

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee **DATE:** 3 August 2020

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WARD(S): All

PART I **FOR CONSIDERATION & COMMENT**

MEMBERS CODE OF CONDUCT

1 Purpose of Report

The purpose of this report is to:

- (i) report to the committee upon developments with regard to a national model code of conduct for councillors;
- (ii) report to the committee on the issue of checks on Councillors with the Disclosure and Barring Service (DBS);
- (iii) bring to the Committee for consideration and comment the draft of the letter proposed to be sent to the Ministry of Housing, Communities and Local Government by the Monitoring Officer on behalf of the Committee with regard to the challenges associated with implementation of the Localism Act in relation to standards matters;
- (iv) bring to the Committee for consideration and comment the issues of the timeframe for investigation of complaints and the publication of findings; and
- (iv) update the Committee on complaints under the Councillors' Code of Conduct which remained undisposed of at their last meeting on 5 March 2020.

2 Recommendation(s)/Proposed Action

The Committee is requested to:

- (i) note the developments with regard to a national model code of conduct for Councillors set out at paragraph 5.1 of this Report and consider and comment upon the draft model code set out at Appendix 1;
- (ii) consider and comment upon the contents of this Report relating to checks with the Disclosure and Barring Service for Councillors set out in paragraph 5.2 of this Report;
- (iii) consider and comment upon the draft letter proposed to be sent to the Minister for Housing, Communities and Local Government by the Monitoring Officer on behalf of the Committee highlighting the challenges associated with the implementation

of the Localism Act in relation to standards matters referred to in paragraph 5.3 of this Report and set out at Appendix 3,

- (iv) consider and comment upon the contents of this Report relating to the timeframe for investigation of complaints and the publication of findings set out at paragraph 5.4;
- (v) note the contents set out at paragraph 5.5 of this Report relating to complaints under the Councillors' Code of Conduct which remained outstanding at the time of the Committee's last meeting on 5 March 2020.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. This is underpinned by the Confidential Whistleblowing Code, the Councillors' Code of Conduct and good governance arrangements being in place.

4 **Other Implications**

(a) Financial

There are no financial implications arising specifically from this report, other than as set out in paragraph 5.2.11

(b) Human Rights Act and Other Legal Implications

The law relating to Councillors' conduct is contained in the Localism Act 2011. Under Section 27 of that Act the Council must promote and maintain high standards of conduct by members of the Council and, in discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members of the Council when they are acting in that capacity.

The Council must secure, by virtue of Section 28 of that Act, that such code adopted by it is, when viewed as a whole, consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership (the "Nolan Principles").

The Council must also have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made, and if the Council find that a member of the Council has failed to comply with its code of conduct, it may have regard to the failure in deciding whether to take action in relation to the member and what action to take.

(d) Equalities Impact Assessment

There is no identified need for an Equalities Impact Assessment arising from this Report.

(e) Workforce implications

No workforce implications arise from this Report.

5 **Supporting Information**

5.1 **National Model Code of Conduct for Councillors**

- 5.1.1 At recent meetings of the Committee, the Committee have considered the report of the Cabinet Committee on Standards in Public Life (CSPL), “Local Government Ethical Standards”, published in January 2019. One recommendation of that Committee was that the Local Government Association (LGA) should create an updated model code of conduct in consultation with representative bodies of councillors and officers of all tiers of government.
- 5.1.2 In their Report the CSPL considered that there should be a national model code of conduct but that this should not be mandatory and should be able to be adapted by individual authorities. The CSPL also considered that a new model code would be needed and recommend that the LGA should draft that code, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. They also recommended that the MHCLG should ensure that they are given the necessary resources and support to undertake this work.
- 5.1.3 The LGA published a draft model code of conduct for consultation on 8 June 2020. A copy is set out at Appendix 1 to this report. The LGA will offer it as a template for Councils to adopt in whole and/or with local amendments. The LGA have undertaken to carry out an annual review of this code to ensure it continues to be fit-for-purpose with respect to advances in technology, social media and any relevant changes in legislation. Once finalised the LGA will also offer support, training and mediation to Councils on the code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer support and advice to parish councils.
- 5.1.4 The LGA have invited responses to the draft model code by 17 August 2020.
- 5.1.5 The Committee are requested to consider and comment upon the new model code and to indicate what response if any the Committee might wish the Council to make in the Consultation.
- 5.1.6 It is considered, taking into account all the revisions made to the Council’s Code of Conduct following the work done by the Member Panel on the Constitution and this Committee over the last year, which revisions were accepted by full Council at their meeting on 21 July 2020, that the Council’s Code of Conduct, as it stands as present, compares very favourably with the Model Code of Conduct published by the LGA. There are some differences and nuances. For example, the Council’s Code requires Members to treat others with respect, whereas the Model Code requires Members to treat others with civility and to respect the roles that they play. Also, for example, the Model Code sets out an escalating list of eight actions which could be taken in the case of breach of the code, which is not a feature of the Council’s Code of Conduct.
- 5.1.7 Further iterations of the model code will be reported to the Committee, to the Member Panel on the Constitution and to full Council, as appropriate.

