



## Standards Committee

**Date** Thursday 7 June 2018  
**Time** 10.00 am  
**Venue** Committee Room 1A - County Hall, Durham

---

### Business

#### Part A

**Items during which the Press and Public are welcome to attend.  
Members of the Public can ask questions with the Chairman's agreement.**

1. Apologies for Absence
2. Declarations of Interest, if any
3. Minutes of the Meeting held on 22 March 2018 (Pages 3 - 6)
4. Code of Conduct Update (Pages 7 - 18)
5. Standards Update (Pages 19 - 28)
6. Local Assessment Procedure for Code of Conduct Complaints (Pages 29 - 72)
7. Social Media Guidance (Pages 73 - 82)
8. Such other business as in the opinion of the Chairman of the Meeting is of sufficient urgency to warrant consideration.

**Helen Lynch**  
Head of Legal and Democratic Services

County Hall  
Durham  
30 May 2018

**To: The Members of the Standards Committee**

Councillors J Atkinson, A Bainbridge, E Bell, J Bell, J Clark, M Clarke,  
E Huntington, B Kellett, J Nicholson, A Savory and D Stoker

Town Councillor T Batson and Parish Councillor R Harrison

---

**Contact: Jill Errington**

**Tel: 03000 269 703**

---

**DURHAM COUNTY COUNCIL**  
**STANDARDS COMMITTEE**

At a Meeting of **Standards Committee** held in Committee Room 2 - County Hall, Durham on **Thursday 22 March 2018 at 10.00 am**

**Present:**

**Councillor B Kellett (Chairman)**

**Members of the Committee:**

Councillors T Henderson, E Huntington (Vice-Chair), M McGaun, M McKeon, J Nicholson and A Savory

**Co-opted Members:**

Town Councillor T Batson and Parish Councillor R Harrison

**1 Apologies for Absence**

Apologies for absence were received from Councillors E Bell, J Bell, J Clark and M Clarke.

**2 Declarations of Interest**

There were no declarations of interest in relation to any items of business on the Agenda.

Mr Batson informed the meeting that he had recently joined an organisation called Confor and this was not yet included on his Register of Interests Form.

**3 Minutes**

The Minutes of the meeting held on 1 December 2017 were agreed as a correct record and signed by the Chairman.

**4 Code of Conduct Update**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided Members with an update on activity since the last meeting in respect of complaints received by Durham County Council (for copy see file of Minutes).

Mr Harrison referred to the complaints listed at Appendix 2 of the report and asked why the Subject Matter and detail of Council were anonymised when previously they were not. The Legal Manager – Governance and Elections replied that previously the report had been in the closed part of the Committee agenda, but to

increase public knowledge of complaints which had been submitted, the report had been anonymised and brought into the open part of the agenda.

Mr Harrison considered that it was important for the Committee to be provided with details of both Councillors and Council's so that trends could be identified if any particular Councillor or Council was regularly the subject of a complaint. The Legal Manager – Governance and Elections informed the Committee that this information was available on Decision Notices which were issued for each complaint and these were public documents. However, she would discuss this with the Head of Legal and Democratic Services to see what could be done to add value for the Committee.

The Legal Manager – Governance and Elections added that the Executive Director of the County Durham Association of Local Councils is consulted when problems arose with Parish Councils.

**Resolved:**

That the report be noted.

**5 Standards Update**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided Members with an update on national developments, consultations and court cases which related to the work of the Committee (for copy see file of Minutes).

**Resolved:**

That the report be noted and Officers be requested to monitor the progress of the matters referred to and update the Committee as appropriate.

**6 Review of the Members Code of Conduct**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which sought approval of a revised Code of Conduct for Members of Durham County Council (for copy see file of Minutes).

The Legal Manager – Governance and Elections informed the Committee that the revised Code of Conduct had been considered by the Council's Constitution Working Group and was as a result of a review of the County Council's Constitution.

Councillor Kellett considered the revised Code of Conduct to be clearer and more concise and informed the Committee that it was well received by the Constitution Working Group.

**Resolved:**

It be recommended to Council that the revised Member Code of Conduct be adopted as part of the Annual Review of the Constitution.

## **7 Protocol on Member/Officer Relations**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided Members regarding a revised protocol on Member and Officer relations (for copy see file of Minutes).

Mr Batson informed the Committee that the revised protocol was a comprehensive, well-written document and praised those involved in its production.

### **Resolved:**

It be recommended to Council that the revised protocol on Member and Officer relations be adopted as part of the Annual Review of the Constitution.

## **8 Social Media Guidance**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which proposed draft Social Media Guidance (for copy see file of Minutes).

The Legal Manager – Governance and Elections informed the Committee that the Guidance was intended for those who wished to use Social Media. Comments on the Guidance had been sought from the Council's Corporate Communications Team and these would be incorporated into the Guidance and brought to a future meeting of the Committee, prior to being consulted upon.

### **Resolved:**

That the draft Social Media Guidance be approved in principle, reflect comments from Corporate Communications and brought to a future meeting.

## **9 Review of Local Government Ethical Standards: Stakeholder Consultation**

The Committee considered a report of the Head of Legal and Democratic Services regarding the review by the Committee on Standards in Public Life (CSPL) of local government ethical standards (for copy see file of Minutes)

The Legal Manager – Governance and Elections informed the Committee that the issues raised by CSPL were outlined at paragraph 8 and Appendix 2 of the report. It was proposed that the Head of Legal and Democratic Services prepare a collective response in consultation with the Chairman of the Committee.

### **Resolved:**

That the Head of Legal and Democratic Services prepare a collective response in consultation with the Chairman of the Committee.

This page is intentionally left blank

**Standards Committee**

**7 June 2018**



**Code of Conduct Update**

---

**Report of Helen Lynch, Head of Legal and Democratic Services  
and Monitoring Officer**

---

**Purpose of the Report**

1. To provide Members with an update on activity since the last meeting in respect of complaints received by Durham County Council.

