

CITY OF WOLVERHAMPTON COUNCIL	Governance and Ethics Committee 14 March 2024
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Report title	Code of Conduct for Councillors – Annual Report 2023	
Cabinet member with lead responsibility	Councillor Paula Brookfield Cabinet Member for Governance and Equalities	
Accountable director	David Pattison, Chief Operating Officer	
Originating service	Various	
Accountable employee	David Pattison Email	Chief Operating Officer David.Pattison@wolverhampton.gov.uk
Report to be considered by	N/A	

Recommendations for action or decision:

The Governance and Ethics Committee is asked to:

1. Note the annual report addressing the promotion, operation, and monitoring of the members' code of conduct.
2. Note the complaints about members received and considered by the Monitoring Officer during 2023.
3. Make any comments or recommendations about the process for managing complaints or any other relevant matters.

1.0 Purpose

- 1.1 To provide an overview of the operation and promotion of the Council's member code of conduct and associated arrangements ("member standards framework") during the 2023/24 calendar year.
- 1.2 For the committee to be assured that high standards of conduct continue to be met by members of the Council.

2.0 Background

- 2.1 Under the Localism Act 2011, the Council has a **duty** to:
 - Promote and maintain high standards of conduct by its members and co-opted members; and
 - When discharging its duty, adopt a voluntary code dealing with the conduct that is expected of members and co-opted member of the authority when they are acting in their capacity as members (that is, in an official capacity).
- 2.2 There is therefore no requirement to comply with the code of conduct where members are acting in their personal capacity (i.e. in relation their private lives) although disqualification under Part V of the Local Government Act 1972 remains as a result of events such as bankruptcy or certain criminal offences and sanctions.
- 2.3 The decision in *Livingstone v. Adjudication Panel for England* (2006) EWHC 2533 helpfully clarified that "official capacity" in the previous 2007 Model Code that applied in England meant:
 - conducting the business of the authority or the member's office.
 - acting, claiming to act or giving the impression that a member is acting as a representative of their authority.
- 2.4 Therefore, any conduct in a member's private capacity will only be covered by the Council's members' code of conduct only if they engage in an activity that has a link with the functions of the member's office (which includes not just their councillor role but any other role to which they have been appointed by virtue of being a councillor i.e. any SRA related roles). Accordingly, in the *Livingstone* case, words spoken to a journalist by the former Mayor of London, Ken Livingstone, likening the journalist to a concentration camp guard, were not only not spoken in an official capacity, but also were not arguably in the performance of his functions as Mayor.
- 2.5 The seven Nolan principles (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) are set out in section 28 of the Localism Act 2011. Section 28 provides that a local authority in England must ensure that its code of conduct includes appropriate provisions for registering, and disclosing:

- Pecuniary interests.
 - Interests other than pecuniary interests.
- 2.6 The body that oversees the member standards framework is the Council's Governance and Ethics Committee. The Committee is tasked with monitoring the effectiveness and operation of the member standards Framework, promoting high standards of conduct, receiving an annual report, and making appropriate recommendations for improvement where deemed necessary.
- 2.7 Section 28(6) of the Localism Act 2011 also requires a relevant authority to have arrangements in place to deal with complaints that its members' code of conduct has been breached, including arrangements for:
- Complaints to be investigated.
 - Decisions on allegations to be made.
- 2.8 The Council's constitution provides that the Monitoring Officer will receive, assess, refer and determine complaints that Councillors have not complied with the members' code of conduct and will refer these to the Council's Governance and Ethics Committee for determination where an investigation has taken place and a breach of the code found.
- 2.9 The approach that the Council adopts for dealing with complaints is in line with the LGA's recommendations on dealing with complaints.
- 2.10 The arrangements are designed to ensure that the most serious complaints are considered by the sub-Committee and not those that are considered capable of informal resolution or not proportionate to be investigated.
- 3.0** All members and co-opted members agree to abide by the members' code of conduct upon their election.
- 4.0 Continuous improvement and training**
- 4.1 An Internal Audit Report on Members' Register of Interests was published in accordance with the internal audit plan 2023/24. The report identified a number of areas of good practice in the Council's management of risk through appropriate controls such as training on the register, which is provided as part of Councillor induction, and on the member standards framework which is offered at least annually to members and delivered to all new members shortly after the elections each May. Training on the member standards framework is comprehensive, covering principles and expectations, interests, and complaints.
- 4.2 The report also identified that several Councillors had not updated their electronic Register of Interests in the previous 12-month period; although this is not a legal requirement, it is considered to be best practice. Members are reminded of this in the guidance note for members which they are required to read. To mitigate against

