

Board/Committee:	STANDARDS AND GOVERNANCE COMMITTEE
Date of meeting:	18 NOVEMBER 2021
Title:	REVIEW OF CODE OF CONDUCT FOR MEMBERS AND ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACHES OF THE CODE OF CONDUCT FOR MEMBERS
Author:	BOROUGH SOLICITOR & MONITORING OFFICER
Status:	FOR DECISION

Purpose

This report sets out the need for the Council to review its Code of Conduct for Members and Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members (taken together and referred to as “the Code”) set out in Part 4 Schedule 17 of the Constitution, and considers the proposal of setting up a working group of Members and Officers to review the Code and assist the Borough Solicitor in proposing amendments to a future Committee.

Recommendation

That the Committee agrees to establish a working group of five members (made up of the Chairman plus four other members of the Committee) to work with Officers to review the Code of Conduct for Members and Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and to consider proposals for amendment so that the Borough Solicitor & Monitoring Officer can report back to the Committee at a subsequent meeting in early 2022 with proposals for amendment for onward submission to the Policy & Organisation Board and Full Council as a change of the Constitution.

1.0 Background

- 1.1** On 19 November 2020 the Committee considered a report by the Borough Solicitor & Monitoring Officer in response to the Committee on Standards in Public Life Report, chaired by Lord Evans of Weardale (the ‘Weardale Report’) dated January 2019.
- 1.2** One of the recommendations of that previous Committee report was that the Code should be subject to an annual review. The report stated that, “We will ensure that the Council programme of meetings is updated to include an annual review of the Code of Conduct.”
- 1.3** The Weardale Report had also made a number of other best practice recommendations regarding a Council’s Code of Conduct, and it would be appropriate to review and consider these as part of this first annual review. The best practice recommendations which were aimed at a Council’s Code of Conduct are set out in this report along with proposals for how the Council might address them with changes to the Code.

2.0 Report

2.1 The Committee previously considered the Council's response to the Weardale Report in November of last year. As stated above, the Weardale Report set out a number of best practice recommendations, and those which relate to a Council's Code of Conduct are referred to in the following paragraphs together with some suggestions for how these can be addressed.

2.1 Best practice recommendation 1:

"Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition."

The Code contains a prohibition on bullying. It does not specifically cite 'harrasment', which could be inferred by other prohibitions in the Code; but this should be specifically added. In particular, the Code requires definitions of bullying and harassment and examples to comply with the recommendation provided by the Weardale Report; so these will need to be considered.

2.2 Best Practice Recommendation 2:

"Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors."

The Code currently does not have these specific provisions, although it does allow for taking into consideration whether a complaint is, "vexatious, politically motivated, tit-for-tat or made by a persistent complainant." Such additional wording can be added to the procedure if Members are in agreement. In particular it would be of benefit to the Council to make it explicitly clear that all Members are required to comply with a formal standards investigation in order to provide public confidence in the system that the Council has in place.

2.3 Best practice recommendation 3:

"Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities."

Further to this recommendation, Officers have ensured that the Council plans for an annual review of the Code by the Standards and Governance Committee. On this occasion the review is likely to be more detailed as it is a first review of the Code since it was introduced by the Council in March 2019. The views of Members of the Standards & Governance Committee are sought regarding the proposal for wider consultation on the Code, and further it is proposed that all Group Leaders are approached on the subject.

2.4 **Best practice recommendation 6:**

“Councils should publish a clear and straightforward public interest test against which allegations are filtered.”

Having considered the supporting text within the Weardale Report it was concluded last year that the Council should consider an amendment to its assessment criteria to include a clearer public interest test; albeit that certain elements of what may be included are already contained in the Constitution such as considerations of whether the alleged conduct took place within the last six months, whether it involves behaviour under the Code, and whether the conduct is something which it is possible and proportionate to investigate.

The Weardale Report contains the following example which the Council could consider as a starting point:

“1. ‘CAN’ we investigate your complaint?

