merited further investigation was closed due to the complainant not co-operating with the investigation.

** The investigation was ceased following the Councillor concerned resignation.