5.2 Checks on Councillors with the Disclosure and Barring Service

5.2.1 At their meeting on 5 March 2020 the Committee asked the Monitoring Officer to update the committee on good practice in relation to CRB checks for Members.

5.2.2 The acronym “CRB” refers to the “Criminal Records Bureau”. References to the CRB are now redundant, as the body presently charged with providing information from criminal records is the “Disclosure and Barring Service”, commonly referred to by the acronym “DBS”.

5.2.3 The change from the CRB to the DBS was affected by the Protection of Freedoms Act 2012.

5.2.4 Prior to the coming into force of the Protection of Freedoms Act 2012 it was not uncommon for Councils to carry out CRB checks on Councillors. Following its coming into force, however, a more restricted set of criteria was introduced as to when checks could be carried out and by whom. Since then, therefore, carrying out DBS checks has become a policy matter for individual councils.

5.2.5 Under the DBS system there are 4 levels of checks that may be made: “Basic”, “Standard”, “Enhanced” and “Enhanced Check with Barred Lists Check”. The “Basic” check will disclose unspent convictions but not spent convictions, cautions, warnings, reprimands, other police information nor information from the Adult’s or Children’s barred lists. The “Standard” check will reveal unspent convictions, spent convictions, cautions, warnings and reprimands but not other police information nor information from the Adult’s or Children’s barred lists. The “Enhanced” check will reveal the same information as the “Standard” check but also other police information. The “Enhanced Check with Barred Lists Check” will reveal all information, including information from the Adult’s and Children’s barred lists.

5.2.6 Councils do not have the right to carry out on “Enhanced” or “Enhanced Check with Barred Lists Check” on Councillors other than in respect of those Councillors likely to be involved in “regulated activity” in respect of children or vulnerable adults. Councils are not able either to carry out directly or to require from Councillors “Standard” checks other than in respect of “regulated activity”. The “Standard” check would not in any event reveal other police information or information from the Adult’s and Children’s Barred Lists. Councils are not able, therefore, to obtain information on spent convictions, cautions, warnings, reprimands, other police information or information from the Adult’s and Children’s Barred Lists. This is why Councils largely do not require DBS checks in respect of all Members.

5.2.7 Councils are, however, able to require Councillors, by way of an obligation in their Codes of Conduct, to require Members to procure a “Basic Check” on them and to provide the information to the Monitoring Officer and to arrange for a record to be kept. As stated above, this check will not reveal any information about spent convictions, cautions, warnings, reprimands, other police information or information from the Adult’s or Children’s Barred Lists.

5.2.8 Certain Councils have, however, chosen to adopt policies requiring “Basic” searches in respect of Members. These include, inter alia, Thurrock, Leeds, Sunderland, Devon County Council and Bristol. The general rationale for the adoption of these policies appears to have been to enhance safeguarding, even if in a limited way (due to the limitations on the information obtained by such searches) and despite

potential for challenges based on alleged breaches of the rights to private life contained in the Human Rights Act 1998.

5.2.9 Where Councils have adopted policies to require DBS checks on Members, those policies prescribe, inter alia, how any information revealed is stored and kept, who has access to it, how long it will be stored for and how it will be used

5.2.10 South East Employers have very recently carried out an informal survey of their Members on their individual practices on this issue and the responses received are summarised in Appendix 2 to this Report.

5.2.11 The cost of a “Basic” check with the DBS for an individual is presently £23.00. The costs of such a check for all 42 Members would be £966.00.

5.2.12 The Committee is requested to consider and comment upon the contents of this paragraph 5.2 of this Report.

5.3 Letter to the Secretary of State for Housing, Communities & Local Government

5.3.1 At their last meeting on 5 March 2020 the Committee considered a report by the Service Lead Governance on revisions to the Council’s Constitution which contained reference to recommendations made by the Cabinet Committee on Standard in Public Life (CSPL) in their report, “Local Government Ethical Standards” issued in January 2019. That Report informed the Committee that certain changes to councillors’ codes of conduct recommended by CSPL would require primary legislation as existing legislation would need to be amended to accommodate such changes.

