

AUDIT COMMITTEE
13 APRIL 2022

ETHICAL GOVERNANCE AND MEMBER STANDARDS – UPDATE REPORT

SUMMARY REPORT

Purpose of the Report

1. To update members on issues relevant to member standards and ethical governance.

Summary

2. The report gives members an update of information about issues relevant to member standards since matters were reported to the Committee in September 2021.
3. Also set out in the report are a number of datasets of ethical indicators to assist in monitoring the ethical health of the Council. By reviewing these indicators it is hoped to be able to identify any unusual or significant trends or changes in the volume of data recorded for the relevant period that might provide an alert to any deterioration in the ethical health of the authority.
4. Commentary is included for some data sets to give analysis and explanation for some of the more notable variations. There are no particular issues of concern that have been identified from reviewing the data.

Recommendation

5. Members are asked to note the information presented and to comment as appropriate.

Reason

6. By having information of this nature:
 - (a) Members will be assisted to perform their role.
 - (b) Members will be able to get a better picture of the ethical health of the authority.

Luke Swinhoe
Assistant Director, Law and Governance
Monitoring officer

Background Papers

None – save as mentioned in the text

Luke Swinhoe: Extension 5490

S17 Crime and Disorder	There are no specific issues which relate to crime and disorder
Health and Well Being	There is no specific health and wellbeing impact
Carbon Impact and Climate Change	There is no specific carbon impact
Diversity	There is no specific diversity impact
Wards Affected	All wards are affected equally
Groups Affected	All groups are affected equally
Budget and Policy Framework	This report does not affect the budget or policy framework
Key Decision	This is not an executive report
Urgent Decision	This is not an executive report
Council Plan	There is no specific relevance to the strategy beyond a reflection on the Council's ethical governance arrangements
Efficiency	There is no specific efficiency impact
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Update on matters relevant to Ethical Governance and Member Standards

Members Code of Conduct

7. Members will recall that at the meeting of this Committee on 29 September 2021, following consideration of a report about the Local Government Association (LGA) Model Councillor Code of Conduct Members approved further consultation on the adoption of a replacement Code of Conduct based on the LGA Code of Conduct. After further consultation and engagement on 25 November 2021 Council agreed to adopt a replacement Code of Conduct modelled on the LGA Code of Conduct, effective from 1 January 2022.
8. Subsequent to this the Constitution has been updated and relevant webpages. A number of member training sessions (and also training for relevant staff) have been held on the replacement Code of Conduct and updates to Register of Interest entries have been published on the website.
9. Engagement including TEAMs information sessions has also taken place with Parish Councils. There has been consensus amongst the Parish Councils in Darlington to follow the approach of the Borough Council and to adopt a version of the Code of Conduct based on the LGA Code. To date have 6 out of the 10 Parish Councils in the Darlington area have adopted a replacement Code and others are in the process of doing so. Training has been run for parish council members about the replacement Code of Conduct.

Government response to Committee on Standards in Public Life (CSPL) Report

10. The CSPL advises the Prime Minister, national and local government about ethical standards in public life in England. It monitors, conducts broad inquiries and reports on issues relating to the standards of conduct of all public office holders.
11. The CSPL undertook a review of Local Government Ethical Standards and published its recommendations in a report on 30 January 2019 - available from <https://www.gov.uk/government/publications/local-government-ethical-standards-report> Members were advised of this report in June 2019
12. On the 18 March 2022 the Government published its response to the recommendations <https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report>
13. To assist members the CSPL recommendations and the Government response has been set out in abbreviated form in the table below:

CSPL Recommendations	Government view	Commentary
1. After consulting, the LGA should create an updated model code of conduct.	The LGA published an updated model code in January 2021 – it is a matter for local authorities to decide whether to adopt it.	We adopted a revised Code of Conduct based on the LGA model code in January 2022
2. The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The regulations should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	The Government agrees in principle to this and amending the legislation. Further engagement with interested parties is needed. Members will still need to register home addresses with the monitoring officer	Members can ask the monitoring officer to exclude information such as an address from the public register, if it is sensitive information (and if disclosed could lead to the member or a person connected with them being subjected to violence or intimidation)
3. Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. The Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	It is important to recognise that there is a boundary between a member's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.	It is important to have the discretion to consider individual cases on their own facts rather than removing discretion In practice most decisions are reasonably obvious from the facts.

