

## MEMBER CONDUCT COMMITTEE – 3RD DECEMBER 2018

### Report of the Monitoring Officer

#### Part A

#### ITEM 6 REVIEW OF THE CONSTITUTION

##### Purpose of Report

To provide the Committee with a briefing about the annual review of the Council's Constitution and those parts of the Constitution that relate to the roles of the Committee.

##### Recommendations

1. That the Committee notes the report and the content of the current sections of the Constitution relating to member conduct and the handling of member conduct complaints.
2. That the Committee makes any recommendations regarding changes to the Council's Constitution relating to its roles that it wishes to see.

##### Reasons

1&2. To enable the Committee's views to form part of the annual review of the Council's Constitution.

##### Policy Justification and Previous Decisions

The roles of the Committee include:

- monitoring the operation of, and advising the Council on, the adoption or revision of codes and protocols relating to standards issues
- overseeing the process for dealing with complaints that those codes and protocols have been breached and where necessary making determinations of specific complaints
- making recommendations on major amendments to the Council's Constitution which involve standards issues.

A report appears elsewhere on this agenda in relation to the Committee's review of 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 undertaken with officers and councillors. It is planned to submit the results of the review to the Cabinet on 14th March 2019 and Council on 25th March 2019. At its meeting on 11th September 2017, the Committee agreed to consider the Members' Code of Conduct for amendments. A request was forwarded to members of the Committee to put forward possible amendments for consideration at the next meeting (3rd December 2018).

## 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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## Parts of the Constitution Dealing with Member Conduct Issues

1. The Council's Constitution includes a section containing the Council's Codes and Protocols in relation to conduct. These are:
  - Members' Code of Conduct
  - Officers' Code of Conduct
  - Protocol on Member/Officer Relations
  - Monitoring Officer Protocol
  - Members' Planning Code of Good Practice
  - Protocol Presentations to Councillors.
2. The Officers' Code of Conduct falls within the remit of the Personnel Committee as it forms part of the terms and conditions on which staff are employed. However all 6 documents can be accessed using the link at the end of the report for the Committee's information. A report appears elsewhere on this agenda in relation to the Committee's review of the Planning Code of Good Practice.
3. The Council has adopted a procedure for dealing with complaints that councillors have failed to comply with the requirements set out in these codes and protocols. A copy of the current procedure can be found using the link at the end of the report. As part of the review of the Constitution officers will look at whether the document can be simplified. Complaints that officers have failed to comply with the requirements of the Officers' Code of Conduct or the Protocol on Member/Officer Relations would be dealt with through the Council's disciplinary procedures.

## Issue for the Annual Review of the Constitution - Monitoring Officer Protocol

4. Chapter 23 of the Constitution relates to the Monitoring Officer Protocol which can be found in the link below. Section 2 of the protocol specifically explains the arrangements between the Monitoring Officer, colleagues and Members and is designed to help ensure the effective discharge of their functions.

Point (g) in Section 2 states:

*'The Monitoring Officer will, where appropriate, make enquiries into allegations of misconduct in the absence of a written complaint being received and if appropriate will make a written report to the Member Conduct Committee unless the Monitoring Officer considers a report is not warranted'.*

5. A Councillor has suggested that section 2 (g) of the Monitoring Officer Protocol in Chapter 23 of the constitution be deleted. No reasons for the request have been provided.
6. A brief review of the Monitoring Officer Protocols of other local authorities suggests that whilst some authorities include a similar section relating to the Monitoring Officer being able to deal with concerns or allegations about Members' conduct in the absence of a written complaint, the majority do not appear to.

7. The Monitoring Officer recently acted under this clause in a situation where several Council officers raised concerns both verbally and in writing about the actions of a Borough Councillor, but were unwilling to make formal Code of Conduct complaints.
8. In considering whether or not to support the proposal to remove section 2(g) of the Monitoring Officer Protocol, the Member Conduct Committee may therefore wish to consider the following issues:
  - Most local authorities appear not to have a similar section in their Monitoring Officer Protocols, although some do,
  - Whether everyone raising a concern about a Member's conduct should be required in all cases to make a formal written complaint before any action will be taken,
  - What the expectations of the Member Conduct Committee are in a scenario where the Monitoring Officer becomes aware of a potential breach of the Member Code of Conduct, but no formal complaint has been made.

#### Codes and Protocols

The current codes and protocols in the Constitution can be found using the following link:

[https://www.charnwood.gov.uk/files/documents/05\\_codes\\_and\\_protocols/05%20Codes%20and%20protocols.pdf](https://www.charnwood.gov.uk/files/documents/05_codes_and_protocols/05%20Codes%20and%20protocols.pdf)