5.3.2. Whilst, therefore, the Council have done considerable work in seeking to amend its Councillors’ Code of Conduct to seek to incorporate within it many of the recommendations of the CSPL, and whilst the LGA have now issued for consultation a national model code of conduct as reported to the Committee in paragraph 5.1 of this report, the full enhancement of the recommendations of the CSPL is dependant upon, inter alia, action by central government.

5.3.3 These changes, which would require primary legislation, cover such matters as a statutory presumption that Councillors are acting in an official capacity in their public conduct, including statements made on publically accessible media; ability to suspend a councillor for breach of the Code where the Independent Person agrees that it would be an appropriate sanction; statutory clarification of powers to lawfully ban Councillors from Council premises and withdraw facilities; powers to suspend Councillors, without allowances, for six months etc.

5.3.4 Accordingly, at their last meeting, the Committee requested that the Monitoring Officer write to the Ministry of Housing, Communities and Local Government highlighting the challenges associated with implementation of the Localism Act with regard to standards matters.

5.3.5. The Monitoring Officer proposes to send a letter to the Secretary of State in the terms of the draft set out in Appendix 3. The Committee is requested to consider and comment upon the same.

5.4 Timeframe for complaints and publication of findings under the Councillors' Code of Conduct

- 5.4.1 At their last meeting on 5 March 2020 the Committee determined that the Monitoring Officer should seek, in consultation with the chair, to amend the Code to include a timeframe for investigation and determination of complaints.
- 5.4.2 At their last meeting on 5 March 2020 the Committee also resolved that the Monitoring Officer examine the possibility of the Code of Conduct being amended to reflect that any findings of breaches of the Conduct be published.
- 5.4.3 The Code of Conduct presently provides that the Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receipt and will normally determine, after such consultation with the Independent Person as he shall deem appropriate, whether any complaint merits formal investigation. Otherwise there will be a decision within 28 days of receipt.
- 5.4.4 There is no timeframe for investigation and determination of complaints that merit formal investigation. There is scope for delay in the time it takes for formal responses to be received to complaints from members and on occasions there may be a need to interview several witnesses and the need to appoint an external investigator. Now that the Council are in a position where there is no longer a backlog of outstanding complaints, the Monitoring Officer proposes to re-set the position by seeking to amend the Code of Conduct to provide that there be an expectation that in the case of complaints that require formal investigation, that these be completed within 3 months, and that there be a requirement for Subject Members to respond to complaints within 14 days of first being informed of the complaint and to respond to any further requests for information from the Monitoring Officer with 7 days of each such request in the absence of any reasonable excuse. He also proposes, in the meanwhile, to seek to apply this time frame pending any formal amendment of the Code of Conduct.
- 5.4.5. The Committee are requested to consider and comment upon the preceding paragraph with a view to providing a steer for formal amendments which may be proposed to the Member Panel on the Constitution at their next meeting.
- 5.4.6. At present, the Code of Conduct does not provide for any formal publication of the outcome of any investigation and determination by the Monitoring Officer, save that the Council have delegated to the Determination Sub-committee the power to authorise the Monitoring Officer to publish any findings in respect of a Subject Members Conduct where the sub- Committee have determined a complaint referred to the Committee.
- 5.4.7 The Cabinet Committee on Standards in Public Life in their Report on Local Government Ethical Standards referred to at paragraph 5.1.1 above made a best practice recommendation that where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker and any sanctions applied.
- 5.4.8 The Member on the Panel on the Constitution and this Committee have considered the above best practice recommendation, which affects decisions of the Determination sub-committee, and have resolved to partly adopt the recommendation

by way of accepting the information which the CSPL have recommended be published, but have not agreed that this should be automatic and continue to be in the discretion of the Determination sub-committee, as at present. This has now been agreed by full Council and adopted as part of the revisions to the Constitution agreed at their meeting on 21 July 2020.

5.4.9 If the Committee are minded to publish, in a similar manner, any decisions of the Monitoring Officer following a formal investigation where the Subject Member has agreed the facts and the Monitoring's Officer has made a decision that there has been a breach of the Code, the manner in which this might be done is for the Committee to refer such cases to the Determination sub-committee to consider and to decide, following consideration of representations from the Monitoring Officer, the Independent Person and the Subject Member.

5.4.10 The Committee are asked to consider and comment upon the suggestion made in the preceding paragraph of this Report.

