NORWICH
City Council

Committee name: Standards Committee

Committee date: 26/11/2024

Report title: Review of Process for Dealing with Code of Conduct Complaints

Portfolio:	Councillor Kendrick, Cabinet member for an Open and Modern Council
Report from:	Head of Legal and Governance
Wards:	All Wards

OPEN PUBLIC ITEM

Purpose

This report asks Standards Committee to consider the revised Code of Conduct Complaint form and process used when assessing Code of Conduct Complaints and recommend any changes or updates required to full Council.

Recommendation:

1, That the Standards Committee review the Complaints form and Code of Conduct Complaints Process and recommend any changes or updates to Council for approval.

Policy framework

The council has five corporate priorities, which are:

- A prosperous Norwich.
- A fairer Norwich.
- A climate responsive Norwich.
- A future-proof Norwich.
- An open and modern council.

This report meets the open and modern council corporate priority

This report meets the requirements in the Constitution to review the process on an annual basis.

Report details

1. The Localism Act 2011 requires local authorities to deal with allegations of breaches by councillors of the Member Code of Conduct, which forms part of Norwich City Council's constitution.

2. Norwich City Council has adopted the Local Government Association's Model Code of Conduct and a process for dealing with Code of Conduct Complaints.

3. The Council is required to review the process on an annual basis to ensure that the process remains compliant with the Local Government Association's guidance and is a fair and transparent process.

4. The form for making a complaint about a councillor is attached at Appendix A

5. The existing complaints procedure is attached at Appendix B.

6. The procedure in appendix B is used when dealing with allegations or complaints relating to councillors and voting co-opted members when they are acting in that capacity.

7. The procedure applies when a complaint is received that a Norwich City Council member or a voting co-opted member has, or may have, failed to comply with the Member Code of Conduct at the time of the alleged breach.

Consultation

8. Members of Standards Committee.

Implications

Financial and resources

9. There are no proposals in this report that would reduce or increase resources all changes will be undertaken by using existing resources.

Legal

10. The Localism Act 2011 requires local authorities to deal with allegations of breaches by councillors of the Member Code of Conduct, which forms part of Norwich City Council's constitution.

Statutory considerations

Consideration	**Details of any implications and proposed measures to address:**
Equality and diversity	N/A

Consideration	Details of any implications and proposed measures to address:
Health, social and economic impact	N/A
Crime and disorder	N/A
Children and adults safeguarding	N/A
Environmental impact	N/A

Risk management

Risk	Consequence	Controls required
Political and reputational risk to council.	Lack of a clear transparent process could result in complaints being upheld by the LGHO.	Clear process on how complaints regarding councillors will be dealt with. Complaints process is monitored and regularly reviewed. The level of risk is low.

Other options considered

11. The Council must review the Councillor Code of Complaint process on a regular basis as detailed in the Constitution.

Reasons for the decision/recommendation

12. The Councillor Code of Conduct Complaints process must be reviewed on an annual basis. Under the terms of reference for Standards Committee, the Committee has the duty of promoting and maintaining high standards of conduct by members and Co-opted members of the Council.

Background papers:

Norwich City Council's constitution

Appendices:

Appendix A Complaint form for Code of Conduct Complaints

Appendix B Council Code of Conduct Complaints process.

Appendix C Proposed Amendments

Contact officer: Monitoring Officer

Name: Jan Robinson

Telephone number: 01603 989434

Email address: JanRobinson@norwich.gov.uk

IN TRAN communication for all	If you would like this agenda in an alternative format, such as a larger or smaller font, audio or Braille, or in a different language, please contact the committee officer above.

Make a complaint against a councillor

Your details

1. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the councillor(s) you are complaining about
- the monitoring officer of the council

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 5 of this form.

2. Please tell us which complainant type best describes you:

☐ Member of the public
☐ An elected or co-opted member of an authority
☐ An independent member of the standards committee
☐ Member of Parliament
☐ Local authority monitoring officer
☐ Other council officer or authority employee
☐ Other

3. Please provide us with the name of the councillor(s) you believe have breached the Code of Conduct.

First Name	Last Name

4. Please explain in this section (or on separate sheets) what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when they decide whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

You should provide any relevant background information.

Please provide us with the details of your complaint. Use a separate sheet if there is not enough space on this form.

Only complete this next section if you are requesting that your identity is kept confidential.

5. In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the summary of your complaint unless you have good reason to believe that:

(1) There are reasonable grounds for believing that the complainant will be at risk of physical harm if identity is disclosed.

