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

**MEMBERS' CODE OF CONDUCT COMPLAINTS UPDATE – QUARTER 3 OF
2022/23**

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 notified to the Monitoring Officer during Quarter 3 of 2022/23 (the period running from 1st October 2022 to 31st December 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 Quarters 1 and 2 of 2022/23 were reported to the Committee meeting on 25th October 2022.

Issues

5. During Quarter 3 of 2022/23, covering the period running from 1st October 2022 to 31st December 2022, a total of 2 complaints alleging a breach of the Members' Code of Conduct were notified to the Monitoring Officer. Both complaints were notified to the Monitoring Officer by the Ombudsman. Brief details of the complaints are as follows:
 - (a) A member of the public submitted a complaint to the Ombudsman in September 2020 alleging that their local Councillor had failed to respond to correspondence and to support them with their concerns. The Ombudsman's decision letter, issued in October 2022, confirmed that the Ombudsman had decided not to investigate the complaint, because the matters alleged did not constitute a breach of the Code. The decision letter explained the Ombudsman's view that:

'It is a matter for the Member to determine which causes to support and they are elected to make those decisions. Whether the Member has acted for the benefit of the community is something which will be determined at the ballot box at the next election. It is not the Ombudsman's role to interfere with the will of the electorate and Cllr X is the person elected by the constituency to represent it.'
 - (b) Another member of the public complained that their local Councillor had failed to support them with their concerns, lied to residents at a public meeting held in September 2022, was unfit to perform their duties as Member and had used a religious slur and made other comments, which were considered to be unacceptable behaviour for an elected Member. The Ombudsman decided not to investigate, because the alleged failure to support the constituent's concerns could not constitute a breach of the Code, as the complaint related either to the decisions of the Council as a whole and or to political matters on which the Councillor was entitled to form their own views. The Ombudsman further decided that, whilst the remaining parts of the complaint may amount to a breach of the Code, an investigation would not be in the public interest, because the comments were not 'sufficiently offensive, intimidating or insulting to amount to bullying behaviour', nor 'so inflammatory, violent or shocking that they could amount to a breach of the Code'. However, the Ombudsman did not condone the comments made and indicated that the

Councillor would be reminded of their duty to always show respect and consideration for others.

Change in the Ombudsman's Notification Procedures

6. The Ombudsman's office has confirmed that their notification procedures have changed; and that they only now notify all parties when a decision has been made on whether the matter will be investigated. The new approach is said to have a number of benefits:

'It reduces pressure on the Monitoring Officers who are often contacted by members as soon as a complaint is made about them (seeking advice and support), it also reduces the concern for Members who were previously worrying about a complaint (some even went so far as to engage legal support), which may never be taken further than assessment, and it has reduced the number of counter complaints, which would also not meet the test for investigation. The process is also more in keeping with the legislation which requires that the Monitoring Officer be provided with a reason for decision.'

7. As the Committee will be aware, the established practice in Cardiff is for the Monitoring Officer to report complaints to the Standards and Ethics Committee quarterly, on the basis of the date upon which the complaints are received. This allows the Committee to see linked complaints, have oversight of any increase or decrease in the number of complaints overall, or of a particular type and any emerging patterns and concerns. This approach has been reviewed in light of the change in the Ombudsman's notification procedures.
8. Going forwards, it is suggested that the Committee continues to receive a quarterly complaints update report from the Monitoring Officer, but notes the different basis for reporting of complaints dealt with by the Ombudsman, as follows:
 - (a) Local Resolution Protocol - Complaints submitted to the Monitoring Officer under the Local Resolution Protocol, which will continue to be reported on the basis of the *date on which the complaint is made*, allowing comparisons to be made with the number of complaints received in previous quarters and any emerging patterns or concerns; and
 - (b) Ombudsman – Complaints notified to the Monitoring Officer by the Ombudsman, which will be reported to Committee on the basis of the *date upon which they are notified to the Monitoring Officer*, with the details of the complaint including information about the date/s of the incident/s complained about and the date of when the complaint was submitted to the Ombudsman, if this information is provided.
9. The table below illustrates the new reporting format which is to take effect from Quarter 3 of 2022/23:

Complaints Process

	Q3 Oct – Dec 2021	Q4 Jan – Mar 2022	Q1 Apr – Jun 2022	Q2 Jul – Sept 2022	Q3 Oct – Dec 2022
Local Resolution	1	1	0	1	0
Ombudsman*	3	2	2	1	2
Total	4	3	2	2	2

* Reported on the basis of the date upon which the complaint is notified to the Monitoring Officer.

