



MEMBER CONDUCT COMMITTEE

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To: Councillors Tassell (Chair), Murphy (Vice-Chair), Bentley, J. Bradshaw, Hadji-Nikolaou, Hamilton and Rollings (for attention)
Councillors Ball, Jones and Marchant (Parish Members)

All other members of the Council
(for information)

You are requested to attend the meeting of the Member Conduct Committee to be held in Preston Room - Woodgate Chambers on Monday, 2nd December 2019 at 6.00 pm for the following business.

Chief Executive

Southfields
Loughborough

22nd November 2019

AGENDA

1. APOLOGIES
2. MINUTES OF THE PREVIOUS MEETING 3 - 6
To confirm as a correct record the minutes of the meeting held on 9th September 2019
3. DISCLOSURES OF PECUNIARY AND PERSONAL INTEREST

4. QUESTIONS UNDER COMMITTEE PROCEDURE 12.8

No questions were received.

5. UPDATE ON COMPLAINTS RECEIVED

7 - 10

A report of the Monitoring Officer providing an update on complaints received about breaches of the Code of Conduct and any issues arising from those complaints.

6. REVIEW OF THE PLANNING CODE OF GOOD PRACTICE

11 - 14

A report of the Monitoring Officer providing an opportunity for the Committee to review the Planning Code of Good Practice.

7. HEARING APPEALS PROCESS REVIEW

15 - 18

A report of the Monitoring Officer providing a review of the Member Conduct Panel Hearing Appeals process.

8. WORK PROGRAMME

19 - 22

A report of the Monitoring Officer to enable the Committee to agree a work programme to plan its future business

MEETING DATES

Meetings of the Committee during 2019/20 will be held at 6.00pm on the following dates:

18th March 2019

MEMBER CONDUCT COMMITTEE 9TH SEPTEMBER 2019

PRESENT: The Chair (Councillor Tassell)

Councillors Bentley, J. Bradshaw, Hadji-Nikolaou
and Hamilton
Councillors Jones and Marchant (Parish Member)

Head of Strategic Support
Democratic Services Officer (NC)

APOLOGIES: Councillors Murphy, Rollings and Ball (Parish
Member)

The Chair stated that the meeting would be recorded and the sound recording subsequently made available via the Council's website. She also advised that, under the Openness of Local Government Bodies Regulations 2014, other people may film, record, tweet or blog from this meeting, and the use of any such images or sound recordings was not under the Council's control.

7. MINUTES OF THE PREVIOUS MEETING

The Chair welcomed the new Parish Member on behalf of the Committee and passed on its thanks to Councillor Betty Crick who had stepped down from being a parish member before the election in May 2019.

The minutes of the meeting held on 17th June 2019 were confirmed as a true record and signed.

8. DISCLOSURES OF PECUNIARY AND PERSONAL INTEREST

No disclosures were made.

9. QUESTIONS UNDER COMMITTEE PROCEDURE 12.8

No questions had been received.

10. UPDATE ON COMPLAINTS RECEIVED

Considered a report of the Monitoring Officer providing an update on complaints received about breaches of the Members' Code of Conduct and any issues arising from those complaints (item 5 on the agenda filed with these minutes).

The Monitoring Officer stated that the outcome of the three complaints received since the last meeting of the Committee had been to take no further action and that the Independent Persons consulted had agreed with these outcomes. One complainant had appealed but having consulted with the Chair and Vice-chair of the Committee, the appeal was not upheld.

RESOLVED that the current position in respect of complaints about breaches of the Members' Code of Conduct that have been received be noted.

Reason

To keep the Committee informed about complaints.

11. DISCLOSABLE PECUNIARY INTERESTS

Considered a report of the Monitoring Officer providing an update regarding the Register of Members' Interests (item 6 on the agenda filed with these minutes).

The Monitoring Officer stated that he had issued a stern reminder in August explaining that this report would be presented to the Member Conduct Committee and that one of the potential options could be submitting a report to the Police with names of councillors who had not notified the Monitoring Officer of disclosable pecuniary interests (DPI) within 28 days of becoming a councillor. This had resulted in some DPis being returned and there were now only 8 parish or town councillors who had not yet returned submitted details of their DPis. It was noted that the wording of the reminder had been objected to by some councillors as too strong, but the Committee fully endorsed the Monitoring Officer's actions.