**Complaints**

2. Whilst it would not be appropriate to debate any complaint which has not yet been assessed, the Committee will wish to know the volume of complaints of alleged breaches of the Code of Conduct currently being assessed and the rate of progress in bringing complaints to a conclusion. Complaints are assessed in accordance with the Council's Procedure for Local Assessment of Complaints dated May 2016.
3. Since the last meeting of the Committee held on 22 March 2018 there has been a slight reduction in the volume of complaints received. Attached at Appendix 2 is a table which sets out the status of those complaints which are currently regarded as live complaints or which have been completed.
4. At the last meeting ten complaints were reported as being under consideration, and Decision Notices have now been issued in respect of all of these complaints. The complaints are ref: COM 134, COM 136, COM 137, COM 138, COM 140, COM 141, COM 142 and COM 143 - 145, and are included in Appendix 2 to this report. Three of these complaints have been referred for investigation.
5. Since the last meeting eight new complaints have been received, one of which has been withdrawn. Of these, two have been completed and five are under consideration.
6. The table is intended to provide an overview of complaints handling. Decision notices will also be available for member inspection.

## **Recommendation**

7. Members are asked to note the report.

---

**Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886**

---

---

## **Appendix 1: Implications**

---

**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It must also have in place arrangements under which allegations about breaches of the Codes of Conduct, of the Council's own members and of members of Parish/Town Councils for which the Council is the principal authority, can be investigated and decisions on allegations can be made.

This page is intentionally left blank

**APPENDIX 2**

**Code of Conduct Complaints - Update  
7 June 2018**

| <b>Ref No:</b> | <b>Subject Member</b> | <b>Date received and complainant</b> | <b>Allegations</b>   | <b>Paragraphs of Code</b>   | <b>Date of Decision Notice</b>          | <b>Outcome</b>  |
|----------------|-----------------------|--------------------------------------|--|---|---|---|
| COM 134        | County Councillor     | 4 December 2017<br>Local Resident    | <p>The complainant complained that the County Councillor had failed to complete his register of interests within 28 days of election, and when published on 6 December 2017 the complainant noted that it was undated and that the Councillor had not declared that he owned a farm, which he had stated as part of an ongoing planning inquiry.</p> <p>In addition it was noted by the Solicitor with conduct of the planning inquiry that the Councillor's representations at the Inquiry were critical of Council Officers and their actions.</p> | Part 1 paragraphs 4 and 6, Part 2 paragraph 11 and potentially paragraph 15 | 29 January 2018<br>and<br>29 March 2018 | The complaint was referred to the Police to consider the Councillor's alleged failure to declare his disclosable pecuniary interest within 28 days of election and/or in a farm that he owns. The Police determined not to take further action and in accordance with the Decision Notice issued on 29 March 2018 an Investigation is being undertaken. |

| <b>Ref No:</b> | <b>Subject Member</b> | <b>Date received and complainant</b> | <b>Allegations</b>  | <b>Paragraphs of Code</b>                  | <b>Date of Decision Notice</b> | <b>Outcome</b>   |
|----------------|-----------------------|--------------------------------------|---|--|--------------------------------|--|
| COM 136        | County Councillor     | 14 December 2017<br>Anonymous        | It is alleged that the Councillor posted notices in his shop window which contained derogatory comments about Durham County Council and that he failed to declare his business in the Register of Member Interests.   | Part 1 paragraph 4 and Part 2 paragraph 11 | 5 April 2018                   | Investigation ongoing.   |
| COM 137        | Town                  | 25 January 2018<br>Town Councillor   | The complainant complains that the Councillor in his capacity as Chairman has signed a lease Agreement that was dated 1 January 2017. The complainant asserts that on that date he was neither a Councillor nor an authorised signatory to the Agreement. The complainant asserts that the Agreement has since been used to support eviction proceedings. He complains that the Agreement has been backdated without lawful authority. He further complains that the Council's Standing Orders require such an agreement to be made under seal, and that this did not happen. | 3 and 4                                    | 16 February 2018               | Investigation ongoing.   |
| COM 138        | Town                  | 1 February 2018<br>Town Councillor   | The complainant complains that in October 2017 the Councillor argued aggressively with him in a public house about a council decision. He also complains that on 25 January 2018 he was with 2 constituents when the Councillor interrupted him to accuse him of corruption. He complains of a pattern of aggressive behaviour by the Councillor at Council meetings  | 1 and 2                                    | 19 April 2018                  | Local Resolution – mediation between the complainant and subject Member, and Code of Conduct training for all members. |

| Ref No:                 | Subject Member | Date received and complainant  | Allegations  | Paragraphs of Code | Date of Decision Notice | Outcome  |
|-------------------------|----------------|--|--|--------------------|-------------------------|--|
| COM 140                 | Town           | 14 February 2018<br>Town Councillor  | The complainant alleges that the Councillor verbally attacked him at a meeting of the Town Council Allotments Sub-Committee on 6 February 2018, after losing a vote on a motion. It is said that around 30 members of the public were in attendance. It is alleged that the Councillor said that the complainant hated him and his family in an outburst that nobody present could understand. The complainant alleges that this is the third attack on him by the Councillor and that "this last outburst is a step too far".   | 3.1(i) and 3.2(ii) | 25 April 2018           | No Further Action.   |
| COM 141,<br>COM 143-145 | Town           | 14 February 2018<br>Town Councillor<br><br>2 March 2018<br>Town Councillor | <p><b>Complaint Ref: COM 141</b></p> <p>It is alleged that on 15 November 2017 a meeting was taking place in the Chamber when the Councillor entered the Chamber before a Corporate Governance Meeting that was due to take place. The Chair of the meeting then going on apparently asked him to leave. It is said that he refused to do so, and expressed himself aggressively. He is alleged to have repeatedly shouted at the Chair of that meeting to "shut up" whilst pointing and shaking his finger. The complainant then alleges that he asked the Councillor to cease shouting, to which he reacted by grabbing the complainant by the lower arm and screaming that he had 'had enough' of him before then letting go and sitting down.</p> <p><b>Complaint Ref: COM 143</b></p> <p>It is alleged that on 15 November 2017 a meeting was taking place in the Chamber when the Councillor entered the Chamber before a Corporate Governance Meeting that was due to take place. The complainant apparently asked him to leave and it is said that he refused to do so, and expressed himself aggressively. He is alleged to have repeatedly</p> | 1, 2, 4 and 6      | 25 April 2018           | Local Resolution – training session for members of the Town Council to cover the Member Code of Conduct and the roles and responsibility of the Chair, Councillors and the Clerk to the Council. |

