

# Birmingham City Council Standards Committee

16 February 2023



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**Subject:** Update on Councillors complaints for the period 1 November 22 to 31 January 2023

**Report Author:** Robert Connelly Assistant Director – Governance

## 1. Purpose of report:

- 1.1 To provide Standards Committee with an update on complaints under the Councils Code of Conduct during the period 1<sup>st</sup> November 2022 to 31<sup>st</sup> January 2023.

## 2. Recommendations

- 2.1 To note the report

## 3. Relevant legislations and Protocols

- 3.1 The Localism Act 2011 (“the Act”) introduced fundamental changes to the regulation of standards of conduct for elected and co-opted members.
- 3.2 Under Section 27 of the Act, a relevant authority must:
  - i. promote and maintain high standards of conduct by its members and co-opted members; and
  - ii. when discharging its duty, adopt a voluntary code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as members (that is in an official capacity)
- 3.3 Under section 28(6) of the Act a relevant authority must have in place arrangements:
  - i. under which allegations can be investigated; and
  - ii. under which decisions on allegations can be made

- 3.4 The Code aims to protect the public, Councillors, Local Authority officers as well as the reputation of Local Government. As such it sets out general principles of behaviours expected of all Councillors.

#### **4. Complaints**

- 4.1 A total of 8 complaints have been made during the period covered by this report.

- 4.2 These cases can be broken down into categories as follows:

<b>Complaint Type</b>	<b>Number</b>
Failure/delay in responding to a constituent	1
Making misleading statements	1
Complaint incomplete/insufficient//Anonymous	2
Incorrect declaration of interest	0
Service delivery	0
Performance	1
Behaviour	3
Councillor / Councillor	0
Other	0
Total	8

- 4.3 In all cases when a complaint is received there is an initial assessment by the Monitoring Officer (or her/his staff) to determine whether it falls within the scope of the Code of Conduct and therefore within the remit of the Standards Committee (the Committee).
- 4.4 In some cases, at this initial assessment stage a complaint may be deemed “invalid” as it doesn’t fall within the scope of the code of conduct. This would include, for example, complaints that relate to service delivery. When complaints of those nature are received, they will be referred to the relevant service area.
- 4.5 These will also include complaints that are incomplete or lack sufficient detail to allow for an assessment to be made. In respect of the latter a complainant will normally be contacted for further information but if that is not forthcoming the matter will be closed.

- 4.6 In all bar one of the complaints, an initial assessment has been completed and where appropriate, the assessment shared with the Independent Person and/or the Chair of the Committee.
- 4.7 In the remaining complaint, further information has been sought from the Councillor subject to the complaint prior to completing the assessment.
- 4.8 It should be noted that of the 8 complaints received 2 complainants have made 2 complaints each against separate councillors.
- 4.9 It is proposed that as part of the April meeting of the Standards Committee further details of the complaint and the outcome will be provided.

## **5. Cases summaries**

- 5.1 As set out previously, it has been agreed with the Chair of the Committee that the Standards Committee should be given regular updates on external cases involving alleged breaches of Councils code of Conduct.

### **Cllr Stephen Melia – Sandwell Borough Council**

Cllr Melia had pleaded guilty to an assault in February 2022 following an incident when a blogger was seen filming Councillors as they walked across a car park ahead of a meeting of full council.

The blogger questioned Councillors about potential corruption and cronyism and as Cllr Melia walked past he pointed a finger at the blogger and knocked his mobile phone out of his hand.

Following completion of the criminal case a complaint was made against Cllr Melia under Sandwell's Code of Conduct.

Found to have breached the Code and had brought the Council into disrepute.

The Committee recommended that Cllr Melia be removed from any Committee position he held and that he apologise to the blogger both verbally at the next council meeting and that he also send a written apology.

- 5.2 As the Standards Committee will know, for the Code of Conduct to be engaged a Councillor must be acting within their official capacity. One of the determining factors when considering capacity is whether the content is sufficiently connected to Council business in order for that to be case. As such when any complaint is received a determination must be made on whether what capacity the Councillor was acting in.

- 5.3 In December 2022 the Local government & Social Care Ombudsman made a finding that Teignbridge District Council was at fault as it failed to follow due process when investigating him for alleged breaches of its code of conduct for elected councillors and as such made a number of recommendations

The Council should also learn lessons from this complaint. It should ensure it has a written procedure for its officers and any independent investigators asked to consider standards complaints that should include:

- ensuring the Council has a record of complaints being made in writing;
- ensuring there is a clear written record of consultation with an Independent Person to include their response;
- recording that the written complaint has been shared with the Councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the Councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

## **6. Financial Implications**

- 6.1 The only financial implications arising from this report are the costs of engaging Hoey Ainscough Associates Ltd but those costs can be met from existing budgets

## **7. Legal Implications**

- 7.1 Pursuant to the Localism Act a relevant authority must, amongst other things promote and maintain high standards of conduct by its members and co-opted members.
- 7.2 Authorities (Disclosable Pecuniary Interests Regulations) 2012 requires elected members to declare any disclosable pecuniary interests.

## **8. Human Resources**

- 8.1 There are none arising from this report