RESOLVED

1. that the information contained in the report be noted;
2. that the Monitoring Officer sends a further reminder directly to the Parish and Town Councillors who have not yet returned their DPis seeking clarification as to why they have not yet submitted their information and asking if they required any additional support to complete the form.

Reasons

1. the Committee were satisfied with the contents of the report.
2. The Committee were concerned that an offence was being committed and therefore considered that it was important to give parish and town councillors a further opportunity to submit their DPis.

12. MANDATORY STANDARDS AND PROBITY TRAINING

Considered a report of the Monitoring Officer regarding the non-attendance of members at two mandatory training sessions regarding standards and probity (item 7 on the agenda filed with these minutes).

The Monitoring Officer stated that the training had been categorised as mandatory, its purpose was to protect councillors and that 14 councillors who had not attended either session were re-elected members. If a councillor had not attended the training since 2015 after the previous election, it could potentially be eight years before a councillor was trained in the matter again and could put themselves at risk.

RESOLVED that one further session be arranged by Democratic Services in consultation with the Monitoring Officer, that a date and time is chosen whereby the majority of councillors can attend and that the training session be recorded and made available with the presentation slides to councillors.

Reason

Although the Committee was aware that further training would involve officer time and resources, it considered that it was important for councillors to attend standards and probity training and that every opportunity should be taken to arrange a session for the outstanding councillors to attend, including setting up the sessions during the day if necessary and recording the training if for genuine reasons councillors were still unable to attend.

13. WORK PROGRAMME

Considered a report of the Monitoring Officer enabling the Committee to agree a work programme to plan its future business (item 8 on the agenda filed with these minutes).

Members discussed whether a time limit would be beneficial when investigations were conducted into complaints by the Monitoring Officer and whether counselling support was offered to councillors undergoing the investigation. It was noted that there were many factors that influenced the length of time it took for a complaint to be investigated and that councillors could request to receive support.

RESOLVED

1. that the item regarding the Register of Members' Interests be rescheduled for consideration by the Committee from its meeting on 2nd December 2019 to its meeting to be held on 16th March 2020;
2. that the item regarding the Review of the Constitution be updated to remove consideration of the recommendations of the Committee on Standards in Public Life and that the recommendations be added to the Work Programme separately for the Committee to schedule at an appropriate time;
3. that the Chair, Vice-chair and Head of Planning and Regeneration be invited to the Committee's meeting on 2nd December 2019;
4. that the Monitoring Officer considers the Committee's views regarding the application of time limits and availability of counselling support when preparing the Hearing Appeals Process report for its meeting to be held on 2nd December 2019.

Reasons

1. The Committee considered that there was sufficient items on its agenda for its meeting to be held on 2nd December 2019 and therefore wished to consider

- the Register of Members' Interests at a later meeting by which time the routine six monthly reminders would have also been sent out to all councillors;
2. The Committee were aware that the Government was unlikely to prioritise its review of the recommendations of the Committee on Standards in Public Life and did not wish to make changes to the Council's Constitution before the Government had responded.
 3. To provide guidance during the consideration of the Planning Code of Good Practice as part its agenda item 'review of the Constitution' at its meeting in December 2019.
 4. The Committee wished the Monitoring Officer to provide guidance regarding time limits and the availability of counselling support.

NOTES:

1. No reference may be made to these minutes at the Council meeting on 4th November 2019 unless notice to that effect is given to the Democratic Services Manager by five members of the Council by noon on the fifth working day following publication of these minutes.
2. These minutes are subject to confirmation as a correct record at the next meeting of the Member Conduct Committee.

MEMBER CONDUCT COMMITTEE – 2ND DECEMBER 2019

Report of the Monitoring Officer

Part A

ITEM 5 UPDATE ON COMPLAINTS RECEIVED

Purpose of Report

To provide the Committee with an update on the complaints about breaches of the Code of Conduct that have been received and any issues arising from those complaints.

Recommendation

That the current position in respect of complaints about breaches of the code of conduct that have been received be noted.

Reason

To keep the Committee informed about complaints.