(2) The complainant is an officer who works closely with the member and is afraid of the consequences to employment or of losing job if identify is disclosed.

(3) The complainant suffers from a serious health condition and there are medical risks associated with identity being disclosed. In such circumstances, medical evidence of the condition may be required.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. They will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

Please read the council's complaints privacy policy at www.norwich.gov.uk/complaintsPN

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional help

6. Complaints must be submitted in writing. This includes email and fax. However, in line with the requirements of the Disability Discrimination Act 2000 we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible, through contact details below.

Return the Form to:-

Leah Mickleborough
Head of legal and procurement
Norwich City Council
City Hall
NORWICH
NR2 1NH

Please mark envelope confidential

Email: leahmickleborough@norwich.gov.uk

MEMBER CODE OF CONDUCT

COMPLAINTS, INVESTIGATION AND HEARING PROCEDURE

Introduction

The Localism Act 2011 requires local authorities to establish arrangements to deal with allegations of breaches by councillors of the Member Code of Conduct, which forms part of Norwich City Council's constitution.

This procedure is to be adopted when dealing with complaints against elected members and voting co-opted members when they are acting in that capacity. The procedure applies when a complaint is received that a Norwich City Council member or a voting co-opted member has, or may have, failed to comply with the Member Code of Conduct at the time of the alleged breach.

COMPLAINTS PROCEDURE

In this procedure, the person making a complaint is referred to as 'the complainant' and the person against whom a complaint is made is referred to as 'the subject member'.

A complaint is confidential and remains so until the complaint is resolved.

A complainant may request that a complaint be withdrawn at any stage and all such requests will be determined by the Monitoring Officer, which may include consultation with a Designated Independent Person[1].

Complaints can be made about a subject member breaking any part of the Member Code of Conduct when they are acting (or giving the impression they are acting) as a representative of the council or undertaking council business. This includes:

- Failing to treat others with respect
- Bullying
- Intimidating a complainant or witness
- Compromising the impartiality of officers
- Bringing the council/office as councillor or executive member into disrepute
- Disclosing information given in confidence/confidential information unless:

[1] A Designated Independent Person is someone who is independent of the council or any political group and who has experience of dealing with ethical issues. They are appointed for the Monitoring Officer or councillors to consult with on complaints.

    - They have consent; or
    - They are required to do so by law; or
    - Disclosure is to obtain professional advice; or
    - Disclosure is reasonable, in the public interest, in good faith and in compliance with reasonable requirements of the council
- Using their position improperly to obtain advantage or disadvantage for anyone
- Using council resources for political purposes
- Preventing anyone accessing information they have a legal right to
- Failing to register financial or other interests
- Failing to disclose a pecuniary interest at a meeting
- Failing to register any gifts or hospitality worth over £25 received in their role as a councillor

If none of the above applies, it will probably not qualify as a valid complaint.

Making a complaint

A complaint should be made in writing by filling in a complaint form within 10 working days of the alleged breach of the Member Code of Conduct. Any documents that support a complaint should accompany the form.

A complaint will normally be acknowledged within 10 working days of receipt and the complainant advised if the complaint will be passed for initial assessment by the Monitoring Officer or rejected.

Complaints may be rejected:

- where a member is not named
- where the complainant is not named[2]
- if they relate to a person who is no longer a member or which refer to alleged incidents before the person became a member
- that are not in writing
- that relate to a person who is not an elected or a voting co-opted member of Norwich City Council
- that relate to incidents or actions that are not covered by the Member Code of Conduct

[2] Complaints that contain a request for the complainant's identity to be withheld may be accepted, although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage. Anonymous complaints that reveal potential fraud or corruption will be referred to Internal Audit for consideration under the council's Whistleblowing Policy.

- where they are about the actions (or inactions) of Norwich City Council as a whole (these complaints should be dealt with through the council's complaints procedure
- where they relate to a member's personal or private life
- contain insufficient information
- where they are about people employed by the council
- if they refer to alleged incidents which happened so long ago that there would be little benefit in taking action now
- if they contain trivial allegations, or which appear to be malicious, politically motivated or tit-for-tat
- where they relate to alleged behaviour that has already been the subject of an investigation or some form of action

Where the Monitoring Officer decides to reject a complaint, they will write to the complainant explaining why the complaint cannot be dealt with under this procedure. In these circumstances, there will be no right of appeal.

