

Board/Committee:	POLICY AND ORGANISATION BOARD
Date of meeting:	17 MARCH 2022
Title:	AMENDMENTS TO 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 AND RECOMMENDATION TO FULL COUNCIL

Purpose

This report seeks approval of amendments to the Council's 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") following endorsement of the Standards and Governance Committee and a public consultation exercise which concluded on 11 March 2022.

Recommendation

That the Board approves the amended versions of the Code of Conduct for Members and Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and further recommends these to Full Council as a change to the Council's Constitution.

1.0 Background

1.1 As part of its work in response to the findings of the Committee on Standards in Public Life chaired by Lord Evans of Weardale the Standards and Governance Committee have considered amendments to the Code at its meetings on 18 November 2021 and 10 February 2022. The Committee established a working group comprising Councillors Reverend Blackman, Herridge, Huggins, Murphy and Pepper, Peter Large, one of the Council's Independent Persons and the Borough Solicitor and Monitoring Officer to consider the amendments in detail. Working versions of the amendments were also shared with the Council's other Independent Person, Chris Willis, and with Group Leaders. At the February meeting the Committee resolved that it:

- i. approves the changes to the Code of Conduct for Members and Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members set out in the Appendix A ('the Code') to this report;
- ii. agrees that the Borough Solicitor & Monitoring Officer undertake a public consultation exercise regarding the revised Code of Conduct for Members for four weeks after the date of this Committee;
- iii. delegates power to the Borough Solicitor & Monitoring Officer to

make any minor changes to the Code of Conduct for Members as a result of the public consultation;

- iv. agrees that the results of the public consultation and the Code shall thereafter be reported to the Policy & Organisation Board and Full Council with the Code being proposed for approval as a change of the Constitution.

1.2 At the meeting in February Members of the Committee also raised issues in relation to the enforceability of pre-existing sanctions in relation to a Member found to have breached the Code and whether the Council could, in practice, restrict access to the Council building and resources.

1.3 An online public consultation exercise has taken place, which has been advertised on the Council's website and social media channels. The public consultation concluded on 11 March. The results of the public consultation are referred to in this report.

2.0 Report

2.1 The Borough Solicitor took into account comments and feedback as a result of the working group discussions in preparing a revised version of the Code, which was approved by the Standards and Governance Committee for public consultation. The recommended changes to the Code capture amendments required as a result of the best practice recommendations of the Committee on Standards in Public Life as well as other proposed changes which have been identified to address shortcomings in the Code.

2.2 The Committee on Standards in Public Life made a number of best practice recommendations and the Council wrote to the Committee Chairman, Lord Evans of Weardale, in late 2020 to set out how it intended to address those recommendations, which included a number of improvements and amendments to the Code. Previous reports to the Standards and Governance Committee set out in detail best practice recommendations and the Council's responses to all of those. The following paragraphs consider only those best practice recommendations that affect the Code.

2.3 The Code has been reviewed, amended and improved to address certain of the best practice recommendations (BPR) as follows:

- the prohibition on bullying has been widened to include harassment and also include explanatory commentary (BPR 1).
- Wording has been added to make it clearer that Councillors agree to comply with any standards investigation and process, and so that an initial filtering panel will consider whether a complaint is trivial or malicious when assisting the Borough Solicitor with a determination that a complaint might amount to a breach of the Code of Conduct (BPR 2).
- This review constitutes a first annual review of the Code and is supplemented by the proposal to undertake a public consultation

exercise to address BPR 3.