Policy Justification and Previous Decisions

The functions and responsibilities of the Committee set out in the Council's Constitution include determining any complaints that members of the Borough Council or the parish and town councils in the Borough have breached the Code of Conduct. The initial stages of the complaints process are dealt with by the Monitoring Officer and the purpose of this report is to keep the Committee informed of the volume and nature of complaints that are received.

Implementation Timetable including Future Decisions

It is recommended that the Committee receives reports at each meeting about the complaints that have been received.

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

Officer to Contact: Adrian Ward
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Part B

Summary of Complaints Received to 31st October 2019

1. Since the last meeting of the Committee and up to 31st October no new complaints have been received, leaving the total for 2019/20 to date at 3 complaints.
2. Therefore no further update is required.
3. For comparative information, the following table summarises complaints received in previous years (including complaints about both Borough and Parish/Town Councillors):

Year	Total Complaints
2012/13 (9 months)	10
2013/14	6
2014/15	21
2015/16	14
2016/17	7
2017/18	10
2018/19	13
2019/20 (tp date)	3

Type of councillor	Number of complaints	Outcome	Issues raised in complaint	Reason for no further action	Description of other action	Outcome of investigation
Borough	2	Fact finding review found that the complaint did not merit further action or investigation	Comments made during a speech at a Council meeting included implied allegations about a fellow Councillor	The comments made fell within the reasonable limits of freedom of political expression		
		Fact finding review found that the complaint did not merit further action or investigation	Various allegations about election campaign activities, failing to declare interests, and making false declarations	Complainant was advised that potential electoral offences need to be reported to the Police. The other issues were considered not to merit further action, and the Independent Person agreed with this		
Parish / Town	1	Fact finding review found that the complaint did not merit further action or investigation	Abuse of position by 2 parish councillors to obtain a key to access private land	The actions complained about did not relate to the individuals acting in their capacity as parish councillors		

MEMBER CONDUCT COMMITTEE – 2ND DECEMBER 2019

Report of the Monitoring Officer

Part A

ITEM 6 REVIEW OF THE PLANNING CODE OF GOOD PRACTICE

Purpose of Report

To provide the Committee with an opportunity to review the Planning Code of Good Practice.

Recommendation

That the Committee considers the one consultation response and considers whether they wish to recommend any amendments, taking into consideration that the Head of Planning and Regeneration does not recommend any changes to the Planning Code of Good Practice.

Reason

To consider any proposals that have been made to amend the Planning Code of Good Practice.

Policy Justification and Previous Decisions

The functions and responsibilities of the Committee set out in the Council's Constitution include monitoring the operation of, and advising the Council on, the adoption or revision of codes and protocols relating to standards issues which included the Planning Code of Good Practice.

Implementation Timetable including Future Decisions

The Council reviews the Constitution each year. As part of the review consultation is has been undertaken with officers, and members of the Plans Committee and the Member Conduct Committee. It is planned to submit the results of the Constitutional review to the Cabinet on 12th March 2020 and then to Council on 27th March 2010.

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

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Part B

Background

1. Members of the Plans Committee and the Member Conduct Committee, and the Head of Planning & Regeneration have been consulted by email about any amendments to the Planning Code of Good Practice that they felt may be beneficial.
2. The following response from a Member of the Member Conduct Committee (Councillor Rollings) has been received about the Planning Code of Good Practice as follows:

'Page 24-6 of the Constitution - 8.1 onwards. This area needs tightening up to make it clear that a Councillor is only obliged to report 'contact with a developer, applicant or objector' if it relates to a current or proposed application which is to be determined by the Council. As currently drafted, any contact for any purpose from a developer would need to be reported'.

3. The Head of Planning and Regeneration responded with the following comment:

'Section 8 of the Planning Code of Good Practice has advice for all Councillors and also Plans Committee members. The suggestion from the Councillor is not specific about whether the proposals are for either grouping'.

'Looking at the proposal carefully I suggest that the word 'Council' be replaced with "Planning Authority" in the Councillors suggestion above; nevertheless, section 8.1 reads that Councillors can involve themselves in discussions with developers, constituents and others about planning matters. It does however, then go on to say difficulties can be avoided if Councillors inform officers about approaches and seek advice. I think that the section provides appropriate balance. I do not recommend any change to section 8.2. as there is a need to maintain the highest level of probity and transparency for our Plans Committee Members'.