Informal resolution

If the complaint is accepted, the Monitoring Officer will write to the complainant and explain that the matter is to be dealt with under this procedure. The subject member will be sent a copy of the complaint and will also be sent contact details of a Designated Independent Person. In this correspondence, the Monitoring Officer will:

(a) Seek confirmation from the complainant as to what form of informal resolution they would find acceptable and

(b) Provide the subject member with a reasonable timescale (usually 20 working days) within which to attempt to informally resolve the complaint

Types of informal resolution might include:

(a) An explanation by the subject member of the circumstances surrounding the complaint

(b) An apology from the subject member

(c) Agreement from the subject member to attend relevant training or to take part in a mentoring process

(d) Offering to engage in a process of mediation or conciliation between the subject member and the complainant

(e) Correcting an entry in a register

(f) Any other action capable of resolving the complaint

Where the subject member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject member of this decision.

If the complaint makes allegations that a criminal offence may have been committed, then the matter will not be dealt with under this procedure, but instead will be referred to the police.

INVESTIGATION PROCEDURE

Where it has not been possible to informally resolve matters, the complaint will be referred by the Monitoring Officer to an officer of the council, an officer of another authority, or such other expert as the Monitoring Officer considers appropriate for investigation ('the Investigating Officer'). The Monitoring Officer will notify both the complainant and the subject member of this decision.

When notifying the persons mentioned above, the Monitoring Officer will request that they respond within 10 working days:

- Listing any documents that they would wish to be taken into account in the investigation of the allegation, providing copies of these documents, and confirming where the original documents may be inspected.
- Providing the name, address and telephone number (or other appropriate contact details) of any person or organisation whom they would wish to be interviewed in the course of the investigation of the allegation.
- Providing any information that they would wish to be sought from any person or organisation in the course of the investigation of the allegation.

The Investigating Officer will take into account both the content of the original complaint and any information received from the persons notified above. They will make any further enquiries they consider necessary, following which they will determine whether or not there appears to have been any breach of the Member Code of Conduct.

Upon conclusion, the Investigating Officer will provide the Monitoring Officer with a report setting out their findings and whether or not, in their view, there have been any breaches of the Member Code of Conduct.

The investigation will normally be carried out and the report provided to the Monitoring Officer within 30 working days of the investigation being commissioned.

Outcome of investigation

The Investigating Officer's report will set out:

- The details of the allegation
- The relevant provisions of statute, the Member Code of Conduct and any relevant local protocols
- The subject member's response to notification of the allegation (if any)
- The views of a Designated Independent Person
- The relevant information, advice and explanations obtained in the course of the investigation
- Any documents relevant to the matter
- A list of those persons they have interviewed and those organisations from whom they have sought information
- A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to cooperate
- A statement of their draft findings of fact
- Their conclusions as to whether or not the subject member has failed to comply with the Member Code of Conduct

If the Investigating Officer's conclusion is that there has been no breach of the Member Code of Conduct, the complainant and the subject member will be notified. In these circumstances, there will be no right of appeal.

If the Investigating Officer's conclusion is that there has been a breach of the Member Code of Conduct, consideration will be given by the Monitoring Officer, in liaison with a Designated Independent Person (where appropriate), whether or not an informal resolution between the parties would be appropriate.

Where an informal resolution is considered appropriate, this will be discussed with the complainant and the subject member. Should an informal resolution be agreed, the complaint will not proceed any further.

Should either the complainant or the subject member not agree to the proposed informal resolution, or an informal resolution is not considered appropriate, the matter will be referred to the Standards Committee for hearing and final decision.

HEARING PROCEDURE

Where the matter is referred to the Standards Committee for decision, the complainant, the subject member, a Designated Independent Person and, where appropriate, the relevant political group leader will be advised of the position and consulted on the date of the committee hearing.

Democratic Services will arrange a convenient time and date for the committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day.

At least 20 working days before the hearing, the complainant, the subject member and a Designated Independent Person will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report. They will be invited to attend and identify any witnesses already interviewed that they wish to speak.

At the same time (and where appropriate), the relevant political group leader will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report.

The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the committee resolves that the press and public should not be excluded from the meeting at which the allegations are heard.

The date of the meeting and the agenda will be is published on the council's website.

Determination of the matter by the Standards Committee will normally be made within 65 working days of referral of the matter to the committee.