5.5 Outstanding Complaints under the Councillors Code of Conduct

5.5.1 The following table summarises the complaints under the Councillors' Code of Conduct which still remained to be determined by the Monitoring Office at the time of the last activity Report to the Committee on 5 March 2020. All these complaints have now been resolved and no new complaints under the Code of Conduct have been received since the last meeting of the Committee. As at the date of the publication of this report, therefore, there are no complaints under the Code which remain to be resolved.

	Subject Member – Borough/Parish	Complainant & Date Received	Code Provision(s) considered	Action taken/intended action and dates	Outcome & Date of Resolution
1	Borough Councillor	Complaint by one Borough Councillor and two residents 06.08.19 08.08.19 13.08.19	2.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a Member of the Council, into disrepute. 2.6 You have a duty to uphold the law including the general law against discrimination.	10.09.19 Complaints sent to Subject Member for response. 10.09.19 Link to audio recording of evidence sent to Subject Member. 12.09.19 Subject Member requested audio recording on memory stick and deciphering of manuscript wording in complaint form. 13.09.19 Instructions to access audio recording sent to Subject Member by IT. 02.12.19 Deputy Monitoring Officer concluding investigation and making provisional findings of breach of Code	Local Resolution 20.07.20

				<p>by Subject Member to report to Monitoring Officer and Independent Person.</p> <p>13.01.20. Deputy Monitoring Officer submitting Report of findings to Monitoring Officer and Independent Person.</p> <p>20.01.20 Meeting between Deputy Monitoring Officer and Independent Person. Findings agreed. Confirmed subsequently with Monitoring Officer.</p> <p>06.02.20 Subject Member informed of provisional findings. Response requested.</p> <p>07.02.20 communication from Subject Member that due to work commitments substantive response could not be provided until end of the month. Audio recording of evidence requested again.</p> <p>12.02.20. Audio recording provided to Subject Member on Memory Stick.</p> <p>13.02.20 Subject Member provided with password to access audio recording.</p> <p>27.02.20 Subject Member sending response to complaint.</p> <p>02.03.20 Subject Member sending supplementary evidence in relation to response to complaint.</p> <p>06.03.20 Subject Member sending further supplementary evidence in relation to response to complaint.</p>	
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				<p>29.06.20 Deputy Monitoring Officer seeking clarification from Subject Member relating to evidence in support of response to complaint.</p> <p>01.07. 20 Subject Member clarifying that comments subject of the complaint not intended in any way to be of general application to class of persons referred to, but to refer to reports in general circulation about such class.</p> <p>07.07.20 Deputy Monitoring Officer and Monitoring Officer discussing local resolution in the light of clarification received from Subject Member. Agreeing to informal resolution subject to consultation with of Independent Person</p> <p>20.07.20 Independent Person reviewing evidence and confirming that in light of clarification from Subject Member it was appropriate to dispose of matter by local resolution by way of direction to Subject Member to ensure higher standards in future conduct.</p>	
2	Borough Councillor	<p>Separate Complaints by one Borough Councillor and two residents.</p> <p>06.08.19 08.08.19 08.08.19</p>	2.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a Member of the Council,	<p>10.09.19 Complaints sent to Subject Member for response.</p> <p>26.09.19 Chasing e-mail sent to Subject Member for response to complaints.</p> <p>02.12.19 Deputy Monitoring Officer concluding investigation and making provisional</p>	<p>Finding of no breach of the Code.</p> <p>20.06.20</p>