- The approach to the consideration of complaints about Councillors has been improved by wording added to the complaints process in paragraph 4.1 to make it clear that there is a filtering process that will determine whether the complaint can proceed. There is a public interest test included in Appendix 2 to the process. This explanatory text and links to the relevant documentation will be provided on the Council's website to further clarify the approach for prospective complainants (BPR 6).
- Wording has been added to the process to set out that a summary of an investigation report, including the outcome, regarding a complaint will be published on the Council's website where a finding of no breach of the code of conduct (BPR 9). It should be noted that the process already sets out that a finding of a breach of the code of conduct would result in a hearing procedure at the Standards & Governance Committee and this would be in public.
- Wording has been added to the process to make it clearer how anyone with accessibility requirements might use alternative means of making a complaint. This improved wording will be added to the Council's website. Additional deadlines for the performance of certain actions during the conduct of a complaint have been added throughout the process (BPR 10).
- A statement has been added regarding how conflicts of interest will be addressed in the handling of a complaint (BPR 13).

2.4 In considering the improvement to the wording to address BPR 1 it was considered that the Council should use the language proposed in the Local Government Association's Model Code of Conduct ("the Model Code"). The Model Code provides additional wording to fully address the need for a prohibition on bullying and harassment as well as supporting commentary which is considered to be helpful in assisting Members, Officers and members of the public in understanding what the expectations are. Having considered the Model Code in relation to this first obligation it became apparent that the Council should consider a wholesale amendment of the Code to replace the existing general obligations of Members with the obligations set out in the Model Code. This is a fundamental change that provides for clearer obligations and higher standards of behaviour. It is considered that each of the previous general obligations of Members is covered in the new obligations, with the exception of the general obligation 11 relating to local government publicity. To some extent this is covered by the new obligation 7, but where it is not, the general requirement for Members to comply with guidance regarding publicity is a requirement anyway so it is unnecessary for this to be reproduced in the Code of Conduct.

2.5 In conducting the review of the Code, it also became apparent that the wording of the Nolan principles required updating to reflect the same wording that appears on the Government website. This has been changed accordingly.

- 2.6** Some consideration and debate was given by the review and the working group to the concept of how much time should be allowed to make a complaint regarding a Councillor's conduct. The existing requirement is that only behaviour that has occurred in the previous six months since the complaint was made can be included. However, following discussions it was felt that this should be changed back to the previous cut off period of 12 months and that a complaint may be considered outside of this time restriction if exceptional circumstances applied. This brings the Councillor complaint process in line with the Council's Corporate Complaints Process, which contains the same restriction.
- 2.7** It is also proposed to reintroduce a pre-filtering stage so that certain complaints can be ruled as not capable of proceeding to an initial filtering panel by the Borough Solicitor in consultation with one of the Independent Persons. This is set out in paragraph 4.1 of the process and will remove the need to convene an Initial Filtering Panel for every complaint that is received. As a consequence, questions relating to these issues are removed from the Local Assessment criteria and no longer need to be considered by an Initial Filtering Panel. It applies to particular circumstances:
- Is the person you are complaining about a Councillor who was in office at the time of the alleged conduct?
 - Did the conduct occur within the last twelve months, or are there exceptional circumstances why the complaint should be considered despite the conduct occurring more than twelve months previous to the complaint?
 - Is the conduct something that is covered by the Code of Conduct?
- 2.8** It is proposed that the paragraphs in the complaints procedure which set out how a hearing of the Standards & Governance Committee will take place following an investigation report concluding there has been a breach of code should be reordered to make it clearer how the process is to work.
- 2.9** The public consultation exercise elicited 22 responses. 18 were in favour of the proposed changes and 4 were not in favour. Of those who were not in favour there was one comment, "Councillors should not be able to select themselves for mayor; all councillors from all parties should make the decision. Councillors should not refurbish their own private offices with ratepayers money to do councillors work".
- 2.10** Those who were in favour made comments which are summarised as follows:
- Members should uphold the spirit as well as the word of the code of conduct.
 - Obligations should include equality of treatment by members of public and staff regardless of race, gender, age, disability.
 - The contact form should be made available for the Monitoring Officer. Details should be made openly available.
 - All members should be Police checked/Disclosure and Barring

Service ("DBS") checked.

- Not sure our current councillors are really connected to their public.

