

Cherwell District Council

Standards Committee

11 October 2021

Monitoring Officer Report

Report of Director of Law & Governance and Monitoring Officer

This report is public

Purpose of report

To give an overview from the Monitoring Officer on potential changes to the member code of conduct and an update on member Code of Conduct complaints.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note and comment upon the contents of the report.
- 1.2 To identify if there are any other matters of ethical governance within the Terms of Reference of the Committee that the Monitoring Officer should report on to the Committee

2.0 Introduction

- 2.1 Councillors have agreed to follow a code of conduct to ensure high stands in the way they undertake their duties. The Code of Conduct is set out in the [Constitution](#). The Council's Standards Committee is responsible for promoting and maintaining high stands of conduct by members.

The Committee's responsibilities for ethical standards

- 2.2 The terms of reference of the Standards Committee contain the following responsibilities:
 - The promotion and maintenance of high standards of conduct by members and coopted members of the Council and the Town and Parish Councils in the Cherwell district.
 - The making of recommendations to Council on the adoption, revision, or replacement of a code of conduct for members and co-opted members.
 - The approval and administration of arrangements under which allegations of breach of the code of conduct for members and co-opted members can be investigated and decisions on such allegations can be made.
 - The determination of items (if any) that must be entered in the Council's register of members' interests over and above any that are legally required.

- The approval and administration of arrangements for the granting of dispensations to members and co-opted members so as to permit their participation in meetings despite the existence of a disclosable pecuniary interest.

2.3 The regime, stemming from the Localism Act 2011 (the Act), demonstrates the Council's expectation that high standards of conduct will continue to be promoted and maintained amongst elected councillors and co-opted members.

2.4 Following the departure of James Doble, Monitoring Officer for Cherwell District Council in 2018, Nick Graham, Monitoring Officer at Oxfordshire County Council, was appointed Monitoring Officer for Cherwell District Council also until June 2020 when he left his role. Steve Jordan was appointed interim Monitoring Officer pending a recruitment exercise; Anita Bradley was appointed Director of Law and Governance Monitoring Officer, taking up the post on 4 January 2021.

3.0 Report Details

Member Code of Conduct

3.1 The county, district and city councils in Oxfordshire maintain harmonised Codes of Conduct. This has the benefit of creating transparency and accountability for the public and clarity of expectation for councillors who may also be members of more than one authority. The harmonisation is itself a key aspect in promoting and maintaining high standards across Oxfordshire. The Code is also provided to parish and town councils as a model to follow.

3.2 Each authority has adopted slightly different approaches to handling complaints about councillor conduct. There has been, though, a common theme of proportionality in these arrangements as envisaged by the Act.

3.3 To comply with the combined requirements of the Localism Act 2011 (section 29(7) and the Regulation 6 paragraph 5 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, the Council currently has three Independent Persons. On 19 July 2021, the Council extended the appointment of the current Independent Persons, Mr Tom Edwards, Mr Stuart Green and Mr Graham Matthews, until December 2021 to support the Monitoring Officer and members in the consideration of Code of Conduct complaints.

3.4 There is a separate report on the agenda for this meeting for Members to consider the future appointment of Independent Persons.

3.5 A summary of the Code of Conduct complaints received and considered since 2018 and their outcome, is reported at paragraph 3.17 and 3.18 below.

Consultation on Model Code of Member Conduct

3.6 During 2020/21, the Local Government Association, building on work with the Committee on Standards in Public Life, appendix 1, issued a consultation on a proposed new Model Code of Conduct for Members.

- 3.7 The Model Code was broadly supported and its emphasis is on creating clarity around responsibilities, the importance of good behaviours, particularly in the use of social media, and the creation of national guidance to provide examples of key behaviours.
- 3.8 In keeping with the principle that, ideally, a similar Code should be adopted across Oxfordshire, the Monitoring Offices from across the county agreed to work up a potential revised Code, based on the Model, for consideration by each authority, with a view to potential implementation by each Council by May 2022. This Committee will be fully involved in this as the work develops. Progress on this will be dependent on each local authority agreeing to take this forward if the principle that the same Code of Conduct is to be adopted across Oxfordshire.
- 3.9 In addition, the Council has continued to be fully compliant with the Act and subsequent government guidance and regulations in terms of maintaining registers of members' interests, which are published on each councillor's [web](#) page.

Member Code of Conduct Complaints – promoting and maintaining high standards of conduct by Councillors and Co-opted Members

- 3.10 It is the core duty of this Committee and each and every Member to promote and maintain high standards of conduct by councillors and co-opted members.
- 3.11 Monitoring Officer advice was also issued during the year as regards:
- Disclosable Pecuniary Interests
 - Pre-election guidance to staff and councillors on responsibilities about the use of council publicity and resources during the elections in May 2021, the pre-election period commencing on 29 March 2021

Declarations of Interest

- 3.12 There is a requirement to declare disclosable pecuniary interests at meetings if they are not otherwise included in the Register and to register them thereafter. Declarations need to be made unless a dispensation has been given.
- 3.13 The usual safeguards are in place including a reminder to Members of the need to declare interests at all meetings, and all agendas contain a standard item headed "Declarations of Interest". The item refers to detailed guidance attached to the agenda setting out how and when to declare an interest.

Sensitive Interests

- 3.14 Section 32 of the Localism Act 2011 provides that where a Member of a local authority has an interest which they, and the Monitoring Officer, consider could lead to the Member or a person connected to the, to be subjected to violence or intimidation if it were disclosed, it can be deemed by the Monitoring Officer to be a sensitive interest.
- 3.15 The effect of a sensitive interest is that the interest and details of it are disclosed to the Local Authority but only the existence of the interest is included in the public version of the register of members interests, with the details being withheld and a note added that the details are withheld under the Act .

