

13 November 2018

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 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 keep the Members' Code of Conduct and the Council's "Arrangements" under annual review.
- 2.3 To agree to make recommendations to Full Council regarding any amendments to the Members' Code of Conduct and the Council's "Arrangements" in the light of experience.

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 would 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 C and Appendix D 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 a new 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 has been 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 17 October 2017 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 to be consistent with the seven Nolan principles) and accordingly the version of the Members' Code of Conduct adopted by the Full Council was a 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 so as to provide a sense of clarity for Councillors.
- 4.2 The Borough Council's Code was adopted by the Town and Parish Council's in the Borough. 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 makes recommendations to Full Council on any subsequent 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 also pecuniary and non-pecuniary interests just for Councillors. All of 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. However, the Act did not make it a statutory requirement for all existing Councillors to register their declarable interests. The Act does however make it an offence for a councillor to fail to register their declarable interests within a period of 28 days of becoming elected. However the Government stated in its guidance:-

"All sitting councillors need to register their declarable interest. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty (i.e. Nolan Principles), with which you must comply"

This has been specifically been drawn to the attention of all Town and Parish Councils.

- 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.
- 4.5 Training on the Code on Conduct is offered regularly by the Monitoring Officer for Borough Councillors and also provided refresher training for some Parish Councils earlier in the year.

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 publically available on the Borough Council's website and have been used on several occasions 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 A below details the number, type and outcome of allegations received since 1 July 2012. The table indicates an increase in the numbers in the past year. This is 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 capacity as a councillor. This has been upheld in subsequent case law which has held that the Code of Conduct only applies when a councillor is acting in their official capacity. Accordingly the Code can only be used to regulate councillors' conduct when they are acting in that capacity.
- 5.4 In previous years complaints had been received regarding comments made on social media. The Committee had supported the provision of training for Councillors regarding the use of social media. In addition the Member Development Group highlighted social media as an area where training should be provided for councillors. Earlier this year three sessions were run for councillors facilitated by an external trainer which were attended by 24 councillors. The training sessions received very positive feedback. It is suggested that refresher sessions are scheduled in due course.
- 5.5 The table at Appendix B comprises a response to a freedom of information request that was supplied in September 2018 and provides details of complaints made against Borough Councillors since January 2016. A majority of the reasons of the complaints were comments made in social media. As these all pre-date the training and I would expect to see a reduction in these types of complaints in the future. By way of comparison in the same period 11 complaints were made against Parish Councillors.
- 5.6 Overall the Council's Localism Act "Arrangements" appear to be operating satisfactorily and I would propose that the Committee continues to keep them under annual review and to make any appropriate recommendations to Full Council on any subsequent amendments to the "Arrangements" in the light of experience. The Council's Code of Conduct is compliant with the law, however the Committee may wish to review its wording.

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 aims 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 and Risk Management Implications

- 8.1 None.

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	Total
Number of allegations received	2	3	2	3	3**	13***	22****	48
Borough Councillors	1	3*	2	1	2	12	•13	34
Parish Councillors	1	1	0	2	0	1	••9	14

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

The majority of allegations came under the heading of “treating others with respect” with one being 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	Total
Member of the public	2	6	2	2	1	9	14	36
Borough Councillors	0	0	0	1	1	1	1	4
Parish Councillors	0	0	0	0	0	2	2	4
County Councillors	0	0	0	0	0	0	0	0
Member of Parliament	0	1	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	Total
Complaints referred to Governance and Audit Committee	0	0	0	1	1	1	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	Total
Not within remit of Code of Conduct	0	0	0	1	0	5	0	6
Merits no further investigation	2	3	2	2	3	8	14	34
Merits further investigation	0	0	0	0	0	0	1	1

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

LOCALISM ACT 2011
ALLEGATIONS MADE THAT COUNCILLORS HAD BREACHED THE MEMBERS' CODE OF CONDUCT
SINCE JANUARY 2016

Total of 20 complaints made about councillors (some complaints involved more than one councillor).

In accordance with the Council's Localism Act Arrangements an initial assessment is made of the complaint by the Council's Monitoring Officer in consultation with one of the Council's Independent Persons. All of the following were determined at the initial assessment stage except for 2 complaints which the Monitoring Officer referred to the Governance and Audit Committee.

Councillor	Number of complaints made	Number of complaints upheld	Reason for no further action	Reason for complaint
Martin Goss	1	0	Outside scope of code of conduct	Social media comments
Roger Buston	2	0	<ul style="list-style-type: none"> Governance and Audit Committee decided no further action Acting in interest of constituents 	Comments made in the press and email Objection assisting on constituents planning application
Annie Feltham #	1	0	Letter was factually correct	Comments made in a letter to the press
Lee Scordis	2	0	<ul style="list-style-type: none"> Removal of comments Outside scope of code of conduct 	Social media comments Social media comments
Gerard Oxford	2	0	<ul style="list-style-type: none"> Actions were appropriate and in accordance with procedures Accusation not substantiated 	Interest in planning application Accusation made a false statement
Paul Smith#	2	0	<ul style="list-style-type: none"> Outside scope of code of conduct Accusation not substantiated 	Comments made at meeting Accusation made a false statement

Councillor	Number of complaints made	Number of complaints upheld	Reason for no further action	Reason for complaint
Dominic Graham#	2	0	<ul style="list-style-type: none"> Investigation not in the public interest Action was appropriate 	Social media comments Request for resident to cease email correspondence
Christopher Arnold	1	0	Outside scope of code of conduct	Councillor survey data
Rosalind Scott#	2	0	<ul style="list-style-type: none"> Outside scope of code of conduct Outside scope of code of conduct 	Social media comments Social media comments
Mike Lilley	1	0	Governance and Audit Committee decided no further action following apology	Social media comments
Tim Young	4	0	<ul style="list-style-type: none"> Outside scope of code of conduct Politically motivated Politically motivated Accusation not substantiated 	Social media comments Comments made in the press Comments made in the press Accusation made a false statement
Dennis Willetts	1	0	Comments were appropriate	Comments made at meeting
Philip Coleman	1	0	Action was appropriate	Request for resident to cease email correspondence
Patricia Moore	1	0	Apology given	Comments made at meeting
Mark Cory	1	0	Actions were appropriate	Acting on behalf of constituent regarding planning application
Andrea Luxford Vaughan	2	0	<ul style="list-style-type: none"> Apology given Apology given 	Social media comments Social media comments

= indicates no longer a councillor

September 2018