Some of the issues above, whilst of note, do not provide direct comment on matters which are within the scope of the Code.

- 2.11** In relation to the issue of the contact form and details for contacting the Monitoring Officer amendments have been proposed as part of the work conducted to make the Code and process for dealing with Member complaints easier to understand and more accessible, including accommodating different ways of making a complaint to the Borough Solicitor and Monitoring Officer. Following the public consultation the provisions of this part of the procedure have been reordered to make them clearer. The website will be amended to add email and phone numbers to make contact easier, regardless of whether the amendments are approved or not.
- 2.12** As far as other issues of governance which have been raised are concerned, all Councillors are involved and able to vote on the selection of the Mayor and the Council must – and does - comply with its Equality duty.
- 2.13** In relation to Police/DBS checks, there is no legal provision whereby prospective Members are required to undertake a DBS check upon selection or taking office. However, under s80 Local Government Act 1972, a candidate is not allowed to stand for election if they are disqualified due to receiving a criminal conviction in the preceding 5 years and a sentence for imprisonment of 3 months or more, whether suspended or not. Candidates for election are required to sign a declaration confirming that they are not disqualified for this reason.
- 2.14** In relation to the issue of sanctions raised by Members at the February meeting of the Standards and Governance Committee, the Borough Solicitor explained at the time that no changes have been made to the sanctions which currently exist within the Code and have been in place for some years. However, there was some concern on the part of Members that a sanction relating to the restriction of a Member, who has been found to have breached the Code, from the use of the Council buildings and resources had no foundation in law. This is a sanction that is included in the Constitution of other neighbouring authorities and is referred to as a possible sanction in the Weardale report. However, it is for Members to determine what they feel are appropriate sanctions in such circumstances and if there is consensus that such a sanction conflicts with the democratic mandate of a Member then it could be removed. It is correct that the law only provides for explicit sanctions in relation to a breach of a disclosable pecuniary interest, so any sanctions that the Council determines are appropriate are its own rules that Members sign up to when becoming a Member at the start of their term of office. Given that concerns about the sanction restricting access have been raised by different groups it is proposed to remove the sanction restricting access from the Code and this is reflected in the amended document attached.

2.15 Notwithstanding the above issue regarding sanctions, it is proposed that a further open ended sanction is included in the Arrangements for dealing with allegations of breaches of the Code of Conduct for members at 13.1.3.3 so that a hearing of the Standards and Governance Committee may apply:

“Any other sanction that the Council considers to be appropriate bearing in mind the circumstances of the case and is entitled to apply in accordance with the law prevailing at the time”.

This will allow for the Council to apply any other sanctions that may come into force if the law is changed before further amendment of the Code and provides for flexibility in the sanctions available to a hearing of the Standards and Governance Committee.

3.0 Risk Assessment

3.1 By carrying out a review of the Code the Council has complied with the assurances provided to the Committee on Standards in Public Life. The report proposes changes to be made to the Code which will improve the standards of behaviour required of Members. If the recommendations are not approved the Council will revert to the existing Code and it is arguable that the Council is falling short of its duty to pursue continuous improvement.

4.0 Conclusion

It is submitted that the amended Code is recommended to Full Council for agreement and incorporation within the Council’s Constitution.

Financial Services comments:	None
Legal Services comments:	Contained within the report.
Equality and Diversity:	IIA attached (version produced for Standards & Governance Committee)
Climate Change implications:	N/A
Crime and Disorder:	
Service Improvement Plan implications:	N/A
Corporate Plan:	
Risk Assessment:	N/A
Background Papers:	Reports to the Standards and Governance Committee 12 November 2021 and 10 February 2022
Appendices:	Amended versions of: <ul style="list-style-type: none"> • Code of Conduct for Members; and • arrangements for dealing with allegations of breaches of the Code of Conduct for Members • IIA
Report Author/Lead Officer:	Paul Grant, Borough Solicitor & Monitoring

	Officer
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