

STANDARDS COMMITTEE
18TH OCTOBER 2017

GUIDANCE ON MEMBERS' CORRESPONDENCE

Cabinet Member(s): Cllr Clive Eginton, Leader of the Council
Responsible Officer: Kathryn Tebbey, Monitoring Officer

Reason for Report: to consider:

- (a) whether guidance should be given to Members on dealing with correspondence in the form attached at Appendix 1;
- (b) whether a Member's failure to reply to correspondence in a timely manner (or at all) could on its own, and in principle, amount to a breach of the Code of Conduct; and
- (c) whether to recommend that the Local Assessment Criteria be amended

RECOMMENDATION: that the Standards Committee considers the report, the draft Guidance at Appendix 1 and decides how it wishes to proceed in relation to the reasons (a) to (c) set out above.

Relationship to Corporate Plan:

Financial Implications: None, other than potential reduction in time spent on complaints about correspondence.

Legal Implications: There is no legal obligation on Members to reply to correspondence. However, the Code of Conduct covers several matters, including that of showing respect. Were a complaint to be received arising from a failure to reply to correspondence, the Monitoring Officer would need to consider the complaint against the Legal Jurisdiction Test and the Local Assessment Criteria (Appendix K to Constitution) before deciding whether to proceed with an investigation or local/informal resolution.

Risk Assessment: issuing guidance to members and setting clear local assessment criteria will reduce the risk of uncertainty as to whether a complaint merits investigation as a potential breach of the Code of Conduct

Equality Impact Assessment: Any guidance issued to Members needs to recognise and take account of any equalities issues, for example any disability which impacts upon a Member's ability to deal with correspondence, or which might result in a member of the public suffering a detriment directly or indirectly out of a protected characteristic. At the drafting of the report, no such issues have been identified in the guidance, but Members will wish to consider this as part of their overall consideration.

1.0 Introduction

1.1 At the meeting of the Standards Committee on 26 July 2017, the Monitoring Officer discussed concerns raised with her by a member of the public about the alleged failure of a member of the Council to reply to correspondence. In that particular incidence, the Monitoring Officer had dealt with the issue informally. However, as members of the Committee indicated at the meeting, it did raise issues about how members should be expected to deal with their correspondence, particularly in relation to that received from members of the public from their electoral ward.

2.0 Guidance

2.1 The Monitoring Officer has considered the position of a selection of other councils. Whilst many councils are silent on the matter, some have issued guidance. Such guidance varies between being quite prescriptive in tone and content (despite being only guidance) to a more general set of principles. It is the Monitoring Officer's opinion that prescriptive guidance is unhelpful, as it does not recognise or address the following:

- the rights of Members to conduct their ward business as they see fit, subject to acting lawfully and in accordance with the Constitution – ultimately, it is a matter for the electorate to decide whether to elect or re-elect a member and how they perform their role as the local representative is no doubt a factor in that.
- setting an expectation of a reply within a certain period of time will not always match the complexity of the issues raised, the need to seek further information, or indeed the Member's own position – they may be on holiday or unwell.
- those circumstances, particularly where correspondence has been protracted, where there is nothing more the Member feels that he/she can say, or where it is clear that the member of the public will not accept the Member's reply unless it matches their own take on the matter.

2.2 The attached draft guidance (Appendix 1) is just that – a draft for members of the Standards Committee to consider whether to take forward (or amend) and issue to Members of the Council. The Monitoring Officer is not proposing that this be adopted as part of the Constitution, but rather suggesting that it be issued by the Standards Committee in its role as the committee responsible for monitoring, maintaining and raising standards.

3.0 Code of Conduct implications

3.1 If a Member fails to reply to correspondence, they are at risk of a potential complaint under the Code of Conduct – for example, in relation to showing respect. That is not to reach a presumption that such a complaint would be upheld. It would depend very much on the circumstances.

3.2 The Monitoring Officer would be interested in hearing the Standards Committee's views on this point and whether, in their opinion, such matters should be specifically included, excluded or left to judgment in any particular case. The Monitoring Officer considers that, whilst she would be happy to raise the issue with the Member concerned, a failure to reply to correspondence is not really what the Code of Conduct is aimed at. However, there will be some cases, for example, when combined with another allegation capable of being a breach of the Code, which might merit further investigation – or at the least, a local/informal resolution process.

3.3 It is open to the Standards Committee to set its own local assessment criteria – to be found on page 283 of the Constitution. If Members reach the view that a failure to reply to correspondence should not, on its own, amount to a breach of the Code of Conduct, they could look to express this in the criteria. For example, some words could be included in 1(g), which currently reads:

“The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers’ and Members’ time.”

3.4 One option would be to add words to the end of 1(g), for example:

“Where the only ground for complaint is a failure to reply to correspondence, this would not normally be regarded as sufficient to amount to a breach of the code of conduct.”

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Circulation of the Report:

List of Background Papers: