

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	AUDIT AND STANDARDS COMMITTEE	23 JULY 2020	4
ISSUES RAISED WITH THE MONITORING OFFICER			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

Members are reminded of the Council's procedure for dealing with complaints regarding alleged elected member misconduct, which includes the following:

That the Monitoring Officer be given delegated powers to determine whether a complaint merits formal investigation or otherwise and to arrange such investigation where one is considered appropriate in consultation with one of the Council's independent persons.

Where the investigation finds no evidence of failure to comply with the Code of Conduct, that the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned and to the Standards Committee for information.

This report concerns two similar matters where complaints had been made about members not complying with regulations and/or guidance concerning the coronavirus outbreak.

RECOMMENDATIONS

1. Note the investigator's conclusion that the alleged conduct of Councillor X was not carried out in their capacity as a member of the council and was therefore outside the scope of the code of conduct and the council's standards arrangements.
2. Confirm that any further complaints about non-observance by councillors in their private capacity of legislation or guidance concerned with the coronavirus pandemic should be treated by the Monitoring Officer as falling outside the scope of the code of conduct and be dealt with accordingly.

SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	
Delivering the services that customers expect of an excellent council (Clean and Green)	
Working with all partners (Vibrant Economy)	x
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	
Promoting Fylde as a great destination to visit (A Great Place to Visit)	

REPORT

PROCEDURAL

1. Reports of investigations where no breach of the code of conduct is found are normally reported to the committee as exempt items, with the details of the allegations and the councillor concerned being given. In this instance the report is in the public part of the agenda because the principle concerned is of general importance. The councillors concerned are therefore not named, details of the allegations are not given and the investigation report is not included in full.
2. It should be stressed that neither Councillor X nor Councillor Y has been found to have breached any restrictions.

THE COMPLAINT ABOUT COUNCILLOR X

3. The allegation was that Councillor X failed to comply with aspects of the emergency regulations that were in force during late March, April and May and which were intended to restrict the spread of the coronavirus. The allegation did not cover any activity which was directly included in Councillor X's role as a councillor.
4. The matter was referred for investigation by Mr Mike Dudfield, who is a local government consultant and retired solicitor. Mr Dudfield concluded that the matters complained of, even if substantiated, were outside the scope of the code of conduct. He observed:

"It has been suggested to me that a Councillor should be seen as setting an example at a time of national emergency by leading compliance with the legislation and guidance established by Government to respond to that emergency. Whilst that view is understandable, and I doubt that anyone would disagree with it, it does not mean that any Councillor's conduct relative to the emergency is automatically caught by the Code without reference to the capacity test set by the Code. If the principle set out by the Complainant is correct, then any conduct at this time by any Councillor which was deemed by a complainant to be beyond the Regulations and/or guidance, however remote from the Councillor's role as a councillor, would constitute a breach of the Code. If that situation was considered by a Tribunal or Court, I would expect the Tribunal/Court to find itself obliged to be bound by the reasoning for the decision in the Livingstone case [where the court ruled on what conduct fell within the ambit of the previous standards provisions].

I therefore conclude that the conduct of Councillor [X] in relation to the matters of complaint were not in [their] capacity as a councillor and, consequently, do not constitute a breach of the Code of Conduct.

Having reached this conclusion, it is not necessary for me to consider the various situations that the Complainant has raised and the extent to which, individually, any of them constitute a breach of the Regulations and/or Government Guidance. I have not sought to investigate any of these particular issues any further and I do not offer any opinion on them...

[...]

The Complainant has sought to implicate Councillor [X]'s conduct as being in breach of a number of areas of legislation and I have explained that it is not within my remit to investigate those areas. Even the areas of Regulation and Government Guidance that refer to Covid-19, to the extent that they establish acts of criminal liability, are not enforceable by Fylde Council. [...] The Police are the appropriate body for dealing with alleged breaches of this nature and, in my opinion, it is not the role of the Council, through its Members' Code of Conduct, to seek to determine whether or not a Member has committed a crime when the Police for whatever reason have decided not to action against the Member.

Conclusions

Fylde Council's Members' Code of Conduct applies whenever a Councillor is acting in their capacity as a member, when a Councillor claims to act or gives the impression they are acting in their capacity as a member, or acts as a representative of the authority on another body (paragraph 2.1 of the Code). The Code does not apply whenever a Councillor is involved in a matter in any other capacity.

For the reasons set out [elsewhere] in...this report, I conclude that the conduct of Councillor [X] in relation to the matters of complaint were not in [their] capacity as a councillor and, consequently, do not constitute a breach of the Code of Conduct.

THE COMPLAINT ABOUT COUNCILLOR Y

5. After the complaint about Councillor X had been referred for investigation, a complaint was received about Councillor Y. That complaint also concerned conduct in the Councillor's private capacity alleged to be in breach of coronavirus regulations or guidance. The Monitoring Officer delayed her assessment of the complaint about Councillor Y until Mr Dudfield had completed his report on the complaint about Councillor X.
6. Following the receipt of the report, and applying the reasoning set out in Mr Dudfield's report, the Monitoring Officer decided to not refer the complaint about Councillor Y for investigation. This was because the alleged conduct was not carried out in Councillor Y's capacity as a member of the council and was therefore outside the scope of the code of conduct

FUTURE COMPLAINTS ABOUT CORONAVIRUS RESTRICTIONS

7. Despite the easing of restrictions, legislation and detailed government guidance remain in place to deal with the coronavirus outbreak. It is possible that further complaints could be received alleging that councillors have not complied with restrictions.
8. The Monitoring Officer considers that the conclusion of Mr Dudfield in the report on Councillor X is correct, and that complaints about councillors not complying with coronavirus restrictions do normally fall within the scope of the code of conduct. She therefore proposes to not refer any future allegations of that kind for investigation, unless there are specific circumstances that connect the conduct alleged with the subject member's role as a councillor. Members are invited to confirm that they agree with the Monitoring Officer's position.

IMPLICATIONS	
Finance	No direct implications
Legal	The Council has a duty to have arrangements in place to consider allegations of elected member misconduct
Community Safety	No direct implications
Human Rights and Equalities	No direct implications
Sustainability and Environmental Impact	No direct implications
Health & Safety and Risk Management	No direct implications

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	Head of Governance Tel: 01253 658506	15 July 2020