| Ref No: | Subject Member | Date received and complainant      | Allegations  | Paragraphs of Code | Date of Decision Notice | Outcome           |
|---------|----------------|------------------------------------|--|--------------------|-------------------------|-------------------|
|         |                |                                    | <p>shouted at the complainant to “shut up” whilst pointing and shaking his finger.</p> <p>The complainant then alleges that the Vice-Chair asked the Councillor to stop shouting, to which he reacted by grabbing him by the arm and screaming that he had ‘had enough’ of him before then letting go and sitting down.</p> <p><b>Complaint Ref: COM 144</b></p> <p>The complainant alleges that during a meeting of the Town Council on 13 December 2017 the Councillor refused to allow any explanation or discussion on the accuracy of the Minutes of the meeting held on 15 November 2017, and said that he would sign them off as a true record and make a note that they were not accepted, even though the Council had resolved that they were not accurate.</p> <p><b>Complaint Ref: COM 145</b></p> <p>The complainant alleges that the Councillor informed Durham County Council that the Town Council had decided not to require polling cards to be distributed for two by-elections to be held in March 2018. It is alleged that he lacked proper authority to communicate this to DCC, because there had been no Town Council decision on the matter.</p> |                    |                         |                   |
| COM 142 | County         | 26 February 2018<br>Local resident | The complainant complains that whilst he was out canvassing on 16 February 2018 in a secluded area of the ward, the subject Councillor shouted at him, approached him and called him a liar. The Councillor is alleged to have told the complainant that he had  | 1 and 4            | 4 April 2018            | No Further Action |

| Ref No: | Subject Member | Date received and complainant         | Allegations  | Paragraphs of Code | Date of Decision Notice | Outcome   |
|---------|----------------|---------------------------------------|--|--------------------|-------------------------|---|
|         |                |                                       | 'had his chance' to be an Independent candidate. He is then said to have claimed that the complainant was potentially breaching electoral rules. The complainant claims that the Councillor made attacks against him on Facebook, was very aggressive and that the incident gave him concerns for his welfare. |                    |                         |   |
| COM 147 | Town           | 22 March 2018<br>Member of the public | The complainant alleges an incident of fraud and that the Councillor distributed a candidate's election leaflet which contained false information.   | 6                  |                         | The complaint had been referred by the complainant to the Police. The Police determined not to take action and the complaint is now being considered in accordance with the Local Assessment Procedure. |
| COM 148 | Town           | 3 April 2018<br>Member of the public  | The complainant alleges that on 31 March 2018 the Councillor contacted a local business via social media asking them not to promote the complainant's organisation and questioning their qualifications.   | 1 and 3            | 23 April 2018           | No Further Action.  |
| COM 149 | Town           | 19 April 2018<br>Member of the public | The complainant complains that at a meeting of the Town Council held on 18 April 2018 the Councillor refused to allow a vote on the matter because an appeal had been brought against the decision of a  | 1 and 2            | 24 May 2018             | No Further Action.  |

| Ref No: | Subject Member | Date received and complainant         | Allegations   | Paragraphs of Code | Date of Decision Notice | Outcome  |
|---------|----------------|---------------------------------------|---|--------------------|-------------------------|--|
|         |                |                                       | Complaints Panel, and could not be heard pending the appeal. This was challenged by the Vice-Chair of the Complaints Panel and when the complainant supported this the Councillor demanded that he be removed from the room, despite an apology from him, causing him to feel visibly upset, shaken and embarrassed.  |                    |                         |  |
| COM 150 | County         | 30 April 2018<br>Member of the public | <p>The Complainant alleges that the Councillor sent e-mails seeking information about two candidates in a recent by-election, and whether or not selection criterion relating to the length of Party membership had been met.</p> <p>The correspondence culminates in a request from the subject Councillor for the relevant information "under the Freedom of Information Act". The Complainant says that she is not subject to the Freedom of Information Act. It applies only to public authorities.</p> | 1, 2, 4 and 5      |                         | Subject Councillor requested to speak to Independent Person. Currently being considered by the Governance Solicitor. |
| COM 151 | Town           | 2 May 2018<br>Town Councillor         | The complainant alleges that the Councillor has not openly disclosed an emerging relationship with an employee, thereby potentially bringing the Council, or office as a member of the Council into disrepute.  | 4                  |                         | Complaint withdrawn.   |

| <b>Ref No:</b> | <b>Subject Member</b> | <b>Date received and complainant</b> | <b>Allegations</b>  | <b>Paragraphs of Code</b> | <b>Date of Decision Notice</b> | <b>Outcome</b>   |
|----------------|-----------------------|--------------------------------------|---|---------------------------|--------------------------------|--|
| COM 152        | Town                  | 2 May 2018<br>Member of the public   | The complainant alleges that the subject Councillor attended a community event, at which he voiced an opinion in the presence of a trustee of a charity as well as of two Councillors. It is said that the Councillor stated that people who suffer from mental health conditions are paedophiles, murderers and convicted criminals, and that people who attend the charity are therefore a danger to the public, especially children. | 1 and 3                   |                                | Currently being considered by the Governance Solicitor.  |
| COM 153        | County                | 14 May 2018<br>Town Councillor       | The complainant alleges that the Councillor's recent conduct towards her on social media amounts to bullying and harassment.  | 2                         |                                | Subject Councillor requested to speak to Independent Person. Currently being considered by the Governance Solicitor. |
| COM 154        | Town                  | 18 May 2018<br>Member of the public  | The Complainant complains that, following correspondence with a local newsletter, the Councillor visited him at home and was extremely rude to him and his wife. This culminated, it is alleged, in the Councillor telling the Complainant that as a tenant his opinion did not matter, and that he would not treat him like other people. The Complainant complains that he is not impartial in his dealings with him.                 | 1                         |                                | Response awaited from subject Councillor   |

This page is intentionally left blank

## Standards Committee

7 June 2018



## Standards Update

---

### Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

---

#### Purpose of the Report

1. To inform Members of the 'national picture' on Standards issues affecting Local Government.

#### Background

2. This report is for information, to update the Committee on national developments, consultations and court cases which relate to the work of the Committee. As agreed by the Committee in December 2017, in the annual work programme this will be a standing agenda item with a quarterly update to the Committee.

