



Classification	Item No.
Open	

Meeting:	Standards Sub-Committee (Hearings Panel)
Meeting date:	11 February 2021
Title of report:	Determination of Allegation of Breach of the Member Code of Conduct - Part A
Report by:	Janet Witkowski – Interim Council Solicitor and Monitoring Officer
Decision Type:	Council
Ward(s) to which report relates	N/a

Executive Summary:

The role of the Council’s Standards Sub-Committee is to hear and determine complaints that a councillor has breached the Code of Conduct for Councillors and other Voting Representatives (the Code).

Having heard and determined the matter, the Sub-Committee may then either dismiss the complaint if no breach is found by the Sub-committee, or if a breach is upheld, hear any representations as to mitigation and consider any further action that should be taken, or sanction imposed, upon the Subject Member.

Recommendation(s)

The sub- committee is asked to:

1. Note the report and appendices.
2. Determine the facts of the case if they are not agreed.
3. Determine if the councillor concerned has breached the Code of Conduct and;

- a. Option 1 – if the sub-committee determines there has been no breach of the Code, to dismiss the matter Or;
- b. Option 2 - if the sub-committee determines there has been a breach of the Code, to determine how the councillor is dealt with, such actions to include;
 - i. Publish its findings in respect of the Subject Member’s conduct;
 - ii. Recommend to Council that the Member be censured;
 - iii. Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
 - iv. Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
 - v. Instruct the Monitoring Officer to arrange training for the Member;
 - vi. Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;
 - vii. Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access;
or
 - viii. Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

Key considerations

Background

The role of the Council’s Standards Committee includes promoting and maintaining high standards of conduct by Councillors as well as monitoring the operation of the Code. The Committee can determine how to deal with complaints against councillors, investigation reports compiled on behalf of the Monitoring officer and establish hearing panels where necessary.

The Council adopted its Code of Conduct and its arrangements for dealing with complaints that Council members have breached the Code, in 2012 attached at appendix 1 and 3. The Council has also adopted a Protocol on Member and Officer Relations (the Protocol), attached at appendix 2, in which it is clearly stated that a breach of that protocol may result in a complaint if it appears there has been a breach of the Code. In addition a hearings procedure is in place for matters that cannot be resolved by local resolution which is attached at appendix 4.

Power is delegated to the Monitoring Officer, who has responsibility for the initial assessment of all complaints under the Members Code of Conduct. In consultation with the Independent Person, the Monitoring Officer is required to make an initial assessment of any complaint to decide if it should be accepted and if so to consider whether it should be dealt with informally or by way of investigation.

On 3 August 2020 the Monitoring Officer received a complaint concerning the conduct of a councillor.

This matter was considered by the Monitoring Officer and in accordance with the Council's arrangements for dealing with complaints, the Monitoring Officer consulted with the Council's independent person Mrs Valerie Bracken. It was agreed that there was a potential breach of the code and was sufficiently serious to merit further action and that an independent investigation should be undertaken.

Ms Maria Memoli of Local Governance Limited was appointed to investigate the matter and her report is attached to the report in Part B of the agenda.

In summary the Independent Investigator found that there were failures to comply with the both the Code and Protocol. It was recommended that the matter be resolved by way of a local resolution.

Attempts have been made by the Monitoring Officer to resolve the matters by local resolution but this has been unsuccessful and the matter is now before the sub-committee for local hearing.

Relevant legislation

Section 27 (2) of the Localism Act 2011 places a duty on relevant authorities to ensure their members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members.

Section 28 (2) requires a relevant authority to adopt a code whose contents must be consistent with the seven "Nolan" principles of standards in public life (Selflessness, integrity, objectivity, accountability, openness, honest and leadership).

The proposal

The sub-committee is asked to:

Consider the recommendations set out within the Executive Summary.

Determine the complaint that the councillor has breached the Code and resolve either that a breach is proven or not proven.

Should the Sub-committee determine that the councillor has breached the Code, they are recommended to determine any further action that should be taken, including any sanction to be imposed, as set out in the in the Executive Summary.

Other alternative options considered

To take no further action as per recommendation 3.a. option 1.

Community impact / Contribution to the Bury 2030 Strategy

Equality Impact and considerations:

24. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

25. *The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
The Council is required to have a Code of Conduct and maintain the ethical standards in public life. A failure to act on complaints would be contrary to that requirement.	A Code is in place along with arrangements for dealing with complaints.

Consultation: N/a

Legal Implications:

As set out in the report.

Financial Implications:

No financial implications arising from the report.

Report Author and Contact Details:

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Background papers:

The Bury Council Constitution

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning

Appendix 1

The Code of Conduct for Councillors and Other Voting Representative

Appendix 2

The Protocol on Member and Officer Relations

Appendix 3

Council's Arrangements – Complaints Against Members

Appendix 4

Hearings Procedure