members overlooking to review and update their Register of Interest, the following recommendations were agreed:

- A reminder to be sent to all members to check and resubmit their details annually.
- A reminder to all members detailing the arrangements for redacting details of their property interests (or other interests) in accordance with section 32 of the Localism Act 2011 ('sensitive interests').
- In light of the increase in partnership working, and in the interests of clarity and transparency, members are required to declare their interests across other local and combined authority boundaries.

4.3 All three actions have been undertaken.

5.0 Complaints - procedure

5.1 In September 2021, the Local Government Association published Guidance on Member Model Code of Conduct Complaints Handling and these arrangements were adopted by Committee on 7 July 2022. A routine annual review of the complaint arrangements including associated documents was undertaken in 2023 to ensure they remain fit for purpose, and no changes were considered necessary.

5.2 The Monitoring Officer is responsible for dealing with allegations that a member has failed to comply with the Code of Conduct for Members and for administering the local ethical framework.

5.3 A complaint that a member has breached the rules relating to the registration and declaration of pecuniary (financial) interests would be dealt with by the Police as a criminal matter. The Monitoring Officer is not aware of any such allegations being made against members.

5.4 All other complaints that a member has breached the Code are dealt with according to the Council's Arrangements for Dealing with Code of Conduct Complaint ("Arrangements") which adhere to the Local Government Association's Guidance on Member Model Code of Conduct Complaints Handling.

5.5 The Arrangements follow a three-stage process:

- a) **Initial review.** This is undertaken by the Monitoring Officer (or Deputy Monitoring Officer) as a desk-top exercise to first determine if the complaint qualifies for consideration in accordance with the arrangements and is not vexatious or the conduct in question related to member acting in their official capacity. If it does qualify, consideration will be given to the complaint and any evidence provided by the complainant, any response to the allegations provided by the member complained about (referred to as the Subject Member), and publicly/readily available information relating to the circumstances or behaviours complained of. The arrangements set out the

assessment criteria that the Monitoring Officer will have regard to when reaching a decision on the available information.

The Monitoring Officer may seek to resolve the complaint informally, which might involve an apology or training or some other form of mediation.

A written response is sent to the complainant and Subject Member to advise them of the Monitoring Officer's considerations and decision. There is no right of appeal against the Monitoring Officer's decision at this stage.

- b) **Investigation.** Where informal resolution is not appropriate, for example where the matters complained about are significant and require witnesses to be interviewed, an investigator will be appointed to consider the matter and make recommendations to the Monitoring Officer about the next appropriate steps. On receipt of the investigator's recommendations, the Monitoring Officer might deal with the matter via informal resolution as noted previously or refer the matter to a formal Hearing (see below).
- c) **Hearing.** The Monitoring Officer will refer the investigator's report to the Governance and Ethics Committee which will convene a panel to determine whether the Code of Conduct has been breached. If they do find evidence of a breach, they may:
- Censure or reprimand the Subject Member.
 - Require the Subject Member to issue an apology (which could be both private and public) to the complainant (and any other person/body deemed appropriate).
 - Recommend to the Subject Member's group leader (or in the case of un-grouped Councillors, recommend to Council) that they be removed from any or all Committee, Sub-Committees or Panels of the Council.
 - Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet or removed from particular portfolio responsibilities.
 - Recommend to Council that the Subject Member be replaced as Leader.
 - Instruct the Monitoring Officer to arrange training for the Subject Member.
 - Publish its findings in respect of the Subject Member's conduct.
 - Report its findings to the Governance & Ethics Committee for information.