<p>4. The Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority</p>	<p>The LGA Code of Conduct includes actions that could give the impression to a reasonable member of the public with knowledge of all the facts that they are acting as a member. The Government was content to leave this with individual local authorities and has no immediate plans to legislate</p>	<p>Our Code of Conduct includes this definition</p>
<p>5. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.</p>	<p>The confidence in member decisions must be maintained and unpaid roles may need to be declared if relevant. There is also a balance with members rights to have a private life. The Government will keep this under review but has no immediate plans to legislate</p>	<p>Our Code of Conduct reflects this</p>
<p>6. Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record gifts and hospitality received over a value of £50 or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.</p>	<p>The LGA Code of Conduct includes a requirement for members to register gifts or hospitality with an estimated value of at least £50. It did not include any requirements about the total value of gifts or hospitality received from the same source over period. Local authorities can include their own provisions. There is merit in guidance on the thresholds for gifts and hospitality. A register of gifts and hospitality should be publicly available.</p>	<p>We currently publish a register of gifts and hospitality. Our Code of Conduct reflects the LGA provisions about gifts and hospitality.</p>
<p>7. Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the</p>	<p>Section 31 requires a councillor not to participate in a discussion or vote on a matter where they have a disclosable pecuniary interest (DPI). Section 30(3) further provides that relevant pecuniary interests of a councillor's spouse or partner are considered a DPI of the councillor. The Committee had concerns that S.30(3) infringe on the privacy of a councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved. The Government will keep this matter</p>	<p>That the views on this matter are noted</p>

<p>relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to the matter”</p>	<p>under review but has no immediate plans to repeal Section 31.</p>	
<p>8. The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.</p>	<p>The Government does not accept this recommendation as appropriate for legislation, but rather more appropriate as a best practice recommendation for local authorities. In principle, it may be attractive to limit the terms Independent Persons serve. However, discussions with Monitoring Officers indicate that in practice most local authorities would find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council. When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.</p>	<p>That the views on this matter are noted</p>
<p>9. The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes</p>	<p>The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it is not about the content of councils’ minutes or decision notices. The policy suggestion has merit but will depend on circumstances. In cases where there is no case to answer, it should not necessarily be a legal requirement to publish details of that unfounded complaint.</p>	<p>Our current practice is to include the views of the Independent Person in any Decision Notice</p>
<p>10. A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.</p>	<p>There is no provision in current legislation for a sanction to suspend a councillor who has been found to have breached the code of conduct. This was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime.</p>	<p>That the views on this matter are noted</p>
<p>12. Local authorities should be given the discretionary power to establish a decision-making standards committee with voting</p>	<p>This is not specifically addressed</p>	

<p>independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.</p>		
<p>13. Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.</p>	<p>This is not specifically addressed</p>	
<p>14. The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.</p>	<p>This is not specifically addressed, but the following view was expressed:</p> <p>It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors</p>	<p>That the views on this matter are noted</p>
<p>16. Local authorities should be given the power to suspend councillors, without allowances, for up to six months.</p>	<p>Local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box. The Government recommended that every political party establish their own code of conduct for party members, including elected representatives. The Government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.</p>	<p>That the views on this matter are noted</p>

<p>11. Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.</p>	<p>The Government agrees in principle. Initial soundings with the sector indicate that some local authorities already provide legal indemnity for Independent Persons. The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation.</p>	<p>That the views on this matter are noted</p>
<p>15. The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g., bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.</p>	<p>The Government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled and would encourage this as best practice by the sector.</p> <p>The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.</p>	<p>Data is already published about the volume of member complaints received.</p>
<p>17. The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.</p>	<p>The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.</p> <p>The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.</p>	<p>That the views on this matter are noted</p>
<p>18. The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.</p>	<p>It is a criminal offence to fail to declare pecuniary interests. The Government does not agree with this recommendation, the criminal offence of a non-disclosure of pecuniary interest is a safeguard and deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints.</p>	<p>That the views on this matter are noted</p>
<p>20. Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.</p>	<p>The Government does not agree that this is necessary and has no plans to repeal S.27(3). The Government considers that the adoption of the principal authority's code or the new model code is a matter for local determination. There are merits in achieving consistency within principal authority areas to eliminate potential confusion amongst constituents and elected members but there may be instances where a parish council may want to add to the code of</p>	<p>That the views on this matter are noted.</p>

	their principal authority to reflect local circumstances.	
21. Section 28 (11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority	The Government has no current plans to repeal Section 28 (11) but will give this matter further consideration	That the views on this matter are noted.
22. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal	The three local government statutory officers are the Monitoring Officer, the Head of Paid Service (Chief Executive) and the Chief Finance Officer (often referred to as the S.151 Officer). Under the current disciplinary arrangements for statutory officers, any dismissal decision must be taken by full council, following a hearing by a panel that must include at least two Independent Persons. The Committee consider that the disciplinary protections for statutory officers should be enhanced, by extending disciplinary protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal. The Government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations. The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.	That the views on this matter are noted.
23. The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	The Government agrees with the principle that openness is essential. Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites, and Government is recommending that this is adopted as a best practice recommendation. The Government published the UK National Action Plan for Open Government 2021 – 2023 in January 2022. This includes a commitment on local transparency. The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of	Our Whistleblowing policy is published on the website.