#### Consultations and Reports

##### Committee on Standards in Public Life: Private Sector Providers of Public Services

3. This is not an existing consultation, but the CSPL has called for a consultation on improving ethical standards in third party providers of public services, including extending the Freedom of Information regime to them.
4. The CSPL report, *The Continuing Importance of Ethical Standards for Public Service Providers*, refers to a previous report in 2014 and the Committee says that disappointingly little progress has been made. In the light of, especially, the Carillion collapse, the Committee have called for the Government to confirm their expectations of ethical standards among those who deliver services with public money.
5. The report may be accessed at:

<https://www.gov.uk/government/publications/the-continuing-importance-of-ethical-standards-for-public-service-providers>

## **Committee on Standards in Public Life: Review of Local Government Ethical Standards**

6. The CSPL's consultation exercise was reported to the last meeting of the Standards Committee and the Council's proposed response subsequently circulated to the Committee. That response was despatched on 18 May 2018 and is appended to this report at **Appendix 2**. The outcome of the consultation will be reported to the Committee in due course.

## **Communities and Local Government Committee: Effectiveness of Local Authority Overview and Scrutiny Committees: Government Response**

7. The Select Committee Report was reported to the last meeting of this Committee. The Government has now responded, disagreeing with many of the Select Committee's recommendations and particularly its call for a statutory scrutiny officer. It does say that new guidance on scrutiny committees will be published later this year.
8. The Government Response may be accessed at:

<https://www.gov.uk/government/publications/local-authority-overview-and-scrutiny-government-response-to-select-committee-report>

## **Case Reports**

### **Sandwell Metropolitan Borough Council**

9. Councillor Mahboob Hussain (reports *passim*) has been ordered to pay Sandwell MBC's £140,000 costs of defending his unsuccessful judicial review action against it.

### **Ledbury Town Council**

10. In *Harvey v Ledbury Town Council* 2018 EWHC 1151 (Admin), Cllr. Harvey sought judicial review of a number of restrictions placed upon her by the Town Council following a complaint about her conduct by officers of the Town Council. Her case was essentially that, because Code of Conduct matters were within the remit of the Monitoring Officer of the principal Council (Herefordshire County Council), the Town Council had no authority to place such restrictions on her.

11. The behaviour of Cllr. Harvey was dealt with in 2 forums. First, by a Grievance Panel of the Town Council, which considered allegations of bullying by the clerk and deputy clerk, found that those allegations were made out, and decided to impose restrictions upon Cllr. Harvey, mainly in the form of prohibiting her from sitting on any of the Town Council's committees or representing them on outside bodies. Secondly, by the County Council's Monitoring Officer under the Code of Conduct provisions, who eventually decided that no breach of the Code had occurred.

12. Essentially Cllr. Harvey's case was that the Town Council's Grievance Procedure and the County Council's Code Procedure covered the same ground. One could not cherry pick a particular process, or duplicate proceedings on the same issues. She also said that the Town Council did not have the power to impose the sanctions that it did. The Town Council's case was that the two Procedures served different roles and functions. One was concerned with employee protection. The other was concerned with standards in public life. Both sides cited the *Hussain* case in support.

13. The judge found for Cllr. Harvey. She also found that the decisions of the Grievance Panel had been both substantively and procedurally unfair.

### **Thanet District Council**

14. The Information Commissioner is prosecuting a councillor under section 77 of the Freedom of Information Act 2000, which concerns the offence of altering records with intent to prevent disclosure. The case is due to be heard in September.

### **Recommendation**

15. Members are asked to note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated.

---

**Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886**

---

---

## **Appendix 1: Implications**

---

**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. Keeping Members aware of the national picture on Standards issues is expected to facilitate compliance with this duty.

Contact: Helen Lynch  
Direct Tel: 03000 269732  
email: [helen.lynch@durham.gov.uk](mailto:helen.lynch@durham.gov.uk)  
Your ref:  
Our ref: HL/JR



## APPENDIX 2

Review of Local Government Ethical  
Standards Committee on Standards in  
Public Life  
GC:07  
1 Horse Guards Road  
London  
SW1A 2HQ

[public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

18 May 2018

Dear Sir/Madam

### **Review of Local Government Ethical Standards: Stakeholder Consultation**

As the Head of Legal and Democratic Services and Monitoring Officer, I am responsible for the overall governance of ethical standards at Durham County Council, which has 126 elected Members and 121 Town/Parish Councils within County Durham.

Members and Officers consider that the current regime has some benefits such as the provision for local/informal resolution. However, the lack of meaningful sanctions undermines public confidence in the regime and therefore it requires review.

The above consultation paper was considered by the Council's cross-party Constitution Working Group (CWG) and the Standards Committee. The consultation was also shared with the clerks to all the Town/Parish Councils who were invited to submit responses on behalf of their Council's, as well as in their own right. Durham County Council's response to the consultation is set out below:

**a) Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

The current arrangements are not sufficient to ensure high standards of conduct. All relevant authorities have adopted a Code of Conduct and awareness of the Code is generally good amongst County and Town and Parish Councils. However, the lack of meaningful sanctions available to the Standards Committee limits the ability of Councils to effectively deal with Member misconduct, particularly repeated 'low-level' bad behaviour and/or bullying or harassment.

