

## STANDARDS COMMITTEE

DATE OF MEETING: 3 NOVEMBER 2020

TITLE OF REPORT: GUIDANCE ON THE CODE OF CONDUCT - PUBLIC INTEREST TEST

Report of: Monitoring Officer

### 1. PURPOSE OF THE REPORT

1.1 To seek Standards Committee's agreement to the public interest test as set out in Appendix 1 of this report.

### 2 RECOMMENDATION

2.1 It be recommended to Full Council that

2.1.2 the public interest test as set out in Appendix 1 be used in the consideration of allegations that a member has broken the Code of Conduct; and

2.1.3 The Hart Code of Conduct Arrangements for Dealing with Allegations be amended to include:

- **Public interest** – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the resources require to carry out an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and in accordance with the public interest tests as set out in Appendix 1).
- **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
- **Member's democratic role** – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation.

### 3 CONTEXT

- 3.1 The role of Standards Committees is to help councillors achieve the standards of conduct that meet public expectations. It must aim to support proper decision making and the proper use of public resources and to preserve public confidence in local government and in the democratic process itself. Investigations that do not support these wider benefits is not in the public interest.
- 3.2 Because the limited resources available, and the absence of any meaningful sanctions, the Council needs to quickly filter out those complaints that are trivial or which have little or no impact on the public. It also needs to avoid engaging or carrying out investigations that are disproportionate to any outcome that can be achieved or sanction imposed.
- 3.3 It is important that everyone focuses attention on investigating matters that are serious and are capable of undermining the relationship between councillors and the public, such as corruption, bullying and misuse of power in public office. The complaint must have substance<sup>1</sup> and raise a matter of public interest. Vexatious, malicious, frivolous, or trivial complaints<sup>2</sup> should have no place in these arrangements.

#### **4 THE PUBLIC INTEREST TEST**

- 4.1 The Committee of Standards in Public Life (CSPL) recommends that Councils should publish a clear and straightforward public interest test against which allegations are filtered<sup>3</sup>. It highlights the standards bodies in Scotland, Wales and Northern Ireland which all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not need to be detailed. The CSPL for example, highlights the Northern Ireland Local Government Commissioner for Standards approach with a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'?

##### **Northern Ireland Local Government Commissioner for Standards public interest test<sup>4</sup>**

1. 'CAN' we investigate your complaint?
  - Is the person you are complaining about a councillor?
  - Did the conduct occur within the last six months?
  - Is the conduct something that is covered by the code?
  
2. 'SHOULD' we investigate your complaint?
  - Is there evidence which supports the complaint?

<sup>1</sup> The complaint must have something in it and be of meaningful quality.

<sup>2</sup> There is no place for complaints that are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>4</sup> <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>

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| <ul style="list-style-type: none"><li>• Is the conduct something which it is possible to investigate?</li><li>• Would an investigation be proportionate and in the public interest?</li></ul> |
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## 5 THE PROPOSAL

5.1 Attached at Appendix 1 is a draft of a proposed statement which gives clarity to what the underlying public interest tests the Council will use to assess Code of Conduct complaints. It follows closely the approach promoted by the CSPL and reflects the Northern Ireland and Welsh example.

5.2 It is also recommended that the Hart Code of Conduct Arrangements for Dealing with Allegations<sup>5</sup> be amended to include:

- **Public interest** – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will consider the wider public interest and the resources require to carry out an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and follow the public interest tests as set out in Appendix 1).
- **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
- **Member's democratic role** – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation.

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Appendix 1 – PUBLIC INTEREST CONSIDERATIONS

## PUBLIC INTEREST CONSIDERATIONS

The purpose of the Codes of Conduct is to help councillors achieve the standard of conduct which meets public expectations. The aim is to support proper decision making and the proper use of public resources. Undertaking investigations that do not support these wider benefits is not in the public interest.

The resources should not be used to investigate matters which are trivial, or which have little or no impact on the public. The decision whether to investigate will therefore, be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation.

Complaints will only be investigated where the allegations are reasonably considered to be serious matters such as corruption, bullying and misuse of power in public office for example<sup>6</sup>. Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the Councillor complained about, or where the matter complained about does not raise a significant matter of public interest.

There must also be some evidence of deliberate fault. If a councillor has made a genuine mistake despite taking reasonable care, then it is unlikely that it will be in the public interest to investigate a complaint simply because it so happened that a breach of the Code of Conduct may have occurred.

There is no widely accepted definition of the public interest but has been described as "*something which is of serious concern and benefit to the public*". The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that necessarily impacts on an individual alone (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the whole of Hart District. It may refer to a distinct section of the public such as a small community or interest group.

### 1. Seriousness

The more serious the alleged breach, the more likely it is that it will be investigated.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor was at responsible for or was to blame for the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person.

#### **a) To what extent was the councillor responsible for or to blame for the conduct complained of?**

Questions of responsibility or blame are likely to be determined by the councillor's level of involvement; the extent to which the alleged breach

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<sup>6</sup> The application of the investigations not limited to these matters

was premeditated and/or planned; whether they have previously being investigated for a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the councillor's length of service; and level of experience/ knowledge of the councillor in relation to the issue in question.

**b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?**

In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and must be taken into consideration.

Particular regard will be taken of whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor showed hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, the views expressed by the complainant, about the impact the alleged breach has had on them will be considered.

## **2. Proportionality**

Account must always be taken of the resource implications any investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be taken based on resource alone, but it is a relevant consideration when making an overall assessment.

These considerations will help in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code.