

COUNCIL 19 OCTOBER 2022

RECOMMENDATION FROM AUDIT AND GOVERNANCE COMMITTEE: CODE OF CONDUCT

RECOMMENDATION

That Council

- a) adopt the draft Member Code of Conduct, incorporating all amendments proposed by the Group Leaders, and**
 - b) adopt the draft Member Code of Conduct Complaints Procedure to take effect following adoption of the Members Code of Conduct.**
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Extract from the Minutes of the Audit and Governance Committee meeting on 28 July 2022

20 MEMBER CODE OF CONDUCT

Jamie Hollis, Interim Head of Legal attended the meeting via Microsoft Teams and presented the report. The report had been deferred from the previous meeting to facilitate a further Working Group discussion; however it had not been possible to convene that discussion within the time allowed. The Committee was advised a course of action could be to defer the matter further, or to make a decision to deal with the substantive items within the report.

The Chair used discretion to enable visiting Member Councillor David Marren to address the Committee in regard to the Member Code of Conduct.

Councillor Mark Goldsmith noted that any agreement on this item would go to Council, and potentially Councillor Marren (as the current Mayor) could be perceived as pre-determining a decision on the item by speaking on it during this meeting.

David Brown, Director of Governance and Compliant and the Monitoring Officer advised it was down to individuals to determine if they were approaching matters with an open mind.

The Chair noted all Members of the Working Group would be in the same position.

Councillor Marren addressed the Committee and began by noting that MP Kemi Badenock (the Minister for Levelling Up Communities) had responded to the recommendations set out in the report of the Committee on Standards in Public Life and agreed with five out of the 25 recommendations. The minister had also advised that it was for individual councils to set their own local code in line with the Localism Act.

Councillor Marren went on to say that he was part of the Working Group assigned to review the updated Member Code of Conduct as published by the Local Government Association. The Committee heard that at the first meeting of the Working Group, the code presented by officers had been amended in parts and there was some confusion about whether these amendments were fully explained to the group. The changes were reinstated by the second meeting of the group.

Councillor Marren then read correspondence he had written in January 2019 to the then Acting Chief Executive at Cheshire East Council Kath O'Dwyer, all Councillors at the time had been copied into this correspondence and it covered:

- the disappointment of officers lodging complaints against Members and associated costs paid to external lawyers rather than using in-house resources;
- the acceptance that complaints needed to be investigated, but that if an officer makes a complaint against a Member that is not upheld, then disciplinary action should be taken against that officer because of the potential for irretrievable damage to relationships and any monies used to investigate will have been in vain;
- that potentially, those subject to complaints should be able to speak freely, as they could be vulnerable to further ill-founded and malicious complaints that would result in further money being spent to external lawyers;
- Councillor Marren believed that lack of openness would lead to malicious complaints and serial complainants, and that the current Member Code of Conduct needed urgent review to avoid being used as a tool by bullies;
- Councillor Marren had publicly advised that he did not object to any complaints made against him being made public, because he believed that the reputation of Councillors by the public was generally negative, that they were secretive, broke promises and tried to avoid scrutiny and that straight-talking and openness was the antidote to help restore Councillors general reputation; and
- Councillor Marren was of the opinion that Police referrals and Member Code of Conduct complaints had become weaponised by officers to attack Members.

The Committee heard that the day after this correspondence was sent, Councillor Sam Corcoran (in his then capacity as Opposition Leader) wrote to the Acting Chief Executive to support Councillor Marren's concerns about the complaints process being used a tool for bullies, and potential misuse by senior officers. The original purpose of the process was for members of the public to complain against councillors, not councillors against councillors or officers against councillors.

Councillor Marren continued to have concern that the complaints process has been used by councillors and officers to intimidate and control councillors.

The Committee heard that the Working Group had raised several concerns about the LGA model code, and that the group were mindful that the code could be subject to local modifications. A key concern of the Working Group was that the code should not be more onerous than any process a councillor could be subject to should an interview by the Police be necessary.

Councillor Marren was concerned that the council could be requiring more with the current arrangements than the Police would. He noted that the expectation was that Councillors would cooperate whilst officers investigated complaints, when these might range from exaggeration, or manipulation and lies with intent to disrupt or remove people from positions of influence whilst they're investigating.

In summary, Councillor Marren believed:

- 1) there ought to be an appeals mechanism supported by all Members. Until that time the code should not be approved;
- 2) people should not be expected to have to respond to questions that the Police would not request; and
- 3) If someone had a complaint made against them they should not be bound by any code of silence, and should be able to argue against the allegations.

The Committee were given the opportunity to debate the item and ask any questions. Some Members of the Committee were of the opinion that the Member Code of Conduct should be deferred until an appeals mechanism is built into it.

The Interim Head of Legal advised that any appeals process would likely form part of the Procedure for dealing with Member complaints rather than the Code itself. A separate paper could therefore be brought back to Committee on this specific matter, bearing in mind there was currently no statutory appeal process available.

Some members of the Committee were of the opinion that the code and the appeals process should be considered together as there was the risk of delay to move them separately, whilst others thought that any appeal would be to the Ombudsman.

There was some debate on whether it was better to have a bespoke appeals process in place, some Members noted that recommendations 13 and 14 outlined within the report (relating to the right to appeal to the Local Government Ombudsman (LGO) and the LGO's power to investigate) would require a change to the law.

It was confirmed to the Committee that some Councils had a review process in place, rather than an appeals process.

Some members of the Committee felt that the process had taken too long to complete and were mindful that the model code had been adopted by a significant number of councils across the country and to deviate away from the model would weaken it. The Members Code of Conduct should hold Members to a higher account than just the legal minimum. The Committee noted more recent reputational damage resulting from Police Investigations and Handforth Parish Council and that the direction of travel should be in restoring the confidence of the public.

Some Committee members felt frustration that the Working Group had voted to defer the item from the last meeting and there did not appear to have been any work carried out in

the meantime. The Chair did explain some of the reasons for the delays and noted the favourable comments by the Leaders in reference to the appeals mechanism.

Councillor Mark Goldsmith proposed the Committee approve the draft Member Code of Conduct, on the basis that all amendments proposed by the political Group Leaders were incorporated.

Councillor Marilyn Houston seconded the motion.

The Chair felt the work was incomplete and did not advise progression. The Committee noted that should the item proceed to full Council, some members of the Working Group would be speaking against the recommendations by this Committee.

RESOLVED: That

- a) the draft Member Code of Conduct, incorporating all amendments proposed by the Group Leaders, be recommended for adoption by full Council; and
- b) the draft Member Code of Conduct Complaints Procedure be approved to take effect following adoption of the Members Code of Conduct by full Council.