It is helpful that Monitoring Officers have the ability to deal with issues by way of informal/local resolution. However, the inability of Councils to compel Members to comply with recommended actions or address failures to comply undermines public

### **Resources**

Durham County Council, County Hall, Durham DH1 5UQ

Main Telephone 03000 26 0000

Text messaging service: 07797 870 192 – your message must start with the word: INFO

confidence in the Standards Regime. There is a lack of meaningful sanctions to deal with the more serious incidents of misconduct.

Where serious misconduct is alleged, the public often expect the subject member to be suspended pending an investigation and/or required to resign. The inability of Councils to take such action (if it were considered to be appropriate) further undermines public confidence in the regime. The Council considers that suspension and or disqualification may be appropriate in the most serious of cases (e.g. allegations of/convictions for criminal offences).

**b) What, if any, are the most significant gaps in the current ethical standards regime?**

Members considered the lack of sanctions to deal with the most serious of breaches and the inability to compel a subject Member to comply with the sanction imposed to be the most significant gaps.

Codes of Conduct

**c) Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes exist?**

Durham County Council has adopted a Code of Conduct which is largely based on the previous Model National Code. The obligations on members are consistent with the Seven Principles of Public Life. Members and the public have a good awareness of the Code and its general provisions.

All newly elected County Councillors receive an induction, which includes training on the Code of Conduct, Interests, use of social media and equality and diversity. Such training is also provided periodically to County and Town and Parish Councils. The Monitoring Officer also offers training to Town and Parish Councils on an individual basis. The Monitoring Officer recently wrote to all Town/Parish Clerks raising awareness of this consultation exercise and re-iterated the offer to provide training.

**d) Whether the requirement for the local code of conduct to be consistent with the Nolan Principles, and to include appropriate provision for registering and declaring interests, is appropriate.**

Yes, the principles are widely known and understood by Members and the public.

Investigations and decisions on allegations

**e) Are allegations of councillor misconduct investigated and decided fairly with due process?**

**i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet the requirements for due process? Should any additional safeguards be put in place to ensure due**

process?

- ii) **Is the current requirement that the views of the Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**
- iii) **Monitoring Officers are often involved in the process of investigating and deciding on code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

The Council has an established procedure, which is fair and follows due process. Parties to a complaint and/or the Monitoring Officer can consult one of the Council's two Independent Persons if appropriate.

The initial assessment of complaints and any investigations are conducted by separate Officers. If necessary, the Monitoring Officer can appoint an external Investigator. Where a hearing is necessary, a sub-committee of the Standards Committee is convened. The Independent Person also attends such hearings.

Complaints received and the outcomes are reported to each meeting of the Council's Standards Committee, which is politically balanced and includes Town/Parish Council representatives.

There is no evidence that the Monitoring Officer/other Officers have been the subject of any attempted or actual pressure connected with the Code of Conduct regime. The Committee will be aware of the statutory responsibilities of the Monitoring Officer, which extend beyond the standards regime. The standards regime is considered no more likely to create conflicts of interest/exposure to undue pressure for the Monitoring Officer than other areas of the role.

#### Sanctions

- f) **Are existing sanctions for councillor misconduct sufficient?**
  - i) **What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**
  - ii) **Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

The existing sanctions are not considered sufficient for dealing with the most serious breaches of the Code. The Standards Committee can recommend that a member is removed from particular roles/committees but this relies on the co-operation and support of the relevant political group and/full Council.

It would be helpful if there were further sanctions available for use only in the most serious of cases. For example, the ability to suspend Members from sitting on specific

committees/sub-committees (but not full Council) may be appropriate. Suspension in such circumstances would not prevent a Member from fulfilling their role as a ward councillor. In the most serious cases of alleged misconduct (e.g. criminal allegations/convictions) suspension and/or disqualification may be appropriate. If there are to be additional sanctions such as suspension/disqualification, consideration should be given to enabling the subject member a right of appeal. The ability for subject members to consult the Independent Persons should be retained.

Declaring interests and conflicts of interest

**g) Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.**

**i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**

**ii) What arrangements do local authorities have in place to declare councillors interests and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

The Members Register of Interests is available on the Council's website. The Register includes Disclosable Pecuniary Interests (DPIs) as well as "other registrable personal interests", which the Council retained following the introduction of the Localism Act 2011.

The County Council's Code of Conduct also requires members to declare non-registerable interests which may arise during meetings. These are interests, which were previously described as "personal prejudicial interests" prior to the Localism Act 2011. These requirements were retained as the statutory requirements in relation to DPIs was considered to be too narrow. The provisions are generally well understood and adhered to by Members of the Council.

The declaration of interests is a standing item on all agendas of meetings of the authority, which serves as a prompt to Members.

Whilst the responsibility for declarations of interests and identifying conflicts of interests is a matter for Members, the Monitoring Officer does take a proactive approach if she is aware that an interest may be engaged/conflict may arise and advises the Members accordingly.

### Whistleblowing

**h) What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?**

The Council has a Confidential Reporting Code, which applies to Officers and Members and can be used by them and the public to report serious concerns. The Code is supported by the relevant trade unions and professional bodies.

The Council's Audit Committee maintains oversight of the operation of the Code. It is considered that the Council's arrangements are appropriate.

The Council also has well established procedures in place for dealing with corporate complaints.

In addition, the Council's Statutory Officers have good working relationships with members and encourage them to raise any concerns they have with them directly.

### Improving Standards

**i) What steps could local authorities take to improve local government ethical standards?**

Local authorities can continue to monitor the standards issues that arise nationally and share/learn from best practice. Local authorities can also ensure that periodic completion of training on the ethical standards regime is mandatory for all elected Members.

**j) What steps could central government take to improve local government ethical standards?**

As explained above, central government could seek to amend the relevant legislation to amend the sanctions available so that Standards Committees and Monitoring Officers can deal with the most serious breaches of the Code and/or persistent 'low-level' breaches of the Code.