4. The current relevant sections of the Planning Code are:

8. Contact with Applicants, Developers and Objectors

(Application: All Councillors)

- 8.1 If you are contacted by applicants, developers or objectors:

- refer those who approach you for planning, procedural or technical advice to officers;
- Councillors can involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if Councillors inform officers about any approaches made and seek advice.

(Application: Plans Committee)

8.2 If a member of the Plans Committee is contacted by an applicant, objector or developer:

- they should refer any requests for planning, procedural or technical advice to officers;
- they should report in writing to the Head of Planning and Regeneration any contact with an applicant, objector or developer which could (or could reasonably be perceived by the public) to effect the determination of a planning application, requesting that it is recorded on the planning file.
- they should not agree to any formal, private meeting with applicants, developers or objectors if you can avoid it;
- if you feel that a meeting or site visit would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Regeneration to organise it;
- comply with the Council's protocol relating to presentations in Chapter 25 of the Council's Constitution. Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Plans Committee.
- be aware of the rules relating to pre-determination and bias in section 5 of this Code; and
- if you subsequently take part in the Plans Committee meeting considering this matter, disclose those contacts to the meeting.

(Application: All Councillors)

8.3 Councillors are able to attend public meetings and presentations by applicants/developers which are open to the public. If you choose to attend:

- do ask relevant questions for the purposes of clarifying your understanding of the proposals;
- remember that the presentation is not part of the formal process of debate and that determination of any subsequent application will be carried out by the Plans Committee;
- be aware of the rules relating to pre-determination and bias in section 5 of this Code.

5. The Committee is asked to consider whether any further clarification is required within the Planning Code regarding contact by applicants, developers or objectors.

MEMBER CONDUCT COMMITTEE – 2ND DECEMBER 2019

Report of the Monitoring Officer

Part A

ITEM 7 HEARINGS APPEALS PROCESS REVIEW

Purpose of Report

To consider the process for appeals against decisions of Member Conduct Panels when determining complaints that a councillor may have breached the Members' Code of Conduct of their authority.

Recommendations

That the Committee notes the report and considers what, if any, further action they may wish to take.

Reasons

To give further consideration to matters relating to the appeals process and counselling support previously raised by the Committee.

Policy Justification and Previous Decisions

At its meeting on 9th September 2019 the Committee agreed that the appeals process required review in light of a recent hearing and subsequent grounds for appeal which were submitted and then subsequently withdrawn.

The Committee asked the Monitoring Officer to consider its views regarding the application of time limits and availability of counselling support when preparing the Hearing Appeals Process report for its meeting to be held on 2nd December 2019.

Implementation Timetable including Future Decisions

Any amendments to the procedure for considering member conduct complaints could be put forward as part of the ongoing annual review of the Constitution.

Report Implications

The following implications have been identified for this report.

Financial Implications

None specifically arising from this report, although any potential extension of the counselling service offered to Borough officers and councillors would have cost implications

Risk Management

No risks have been identified with this report.

Background Papers: None

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Current Appeals Procedure

1. Sections 18.9 and 18.12 of the current procedure for dealing with Member Conduct complaints state that if a Panel finds against a Member, the Member can appeal in writing within 10 working days for a review of the decision, setting out the reasons for their request.
2. In discussing this process previously the Committee were concerned that the current arrangements could potentially allow for groundless or frivolous appeals to be made.
3. To put this matter into context, the number of appeals that have been submitted is very low with only 2 having been received in recent years (one in 2019 which was subsequently withdrawn, and one in 2016 where the Appeals and Reviews Committee upheld the original Panel's decision).

The Principles of Natural Justice

4. In the interests of fairness and transparency, the principles of natural justice should apply to the process for considering member conduct complaints, including the right to a fair hearing.
5. Although a right of appeal is not specifically included within the principles of natural justice, it is common practice to allow for a right of appeal if someone considers that they have not been allowed a fair hearing.

