

Ethical Standards and Member Development Committee

28 September 2018

Subject:	Elected Member Standards Complaints – Update
Director	Director - Monitoring Officer - Surjit Tour
Contribution towards Vision 2030:	
Contact Officer(s):	Surjit Tour Director - Monitoring Officer

DECISION RECOMMENDATIONS

That Ethical Standards and Member Development Committee:

- (1) considers the updated information on current complaints in accordance with the Council's Arrangements for dealing with Code of Conduct matters.
- (2) notes the details of the complaints and the progress/outcome in respect of each complaint.
- (3) considers any other action deemed appropriate in relation to any of the matters reported having regard to the Council's Arrangements for dealing with Code of Conduct matters and its statutory duty to promote and maintain high standards of Elected Member conduct under the Localism Act 2011.

1 PURPOSE OF THE REPORT

- 1.1 The Ethical Standards and Member Development Committee receives reports periodically on the complaints received in respect of Elected Member conduct and their progress and outcome.
- 1.2 This report provides a brief summary of updated information on current/recent complaints in accordance with the Council's Arrangements for dealing with Code of Conduct Matters.

2 IMPLICATIONS FOR SANDWELL'S VISION

- 2.1 The increased awareness of the work of the Committee will help promote higher standards of conduct amongst Elected Members. It demonstrates that the Council will address poor conduct directly and that allegations made against Elected Members will be effectively managed and addressed in accordance with the Council's Arrangements for dealing with standards allegations under the Localism Act 2011 (see Appendix 10).
- 2.2 The open, transparent and robust approach taken to dealing with complaints against Elected Member conduct helps ensure the public, staff, partners and other stakeholders maintain confidence in the Council and Elected Members.

3 BACKGROUND

- 3.1 Appendices 1-8 to this report contain details of complaints that have and are being addressed, together with investigating officers' reports and findings in those cases that have been subject to investigation. All complaints are dealt with in accordance with the Arrangements for dealing with standards allegations under the Localism Act 2011.
- 3.2 The Committee will note from the Schedule of Complaints (Appendix 1) that only two 'live' standards cases currently remain outstanding. Over the last twelve months, a considerable number of standards complaints have been dealt with either at the preliminary stage, by local resolution or by the standards sub-committee.
- 3.3 There can be little dispute over the Council's commitment and determination to (i) openly and effectively deal with standards complaints, and (ii) challenge and hold to account those Elected Members whose conduct is alleged to fall below the standard of conduct expected of them. The approach taken by the Council is consistent with its representations to the LGA Peer Review and the recommendations of the Peer Review provided in January 2018 to continue to effectively deal with all standards complaints against Elected Members.

- 3.4 It is important to note that the majority of the more significant complaints relate to events that go back several years – with one relating to events going back as far as 1999. The Committee will also note and be aware that the vast majority of Sandwell Elected and Co-opted Members all observe the Code of Conduct appropriately and have exemplary records of conduct.
- 3.5 The Monitoring Officer will consider each complaint in accordance with the Arrangements, and if appropriate refer for investigation, irrespective of the passage of time.
- 3.6 However, complaints that relate to events dating back many years require careful consideration as the passage of time can lead to evidential difficulties and unfair prejudice, particularly as memories do fade over time. However, such factors must be weighed up against (i) the public interest, (ii) probative value of an investigation, and (iii) ensuring the public's confidence in the Council's Ethical Framework and Arrangements for dealing with complaints against Elected Members is maintained.
- 3.7 The Committee will also note that four specific complaints relate to two former Elected Members, namely Mahboob Hussain and Richard Marshall:
- Appendix 4 - Investigation Report - Reference MC/05/0717 (former Cllr Hussain)
- Appendix 6 - Investigation Report - Reference MC/07/1017 (former Cllr Marshall)
- Appendix 7 - Investigation Report - Reference MC/08/1017 (former Cllr Marshall)
- Appendix 8 - Investigation Report - Reference MC/09/1117 (former Cllr Marshall)
- 3.8 The complaints were received against the abovementioned persons when they were both Elected Members. Unfortunately, it was not possible to complete the investigations and hold an Ethical Standards Sub-Committee (in accordance with the Arrangements) into all four complaints prior to the aforementioned persons ceasing to be Elected Members following their terms of office coming to end in May 2018.

- 3.9 Once a person ceases to be an Elected Member, the Code of Conduct cease to apply to that person and in turn the Arrangements for dealing with the complaint also cease to apply. Accordingly, notwithstanding both persons being found to have breached the Members' Code of Conduct following independent investigations (during their respective terms of office), it is not possible to progress these matters to an Ethical Standards Sub-Hearing (and consider potential sanctions (if appropriate)).
- 3.10 However, that does not preclude the Committee considering the above-mentioned reports given the Council's overarching statutory duty to promote and maintain high standards of conduct pursuant to section 27, Localism Act 2011, and the high public interest arising in respect of these matters.

Section 27(1) provides that:

A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.

- 3.11 Given the statutory duty and the Committee's duties and responsibilities arising under its terms of reference, the Committee is entitled to consider and determine what other action ought to be taken (if any) in the interests of promoting and maintaining high standards of conduct amongst Elected and Co-opted Members in light of the update provided.
- 3.12 The Committee is referred to Appendices 1-8 at the end of this report for further details of each reported complaint.

4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 There are resource implications arising directly as a result of undertaking investigations in standards complaints. The cost of investigations varies depending on each matter. Such costs are inevitable and necessary if the Council is to ensure the public maintains confidence in Elected and Co-opted Members, as well as the Council as a whole.

5 LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The new standards arrangements are set out in chapter 7 of the Localism Act 2011, and in secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosure of Pecuniary Interests) Regulations 2012.

- 5.2 The duty upon the Council to promote high standards of conduct arises under section 27 Localism Act 2011 which is detailed within the main body of this report.
- 5.3 Under section 28(1) Localism Act 2011, the Council must have a Members' Code of Conduct. The current Code is attached at Appendix 9 to this report.
- 5.4 The Council must also have arrangements for dealing with complaints against Elected Members which must include provisions for investigating complaints and making decisions in respect of any allegations that are made against an Elected Member (section 28, Localism Act 2011). The Council has adopted 'Arrangements for dealing with standards allegation under the Localism Act 2011' to comply with this requirement – see Appendix 10 to this report.

6 **APPENDICES:**

1. Schedule of Complaints.
2. Investigation Report - Reference MC/02/0517 (Cllr I Jones)
3. Investigation Report - Reference MC/02/0517 (Cllr O Jones)
4. Investigation Report - Reference MC/05/0717 (former Cllr Hussain)
5. Investigation Report - Reference MC/07/1017 (Cllr Eling)
6. Investigation Report - Reference MC/07/1017 (former Cllr Marshall)
7. Investigation Report - Reference MC/08/1017 (former Cllr Marshall)
8. Investigation Report - Reference MC/09/1117 (former Cllr Marshall)
9. Members' Code of Conduct
10. Arrangements for dealing with standards allegations under the Localism Act 2011

Surjit Tour
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