	<p>specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.</p>	
<p>24. Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1998.</p>	<p>Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. They are prescribed by an order made by the Secretary of State (for Business, Energy and Industrial Strategy) for this purpose. A complete list of prescribed persons is available here: Whistleblowing: list of prescribed people and bodies - GOV.UK (www.gov.uk) Local councillors would not meet the criteria of being external to an individual’s workplace and could not be considered as a ‘prescribed person’ for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament. However, the Government recognises that this may provide a further check and balance against council corruption or wrongdoing and is open to further representations on the matter on how local accountability can be strengthened in this regard.</p>	<p>That the views on this matter are noted.</p>

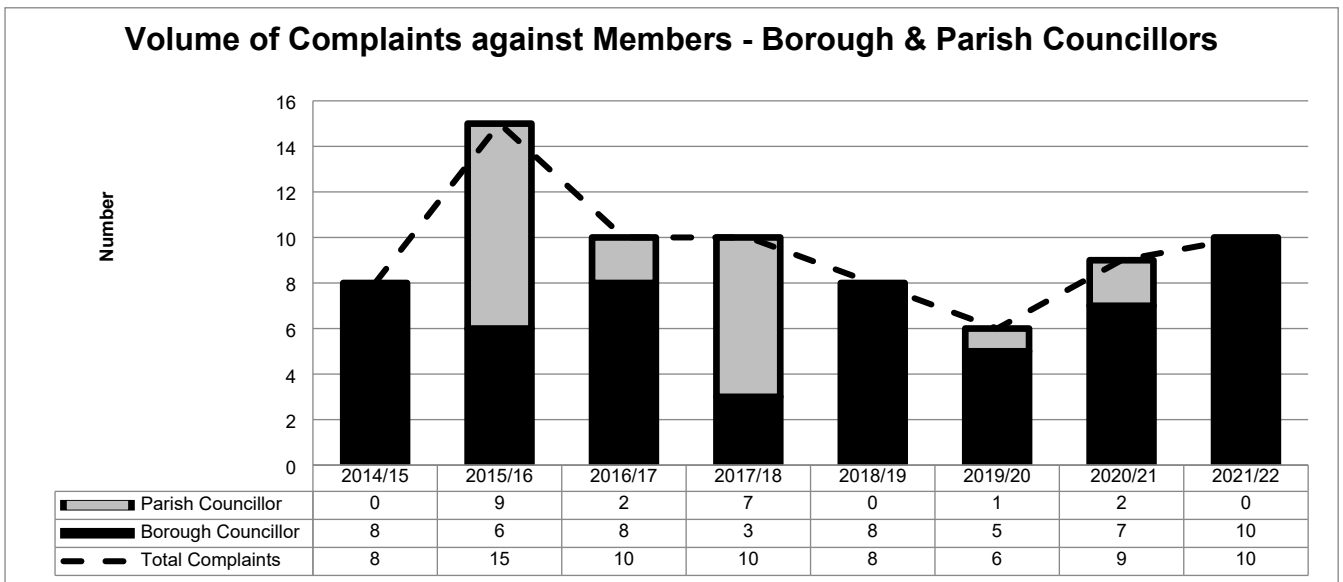
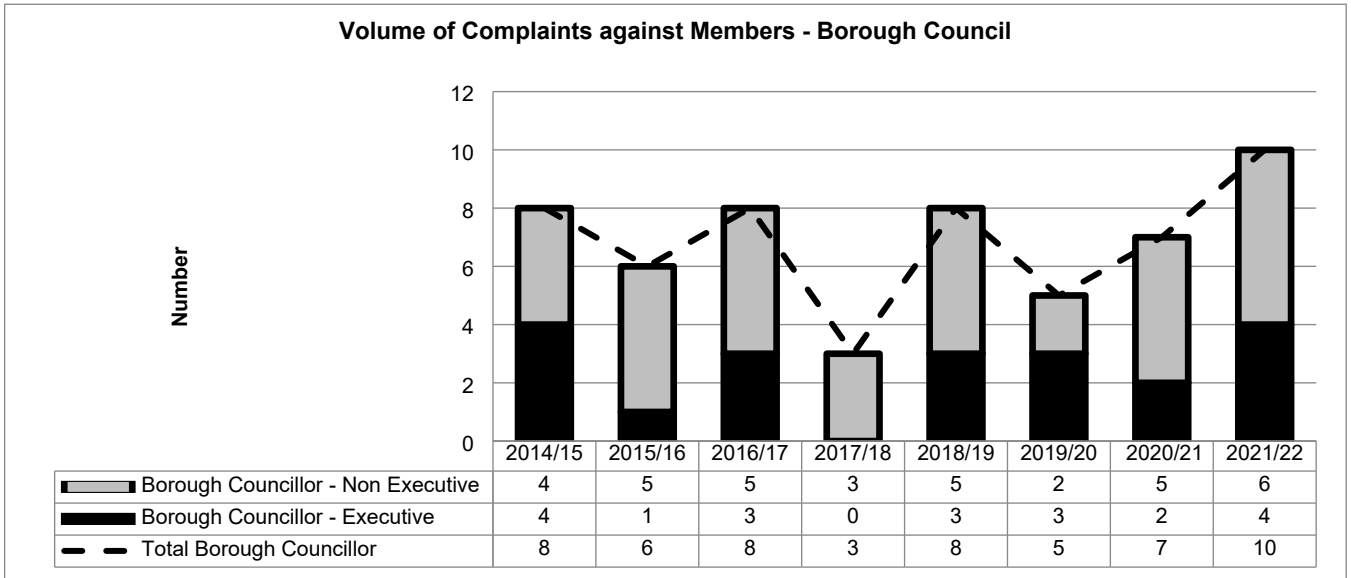
Members Code of Conduct/ Register refresh

- 14. All members have been advised of the need to review the entries that they have made on their register of interests and where necessary to provide an updated form.

