
**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES & MONITORING OFFICER**

**MEMBERS' CODE OF CONDUCT COMPLAINTS UPDATE – QUARTER 4 OF
2021/22**

Reason for Report

1. To provide the Committee with an update on complaints made against Members of Cardiff Council or any of Cardiff's Community Councils alleging a breach of the Members' Code of Conduct, in particular, complaints received during Quarter 4 of 2021/22 (the period running from 1st January 2022 to 31st March 2022).

Background

2. The Committee receives quarterly reports from the Monitoring Officer on complaints, made against Members of Cardiff Council and Community Councils within its area, alleging a breach of the Members' Code of Conduct. (There are six Community Councils in Cardiff: Lisvane; Old St. Mellons; Pentyrch; Radyr and Morganstown; St. Fagans; and Tongwynlais.) These reports provide information to assist the Committee to discharge its functions, in particular:
 - i. To monitor and scrutinise the ethical standards of the Authority, its Members, employees and any associated providers of the Authority's services, and to report to the Council on any matters of concern;
 - ii. To advise the Council on the effective implementation of the Code including such matters as the training of Members and employees on the Code's application; and
 - iii. To undertake those functions in relation to community councils situated in the area of the Council and members of those community councils which are required by law',

(paragraphs (a), (c) and (g) respectively, of the Committee's terms of reference).

3. The Committee considers the number of complaints made and any themes or patterns emerging, but does not consider the specific details of each individual case, unless the complaint is formally referred to the Committee for a decision.
4. Complaints received during Quarter 3 of 2021/22 were reported to the Committee meeting on 9th February 2022.

Issues

Complaints received during Quarter 4 of 2021/22

5. During Quarter 4 of 2021/22, covering the period running from 1st January 2022 to 31st March 2022, a total of 4 complaints alleging a breach of the Members' Code of Conduct were reported to the Monitoring Officer.
6. The table below shows the figures for this period alongside comparative figures for the previous four quarters.

	Q4 Jan – Mar 2021	Q1 Apr – Jun 2021	Q2 Jul – Sept 2021	Q3 Oct – Dec 2021	Q4 Jan – Mar 2022
Member on Member	1	1	6	1	1
Public on Member	1	4	2	0	1
Officer on Member	0	0	0	0	0
Community Councillors	0	0	0	3	1
Total	2	5	8	4	3

7. Brief details of the three complaints submitted during Quarter 4 of 2021/22 are as follows:
 - (i) A Member complained about comments made by another Member during a debate at a full Council meeting. The complaint was resolved informally by local resolution with the Member deciding not to pursue a complaint.
 - (ii) A Community Councillor complained about the behaviour of another Community Councillor. The complaint was submitted to the Ombudsman, who noted that certain allegations would be tested during a related ongoing investigation and decided there was insufficient evidence of a breach of the Code to warrant any further investigation.

- (iii) A member of the public complained about the alleged failure by a Member to respond to correspondence and comments made at a meeting. The complaint was submitted to the Ombudsman who decided that there was insufficient evidence of a breach of the Code of Conduct to warrant an investigation.
8. The Committee will note that this reporting period includes the run up to the local government elections, and that the number of complaints received remained relatively low. All three complaints have been resolved with no finding of a breach of the Code.

Update on Complaints reported previously

Quarter 4 of 2020/21

9. At the Committee meeting in July 2021, the Code of Conduct Complaints report included information about a complaint made during Quarter 4 of 2020/21, which was submitted by a Member on behalf of all members of their political group, alleging that another Member had delivered election leaflets in breach of Covid restrictions in effect at that time. The complaints were referred to the Ombudsman and legal proceedings were also instigated in relation to this matter. Following a hearing held at Cardiff Magistrates Court on 21st October 2021, the case was dismissed due to errors in the prosecution case. The Committee received an update on this complaint at its last meeting in February, when it was noted that the Ombudsman had decided to investigate the complaint. The Ombudsman subsequently decided to discontinue the investigation, because he did not consider there to be a public interest in continuing the investigation.

