

Birmingham City Council Standards Committee

28 January 2022



Subject: Update on Councillors complaints for the period April 2021 to December 2021

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1. Purpose of report:

- 1.1 To provide the Committee with an interim update on complaints under the Council's Code of Conduct during the period April 2021 to December 2021.

2. The relevant legislation and protocols

- 2.1 The Localism Act 2011 ("the Act") introduced fundamental changes to the regulation of standards of conduct for elected and co-opted members.
- 2.2 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)
- 2.3 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
- 2.4 In May 2021 the Council adopted the Local Government Associations Model Code of Conduct with some slight amendments to reflect Birmingham's local circumstances.

- 2.5 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.

3. Complaints

- 3.1 A total of 27 complaints have been made during the period April 2021 to December 2021, the period covered by this report.
- 3.2 These cases can be broken down into categories as follows:

Complaint Type	Number
Failure/delay in responding to a constituent	7
Making misleading statements	1
Complaint incomplete/insufficient//Anonymous	3
Incorrect declaration of interest	1
Service delivery	2
Performance	5
Behaviour	3
Councillor / Councillor	4
Other	1
Total	27

- 3.3 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).
- 3.4 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 such as waste collection. When complaints of those nature are received, they will be referred to the relevant service area.
- 3.5 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.

- 3.6 This leaves a residual group of complaints which merit further analysis. As can be seen from the above table the biggest source of complaints is around allegations of a Councillor's failure to respond to a constituent's query.
- 3.7 In the eyes of the Complainant the failure may be highly emotive. However, whether a failure to respond can amount to a breach of the Code has to be viewed objectively and in context of the failure. Contrary to the belief of some, the Code of Conduct does not impose an obligation that a Councillor is automatically responsive and fully engaged with their constituents. Of course, not all constituents share this view.
- 3.8 While it is clearly good practice for councillors to respond to all enquiries from their local community, there is no requirement for them to do so. While a Councillor should be careful not to be openly rude or disrespectful to their constituents (which would potentially amount to a breach of the Code of Conduct), they are arguably under no obligation to assist them and that does cause confusion and can give rise to complaints.
- 3.9 When a complaint is received, a copy is usually forwarded to the relevant Councillor for comment. It is encouraging that in nearly all complaints under this category, the Councillors were quick to apologise to the constituent and to provide an explanation as to why this occurred.
- 3.10 The reasons for any delay can vary from workload, simply oversight or even wellbeing issues. In one instance the Councillor had passed the query to the relevant department to investigate and respond (rightly) but had simply not kept the constituent informed.
- 3.11 This does raise an interesting question as to what extent, if any, is the Monitoring Officer/the Committee responsible for overseeing how individual councillors represent their ward. In the majority of cases the political groups are better placed to deal with such issues.
- 3.12 The next largest category of complaints, which is connected, is about a Councillors performance and whether they are adequately representing their ward.
- 3.13 In complaints of this nature it is not uncommon for the Complainant to ask that the relevant Councillors be removed from office. However, as the Committee will appreciate that is not something within the remit/power of the Committee (or a political party or the Council).
- 3.14 In such cases the complaint is referred to the relevant Group who are probably in a better position to decide how best to address the concerns that have been raised and, if necessary, provide additional support for the Councillor(s). In such cases I am pleased to report that the Groups are keen to work with the Monitoring Officer to achieve a resolution.

- 3.15 The other area that is worth highlighting is the category headed Councillor/Councillor complaints where a complaint has been made by one Councillor against another.
- 3.16 In total there were 4 such complaints although as 2 of these were only made recently, they are still in the early stages of the complaints process.
- 3.17 To assist Councillors, I think it would be helpful to briefly set out some of the facts and the decision taken in the 2 cases that have been considered under the code of conduct.

Example 1

A Councillor published a leaflet saying that the Council had taken the decision to undertake some action that would potentially have an adverse effect on residents in a certain area.

The other ward Councillor took issue with the contents of the leaflet and in an email to a constituent said that the Councillor had deliberately mislead them.

However, the contents of the leaflet were based on information provided to the Councillor by an Officer in an email and the wording of the email could have easily been interpreted that a “decision” had been made.

As part of my findings I found that:

- The Councillor was justified in making that “decision” publicly known to residents.
- Whilst the Councillor may have used hyperbolic language for effect, what was said was correct to the best of their knowledge.
- The comment that that the Councillor was misleading constituents was erroneous.

- 3.18 In terms of a resolution I determined that the appropriate remedy (having consulted with the Independent Person and the Chair of Standards as well as both Councillors) was to remind the Councillor of their responsibilities (which they duly acknowledged). Whilst they could still be robust in any response, care ought to be taken about the choice of words (in this case “deliberately misleading”) as these can easily be misconstrued by the reader.

3.19

Example 2

Following an exchange on social media Councillor 1 made comments about Councillor 2 that potentially could be construed as a potential breach of the code by bringing the Council into disrepute and affecting the reputation of members generally.

Upon speaking with the Councillors, the following factors were considered:

- The nature of the complaint and the likely impact on both the individual member and the Council as a whole
- That the comments were made in the political arena and that there is an expectation that there will be a certain level of criticism between political opponents.
- The actual words used by the Councillor.
- What would be an appropriate remedy?

- 3.20 Taking into account all the facts I again opted to remind Councillor 1 of their responsibilities and how comments made by Councillors can easily be misconstrued by the reader.
- 3.21 However, if Councillor 1 used similar language in the future my approach might be different bearing in mind that the Councillor had already “been reminded of their responsibilities”.
- 3.22 There were other categories, such as a councillors’ behaviour, where the Monitoring Officer, via the Investigating Officer, carried out an initial assessment and determined that there was no breach of the code.
- 3.23 It is also worth noting that there was only 1 complaint regarding the use of social media. Unusually the Councillor in this instance blocked a constituent as he felt that the comments were becoming more personal and as a result the Councillor no longer wanted to engage with them. The constituent felt that he had been “cut off” but the Councillor was clear that he could still contact him via other channels (such as email) if he required assistance. In my view that did not amount to a breach of the Code

4. January 2022 – May 2022

- 4.1 May 2022 will see all City Councillors standing for re-election. This does have the scope to potentially see an increase in complaints that are “politically motivated” as part of any election campaign.
- 4.2 In addition social media plays an increasingly important part in election campaigns. This creates the potential for councillors to be tempted into making inappropriate and personalised comments that might breach the code, which but for the election they would not otherwise have made.
- 4.3 Birmingham is consistently striving to be at the forefront of improving its corporate culture which includes improved training and development for all Councillors. We also have to bear in mind that Birmingham will be the at the centre of world attention during the Commonwealth games and Councillors (as well as officers) will have a key role in promoting the City.

4.4 Whilst it is acknowledged that electioneering can fall outside the code the Committee may nevertheless wish to consider;

- Asking the Chair of the Standards Committee to write to all Councillors reminding them of the requirements of the Code and the potential for breaches especially when using social media.
- The Chair to meet with the Group Secretaries to communicate this view in person with the request that they communicate this on to their Group Members.