Ethical Indicators

- 15. Set out in Appendix 1 are a range of data sets that it is hoped will to assist in monitoring the ethical health of the Council. By reviewing the indicators, it will be possible to identify any unusual or significant changes in the volume of data recorded for the relevant period that might provide an alert to any deterioration in the ethical health of the authority.
- 16. Member’s observations about this information are invited.

Member Complaints



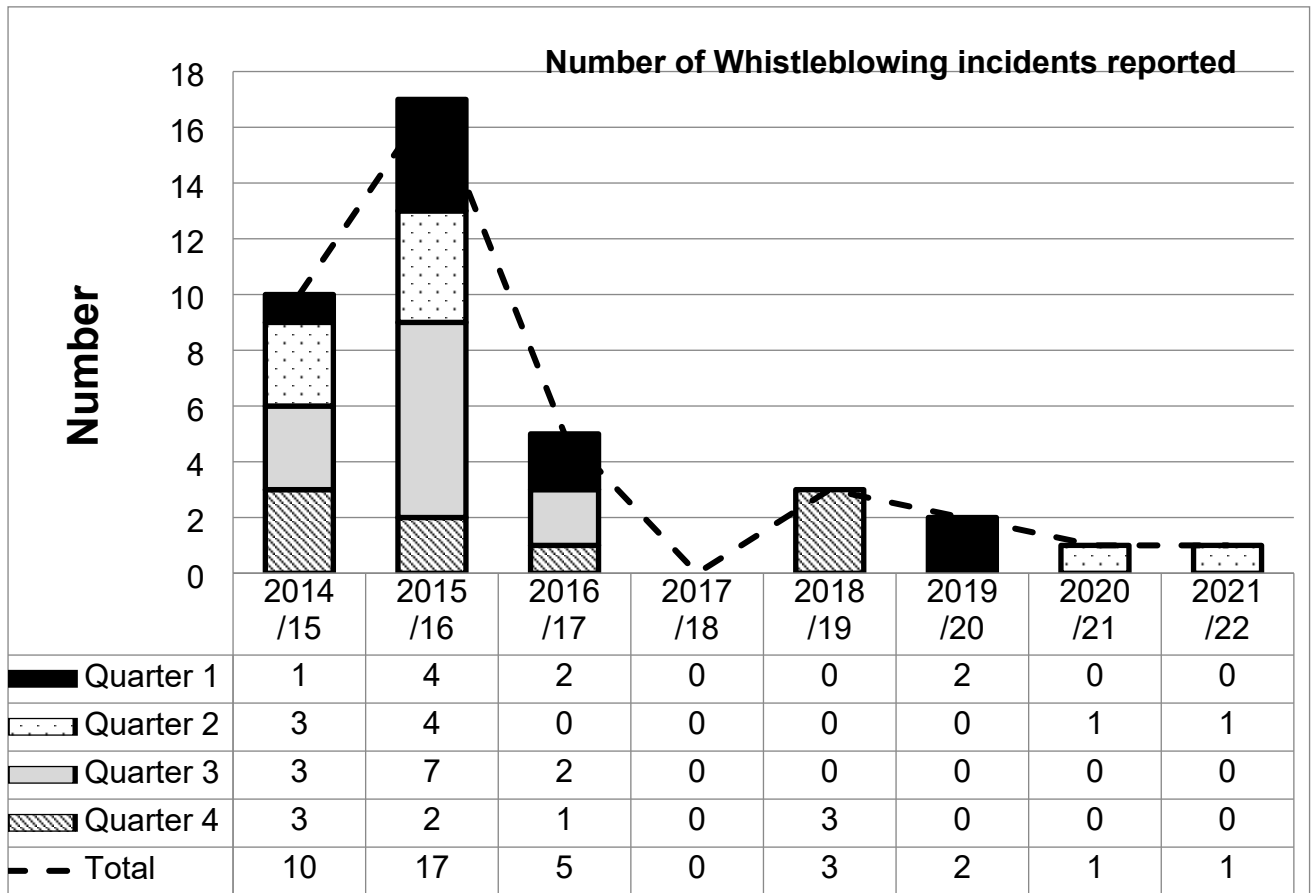
Comments

The average number of Member complaints per year from 2014/15 to 2021/22 was 9.5 per year.

