



Leicester
City Council

WARDS AFFECTED All

8.1

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

STANDARDS COMMITTEE

28th November 2017

COUNCIL

25th January 2018

BI-ANNUAL REPORT OF STANDARDS COMMITTEE JULY 2015 - JUNE 2017: ANALYSIS OF CASES REFERRED

Report of the Monitoring Officer

1. PURPOSE OF REPORT

- 1.1. This is the report of the Monitoring officer, dealing with Elected Member complaints for the period 1st July 2015 to 30th June 2017. Council have separately approved and revised two key documents (the “Code” and the “Arrangements”) which, respectively, set out the expected standards of behaviour of Elected Members and the procedural framework under which misconduct allegations are processed.
- 1.2. This report focuses specifically upon the case work that has come to the attention of the Standards Committee during the two years since the last annual report, covering the period 1st July 2013 to 30th June 2015. This report does not purport to deal with the other work undertaken by the Standards Committee in the relevant years (such as the policies it has commissioned, the reviews it has undertaken or the themes it has explored).
- 1.3. This report was considered by the Standards Committee at its meeting on 28 November 2017, (minute 18 refers), where it was welcomed and endorsed.

2. RECOMMENDATIONS

- 2.1. For Standards Committee to note the report and make any recommendations
- 2.2. For Council to note the report

3. REPORT

Principles

- 3.1.1. The principles which underpin the Council's processes for dealing with Member misconduct complaint remain as follows:
 - a. There should be simplicity to the scheme so that it is easily understood and transparent
 - b. There should be flexibility at every stage of the process for informal resolution and / or robust decisions to be taken about "no further action"
 - c. There should be Member involvement at key stages in the process
 - d. There should be the involvement of Independent Members (IM) and the Independent Person (IP) at key stages of the process
 - e. The Monitoring Officer should have greater powers to deal with complaints relating to the Code of Conduct
 - f. Rights for complainants to seek a "review" of a decisions at various stages should be limited, consistent with the reduced scope and severity of allowable outcomes that can be imposed under the new regime
 - g. At any stage in the process where it is clear that a matter should be referred to the police this should be done and the local investigation should be suspended

3.2. Volume

| | |
|---|-----------|
| No. of valid complaints lodged 1st July 2015 to 30th June 2016 | 4 |
| No. of valid complaints lodged 1st July 2016 to 30th June 2017 | 11 |

2015/16

- 3.3. In the period July 2015 to June 2016 four valid complaints were lodged.
- 3.4. The four cases to June 2016 involved seven allegations of Elected Member misconduct because two of the complaints were levelled at multiple Elected Members simultaneously (i.e. alleging the same misconduct against more than one Elected Member).
- 3.5. The total number of different Elected Members complained-about was seven. This means that no single Elected Member featured in more than one valid complaint during 2015/16. It also demonstrates that 47 out of 54 Elected Members did not attract an allegation of misconduct.

2016/17

- 3.6. In the period July 2016 to June 2017 eleven valid complaints were lodged.
- 3.7. The twelve cases to June 2017 involved twelve allegations of Elected Member misconduct because one of the complaints was leveled at two Elected Members simultaneously (i.e. alleging the same misconduct against two Elected Members over the same incident).
- 3.8. The total number of different Elected Members complained-about was eleven. One Elected Member attracted two complaints. Conversely, this demonstrates that 44 out of 54 Elected Members did not attract an allegation of misconduct.
- 3.9. A particular feature in respect of the 2016/17 statistics is that five of the eleven complaints were generated from one particular Council meeting.
- 3.10. The reference to “valid” complaints is deliberate, and it is to be noted that ten actual referrals were made to the Monitoring Officer in 2015/15 and twenty-five such referrals were made in 2016/17. It follows that nineteen additional cases were dealt with by the Monitoring officer during the two year period and such referrals were never treated as valid complaints. The reasons for this included:
 - Complaint too vague or general to constitute a valid complaint, and when invited by the Monitoring Officer to clarify the nature of the allegation, the prospective complainant declined to engage
 - Complaint made against entire Council Chamber because of a particular policy (e.g. “Boycott” Motion)
 - Complaint revealed as false and malicious

- Complaint more properly resolved through other action instigated by the Monitoring Officer (e.g. complaint wasn't about standards, and complainant really only wanted progression/resolution of an operational matter)
- Complaint already properly dealt with through other channels
- Elected Member clearly not acting on the business of the Authority at the time (for example, was acting in private capacity on social media, or was acting on party political business)
- Elected Member(s) decided not to pursue a complaint against another Elected Member following an informal discussion with the Monitoring Officer

3.11. In all cases where a prospective complaint is not treated as valid the Monitoring Officer is mindful to assess whether it is just and fair to abandon it, taking an appropriate steer from the Independent Person(s) if appropriate.

3.12. Source of Complaints

2015/16

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| Complaints from members of the public | 4 |
|--|----------|

3.13. It is right to say however than in two of the four complaints lodged the complainant was complaining on behalf of a community or special interest group.