			<p>into disrepute.</p> <p>2.6 You have a duty to uphold the law including the general law against discrimination.</p> <p>5.2 Members shall co-operate at all stages with any such investigation</p>	<p>findings that no breach of substantive complaint but breach of Code by way of failure to respond to complaint. To be reported to Monitoring Officer and Independent Person.</p> <p>13.01.20. Deputy Monitoring Officer submitting Report of findings to Monitoring Officer and Independent Person.</p> <p>20.01.20 Meeting between Deputy Monitoring Officer and Independent Person. Findings agreed. Confirmed subsequently with Monitoring Officer.</p> <p>06.02.20 Subject Member informed of provisional findings. Response requested.</p> <p>06.02.20. Response from Subject Member. Claim that messages might not have been received due to IT problems. Subject Member to check and revert again.</p> <p>06.02.20 Subject Member communicating again. Confirming that original messages had been received but not read until this day due to IT problems at time of original messages and failure to scroll back far enough to messages when IT problems resolved. Providing supporting evidence to conform the position.</p> <p>20.06.20. In light of explanation and supporting evidence findings made that no breach of the Code by Subject Member.</p>	
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3	Borough Councillor	Council Officer 29.11.19	<p>2.1 You must treat others with respect, including Council officers and other elected Members.</p> <p>2.2 You must not bully any person (including specifically any Council employee)</p>	<p>03.09.19 Meeting between Monitoring Officer, Independent Person and Deputy Monitoring Officer. Approach agreed to deal with complaints at items 3 and 4 in this table together.</p> <p>05.12.19 Complaint sent to subject Member for response. Independent Person informed.</p> <p>05.12.19 Subject Member requested meeting with Independent Person before responding to complaint.</p> <p>11.12.19 Subject Member offering 29 December 2019 for meeting with Independent Person and Deputy Monitoring Officer.</p> <p>07.01.20 Subject Member informed of Independent Person's view that meeting more appropriate once Deputy Monitoring Officer's investigation complete. Meeting date with Subject Member requested.</p> <p>13.01.20 Meeting date requested again from Subject Member. Subject Member offering 14 February 2020 for meeting due to intermittent absences abroad. Deputy Monitoring Officer requesting earlier date if at all possible. Subject Member responding that only certain date available was 14.02.20 but would inform of earlier date if possible.</p> <p>14.02.20 Personal meeting between Subject Member and Deputy Monitoring Officer to discuss response to complaints. Agreed draft</p>	Complaint Withdrawn 24.06.20
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				<p>statement of would be prepared and sent to Subject Member for approval and return. Subject Member indicating that due to travel arrangements unlikely to be able to respond to draft statement until 25.02.20 or 26.02.20.</p> <p>16.02.20 draft statement of response to complaint sent to Subject Member for consideration and approval.</p> <p>03.03.20 Communication to Subject Member informing Subject Member of Monitoring Officer's decision that return of final statement of evidence required by 5.00 p.m. on 13.03.20 otherwise matter would be disposed of on basis of existing available evidence.</p> <p>03.03.30 Subject Member confirming that response would be sent by time stipulated.</p> <p>06.04.20 Deputy Monitoring Officer becoming aware of circumstances which would prevent completion of investigation.</p> <p>Subsequent discussion with Complainant about circumstances. Complainant withdrawing complaint in the circumstances.</p>	
4	Borough Councillor	Officer 29.11.19	2.1 You must treat others with respect , including Council officers and	03.09.19 Meeting between Monitoring Officer, Independent Person and Deputy Monitoring Officer. Approach agreed to deal with complaints at items 3	Complaint withdrawn. 24.06.20

			<p>other elected Members.</p> <p>2.2 You must not bully any person (including specifically any Council employee)</p>	<p>and 4 in this table together.</p> <p>05.12.19 Complaint sent to subject Member for response. Independent Person informed.</p> <p>10.12.19 Complaint acknowledged by Subject Member. Requesting involvement of Independent Member.</p> <p>07.01.20 Subject Member informed of Independent Person's view that meeting more appropriate once Deputy Monitoring Officer's investigation complete. Meeting date with Subject Member requested.</p> <p>13.01.20 Meeting date requested again from Subject Member. Meeting agreed for 22.01.20.</p> <p>22.01.20. Personal Meeting between Deputy Monitoring Officer and Subject Member to discuss response to complaint.</p> <p>02.02.20 Draft statement of response sent to Subject Member for approval, signature and return.</p> <p>11.02.20 Subject Member responding to draft statement requesting amendments.</p> <p>13.02.20 revised draft statement sent to Subject Member.</p> <p>18.02.20 Subject Member responding requiring further amendments to draft statement of response.</p> <p>19.02.20 Further revised</p>	
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				<p>statement sent to Subject Member. Response from Subject Member requiring further revisions.</p> <p>23.02.20 Further revised statement sent to Subject Member.</p> <p>03.03.20 Finalised statement of response agreed with Subject Member.</p> <p>11.03.20 Final signed Statement of Response received from Subject Member.</p> <p>06.04.20 Deputy Monitoring Officer becoming aware of circumstances which would prevent completion of investigation.</p> <p>Subsequent discussion with Complainant about circumstances. Complainant withdrawing complaint in the circumstances.</p>	
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5.5.2 The Committee is requested to note this paragraph 5.5 of this report which seeks to summarise the present position with complaints under the Councillors' Code of Conduct.

6 **Conclusions**

The Committee are asked to consider and comment and note the contents of this report, as appropriate.

7 **Comments of other Committees**

None

8 **Appendices**

Appendix 1 – LGA draft National Model Code of Conduct
Appendix 2 – South East Employers survey Response – DBs checks for Councillors
Appendix 3 – Draft letter to Secretary of State for Housing, Communities and Local Government

10 **Background Papers**

Report of the Cabinet Committee on Standards in Public Life “Local Government Ethical Standards – a Review By the Committee on Standard in Public Life” published January 2019..