



Governance and Audit Committee Hearings Sub-Committee

Item
5

30 March 2023

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Code of Conduct Complaint - Councillor Moore		
Wards affected	Not applicable		

1. Executive Summary

1.1 The Sub-Committee is responsible for determining complaints in accordance with the Council's Localism Act Arrangements and this report refers a complaint to the Sub-Committee for determination.

2. Recommended Decision

2.1 The Sub-Committee is requested to determine whether:

- (a) Councillor Moore has not failed to comply with the Members' Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing; or
- (b) Councillor Moore has failed to comply with the Members' Code of Conduct but that no further action needs to be taken in respect of the matters considered at the Hearing; or
- (c) Councillor Moore has failed to comply with the Members' Code of Conduct and that a formal resolution should be made to the Full Council.

2.2 The Sub-Committee to consider whether to recommend to Full Council any action or combination of actions available to it (contained at Schedule1) or recommend any informal resolution or combination of informal resolutions as are available to it by law or policy.

3. Background

3.1 Under the Localism Act 2011 the Council has a statutory duty to promote and maintain high standards of conduct by members and co-opted members of the Authority. In order to discharge this duty, the Full Council adopted a Members' Code of Conduct which sets out the conduct expected of members and co-opted members of the Authority when they are acting in that capacity. The Council has also adopted Arrangements which detail how complaints in relation to Member conduct will be handled.

3.2 The Full Council agreed that as part of the terms of reference of this Sub-Committee it is responsible for promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council.

3.3 The Governance and Audit Committee has agreed a procedure for the Hearings Sub-Committee and this is included in the Agenda pack.

4. The Complaints

4.1 The complaints were brought by Chris Wood ("the Complainant") against Councillor Moore of Colchester Borough Council.

The complaints relate to the following allegations:

- (1) It is alleged that Councillor Moore made comments in an article in the July 2022 Mersea Life magazine which brought the Council into serious disrepute.
- (2) It is alleged that Councillor Moore made comments in an article in the August 2022 Mersea Life magazine and that these additional comments be added to complaint (1).
- (3) It is alleged that Councillor Moore attended a West Mersea Town Council meeting on 1 September 2022 and acted inappropriately in a public meeting towards the Complainant.
- (4) It is alleged that Councillor Moore made comments in an article in the September 2022 Mersea Life magazine which related to complaints made.

NB. The Complainant is also a West Mersea Town Councillor; however, the complaints were made in his private capacity.

- 4.2 Subsequent to the initial assessment stage of consideration of the complaints, the Monitoring Officer following consultation with one of the Council's Independent Persons appointed Mr MacBeath of TIAA auditors (the Council's internal auditors) as an independent Investigating Officer to investigate the complaints. Mr MacBeath's final investigation report which includes details of the complaints together with relevant documentation can be found at Appendix A.
- 4.3 Mr MacBeath's investigation report states that he is of the opinion that Councillor Moore:
 - (a) breached section 3(1) of the Council's code of conduct by not treating others with respect on more than one occasion;
 - (b) breached section 3(3)(c) by attempting to intimidate the Complainant; and
 - (c) breached section 4 (a) by disclosing confidential information relating to the complaints which was known or reasonably ought to have been known to be confidential.

5. Colchester Borough Council's Members' Code of Conduct

- 5.1 As required by the Localism Act 2011, Colchester Borough Council adopted a Members' Code of Conduct which sets out the conduct expected of Councillors when acting in their official capacity. The relevant Members' Code of Conduct for Colchester Borough Council appears at Appendix B. It should be noted that for this complaint, the Code pre December 2022 was the relevant Code of Conduct for Colchester Borough Council and it is this Code which the Investigating Officer has considered.

Particularly relevant to these complaints are the following obligations in the Code:

3(1) – "You must treat others with respect."

3(3) (c) – "You must not

intimidate or attempt to intimidate any person who is or is likely to be: –

- (i) a complainant;
- (ii) a witness; or
- (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with the Authority's code of conduct"

4(a) – “You must not –

disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is –
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the Authority.”

5.2 The Council’s Localism Act Arrangements for dealing with Member Code of Conduct complaints are attached at Appendix C.

6. Further information

6.1 It has transpired that due to an omission by the Monitoring Officer, Councillor Moore was not made aware of the complaint referred to above at paragraph 4.1 (c) until Councillor Moore met with Mr MacBeath as part of his investigation process. Councillor Moore is of the view that this omission denied her the opportunity to consider her response to this complaint prior to the meeting with Mr MacBeath and should not be considered. Councillor Moore’s responses to this complaint are included in Mr MacBeath’s final report.

6.2 A draft of Mr MacBeath’s investigation report was supplied to both Councillor Moore and the Complainant and their responses are contained at pages 10 and 11 of the final report respectively.

6.3 Councillor Moore sent an email of apology dated 26 November 2022 to all Colchester Borough Council councillors and this can be found in Appendix D.

6.4 Councillor Moore has also supplied advice received in respect of freedom of expression and this is included at Appendix E.

6.5 An extract from the Guidance on Local Government Association’s Model Councillor Code of Conduct whilst published in relation to the new code still provides relevant advice generally regarding the Members’ code of conduct and freedom of expression is also included at Appendix F for the Sub- Committees information.

6.6 Councillor Moore believes that the complaints are politically motivated and should have been rejected at the initial assessment stage and not have proceeded to investigation. However, no substantive evidence of this was provided during the initial stages of consideration of the complaints nor during the investigation.

7. Issues to be determined

7.1 Did Councillor Moore breach Colchester Borough Council’s Members’ Code of Conduct?

7.2 In the event that the Sub Committee finds that the Code has been breached, it will need to determine whether any action should be taken and if so, what action from those available to the Sub-Committee contained in Schedule 1.

7.3 After making a finding the Sub-Committee will be required to publish a full written decision of its findings within 7 working days following the hearing.

4. Strategic Plan References

4.1 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.

5. Publicity Considerations

5.1 The Sub-Committee's decision will be published.

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

5.1 None.

Actions available to the Hearings Sub-Committee where a Councillor has been found to have failed to comply with the Code of Conduct

1.0 The City Council has delegated to the Hearings Sub-Committee its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct.

Accordingly, the Hearings Sub-Committee may: -

- (a) Report its findings to Council (or to the Parish Council) for information;
- (b) Recommend to Council (or to the Parish Council) that the Councillor be issued with a formal censure or be reprimanded ;
- (c) Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that the Councillor be removed from any or all Committees or Panels of the Council;
- (d) Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Councillor;
- (f) Recommend to Council to remove (or recommend to the Parish Council that the Councillor be removed) from all outside appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or
- (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the Councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

2.0 The Hearings Sub-Committee has no power to suspend or disqualify a Councillor or to withdraw a Councillor's basic allowance or any special responsibility allowances.

3.0 Any actions recommended by the Hearings Sub-Committee should be proportionate and commensurate with the circumstances of the particular case.