

STANDARDS AND ETHICS COMMITTEE
24 OCTOBER 2018**CODE OF CONDUCT – COMPLAINTS UPDATE**

Recommendation

1. **The Head of Legal and Democratic Services recommends that the Committee:**
 - (a) **notes the formal complaints that have been made about the conduct of County Councillors; and**
 - (b) **considers what, if any, further action should be taken to ensure members are aware of and comply with their obligations under the Code of Conduct.**

Summary

2. This report is to update the Committee on formal complaints about the conduct of councillors which have been dealt with since the last report in April 2018. The Committee has delegated to the Monitoring Officer the responsibility of filtering complaints received, in consultation with the Chairman and/or Independent person as may be appropriate, and so the MO reports to the committee on the decisions taken.

Background

3. The Council receives a relatively small number of formal complaints concerning the conduct of county councillors. None of these have progressed to formal investigation but have been resolved informally one way or the other through the facilitation of the Monitoring Officer. This particular period brought an unusually high number of complaints, which are summarised below.

Complaint 03/18

4. The complainant was involved in ongoing contentious matters with officers of the Council, and did not agree with the Council's interpretation of the situation. The complainant complained to the MP about the Council. The Cabinet Member with Responsibility for the service area became involved in the response to the MP. The complainant then complained that the CMR had provided incorrect and libellous information in that response to the MP.
5. Preliminary enquiries were made by the MO into the circumstances, including consultation with outgoing and incoming chairmen. The Monitoring Officer considered the filtering guidelines set by the Committee and decided that the matter would not be further investigated as no breach was disclosed. The CMR had passed on information from officers in good faith; the fact that the complainant disputed the Council's position did not make it a conduct matter for the CMR. The MO encouraged the complainant to co-operate with Council officers to progress the substantive issue behind the complaint.

Complaint 04/18

6. A councillor from another authority complained about a County Councillor's comments on Facebook about a local issue which were critical of the complainant's political performance and called for the complainant's resignation.

7. The MO made preliminary enquiries, and consulted with Chairman and an Independent Member. The MO considered the filtering guidelines set by the Committee and decided that the matter would not be further investigated. The complaint potentially disclosed a breach through disrespect but the exchange was part of the cut and thrust of politics on a local political matter with freedom of speech issues between political opponents and so any potential breach did not warrant pursuing more formally. The Code applied as the Facebook comments were being made as county councillor, not in a private capacity.

8. The County Councillor was reminded of Code duties whilst engaging as a councillor on social media.

Complaint 05/18

9. This complaint concerned the nature of comments made by a county councillor at a public meeting (not a Council meeting). The MO made preliminary enquiries and considered the filtering guidelines. The MO concluded that it was unclear that the councillor was even there in any county councillor capacity, and so treated it as a private life matter and the Code was not applicable and NFA.

10. The Committee will be aware that the Council's Code only applies where a member acts in his or her role as a county councillor or representative of the Council. The Code has no application to actions taken in 'private life'.

Complaint 06/18

11. This complaint was in effect an extension of 04/18 above. The county councillor had further criticised the performance of the 04/18 complainant (and others) in a report and called for resignation. The MO made preliminary enquiries and considered the filtering guidelines in consultation with the Chairman and Independent Member.

12. The complaint raised freedom of expression issues, with different levels of respect owed depending on the context. This was a party political matter, the comments were robust but the complaint related to another politician and the cut and thrust of politics. No further formal action was required. However, the MO provided guidance to the member on the desirability of separating party politics from any formal functions exercised as a councillor.

Complaint 07/18

13. A complaint was received that a councillor had unlawfully failed to respond to an FoI request in breach of legal duties.

14. This related to a member of the public's ongoing interactions on a service matter. The MO consulted the Chairman and concluded that no potential breach was disclosed by the complaint. An individual councillor as such is not a 'public authority' for the

purposes of FoI and so no personal legal duty is owed under it, and so cannot have breached it.

15. However, although there were more direct ways of seeking FoI disclosure, the request to a councillor equated to a request to the Council. This particular one had been overlooked and so the MO ensured that the requested information was supplied to the complainant by officers in order to resolve the underlying issue.

Complaint 08/18

16. A complaint was received concerning tweets from a councillor relating to female Islamic dress. It was complained that the councillor breached the Code through lack of respect for others and by causing the Council to breach its equality duties.

17. This raised significant issues, and the MO consulted with the Chairman and an Independent Person. The MO concluded that no breach was disclosed by this comment on matters of public interest (it was not a personal attack on particular persons), and case law protected freedom of expression principles.

18. The councillor was likely to be taken to be engaging on social media as a councillor as title was being used, and Twitter account clearly showed status. The councillor in making comments was not acting as or on behalf of the Council, and was not performing any functions on behalf of the Council and so the Council's equality duties were not engaged. The councillor was giving personal views on a matter of public interest (which had no connection with the Council). Others were entitled to express criticism of those views. The comments made were well within the enhanced protection of freedom of speech, and expressing them did not amount to a breach of the Code. The complainant received a detailed report in response explaining the decision to take NFA.

19. The councillor subsequently decided to make clear on his Twitter account that he was expressing views in an entirely personal capacity and not as a councillor.

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

Tel: 01905 846670

Email: smallinson@worcestershire.gov.uk

Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.