



Report to:	Audit and Governance Committee	Date:	16 May 2019
Report title:	AG/2018/25 Operation of the Code of Conduct		
Report from:	Jessica Crowe, Monitoring Officer		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Richard Clifton		
Author(s)/Contact Number(s):	Jessica Crowe, Monitoring Officer, 020 8770 6519		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • Smarter ways of working 		
Open/Exempt:	Open		
Signed:		Date:	30 April 2019

1. Summary

- 1.1 A function of the Council's Audit and Governance Committee is to receive reports on the operation of the member Code of Conduct at Sutton. The purpose of this report is to update the committee on complaints which have been received and dealt with since the last meeting of the Audit & Governance Committee on 31 January 2019.

2. Recommendations

The Audit and Governance Committee is recommended to:

- 2.1 Note and comment on the action taken by the Monitoring Officer in dealing with complaints.
- 2.2 Make any further recommendations relevant to the committee's role and function in promoting high standards of ethical conduct by members.

3. Background

- 3.1 The Localism Act resulted in changes to the process for dealing with Code of Conduct complaints made against Councillors. The Monitoring Officer is required to review every complaint received and consult with the Independent Person as to whether the complaint requires formal investigation. The Monitoring Officer will consider the following in determining whether a complaint requires investigation:

1. It is against a councillor or co-opted member.

2. The councillor or co-opted member was in office at the time of the alleged conduct.
3. If proven, the complaint would be a breach of the Code of Conduct in force at the time of the alleged misconduct.
4. The complainant has provided sufficient information for referral for investigation or any other action.
5. The complaint is about someone who is no longer a member of the Council, but is a member of another relevant authority.
6. The complaint has already been the subject of an investigation or other action relating to the Code of Conduct.
7. The complaint is about something that happened so long ago that there will be little benefit in taking action now, or it is not feasible to investigate for any other reason.
8. The complaint is too trivial to warrant further action or not in the public interest.
9. The complaint appears to be simply frivolous, vexatious, politically motivated or tit-for-tat.

4. Issues

4.1 Complaints were received by the Monitoring Officer as set out in the table below:

Complaint from	Complaint about	Action
Current Member	Allegation of stalking and harassment online	Clarification sought, complaint withdrawn.
Member of Public	Allegation of using intimidating language at public meetings and on social media	Further information sought. Independent Person agreed that this did not warrant an investigation as not enough information has been provided. Requested supporting information which has not been forthcoming.
Member of Public	Allegation of breach of Data Protection	Initial assessment conducted, Independent Person agreed that there was no breach.
Member of Public	Allegation of bullying and harassment.	Not enough information provided to progress. Requested supporting information which was not forthcoming.



Current Member	Allegation of bullying and breach of Nolan principles, bringing authority into disrepute.	Completing initial assessment.
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- 4.2 The broad recurring themes in the above complaints are, as previously, around language and behaviour by members, particularly in relation to behaviour towards each other and in public meetings. There may be a mismatch between some members' (and the public's) expectations of what constitutes acceptable language and behaviour by politicians during political debates and what is actually considered acceptable under caselaw and therefore falls below the threshold for investigation.
- 4.3 Caselaw in this area has been formed under the framework of the European Convention on Human Rights (ECHR) which provides the right to freedom of expression:

“Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

- 4.4 There is a useful checklist contained in a Welsh Ombudsman case against a Councillor named Heesom which defines what is allowable (to “a degree”, as per the second paragraph of the Article) under the right to freedom of expression within the ECHR:

“Article 10 [of the ECHR] protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”¹

- 4.5 However, Article 3 of Sutton's own Code of Conduct very clearly requires members to “treat others with respect” and use of such language could clearly place a member in breach of this provision of the Code. In other words, just because members are not forbidden in law from using “immoderate, offensive,... non-rational and aggressive” language when speaking to each

¹ Hickinbottom J in Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)



other in the political sphere, does not mean Sutton Council will want to condone that behaviour as it can be seen to degrade the quality of public and political debate. Indeed members from across the political groups have privately raised concerns about the tone of personal attacks that they face on social media in particular, which members may wish to consider in the context of their leadership role in setting a public example of behaviour and good conduct. It is also really important to note that the Article 10 freedom does not extend to using such language against council officers or to or about the public. The Committee's views on these issues are invited.

- 4.6 A number of the complaints this quarter have touched on allegations of bullying and harassment and there is a discussion on the definition of these terms in the recent report from the Committee on Standards in Public Life, which is the subject of a report elsewhere on this agenda. It is also worth remembering that the Council recently agreed a motion to sign up to the Anti Bullying Alliance and is progressing the agreed actions from that motion to review our definition of bullying, which will take into account the CSPL report recommendations.
- 4.7 Members are reminded that their role in this Committee is to comment on general trends and issues raised by the complaints summarised in this report, not the detail of individual complaints which are dealt with in accordance with the process set out in the Constitution, and should not be discussed at this Committee, particularly if any complaints may be subject to future processes requiring a panel or Committee hearing.

5. Options Considered

- 5.1 The Monitoring Officer has authority to decide whether there are grounds to initiate a formal investigation of a complaint made about a member, using the criteria above and the powers provided in the legislation. The Monitoring Officer must consult the Independent Person and this was done in all complaints summarised above. In addition, legal advice is taken where necessary to inform the decisions.
- 5.2 Audit and Governance Committee's views and comments on the complaints and themes set out in Section 4 are welcomed to inform the approach going forward.

6. Impacts and Implications

Financial

- 6.1 There are no financial implications arising directly from this report.

Legal

- 6.2 The legal implications are set out in the body of the report.

7. Appendices and Background Documents

Appendix letter	Title
N/A	

Background documents

Complaint Forms and responses exempt by virtue of paragraph 1 of schedule 12A of the Local Government Act 1972

Audit Trail

Version	Final	Date: 30 April 2019
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Consultation with other officers

Finance	No	N/A
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Legal	No	N/A
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Equality Impact Assessment required	No	N/A
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