5.6 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw or suspend allowances or restrict access to or use of Council facilities. The Subject Member is required to discharge their obligations as a Ward councillor and cannot be prevented from attending meetings of Full Council.

6.0 Complaints - Independent Person

- 6.1 Local authorities must appoint an “independent person” whose views must be sought by the local authority before the complaint is determined following an investigation. The views of the independent person can be sought at other times if considered necessary, and so too can the councillor subject to the complaint if they wish to.
- 6.2 The Council currently has one Independent Person who is about to retire, and the appointment of two further persons is being progressed.
- 6.3 The Monitoring Officer is grateful for the work and support from the outgoing Independent Person. Ray Tomlinson has been the Council’s Independent Person for a number of years and throughout that time has discharged his responsibilities and duties as Independent Person professionally and diligently. He has proactively supported the Council’s ethical framework and this Committee by sharing his measured and informed views and judgements, which have helped the Council discharge its duty to maintain and promote high standards of conduct.

7.0 Complaints - received and considered during 2023

- 7.1 The Council received 14 complaints members over the calendar year. This includes informal complaints which were made in writing but not on the required form or without the requisite information. Of the 14 complaints, 5 were made by members against other members of the Council.
- 7.2 On analysis of all the complaints received, the primary cause for complaints relates to allegations of lack of respect shown by members at meetings or events, or on social media.
- 7.3 Of those **14** complaints:
- a) **8** were either withdrawn by the complainant at various stages of the process, or requests for further information in order to begin the progress were not responded to and considered withdrawn by the Monitoring Officer.
 - b) **2** cases were outside the jurisdiction of the Council’s arrangements (and therefore the Monitoring Officer’s powers) and so could not be dealt with.
 - c) **2** complaints were dismissed and not considered, as the matters complained about were being dealt with via a different legal route.
 - d) **2** complaints are currently ongoing (both of which are covered in more detail in Appendix 1).
- 7.4 The Committee are asked to note that in view of 5 of the complaints received during 2023 were made by CWC members about other CWC members, the Monitoring Officer will, where it is clear to the Monitoring Officer that there has been a general breakdown of relationships between certain members, involve Group Leaders to assist with addressing the behaviour or underlying issues that are giving rise to poor standards of conduct.

7.5 The Committee are asked to note that there have been times when some members have not cooperated with an investigation or the arrangements. The Code of Conduct for Councillors expressly states that a member must “cooperate with any Code of Conduct investigation and/or determination”. However, the Monitoring Officer has no power to compel members to be interviewed or provide information relevant to the complaint made about them. In such circumstances, the Monitoring Officer will escalate the lack of cooperation to the relevant Group Leader, and where that action has not addressed the issue satisfactorily, or where the member is without a party, lodging a fresh complaint against the Subject Member for failing to comply with the Members’ Code of Conduct (as detailed above) will be considered.

8.0 Financial implications

8.1 There are no direct financial implications arising from the recommendations detailed in this report.

[AS/06032024/J].

9.0 Legal implications

9.1 The Council is required by section 28 of the Localism Act 2011 to have a Code of Conduct for Councillors which includes arrangements for dealing with complaints.

9.2 The key legal implications are set out in the main body of the report.

[DP/06032024/A].

10.0 Equalities implications

10.1 The Council must, in the exercise of its functions, have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 The Code of Conduct and the Council’s arrangements adhere with national guidance and fully comply with the public-sector equality duty.

11.0 All other Implications

11.1 There are no other implications arising from the recommendations in this report.

12.0 Appendices

12.1 Appendix 1 – Code of Conduct complaints – individual complaints.