



Audit & Governance Committee		Agenda Item
26 January 2024		11
Title:	Overview and lessons learned from Code of conduct decision- 14 th November 2023	
Report of:	Edwina Adefehinti	
Lead Member:	Cllr Edna Murphy- Governance	
Public Report:	Yes	
Key Decision:	No	
Voting Arrangements:	Majority	

Recommendations:

A	This committee to identify areas for further work which may include amendments to the code of conduct and/or hearings.
B	The committee to consider whether to write to the government and Committee on Standards in public to reconsider the law on sanctions.

Strategic Objective(s):

The proposals within this report fit under the following strategic objective(s):

	The report improves the CPCA's corporate governance framework and helps to protect the interests of the CPCA and promotes achieving Best Value and High Performance.
--	--

1. Purpose

1.1	To provide the Committee with an overview of observations from the recent code of conduct complaint concluded on 14 th November 2023.
1.2	

2. Proposal

2.1	To make any comments or recommendations regarding code of conduct complaints, investigations, sanctions, hearings and decisions.
2.2	

3. Background

3.1	<p>The Hearing Panel (a subcommittee of Audit and Governance committee) met on 14th November 2023, to consider a report by an independent investigator. The Hearing panel was a cross party committee consisting of John Pye as the Independent Chair, Cllr Andy Coles, Cllr Simon Smith and Cllr Mark Inskip who are members of the Audit & Governance Committee.</p> <p>The Hearing panel unanimously agreed with the findings of the independent investigator and resolved the following:</p> <p>Sanctions</p> <ol style="list-style-type: none">1. Publish the Findings in the Decision Notice.2. Report Findings to the CA Board.3. The Mayor to provide a written apology for the Decision Notice and consult with the Monitoring Officer on the appropriateness of providing a written apology directly to one or more of the complainants.4. The Mayor to provide an undertaking not to repeat his behaviour, and to agree with the Chief Executive an appropriate development and training programme to take place over the next six months; this should include the appropriate HR best-practice when operating in a senior Member role. <p>Recommendations</p> <ol style="list-style-type: none">5. The CPCA Board to agree a comprehensive Induction process for whenever a new Mayor takes up their appointment.6. Audit & Governance committee to review the relevant parts of the Constitution, in the light of the lessons learned from this first Sub-Committee hearing and make recommendations to the CA Board <p>Actions taken:</p> <ol style="list-style-type: none">i. The decision notice was published on 17th November 2023.ii. The findings were reported to the CPCA Board on 29 November 2023iii. The Mayor has apologised to two complainants, the monitoring officer sent the mayor's apology to the complainants on Friday 17th November. In addition, the Mayor has provided a written apology which was published with the Decision Notice.iv. The Mayor has also provided an undertaking as requested by the Hearing Panel. The CEO agreed a four-session training and development programme with the mayor. The first session dealt with the CPCA's Member/Officer Protocol and was held on 18 January 2024. The session discussed topics such as the CPCA member officer protocol, actions to take in example scenarios, how and when the protocol applies, recognising statutory officers, relations with statutory officers and officers in general, setting expectations, ethical behaviour etc. The session was attended by the mayor, the CEO and the other two statutory officers, i.e. the Section 73/Chief Finance officer and the MO. The second session will cover HR Policies and Arrangements and will be held on 22nd January 2024. The third session will deal with Mayoral Office Protocols and is scheduled for 5 February 2024. The fourth session will deal with Values and Behaviours, and this is scheduled for 29 February 2024.v. This report is brought to enable the Audit & Governance committee to review the relevant parts of the Constitution, in the light of the lessons learned from this first Sub-Committee hearing and make recommendations to the CA Board.
3.2	<p>The hearing on 14th November 2023 was the first for the CPCA.</p> <ol style="list-style-type: none">i. The first point that the MO would like to raise is that it felt that the process for the investigation took a long time. However, this is not the case, there were several reasons for the investigation taking a lengthy period, this included illnesses, officers leaving the employment of the CPCA, ensuring a thorough and fair process.