Quarter 2 of 2021/22

10. The complaints submitted during Quarter 2 of 2021/22 included a number of complaints which were subject to ongoing discussions under the local resolution protocol. It was not appropriate to progress these during the pre-election period. An update on those complaints is provided below:
- i. Two Members complained about allegedly inaccurate information contained in a political group leaflet. These complaints were raised with the leader of the group concerned, who was asked whether the inaccuracies were accepted and if so, whether they would be corrected and an apology offered on behalf of the group. Agreement on a resolution has not been reached and so consideration needs to be given to a referral to the Standards Committee Hearings Sub-Committee.
 - ii. A Member complained about comments made about them by another Member during a meeting with other Members and Council officers. The complainant considered the comments to be an unacceptable racist slur on the complainant. In response, the Member said that the offending comment was made following allegations made by the complainant against them, which attacked their personal integrity.

The Member also made a counter-complaint against the complainant, alleging that the complainant had made discriminatory comments about them during the same meeting. In response to the Monitoring Officer's attempts to informally resolve this matter, the first Member complained of offered an apology to the complainant for any upset caused by their comments. The second member has been asked to apologise but to date has not done so. Consideration needs to be given to a referral to the Standards Committee Hearings Sub Committee.

- iii. The counter-complaint referred to in paragraph (ii) above, which has been recorded as a separate complaint.
 - iv. A Member complained about misleading information, misrepresenting what the complainant had said at a meeting with Members and Officers, being published on social media. To date it has not been possible to resolve this complaint by informal resolution. Consideration needs to be given to a referral to the Standards Committee Hearings Sub Committee.
 - v. A Member complained that another Member had posted untrue and misleading information about the complainant on social media. It has not been possible to resolve this under the local resolution procedure. Consideration needs to be given to a referral to the Standards Committee Hearing Sub Committee.
11. Members may wish to note that three of the complaints above (referred to in paragraph 10 (ii), (iii), and (iv)) all relate to the same meeting attended by Members and Officers, and involve the same two Members.

Quarter 3 of 2021/22

12. One of the complaints reported to the last Committee meeting related to a complaint by a Community Councillor about material posted on social media by another Community Councillor and conduct associated with this. The complaint was submitted to the Ombudsman, who has confirmed that the complaint would be investigated. The Ombudsman's decision on this complaint is still awaited.

Key points highlighted in Decisions of the Ombudsman

13. The Committee may wish to note that, in recent decisions, the Ombudsman has confirmed his view that:
- (a) A member's competence and performance are matters for the local electorate to determine through the democratic process.
 - (b) Members have enhanced protection, under Article 10 of the Human Rights Act 1998, for comments which may reasonably be regarded as political expression; and comments which a Member may find upsetting and

intimidating or offensive, may not amount to a breach of the Code of Conduct if they may be regarded as forming part of a wider political debate.

- (c) The Ombudsman generally regards talking and/or shouting over other members during a meeting as a matter for the Chair of that meeting to address, by applying the rules of debate and procedure (standing orders) as appropriate to prevent disorderly conduct at Council meetings.
 - (d) Whilst the Ombudsman would not condone a failure to acknowledge or reply to correspondence, and a failure to do so might potentially be considered a breach of the Code, a single example of overlooked correspondence would not, in itself, be likely to be considered sufficiently serious to warrant an investigation.
 - (e) Councillors are entitled to attend meetings, to decide for themselves what initiatives they want to support, and to pursue and express their views on such matters, so long as they follow appropriate channels to do so.
 - (f) The Ombudsman will not investigate a complaint unless there is reasonably strong evidence to suggest that the member concerned has breached the Code.
14. The Committee may wish to consider including the points above in the next Members' Briefing to assist Members' understanding of conduct issues.

Code of Conduct Training

15. The Committee is invited to note that the Monitoring Officer has delivered a number of training sessions on the Code of Conduct, both in person and remotely, as part of the Member Induction Programme 2022. To date, 3 sessions have been delivered, attended by 47 out of the 79 Cardiff Councillors (just under 60%). A further session is scheduled to be held on 24th June, and further 'mop up' sessions will be made available, on an individual basis if necessary, to seek to ensure that all Members complete this mandatory training.

Legal Implications

16. There are no legal implications arising from the recommendations of this report.

Financial Implications

17. There are no direct financial implications arising from this report.

Recommendation

The Committee is recommended to note the contents of the report.

Davina Fiore
Director of Governance and Legal Services, and Monitoring Officer
18th May 2022

Background papers

Standards and Ethics Committee report 'Member Code of Conduct Complaints Update – Quarter 3 of 2021/22, 9th February 2022