Type of Complaint

Member on Member	1	1	0	0	0
Public on Member	2	1	2	2	2
Officer on Member	0	0	0	0	0
Community Councillors	1	1	0	0	0
Total	4	3	2	2	2

Update on Complaints reported previously

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. 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 (Cllr A) complained about comments made about them by another Member (Cllr B) during a meeting with other Members and Council officers. The complainant (Cllr A) considered the comments to be an unacceptable racist slur on the complainant. In response, the Member (Cllr B) said that the offending comment was made following allegations made by the complainant (Cllr A) against them, which attacked their personal integrity. The Member (Cllr B) also made a counter-complaint against the complainant (Cllr A), alleging that the complainant (Cllr A) had made discriminatory comments about them

(Cllr B) during the same meeting. In response to the Monitoring Officer's attempts to informally resolve this matter, the first Member complained of (Cllr B) offered an apology to the complainant (Cllr A) for any upset caused by their comments. The other member (Cllr A) has been asked to apologise but to date has not done so. Cllr A's complaint may need to be referred to the Standards Committee Hearings Sub Committee.

- iii. The counter-complaint (made by Cllr B), referred to in paragraph (ii) above, which was recorded as a separate complaint. As verbally reported to Committee at its last meeting, Cllr B has withdrawn this complaint.
 - iv. A Member (the same Cllr A referred to in sub-paragraph (ii) above), complained about misleading information, misrepresenting what the complainant had said at a meeting with Members and Officers, being published on social media by another Member (the same Cllr B referred to in sub-paragraph (ii) above). To date it has not been possible to resolve this complaint by informal resolution. Consideration may need 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 9 (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, whose decision was awaited. The Ombudsman decided, following an investigation, that there was no evidence of a breach of the Code. The Community Councillor complainant has requested a review of the Ombudsman's decision and the outcome of that review request is awaited.

Code of Conduct Training

13. The Committee is invited to note that the Monitoring Officer has delivered a number of repeat training sessions on the Code of Conduct, both in person and remotely, as part of the Member Induction Programme 2022. To date, 9 sessions have been delivered, attended by 74 out of the 79 Cardiff Councillors (94% of all Cardiff Councillors). Out of the 5 Councillors who have not yet completed this mandatory training, 3 have attended a Code of Conduct training session previously (but not since May 2022). All 5 Cllrs have again been requested to make arrangements to receive this training in

the near future. One of the 5 Councillors has arranged to attend a repeat training session (online), which has been scheduled for 14th March 2023, and the other 4 Councillors have also been invited to this session. The relevant group Whips are aware of the names of the Members and the need for them to attend up to date training on the Code.

14. At the Council meeting in January 2023, when the Chair presented the Committee's Annual Report 2021/22, there was a question about what action could be taken by the Committee to enforce attendance at this mandatory training and the Chair agreed that the Committee would consider this. It should be noted that when a conduct complaint is received by the Ombudsman, the first question asked of the Monitoring Officer is the date when the Member attended Code of Conduct training, which reinforces the importance of Members' attendance.
15. The Monitoring Officer's staff do follow up with individual Members who have yet to attend the mandatory Code of Conduct training; and Group Whips and Leaders are also informed of any Members from their group who have not yet attended. The Committee will also recall that the new Group Leaders' Report proforma (approved at the last Committee meeting), which is due to be completed prior to, and discussed at, the May 2023 Standards and Ethics Committee meeting, includes data on attendance at mandatory training sessions and asks Group Leaders what action they have taken to address any non-attendance at mandatory training sessions by any of their Group members. The Committee is invited to consider if there is any other action it wishes to take in this regard. For example, the Committee Chair could write to the individuals and their Group Leaders to request that the training takes place.

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 and to indicate if they wish any further action to be taken in relation to non-attendance at the mandatory Code of Conduct training.

Davina Fiore

Director of Governance and Legal Services, and Monitoring Officer

7 February 2023

Background papers

- [Standards and Ethics Committee report, 'Member Code of Conduct Complaints Update – Quarters 1 and 2 of 2022/23, 25th October 2022](#)
- Monitoring Officer's Code of Conduct Complaints Records and Correspondence
- Democratic Services, Members' Training Records
- [Report to Council, Standards & Ethics Committee's Annual Report 2021/22, January 2023](#)
- [Standards and Ethics Committee report, 'Group Leaders' Duties in Relation to Standards of Conduct', 25th October 2022](#)