- ii. There was a breach of confidentiality due to a leak in the press. It is the view of the MO that some of the documents and information that was shared widely should not have been shared at that stage and if shared a confidential method should have been used. With code of conduct complaints, it is good process for details of the complaint to be kept confidential due to fair hearing. It is not unusual for a code of complaint investigation to result in a non-breach, by which stage details of the member would have been in the public domain.
- iii. The committee may wish to consider whether sanctions available in the constitution is adequate. Concerns have been raised by many including the Committee on Standards in Public Life ("CSPL") about the effectiveness of the changes to the previous standards regime effected by the Localism Act 2011 (LA 2011) requiring local authorities to draw up their own local codes of conduct. Since the LA 2011 does not give a relevant authority (or its standards committee) any power to impose sanctions for breach of its code, such as disqualification from office or withdrawal of monetary allowances payable under the Local Authorities (Members' Allowances) (England) Regulations 2003, sanctions likely to be imposed are:
 - A formal letter to the member.
 - Formal censure by motion.
 - Removal of the member from a committee/committee.
 - Adverse publicity.

The Government has rejected a recommendation by the Committee on Standards in Public Life (CSPL) that local authorities should be able to suspend councillors without allowances for up to six months for breaches of the code of conduct.

However, the Government response said: *"There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and 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. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime."*

"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." The response insisted that *"on the rare occasions" where notable breaches of the code of conduct had occurred, local authorities were 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 Department for Levelling Up, Housing and Communities (DLUHC) noted that as part of its response to the CSPL's report on intimidation in public life, the Government had recommended that every political party establish their own code of conduct for party members, including elected representatives.

The response added that the Government would 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>The CSPL had also called on the Government to clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. <i>“These powers should be put beyond doubt in legislation if necessary,”</i> it had said.</p> <p>In its response the Government said: <i>“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.”</i></p> <p><i>“The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.”</i></p> <p>In other comments the Department for Levelling Up, Housing and Communities said: <i>On a CSPL recommendation that councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media, the DLUHC said it was for individual local authorities to consider if their code of conduct is adequate in addressing the issue of councillors’ inappropriate use of social media. “It is important to recognise that there is a boundary between an elected representative’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.”</i></p> <p>iv. The committee resolved that the mayor consider the appropriateness of apologising to one or more of the complainants. The mayor apologised to two of the complainants, however, there has been some comments made about the apology. The Committee may want to discuss sanctions requiring apologising to complainants.</p> <p>v. The membership of the sub-committee should be clarified to confirm substitutes.</p> <p>vi. The complaint had details and comments concerning ex-employees. However, the committee does not have jurisdiction to deal with employees. Employees fall within the jurisdiction of the Head of Paid Service and interaction with employees are governed by HR rules and employment law. This committee would be going beyond its statutory powers and powers under the constitution, if it sought to determine conduct pertaining to an employee. Any decision made would most likely be ultra vires and challengeable by way of judicial review.</p>
3.2	<p><i>Alternative options considered:</i></p> <p>Do nothing</p>

4. Appendices

4.1	Appendix 1- Code of conduct
-----	-----------------------------

5. Implications

Financial Implications

5.1	
-----	--

Legal Implications

6.1	<p>Under the Constitution this committee has the responsibility:</p> <ul style="list-style-type: none"> for ensuring the Combined Authority has effective policies and processes in place to ensure high standards of conduct by its Members and Co-opted Members for assisting the Members and Co-opted Members to observe the Code of Conduct and
-----	---

	<ul style="list-style-type: none"> • for implementing the obligation to ensure high standards of conduct amongst Members <p>The Members' Code of Conduct is set out in the constitution. The CPCA's arrangements in Chapter 16 of the constitution, under which complaints about Member conduct are investigated and decided to comply with the relevant provisions of the Localism Act 2011.</p>
Public Health Implications	
7.1	
Environmental & Climate Change Implications	
8.1	
Other Significant Implications	
9.1	
Background Papers	
10.1	