- 3.16 Government guidance to Monitoring Officers has provided that the threshold to be applied to determining a Sensitive Interest is low.

Number and Nature of Complaints of breaches of the Code made against members of Cherwell District Council and Parish Councillors within the Cherwell district.

- 3.17 The number of formal complaints received since the last report to the Committee eight. Seven of the complaints have been concluded and only one has been upheld for which an informal resolution by way of an apology was given and accepted. In one case, the Monitoring Officer is still to establish the details of the complaint from the complainant.
- 3.18 Independent persons were consulted in five of the formal complaints. As reported above, the details of one of the outstanding complaints are not yet known and a decision has not yet been made whether to consult Independent Persons.

Date	District/Parish	Complaint/Allegation	Outcome
15.10.18	Parish	Allegation of defamatory comments being made by another parish councillor	Apology – IP consulted
8.01.19	Parish	Allegation that the Chairman conferred an advantage on himself	Not Upheld – IP consulted
13.06.19	Parish	Complaint that the Parish Chairman failed to declare a personal interest when involving himself in a planning decision	Not Upheld – IP consulted
17.12.19	Parish	Complaint against 2 Parish Councillors	Not Upheld – No IP consulted
07.01.20	Parish	Complaint about Parish Councillor	Not Upheld – IP consulted
10.11.20	Parish	Complaint about the Chairman of Parish Council	Not Upheld – IP not consulted
28.06.21	Parish	Complaint against Parish Councillor	IP consulted – No Further Action
2021		Complaint received details still to be established	

- 3.19 The Monitoring Officer intends, during 2021/2022, to review the arrangements for dealing with complaints against members. This is to achieve greater clarity of process and responsibilities for the benefit of members of the public and members themselves. The potential revision of the Member Code of Conduct itself provides an important context for reviewing the arrangements for dealing with any complaints that arise under the Code. The Committee will be involved in this piece of work.

Pre-election and induction preparation

- 3.20 During 2020/2021, the Council prepared for the May 2021 elections and the implementation of an induction programme for Members against a background of uncertainty due to the pandemic.
- 3.21 An induction programme was developed giving prominence to the Member Code of Conduct, as well as to the overview of services, legal requirements such as planning law and practice, and skills such as the effective chairing of meetings. The programme was intended to give essential introductions to the senior management team, to assist in maintaining open and effective relationships. It was intended that this would provide a platform on which to create further development, owned by Members, throughout 2021/2022.
- 3.22 The Welcome Event and the Member Code of Conduct sessions both reflected on members being clear about when they are acting in the capacity as councillor; and the importance of keeping public dialogue consistent with the code.
- 3.23 During 2021/2022, there is a need for the Council to revisit what member training should be mandatory to help build positive behaviours and skills and to ensure key knowledge for those members serving on regulatory committees or in key roles such as chairing formal meetings.
- 3.24 The Overview and Scrutiny Committee has established a “Member Education & Training” working group which will be looking at Member Training and will take advice from the Monitoring Officer. The scoping document (Terms of Reference) for the review will be considered at the 19 October Overview & Scrutiny Committee meeting.

Oxfordshire Monitoring Officers’ Group

- 3.25 Monitoring Officers from Oxfordshire’s county and district councils meet monthly to discuss issues of common concern, along with a representative of the Oxfordshire Association of Local Councils. This comparison of experiences has been particularly useful in monitoring the operation of the harmonised Codes of Conduct and governance issues generally.

4.0 Conclusion and Reasons for Recommendations

- 4.1 This report provides the Committee with information and relevant updates on the Members Code of Conduct. Encouraging and maintaining high standards of conduct will continue to be addressed in 2021/2022 with the consideration of a potential new Member Code of Conduct. If the Council resolves to adopt a new Code of Conduct it will be important to ensure that members are provided with adequate training on that Code. It is imperative that members and officers set the ethical tone within the Council and model the behaviours that they expect of themselves and others.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

- 6.1 The report sets out an overview from the Monitoring Officer on potential changes to the member code of conduct and an update on member Code of Conduct complaints. No alternative options have been considered.

7.0 Implications

Financial and Resource Implications

- 7.1 There is a cost to the authority when a complaint is referred for external investigation which is determined by market factors in terms of the availability of investigators identified through complaint procurement processes. As the figures demonstrate, this has not been required. If there were costs, these could be met through existing budgets. Any costs for Member Training will also be met from within existing budgets.

Comments checked by:

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Legal Implications

- 7.2 The Localism Act 2011 requires the Council to have a Code of Conduct which sets out the standards expected of Members whenever they act in their official capacity. The Code must also have in place a suitable procedure at a local level to investigate and determine allegations against elected Members and co-opted Members and arrangements to deal with requests for dispensations. The Council is also responsible for having arrangements in place to investigate and determine allegations against Parish Councillors.

Comments checked by:

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Risk Implications

- 7.3 If the Council fails to adopt and maintain a Code of Conduct and process for the investigation of complaints which is fit for purpose, robust and transparent then there are risks to the Council's reputation and also to the integrity of its corporate governance and decision-making processes as it will not be compliant with legislation. Formal consideration of requests for dispensation minimises the risk of the Council not following lawful procedures in respect of members' interests.

Comments checked by:

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8.0 Decision Information

Key Decision: N/A

Financial Threshold Met: N/A

Community Impact Threshold Met: N/A

Wards Affected

All

Links to Corporate Plan and Policy Framework

N/A

Lead Councillor

Councillor Tony Illott – Lead Member for Finance and Governance

Document Information

Appendix 1 – Local Government Association Model Councillor Code of Conduct
2020

Appendix 2 – Local Government Ethical Standards – A review by the Committee on
Standards in Public Life.

Background papers

None

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