Members acknowledged the good work that the Clerks to Parish/Town Councils do, often with limited resources. However, some clerks have very little experience/training in relation to the role. This can make it difficult to deal with difficult Councillors and manage persistent poor behaviour. Central Government could consider making it a requirement that all Clerks to local Councils complete relevant training/qualifications before commencing and during the role.

### Intimidation of local councillors

**k) What is the nature, scale and extent of intimidation towards local councillors?**

There have been a few instances where members have received threatening/intimidating correspondence from individuals. The Council works closely with the local

Police who provide support to the Councillors concerned and take appropriate action against the individuals concerned.

**l) What measures could be put in place to prevent and address this intimidation?**

The requirements to publish the personal contact details for members could be amended. The provisions to remove such information based on evidence of risk/actual intimidation come into effect too late – the intimidating behaviour is the evidence which prompts the removal of details. The provisions in relation to sensitive interests only cover potential harm/threatening behaviour in relation to a Members Interests, not their role as Councillor more generally.

Yours sincerely



Helen Lynch  
Head of Legal and Democratic Services

## Standards Committee

7 June 2018



### Local Assessment Procedure for Code of Conduct Complaints

---

### Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

---

#### Purpose of the Report

1. To present proposals for the revision of the Council's Local Assessment Procedure ("the Procedure") for Code of Conduct complaints.

#### Background

2. Under the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a co-opted member) or a member of a Parish Council in its area has failed to follow the relevant Code of Conduct. The Procedure, last amended in May 2016 by a resolution of this Committee, sets out how a complaint against a Member will be dealt with when it is received by the Monitoring Officer.
3. The Procedure is a precursor to the Local Determination Procedure ("the LDP"), which was adopted by Council in July 2016. The LDP sets out the procedure when a complaint is sufficiently serious to warrant referral to a Hearing Panel following an investigation. The Procedure that is the subject of this report relates to the earlier stages, of assessing and, where appropriate, investigating a complaint.
4. The Procedure has been reviewed to ensure consistency with the LDP and to address some recurring issues when assessing complaints.

#### Proposed Revisions

5. The Procedure now begins with a Definitions section to aid the reader. Minor amendments are made to the Introduction.
6. The section on Initial Notification has been amended to make it clear that the subject Member may be sent a copy of the complaint, rather

than just a summary as at present (2.1). Several Members ask to see the complaint in its entirety and there seems no good reason to withhold it from them. Other changes make it absolutely plain that confidentiality cannot be expected or guaranteed (2.2 – 2.4). A further change allows the Monitoring Officer to reject a complaint on its face if it is obvious that the Code was not applicable to the events complained of (2.7).

7. The Initial Assessment section now sets out that where witnesses are identified, they may be contacted as part of the assessment of the complaint (3.4).
8. Where an Investigation is to take place, paragraphs have been added to section 6 to set out the Investigating Officer's role, and what happens on receipt of that person's report by the Monitoring Officer.
9. A number of paragraphs relating to the Hearing Panel have been deleted, because they duplicate the provisions of the LDP.
10. The Complaint Form has been amended to reflect the above changes. Additionally, the Equality monitoring information has been removed. It is unnecessary to collect this personal information from complainants. The law relating to the protection of personal data is clear that information should not be collected unnecessarily. As the Council do not need the Equality information to carry out our functions, we should cease collecting it.
11. Minor changes have been made to the Habitual or Vexatious Complaints Policy at Appendix 2, and an additional criterion has been added to the Assessment Criteria at Appendix 3. This is to say that where a Member has already taken appropriate steps to remedy his or her conduct, further action under the Procedure is unlikely to be warranted.

## **Conclusion**

12. The proposed changes to the Procedure are designed to give greater clarity to the procedure on assessing and investigating complaints. The omission of the Equality Monitoring information is required especially in the light of recent changes to data protection law. It is no longer necessary to collect this information from complainants.

## **Recommendation**

13. That Standards Committee resolve as follows:

- (i) to omit the Equality Monitoring information from the Procedure with immediate effect; and
- (ii) to seek the views of the Constitution Working Group on the remainder of the proposed changes to the Procedure before reconsideration at a future meeting of the Standards Committee.

---

**Contact: Laura Renaudon, Governance Solicitor      Tel: 03000 269886**

---

---

## **Appendix 1: Implications**

---

**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. A clear assessment procedure will assist in complying with that duty.



## PROCEDURE FOR LOCAL ASSESSMENT OF COMPLAINTS

**May-2016**June 2018

## **Definitions**

|                                     |   |
|-------------------------------------|---|
| <b><u>Code of Conduct</u></b>       | <u>means the relevant Code or Codes of Conduct adopted by the Member's council or councils</u>  |
| <b><u>Independent Person</u></b>    | <u>the person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometimes must, be sought</u>         |
| <b><u>Investigating Officer</u></b> | <u>means the person appointed by the Monitoring Officer to undertake an Investigation</u>   |
| <b><u>Investigation</u></b>         | <u>means an investigation undertaken by the Investigating Officer</u>   |
| <b><u>Local Resolution</u></b>      | <u>means an informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure</u>                                     |
| <b><u>Member</u></b>                | <u>means the councillor of the County Council or Town/Parish Council who is the subject of a complaint under this Procedure</u>                       |
| <b><u>Monitoring Officer</u></b>    | <u>The County Council's statutory officer who oversees the assessments and investigations of complaints against Members under the Code of Conduct</u> |

## 1. Introduction

The Localism Act 2011 requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct ~~both~~ by both County Council Members and Parish Council Members.

This document sets out the procedure that will apply when complaints are made about Members.

Where a complaint is justified, ~~t~~The Council's Monitoring Officer will seek to resolve ~~complaints~~ it swiftly to the satisfaction of the complainant using ~~l~~Local ~~R~~Resolution whenever possible. Complaints will only be referred for ~~local~~ investigation as a last resort in view of the disproportionate amount of time involved and the limited sanctions available to the Standards Committee, under the new legislation.