Due to low volumes, interpreting the information needs a degree of caution. It is also the case that there can be spikes in complaints caused by particular concerns (for instance a number of complaints about a particular problem, or a complainant making the same complaint against a number of Members) which can disproportionately affect the overall total.

Over the period 2014/15 to 2021/22 there have been 21 complaints made in respect of Parish Councillors and for the same period 55 complaints relating to Borough Councillors. The fact that there are more complaints in respect of Borough Council members is perhaps unsurprising given the types of decisions they are involved in making and the more prominent role that they play compared to Parish Councillors.

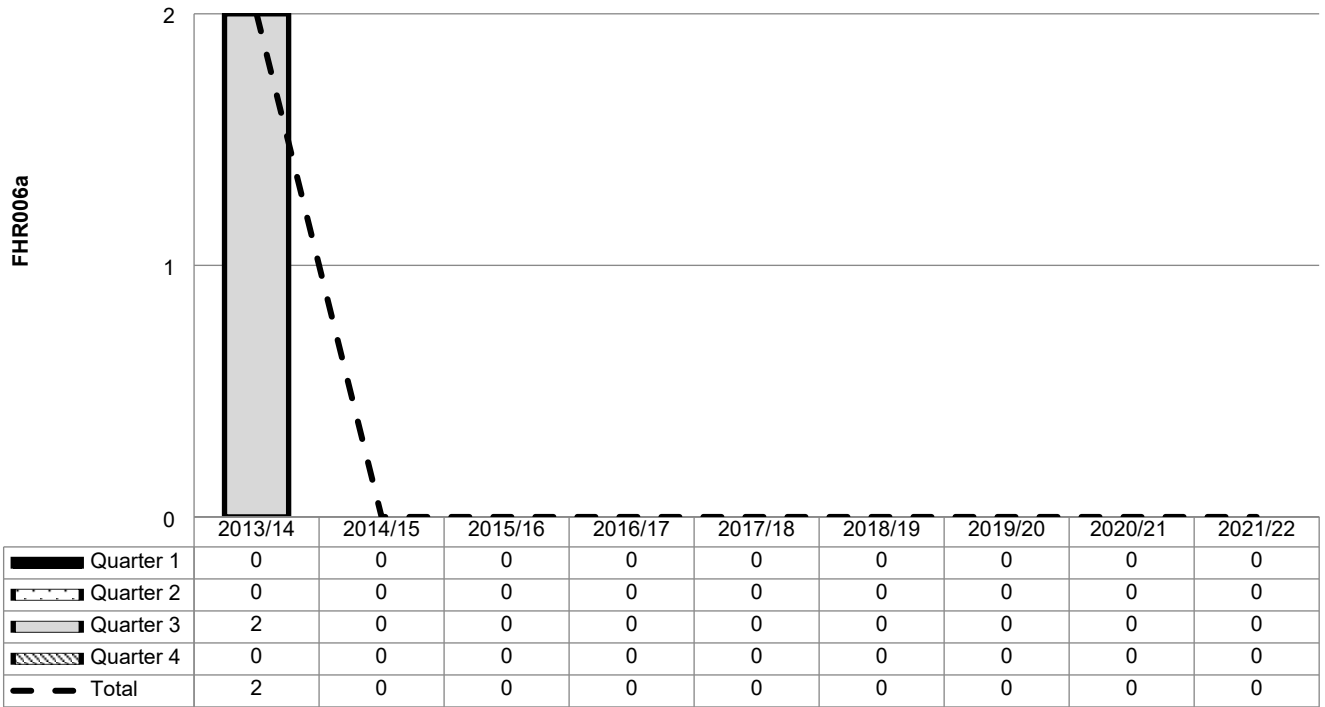
Whistleblowing



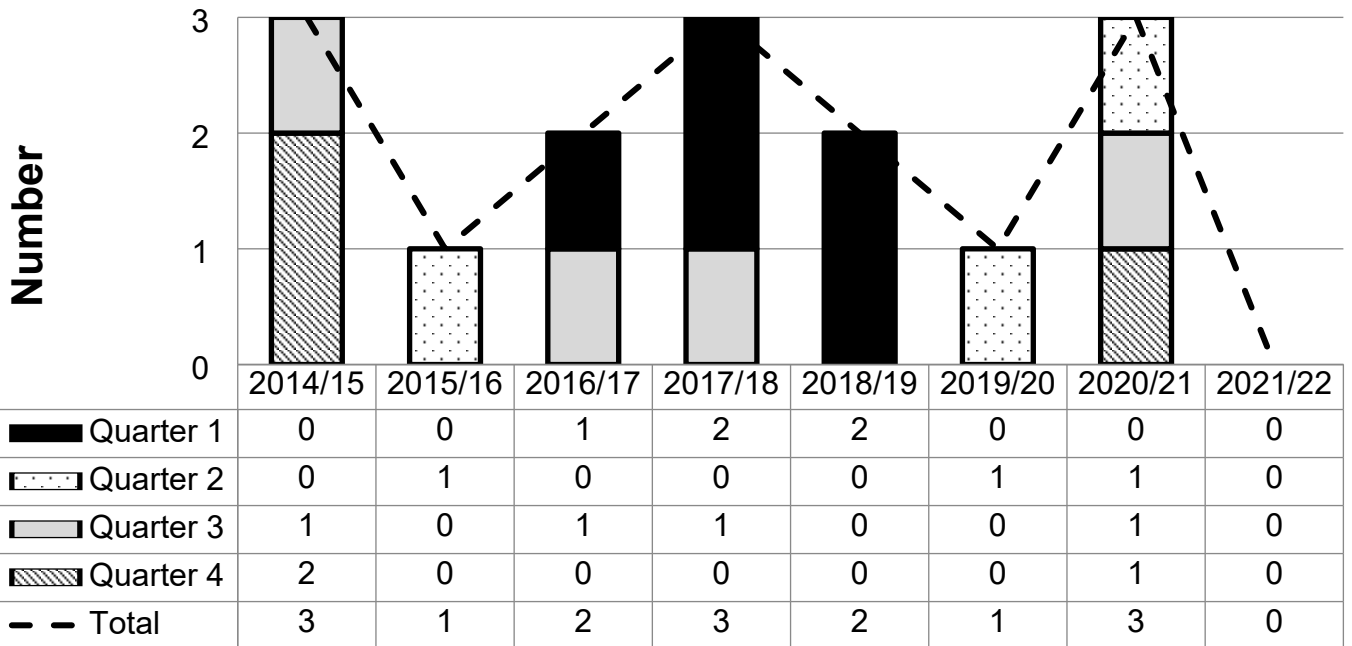
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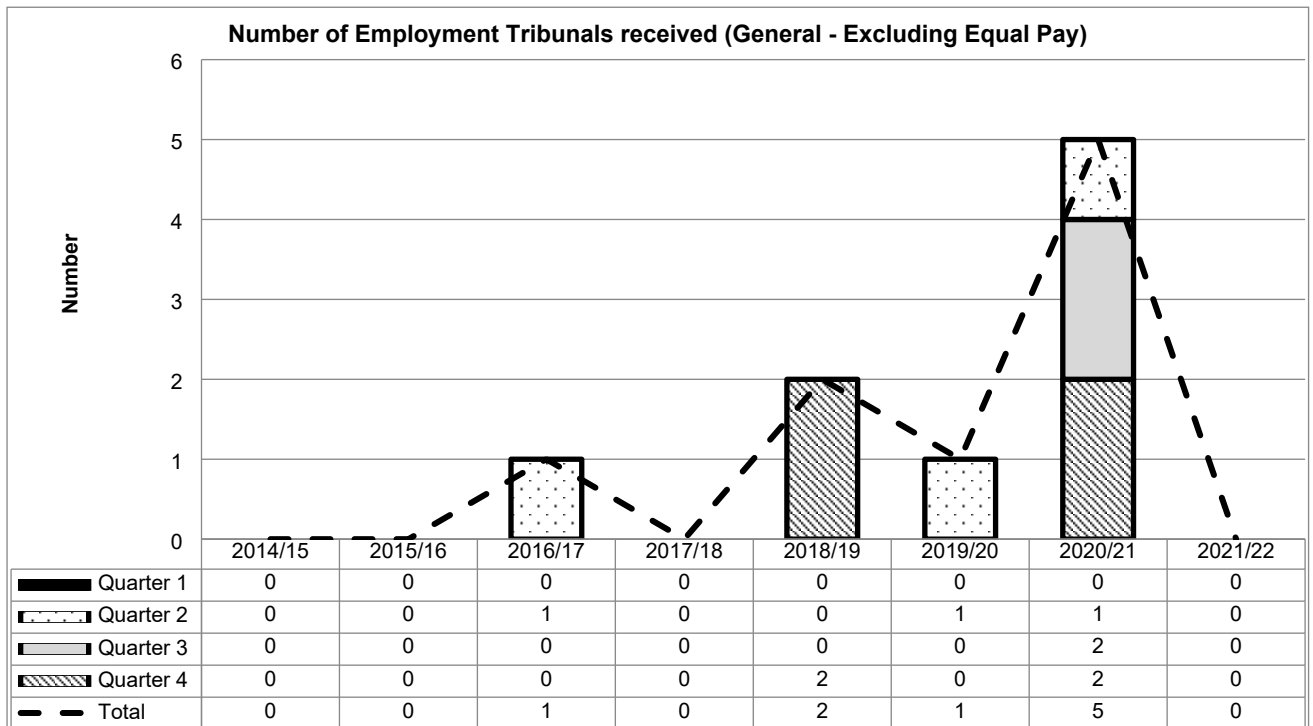
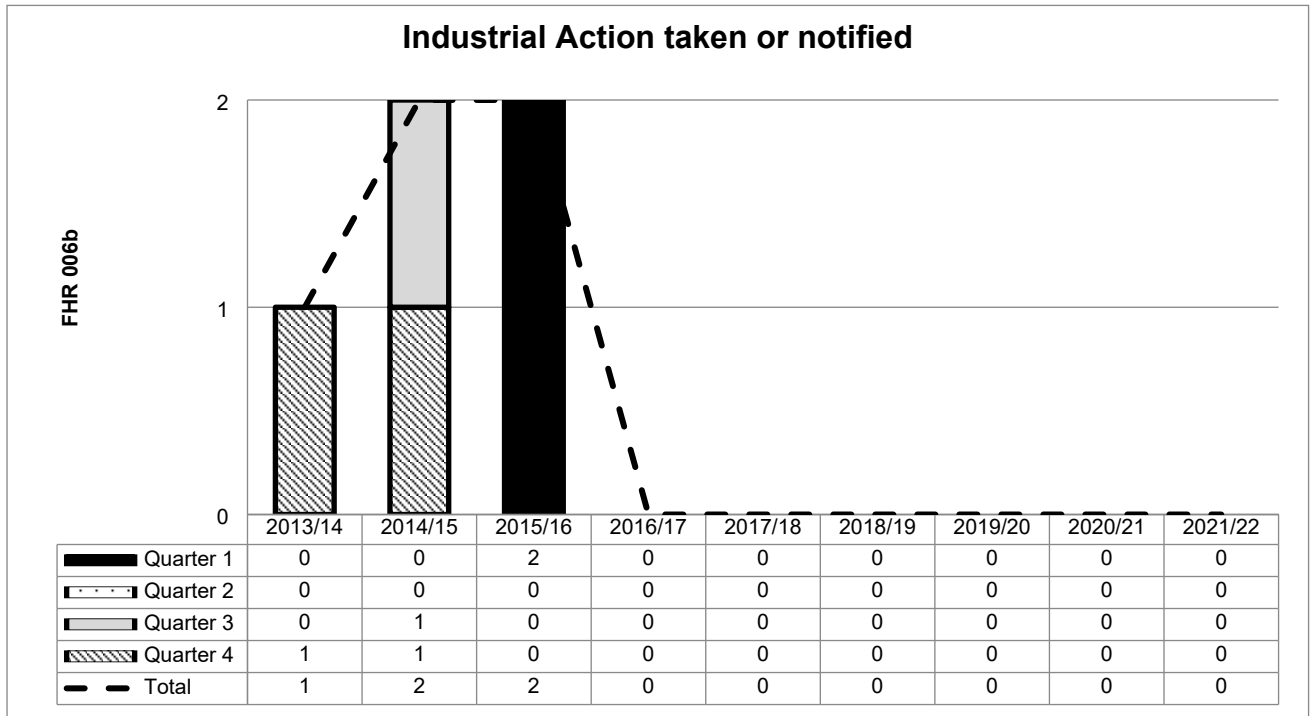
Publicity about the whistleblowing policy took place in the Autumn of 2018 and it has continued to be raised annually in newsletters to officers. Work has also undertaken to highlight the Council's Anti-Fraud and Corruption Strategy.