Standards Committee hearings

The Standards Committee will determine whether or not it agrees with the Investigating Officer's conclusions, whether there has been a breach of the Member's Code of Conduct and, if so, what (if any) sanctions should be applied. In so doing, they may seek the views of a Designated Independent Person.

Where a witness has been interviewed and their information is included in the Investigating Officer's report, should they not attend, the committee will give such weight to their comments as it considers appropriate.

The Standards Committee's decision as to whether or not there have been any breaches of the Member Code of Conduct shall be final. This also applies to any sanctions imposed or recommended by the committee for any such breaches of the Code.

If at any point during the hearing process, the subject member resigns, loses their seat, is seriously ill or has died, the Standards Committee will only hear the matter if it considers it is in the public interest to do so.

Representation

The subject member may be represented or accompanied during the hearing by another person provided the committee or its chair has given prior consent.

The subject member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The committee will not normally permit the subject member and their representative to both make representations, although the subject member may present evidence themselves whether or not represented.

Outline of the Procedure for the Hearing

The Standards Committee may govern its own procedure as long as it acts fairly. It may request advice from the Monitoring Officer (or Deputy) at any time. However, in general the following procedure should be adopted:

(a) Hearings should normally be held in private unless the committee has resolved not to exclude the press and public from all or any part of the hearing in accordance with the council's Access to Information Rules.

(b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents, etc, should be raised at the commencement of the hearing.

(c) The committee will adopt (as far as reasonably practicable) an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.

(d) Witnesses are not to be present in the hearing until they have been called to give their evidence, after which they should leave the room.

(e) If the subject member is not present, then the committee shall consider whether or not to proceed. If the committee is not satisfied that there is sufficient reason for the subject member's absence, it may either proceed to consider the matter and make a determination in the absence of the subject member, or adjourn the hearing to another time or date. If the committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject member has indicated that the hearing should proceed in their absence.

Order of witnesses

(a) The Investigating Officer presents the evidence on which they rely and calls any witnesses;

(b) The Investigating Officer makes submissions about whether the facts constitute a breach of the Member's Code of Conduct;

(c) The Investigating Officer makes submissions as to the seriousness of the breach and the appropriate sanction(s) in the event that the committee decides that a breach has occurred;

(d) The subject member and members of the committee may ask questions through the chair of the Investigating Officer and/or their witnesses;

(e) The subject member may present evidence on which they rely and call any witnesses referred to in the Investigating Officer's report;

(f) The subject member may make submissions about whether the facts constitute a breach of the Member Code of Conduct;

(g) The subject member may make a statement in mitigation in regard to the seriousness of the breach and the appropriate sanction in the event that the committee decides that a breach has occurred;

(h) The Investigating Officer and members of the committee may ask questions through the chair of the subject member and/or their witnesses;

(i) The committee members retire to decide the facts and whether, on the balance of probabilities, there has been a breach of the Member Code of Conduct. At this point, the committee is likely to ask all present to leave the room whilst they consider the matter.

(j) Once the committee members have concluded their findings as to whether the facts amount to a breach, all return to the room and the decision is read out.

Outcome

If the Standards Committee decides there has been a breach of the Member Code of Conduct, then it can determine whether and, if so, which of the following sanctions should apply:

1. Publish findings in respect of the subject member's conduct;

2. Report findings to full Council for information;

3. Recommend to full Council that the subject member be issued with a formal censure or be reprimanded;

4. Recommend to the subject member's political group leader (or in the case of un-grouped members, recommend to full Council) that they be removed from any or all committees or sub-committees of the council;

5. Recommend to the Executive Leader that the subject member be removed from Cabinet, or removed from particular portfolio responsibilities;

6. Arrange or recommend training for the subject member;

7. Remove or recommend the removal of the subject member from all outside appointments to which they have been appointed or nominated by the council;

8. Withdraw or recommend withdrawal of facilities provided to the subject member by the council, such as a computer, website and/or email and internet access;

9. Exclude or recommend the exclusion of the subject member from their council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.

The Standards Committee has no power to suspend or disqualify a member or to withdraw a member's basic or special responsibility allowance.

The Standards Committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within 10 working days, 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 sanction applied.