2016/17

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|---|----------|
| Complaints from members of the public | 3 |
| Complaints from other Elected Members | 5 |
| Complaint from LCC or Vol. Sector staff member | 3 |

3.14. All of the Elected Member complaints arose out of one Council meeting.

3.15. Nature of allegations

(This may be greater than the number of complaints, where a complainant has complained about more than one Councillor within the same complaint)

2015/16

| | |
|--------------------------|----------|
| Behaviour | 2 |
| Unhelpfulness | 1 |
| Abuse of position | 1 |

- 3.16. It is very difficult to draw any inferences from the categories used above due to the small sample size. The anonymized Appendix gives more insight into the nature of the allegations raised in the context of the complaints

2016/17

| | |
|--------------------------|----------|
| Behaviour | 8 |
| Unhelpfulness | 2 |
| Abuse of position | 1 |

- 3.17. The theme of 'behaviour' predominated in the twelve allegations made in the relevant year. Five of these stemmed from the same Council meeting.

3.18. Route

2015/16

| | |
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| Dealt with by I.P. and M.O. (or Deputy M.O.) | 2 |
| Concluded after 'Review' by M.O. and second I.P | 2 |
| Investigative report commissioned | 0 |

| | |
|---------------------------------------|----------|
| Proceeded to Standards Hearing | 0 |
|---------------------------------------|----------|

- 3.19. 100% of cases were dealt with by the Monitoring Officer in conjunction with one of the two Independent Persons. These complaints do not come to the attention of the Standards Committee or the Standards Advisory Board (a sub-committee of the Standards Committee which looks at specific complaints) save by way of anonomysed and very brief update at each Standards Committee meeting which is convened throughout the year.
- 3.20. Of the four cases, two involved the complainant seeking a “review” of the first-stage decision. The Council’s “Arrangements” allow for this right to be exercised in respect of all outcomes short of referral for independent investigation. A review is achieved by the Monitoring Officer sending the complaint to the second Independent Person, essentially for a second opinion as to outcome. In both cases taken to review level over the past year, the conclusion was not different to that reached by the first Independent Person in conjunction with the Monitoring Officer. The view of the Monitoring Officer on this is that this demonstrates a broad level of consistency between the Monitoring Officer and the two Independent Persons as to the appropriate threshold and proper use of the Standards regime in individual cases, but also acts as a useful mechanism to test out initial decisions and to explore other avenues which may not have received particular attention when the complaint was first looked at. Indeed in both cases that proceeded to “review” the second Independent Person raised issues or demonstrated insights into the case from a different perspective, and it is believed that these, when fed back to the complainant, would have underlined the impartiality and integrity of the Arrangements.

2016/17

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|---|----------|
| Dealt with by I.P. and M.O. (or Deputy M.O) | 8 |
| Dealt with after ‘Review’ by M.O. and second I.P | 2 |
| Investigative report commissioned | 0 |
| Proceeded to Standards Hearing | 1 |

- 3.21. Over 75% of cases were dealt with by the Monitoring Officer and Independent Person (nine cases) during 2016/17.
- 3.22. Of the eleven cases two entailed a request for a “Review”. In one of those cases the complaint outcome was changed after Review. The original outcome concluded that an

insulting exchange within the Council Chamber was to be rejected because it was dealt with by another process (a public apology). Upon review, it was decided that this should be recorded as a low-level breach warranting informal resolution.

- 3.23. In no case was an investigative report commissioned. At first sight this may seem anomalous given that one case clearly proceeded to a Standards Hearing. However the circumstances of this case revealed that even in serious cases which proceed to a full hearing, it may not be necessary to commission a separate investigation, for example where ample evidence of the incident already exists. This insight led to a clarification to the “Arrangements” being endorsed by Full Council at its meeting on 6th July 2017.
- 3.24. One case proceeded to a full Standards hearing. This case received media attention in April 2017.

3.25. Outcome of allegations

(As explained earlier, this maps outcomes against the number of allegations, rather than number of complaints)

2015/16

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| Rejected (not related to Code, or covered by another process) | 0 |
| Rejected (trivial, no public interest in pursuing, vexatious) | 0 |
| Rejected (no potential breach of Code disclosed) | 6 |
| Informal resolution (no breach, reparation desirable) | 1 |
| Informal resolution (low level breach, undesirable to take further) | 0 |
| Standards hearing (outcome of ‘no breach’) | 0 |
| Standards hearing (outcome of ‘breach’) | 0 |
| Other | 0 |

- 3.26. No serious breaches of the Code of Conduct were established amongst the seven allegations. Some further detail is to be found in the Appendix.