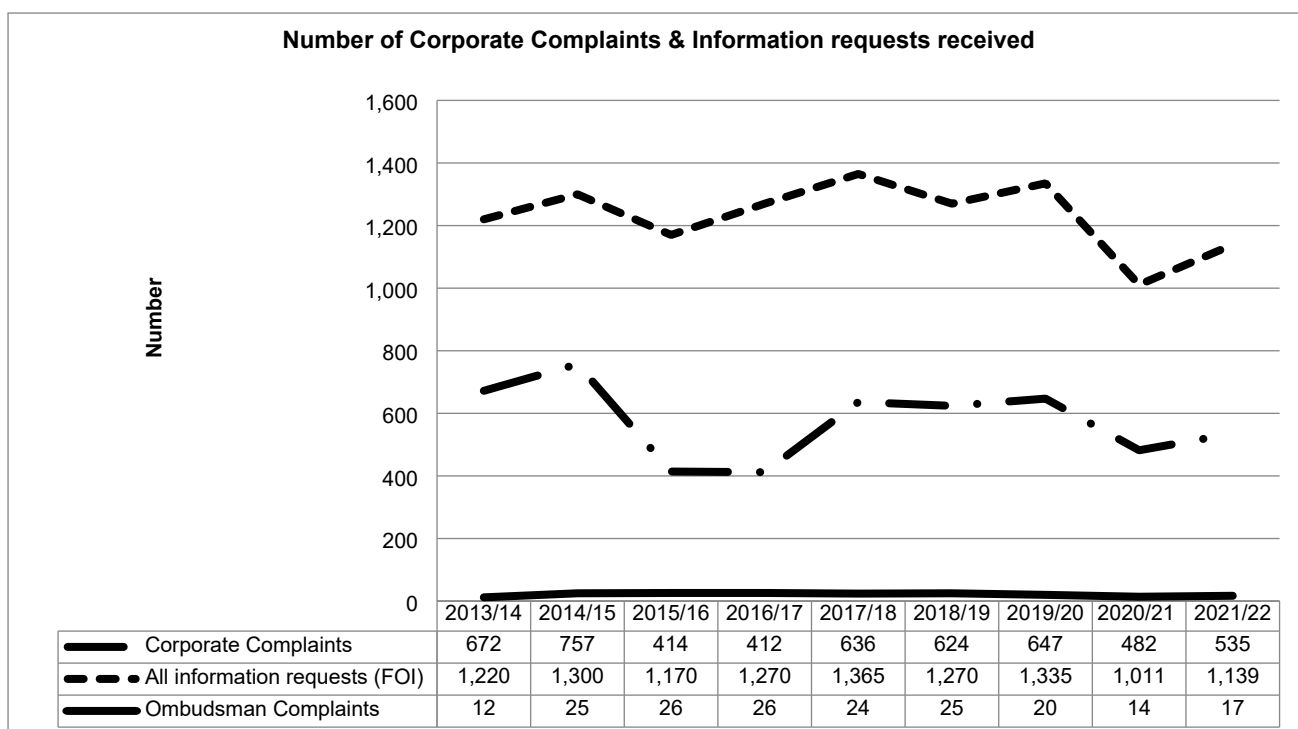
Disciplinary action relating to breaches of the Member / Officer Protocol