Appendix C – Suggested Changes for Code of Conduct Complaints Procedure

Suggested Changes

Subject	Existing Procedure	New Additions
Paragraph numbers	None	Insert Paragraph numbers
Making a complaint	A complaint should be made in writing by filling in a complaint from within 10 working days of the alleged breach of the Member Code of Conduct. Any documents that support a complaint should accompany the form.	A complaint should be made using the standard complaint form (available on the council's website using the following links, any documents that support a complaint should be attached with the complaint form. Links to be inserted here. Alternatively, the complaint can be submitted to the Monitoring Officer in writing be email or post to: _ The Monitoring Officer Norwich City Council City Hall Norwich

Subject	Existing Procedure	New Additions
Anonymous Complaints	The Monitoring Officer will not normally consider anonymous complaints.	The Monitoring Officer will not normally consider anonymous complaints, except in circumstances were doing so will not obstruct the complaints. process. For example, if an anonymous complainant submitted a video showing the councillor acting inappropriately or sent in documentation. disclosing an undeclared directorship in a matter relating to local authority business, it may be considered that the public interest in investigating the allegation outweighed the issue of anonymity.
Timescale	This initial assessment will normally be completed within ten working days of receipt of a complaint.	This initial assessment will normally be completed within ten working days of receipt of a complaint.
	Provide the subject member with a reasonable timescale	The Monitoring Officer will report with full reasons (within fifteen working days from receipt of information from the subject member) the outcome of the complaint
	If the complaint is rejected at initial assessment there is no right of appeal	If the complaint is rejected at initial assessment there is no right of appeal to the MO although complaints can be referred to the LGHO if the councillor feels that there is an issue with the way the complaint was considered.
	None	The Monitoring Officer will only consider complaints that are less than a year old

Subject	Existing Procedure	New Additions
Conflict of Interest		Where the Monitoring Officer has a conflict of interest in determining a complaint, the Deputy Monitoring Officer or a Monitoring Officer from another authority shall be asked to resolve the complaint. When referring to an officer of another authority, referral must be sought within seven working days of the initial assessment.

To Add

Subject	Existing Procedure	New Additions
Member Notification	The existing procedure contains no guidance on circumstances under which the Subject Member would not be notified.	The Monitoring Officer will normally notify the subject member and invite a response from them. They may choose to delay this if it is judged that doing so could risk the complainant being intimidated or evidence. being destroyed.
Types of informal resolution	If the complaint is accepted, the Monitoring Officer will write to the complainant and explain that the matter is to be dealt with under this procedure. The subject member will be sent a copy of the complaint and will also be sent contact details of a Designated Independent Person. In this correspondence, the Monitoring Officer will: (a) Seek confirmation from the complainant as to what form of informal resolution they would find acceptable and (b) Provide the subject member with a reasonable timescale (usually twenty working days) within which to attempt to informally resolve the complaint. Types of informal resolution might include: (a) An explanation by the subject member of the circumstances surrounding the complaint. (b) An apology from the subject member (c) Agreement from the subject member to attend relevant training or to take part in a mentoring process.	If the complaint is not rejected the Monitoring Officer will then go on to apply the following criteria a) whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any recommendations other than an apology. b) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations. c) whether in all circumstances, there is no overriding public interest in carrying out an investigation. d) whether the complaint suggests that there is a wider problem throughout the authority e) whether training or mediation would be the appropriate response. f) whether a substantially similar allegation has previously been made by the complainant. The decision as to how to proceed will be made by the Monitoring Officer after seeking the views of the Independent Person and shall be final there is no right of appeal. Wherever possible the Monitoring Officer will resolve complaints. If the Monitoring Officer considers, after consultation with the Independent Person, that there has been a breach of the code

Subject	Existing Procedure	New Additions
	(d) Offering to engage in a process of mediation or conciliation between the subject member and the complainant (e) Correcting an entry in a register (f) Any other action capable of resolving the complaint.	and the matter can be reasonably resolved without the need for formal investigation, a fair resolution shall be suggested. Such resolution may include: Advising the subject member about matters of conduct. Arranging training for the subject member advising the subject member that an apology might be appropriate. suggesting a mediation meeting between the subject member and the complainant or another course of action
	There is no mention of how this will be communicated and to what timescale the expected resolution will need to be resolved by.	The Monitoring Officer will report with full reasons within fourteen working days from the receipt of the information from the subject member the outcome of the issue with a decision notice informing the complainant and the subject member of their decision and the informal resolution required and the timescale for which this is to happen.
	Right of Appeal- formal investigation	There is no right of appeal. The Standards Committee decision and that of the Monitoring Officer is final. If the councillor is unhappy about the way their complaint has been considered, then they can appeal to the Local Government Housing Ombudsman.