2016/17

| | |
|--|----------|
| Rejected (not related to Code, or covered by another process) | 0 |
| Rejected (trivial, no public interest in pursuing, vexatious) | 0 |
| Rejected (no potential breach of Code disclosed) | 7 |
| Informal resolution (no breach, reparation desirable) | 3 |
| Informal resolution (low level breach, undesirable to take further) | 1 |
| Standards hearing (outcome of 'no breach') | 0 |
| Standards hearing (outcome of 'breach') | 1 |
| Other | 0 |

3.27. Some further detail is to be found in the Appendix. One serious breach of the Code of Conduct was established amongst the twelve allegations. This matter has received media attention, and it is not the focus of this report to comment upon individual cases. What that case does reveal however is the limits of the entire regime in relation to enforcing and upholding an Elected Member Code of Conduct. It is a matter of record that the Councillor found to have breached the Code in the particular case (for (i) failing to show respect; (ii) failing to show leadership and (iii) bringing the Authority into disrepute) has not implemented the actions that were recommended by the Standards Committee; namely to apologise. Since 2012 the law has removed any power to impose sanctions on Elected Members who are found to have breached the Code of Conduct. It follows that whatever power attaches to the Standards regime to expose misconduct, offer restorative justice and guide the behaviour of Elected Members derives from:

- (i) The willingness of Elected Members to reflect upon their own behaviour in cases where they are so inclined; or
- (ii) The public power of censure that attaches to cases that are progressed to Standards Hearing subcommittee.

3.28. Timeliness

The 'Arrangements' set the following timeframes:

Complaint received ► Acknowledged to Complainant (within 5 days) ► Acknowledged to Subject Member (within 5 further days) ► Initial filtering decision by M.O. and I.P (within 15 days) ► [Further Fact Finding] ► Outcome letter ► Review (within 15 days of request)

In cases referred for investigation ► Investigation (within 3 months of initial outcome letter) ► Hearing (within 3 months)

- 3.29. The figures for the number of days taken to deal with a complaint are included within Appendix A. A relevant variable is for cases where an initial filtering decision results in the Monitoring Officer undertaking some more fact finding before an outcome is recommended. This could either entail asking for more details from the complainant, or involve meeting with the Subject Member to discuss the allegations. These are not always achievable within the ten day window envisaged, though the Monitoring Officer is conscious that “drift” in speedily resolving complaints is of itself harmful.
- 3.30. The Monitoring Officer is confident that in all cases complainants and Subject Members are communicated with in such a way that they are not left in doubt as to what stage of the process has been reached in dealing with their complaint, and when outcomes will be reached. Where target timescales are likely to be exceeded, it is important to explain this to the parties involved in a complaint, and in those circumstances (where the delay is purposeful) it is more important to maintain contact and dedicate what time is needed to the resolution of the complaint than to comply with rigid timeframes. The ‘Arrangements’ grant a degree of flexibility to the Monitoring Officer to achieve this aim.

3.31. **Cost**

No detailed analysis of the cost of operating the complaints regime has been undertaken, and neither would it be easy to do so. The vast majority of cases are dealt with without recourse to the Standards Advisory Board or a commissioning of any specialist investigations. The work is therefore absorbed within the day-to-day work of the Monitoring Officer in conjunction with one of the two Independent Persons. Most of this work in turn is conducted over e-mail.

3.32 **Monitoring and evaluation**

Following a recommendation from the Standards Committee in 2014/15, we now attempt to collate information regarding the ethnicity, gender and disability profile of complainants. For the two years covered by this report we can glean very little by way of patterns because of the small sample size. In the complaint year 2015/16 two out of the four complainants completed the monitoring data. In the 2016/17 complaint year we know that five of the eleven complaints came from Councillors. Taking together what was recorded in the monitoring data and the Monitoring Officer’s own knowledge of the cases, it is clear that the complaints regime was accessed by complainants from a diverse ethnic background; from both genders and by people who categorised

themselves as being disabled. It is however difficult to generalise from this any insights or implications for accessibility.

- 3.33 At the conclusion of a complaint, an Evaluation Form is sent to the complainant. In the relevant period one form was returned. The Form asks questions concerning the timeliness and clarity of the procedures, as well as a question about satisfaction with the outcome, as well as a free-text box for general comments. In the case in question the complainant commented that (i) the process was unnecessarily bureaucratic and (ii) the outcome was unsatisfactory. However, in the opinion of the Monitoring Officer this particular complaint had features which made this feedback almost inevitable. Fundamentally the complainant wanted to achieve the reversal of a Planning Decision, and utilised a number of “complaints” to achieve this. It was made very clear to the complainant from the outset that the Member misconduct complaint would never achieve the outcome so desired.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1. Financial Implications

None

4.2. Legal Implications

None

4.3. Climate Change Implications

None

5. OTHER IMPLICATIONS

| OTHER IMPLICATIONS | YES/ NO | Paragraph/References Within the Report |
|---------------------------|--------------------|---|
| Equal Opportunities | | Throughout the report |
| Policy | | Throughout the report |

| | | |
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| Sustainable and Environmental | | Throughout the report |
| Crime and Disorder | | Throughout the report |
| Human Rights Act | | Throughout the report |
| Elderly/People on Low Income | | Throughout the report |
| Corporate Parenting | | Throughout the report |
| Health Inequalities Impact | | Throughout the report |

6. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

None

7. REPORT AUTHOR

7.1. Kamal Adatia, City Barrister and Head of Standards.