Any person may make a written complaint to the Council's Monitoring Officer alleging that a councillor has acted in breach of the Code of Conduct for Members.

Any such complaint should be sent using the Complaint Form at Appendix 1 to **the Monitoring Officer, Durham County Council County Hall Durham DH1 5UL.**

~~The following procedure will normally be followed on receipt of such a complaint.~~

This procedure should be read in conjunction with the Council's Local Determination Procedure, which applies to the process where an investigation has been completed.

## 2. Initial Notification of Complaint

2.1 Unless paragraph 2.2 applies, the ~~M~~member who is the subject of the complaint ~~shall,~~ will as soon as practicable after the complaint is received, be informed in writing by the Monitoring Officer of the ~~nature of~~ complaint. The Member shall be sent a summary or copy of the complaint, and invited to comment upon it.

2.2 The Monitoring Officer shall identify which paragraphs of the Code of Conduct have ~~been~~ allegedly been breached and (unless the complainant has requested and been granted ~~confidentiality~~anonymity) the name of the complainant.

2.3 The Monitoring Officer may withhold ~~this information~~the complainant's identity from the ~~M~~member ~~subject of the complaint~~ if s/he considers that disclosure would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers ~~may be~~are good reasons.

2.4 Where the Monitoring Officer does not agree to keep the complainant's identity confidential, the complainant shall be given the opportunity to seek to withdraw the complaint (or to ask for it to be considered anonymously under paragraph 2.6 below).

2.5 The Monitoring Officer, in consultation with the Independent Person, may apply the Habitual or Vexatious Complaints Policy at Appendix 2 to a complaint where appropriate.

2.6 Complaints made anonymously will warrant consideration only if sufficient information is provided to enable them to be considered. They will usually need to be accompanied by evidence indicating an exceptionally serious or significant matter.

2.7 The Monitoring Officer may reject complaints without notifying the Member where s/he considers that it is clear from the details of the complaint that the Member was

not acting in his or her capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

### **3. Initial Assessment**

3.1 The Monitoring Officer, in consultation with the Independent ~~P~~person where appropriate, will, as soon as reasonable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. The Assessment Criteria contained in Appendix 3 will be applied.

3.2 The Monitoring Officer will decide either:

- (a) That no action should be taken in respect of it;
- (b) To seek local resolution;
- (c) To refer the complaint for investigation; or
- (d) To refer the complaint to the Standards Committee.

3.3 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Monitoring Officer may instead refer the complaint to the Monitoring ~~O~~fficer of that other relevant authority if s/he thinks it more appropriate to do so.

3.4 If witnesses to the circumstances giving rise to the complaint are named by the complainant or by the Member, they may be contacted at this stage for comment. The complainant's and the Member's identity may be disclosed to any such witnesses.

~~3.54~~ After making the decision, the Monitoring Officer will produce a written ~~summary of the~~ decision which will include the main points considered, the conclusion and the reasons for that conclusion.

The ~~summary decision~~ will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

That ~~summary decision~~ will be available for inspection by the public at the offices of the Council for 6 years beginning with the date of the decision. However, the ~~summary decision~~ will not be made available for inspection, until the ~~m~~Member who was the subject of the complaint has received a copy of written summary of the decision.

~~3.65~~ A ~~written summary~~copy of the decision will also be sent to the clerk of the relevant parish/town council where applicable.

### **4. No action to be taken in respect of the complaint**

4.1 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

### **5. Local Resolution**

5.1 The Monitoring Officer will establish whether a complaint is suitable to be resolved informally before or alternatively to taking a decision on whether the complaint merits formal investigation. This may involve:

- a) Exploring whether the ~~M~~member is prepared to apologise for the act or omission complained of;
- b) Arranging for the Member who is the subject of the complaint to attend a training course;
- c) Arranging for that Member and the complainant to engage in a process of conciliation;
- d) Such other steps (not including an investigation), as appear appropriate to the Monitoring Officer.

## 6. Referral by Monitoring Officer for investigation

6.1 Where the Monitoring Officer refers the complaint for investigation, the procedure set out in paragraphs ~~6.43~~ to 6.10 below will apply.

6.2 The Monitoring Officer may reconsider the complaint at any time if:

- (a) As a result of new evidence or information presented by the Investigating Officer, s/he is of the opinion:
  - (i) The matter is materially more or less serious than may have seemed apparent when the s/he referred it for investigation and
  - (ii) The Monitoring Officer would have made a different decision had s/he been aware of that new evidence or information; **OR**
- (b) The person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Council, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation.

6.3 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 3.2 above.

In forming an opinion for the purposes of paragraph 6.2(a) above, the Monitoring Officer may take account of:

- (a) The failure of any person to co-operate with an investigation; **OR**
- (b) An allegation that the Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; **OR**
- (c) An allegation that another member has engaged in a related breach of the Council's Code of Conduct or that of another relevant authority.

6.4 Where the Monitoring Officer decides a complaint merits investigation s/he will appoint an Investigating Officer who may be a Council officer, an officer from another Council, or an external investigator.

6.5 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigating Officer should aim to complete the investigation within 3 months of being appointed.

6.6 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.

6.7 Where the Investigating Officer's report finds that the Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

6.8 Where paragraph 6.7 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.

6.9 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

6.10 Where the Investigating Officer's report finds that the Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearing Panel or seek Local Resolution in appropriate cases. Where such Local Resolution is not appropriate or possible the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee for local determination in accordance with the Local Determination Procedure.