- Is the person you are complaining about a councillor?*
- Did the conduct occur within the last six months?*
- Is the conduct something that is covered by the code?*

2. ‘SHOULD’ we investigate your complaint?

- Is there evidence which supports the complaint?*
- Is the conduct something which it is possible to investigate?*
- Would an investigation be proportionate and in the public interest?”*

It is proposed that a clearer ‘pre-filter’ stage such as that set out above would be helpful and should be taken forwards by the Working Group.

2.5 **Best practice recommendation 9:**

“Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.”

The rationale for this recommendation is that this would comply with the Nolan principal of ‘openness’. The Weardale Report states that decisions on formal investigations should be published. The views of the Working Group are sought regarding the proposal for the publication of decision notices on the Council’s website, and further it is proposed that all Group Leaders are approached on the subject to determine how the Council wishes to take this forwards.

2.6 **Best practice recommendation 10:**

“A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for

investigations and outcomes.”

The Council’s Code is online and within the Constitution, however on reflection it is proposed that we should consider how the Council might streamline these and make them easier to follow. For example, as already covered at paragraph 2.4, a more straightforward and clear public interest test could be an opening consideration which would set out the parameters of the process in a clear way. It might also be that a flow diagram to set out the process will make this easier to understand and this should be considered.

2.7 Best practice recommendation 13:

“A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.”

As members of the legal profession the Borough Solicitor & Monitoring Officer, and the Senior Solicitor & Deputy Monitoring Officer consider conflicts of interest at the outset of any issue as a matter of routine but will set these out in the Code. In the report of last year it was proposed that this could appear in a procedure note as requested by the Weardale Report, however it may be possible to incorporate relevant principles within the Code itself. To be clear, for matters which require an investigation the Borough Solicitor always considers whether an independent external investigator would be appropriate.

2.8 It is proposed that a Working Group made up of Members and relevant Officers considers in further detail how the best practice recommendations can be incorporated into the Code. Whilst the Constitution does not provide for the Standards and Governance Committee to establish a formal Task and Finish Group, there would appear to be no reason why it could not establish a working group to assist the Borough Solicitor with proposals that can be brought back to the Committee for endorsement and onward transmission to the Policy & Organisation Board and Full Council as Constitutional amendments. As part of this work it is possible that the Borough Solicitor may submit rewritten sections of the Code to ensure that these are clearer and easier to understand.

2.9 It is further proposed that a working group is established comprising the Chairman together with four additional Members as nominated by the Committee and relevant Officers including the Borough Solicitor and Senior Democratic Services Officer. The working group will need to meet by the end of 2021 to consider the proposals set out in this report in further detail alongside relevant sections of the Weardale Report. Group Leaders’ views will be sought regarding some of the proposals and the Borough Solicitor will also seek the views of Peter Large and Chris Willis, the Council’s Independent Persons, who assist with the consideration of complaints alleging a breach of the Code.

2.10 The Working Group may need to meet more than once in order to provide due consideration to proposals which are made to improve the Code.

3.0 Risk Assessment

3.1 By carrying out a review of the Code the Council complies with the assurances provided to the Committee on Standards in Public Life. Even more importantly, the Council complies with its general requirement to pursue continuous improvement and it is a hallmark of good governance to do so.

4.0 Conclusion

This report sets out the requirement for an annual review of the Code and how this can be addressed by the Borough Solicitor supported by the Committee by establishing a working group of Members drawn from the Committee and Officers.

Financial Services comments:	None
Legal Services comments:	Contained within the report.
Equality and Diversity:	See IIA attached
Climate Change implications:	None – see IIA attached
Crime and Disorder:	None
Service Improvement Plan implications:	N/A
Corporate Plan:	Empower our residents – good citizenship Deliver effective services - continually review and improve our services
Risk Assessment:	See section 3.
Background Papers:	Standards and Governance Committee report 19 November 2020. Committee on Standards in Public Life, Lord Weardale and others xxx January 2019
Appendices:	IIA attached
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