Disciplinary action relating to Fraud







Comments

2017/18 – One of the major factors in the increase in corporate complaints was the introduction of the Council’s policy to no longer provide a recall service for missed refuse collections. There was also a significant increase in corporate complaints about Customer Services following a restructure, the most common theme was dissatisfaction with telephone waiting times. Additional staffing resource was brought in, as a response to the complaints about telephone waiting times.

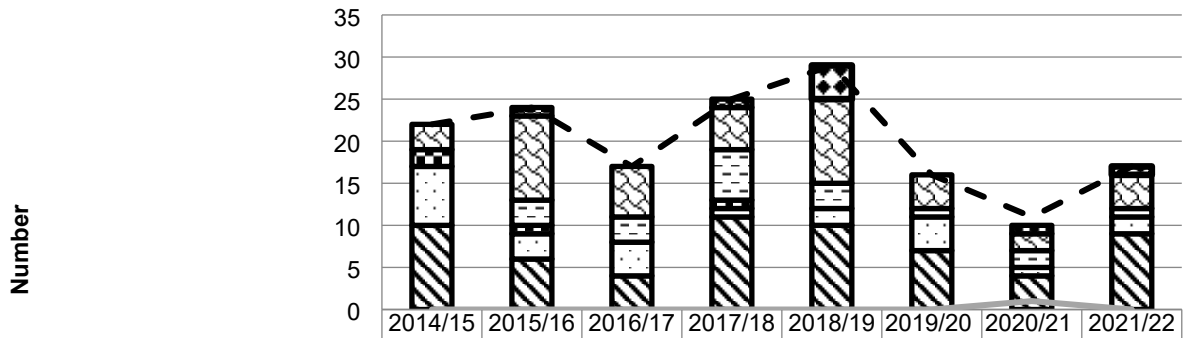
2018/19 – The Council received 624 corporate complaints, a slight decrease from 636 the previous year. While there were increases in some areas, those which saw a decrease in complaints included Housing Benefit and Council Tax Support, Customer Services, Development Management and Parking Appeals.

2019/20 – The Council received 647 corporate complaints, an increase from 624 in 2018/19. The new Garden Waste service received 70 complaints while there were increases in a number of areas including, Refuse and recycling, ASB and Civic Enforcement Ops and Grounds Maintenance. Housing and Building Services saw a significant decrease in complaints while there were also decreases in other areas including Planning, Development Management and Environmental Health.

2020/21 - The Council received 482 corporate complaints, a decrease from 647 in 2019/20. The Council also saw a decrease in complaints across its other complaints procedures during this period. This coupled with the Local Government and Social Care Ombudsman’s decision to cease its investigations during the early stages of the pandemic have likely been a contributing factor in the continued decrease in the number of Ombudsman complaints received.

2021/22 – The Council received 535 corporate complaints, an increase of 53 from the previous year. The Council also saw an increase in complaints across its other complaints procedures, following the reduction seen during the early stages of the pandemic.

Ombudsman Outcome Category



Premature	0	0	0	0	4	0	0	1
Upheld: Maladministration No Injustice	0	1	0	1	0	0	1	0
Upheld: Maladministration and Injustice	3	10	6	5	10	4	2	4
Not upheld: No maladministration	0	3	3	6	3	1	2	1
Not upheld: no further action	2	1	0	1	0	0	0	0
Closed after initial enquiries: out of jurisdiction	7	3	4	1	2	4	1	2
Closed after initial enquiries: no further action	10	6	4	11	10	7	4	9
Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process	0	0	0	0	0	0	1	0
Total	22	24	17	25	29	16	11	17