Potential Amendments to the Appeals Process

6. Councillor Rollings has suggested that appeals should only be allowed if there has been a procedural breach, or if new evidence has come to light since the determination of the complaint.
7. If the Committee is minded to amend the current appeals arrangements in line with Councillor Rolling's suggestion, then they will need to consider who would decide whether an appeal met the required threshold to be allowed. Potential options for the decision maker would include the chair of the original Panel, the chair of the Appeals and Reviews Committee (which would be the Committee from which the Appeal Panel would be drawn), or the Monitoring Officer.
8. However, in light of the very low number of appeals which have been submitted, alternatively the Committee may wish to continue with the current arrangements.

Counselling Support

9. Borough Council employees and councillors do already have access to an independent counselling service - the Council purchases a specified number of support cases at a cost of approximately £4,500 per year.
10. However, this service is not available to parish or town councillors who may have been complained about, or to external complainants.

11. Whilst the Monitoring Officer can offer procedural guidance to such persons, no counselling support is available other than potentially sign-posting them to national resources such as the Samaritans.
12. Councillors who are members of political parties may be able to seek support via their party.

MEMBER CONDUCT COMMITTEE – 2ND DECEMBER 2019

Report of the Monitoring Officer

ITEM 8 WORK PROGRAMME

Purpose of Report

To enable the Committee to consider, and agree any changes to, its work programme to assist it to plan its future business.

Recommendations

1. That the Committee considers any items that it wishes to add to, or amend in, its work programme for future meetings;
2. That the Committee notes the removal of the Review of the Constitution from its agenda for this meeting (2nd December 2019).

Reasons

1. To enable the Committee to identify future items of business and enable planning for future meetings to be undertaken, for example preparing reports and arranging for the attendance of officers and/or others at meetings.
2. During the consultation with councillors no comments were received for the annual review of the Council's Constitution and those parts of the Constitution (including the Members' Code of Conduct) that relate to the roles of the Committee.

Policy Justification and Previous Decisions

At its meeting on 24th March 2014, the Committee resolved to introduce a work programme to manage the business to be conducted at its future meetings (minute 12 refers). The Committee has considered business at its subsequent meetings based on that programme.

Implementation Timetable including Future Decisions

It is recommended that the Committee reviews its work programme at every meeting. Future meetings of the Committee for 2019-20 have been agreed by full Council as follows:

16th March 2020

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

Appendix: Work Programme

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Member Conduct Committee – Work Programme

ITEM	NOTES	DATE
Update on Complaints Received	An update on complaints received about breaches of the Code of Conduct and any issues arising from those complaints.	Standing item
Hearing Appeals Process (Constitution)	Review of the Member Conduct Panel Hearing Appeals process, as the Committee considered that when an appeal was submitted after a decision had been reached by a Member Conduct Panel it should only be considered valid if there had been a procedural failing in the original Panel Hearing or new evidence was provided. The current process where an appeal can be submitted in writing irrespective of the content of the appeal was potentially wasting officer and councillor time and that the Constitution in relation to the appeals process should be reviewed.	2nd December 2019 <i>(added 18th March 2019)</i>
Review of the Constitution	Consider details of possible amendments to the Constitution it may wish to recommend as part of the annual review process.	December 2020 <i>(last considered 2nd December 2019)</i>
Regular review of Members Code of Conduct and Planning Code	At its meeting on 7th December 2015 the Committee requested that the Chair and Vice-chair of the Plans Committee and the Head of Planning and Regeneration, are invited to attend the Member Conduct Committee on a regular basis, to review the relationship between the Planning Code and the Members' Code of Conduct.	December 2020 <i>(last considered 2nd December 2019)</i>
Register of Members' Interests	Update regarding recent reminders and responses for register of members interests and to include more detailed information regarding Parish and Town Councillor responses.	16th March 2020 <i>(last considered 18th March 2019)</i>
review of local government ethical standards by the Committee on Standards in Public Life	Consider the recommendations by the Committee on Standards in Public Life's review of local government ethical standards after the Government has provided a response.	To be scheduled <i>(awaiting Government response)</i>

ITEM	NOTES	DATE
Review of the Constitution alongside CSPL recommendations	Consider details of possible amendments to the Constitution after the recommendations of the Committee on Standards in Public Life have been considered by the Government.	To be scheduled <i>(awaiting Government response)</i>