~~Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent person, may seek local resolution to the satisfaction of the complainant in appropriate cases. Where such local resolution is not appropriate or possible the investigation findings will be reported to a Hearings Panel of the Standards Committee for local determination.~~

~~6.5 A Hearing Panel shall, in the absence of good reason to the contrary, be convened within three months of the completion of the Investigating Officer's report to hear and determine any allegation that a Councillor has failed or may have failed to comply with the Code of Conduct for Members. The procedure for Hearing Panels contained in the Local Determinations Procedure shall be complied with.~~

~~The Hearing Panel shall comprise three Members of the Standards Committee selected by the Monitoring Officer. A quorum of the Hearing Panel will be three Members.~~

~~6.6 The Hearing Panel shall make one of the following findings, namely:-~~

~~(a) That the Member who was the subject of the Hearing had not failed to comply with the Code of Conduct of any authority concerned; or~~

~~(b) That the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned, but that no action needs to be taken in respect of the matters which were considered at the Hearing; or~~

~~(c) That the Member who was the subject of the Hearing had failed to comply with the Code of Conduct of an authority concerned and that action should be taken.~~

## ~~7. Decision to take no action in respect of allegation~~

~~7.1 If the Hearing Panel decides that no action should be taken in respect of the complaint, it must take reasonable steps to give written notice of the decision and the reasons for it to:~~

~~(a) — The complainant;~~

~~(b) — The person who was the subject of the complaint; AND~~

~~(c) — The clerk of the relevant parish/town Council where applicable~~

~~It shall endeavour to send this notice within 5 working days of the Hearing Panel's decision.~~

## 8. **Withdrawing Complaints**

8.1 If a complainant requests to withdraw his/her complaint before the Monitoring Officer has made a decision on it, then the Monitoring Officer will decide whether to grant that request.

In making that decision s/he will take into account the following considerations:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?



## Durham County Council

### COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

#### Your details

- Please provide us with your name and contact details

|                           |  |
|---------------------------|--|
| <b>Title:</b>             |  |
| <b>First name:</b>        |  |
| <b>Last name:</b>         |  |
| <b>Address:</b>           |  |
| <b>Daytime telephone:</b> |  |
| <b>Evening telephone:</b> |  |
| <b>Mobile telephone:</b>  |  |
| <b>Email address:</b>     |  |

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

We will tell them your name and give them a summary or a copy of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 6 of this form.

Any decision letter on a complaint will identify the complainant (i.e. you) and will be available for inspection by any member of the public for a period of 6 years following the decision.

- Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority

- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee

3. ~~Equality monitoring questions~~

~~We have attached an Equality Monitoring Form to the back of this complaint form which you are invited to complete as well.~~

**Making your complaint**

3. Your complaint will initially be considered, usually within 20 working days, by the Council's Monitoring Officer, in consultation with the Independent Person if appropriate. The Monitoring Officer will decide whether any action should be taken on your complaint. You will be advised of that decision. If the decision is to take action, the Monitoring Officer can appoint an Investigating Officer to investigate the complaint.

If your complaint is investigated and a breach of the Code of Conduct is found, the result will be reported to a Hearing Panel of the Council's Standards Committee which will then decide if there has been a breach of the Members' Code of Conduct and, if so, what action to take.

4. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of the authority of which they are a member

| Title | First name | Last name | Council or authority name |
|-------|------------|-----------|---------------------------|
|       |            |           |                           |
|       |            |           |                           |
|       |            |           |                           |
|       |            |           |                           |

5. Please explain in this section (or on separate sheets) what the member has done which you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

- You should provide any relevant background information.
- You should consider the relevant Code of Conduct and identify which aspects of it you consider have been breached.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**Only complete this next section if you are requesting that your identity or details of your complaint is kept confidential**

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary or a copy of the complaint ~~and then further details of it if there is a decision to investigate it or take other action on it.~~

We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so.

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you must cross out the statement in the box below giving your consent to such disclosure. You must also attach to this form a separate sheet which fully explains what information you want withheld and your reasons for your request to withhold it.

I understand and agree that my name and details of this complaint will be disclosed to the persons mentioned in paragraph 1 above.

If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

### **Additional Help**

7. Complaints must be submitted in writing. This includes fax and email submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible. You should initially contact the Council's Monitoring Officer (whose contact details are given below) who will try to arrange appropriate assistance for you.

.....  
**Signed**

.....  
**Dated**

**This form once completed should be sent, along with any supporting documents, to:**

**Helen Lynch  
The Monitoring Officer  
Durham County Council  
County Hall  
Durham  
DH1 5UL**

[Data Protection Act](#)

Durham County Council complies with all relevant statutory obligations. Personal information processed by the Council will be handled in accordance with the Council's privacy statement, which can be accessed at [www.durham.gov.uk/dataprivacy](http://www.durham.gov.uk/dataprivacy)

Committee Services privacy notice provides more specific information on the data collected and how it is handled, a copy of which can be accessed [www.durham.gov.uk/dataprivacy](http://www.durham.gov.uk/dataprivacy) 'legal and democracy' section.

If you have any concerns about how your data is handled, please contact either the Data Protection Officer at [DPO@durham.gov.uk](mailto:DPO@durham.gov.uk) or the Information Commissioner's Office [casework@ico.org.uk](mailto:casework@ico.org.uk).

|

## Equality Monitoring Form

~~Durham County Council operates an Equality Policy. To help us make sure that everybody is treated fairly and equally we need to know who is making complaints. This information will help us to develop and change our policies and practices to ensure that no one is discriminated against.~~

~~To help us to do this we request that you complete the questions below. You do not have to do so but this information would be helpful to us. All of the information you give will be treated with the strictest of confidence and will be used for monitoring purposes only.~~

### Are you:

Male

Female

### What is your age group?

15 and under  16-24  25-39  40-59  60-64

65-74  75+

### Do you have any long standing illness or disability?

(Long standing means anything that has troubled you over a period of time or that is likely to affect you over a period of time)

Yes

No

If yes, does this illness or disability limit your activities in any way?

Yes

No

Please state the impairment type(s) which applies to you:

Mobility

Visual impairment

Hearing Impairment/Deaf

Mental Health diagnosis

Other

Prefer not to say

### What is your ethnic group?

A. White \_\_\_\_\_

British  \_\_\_\_\_

Irish  \_\_\_\_\_

Other  Please state .....

**B. Mixed**

- White and Black Caribbean
- White and Asian
- White and Black African
- Any other mixed background  Please state .....

**C. Asian or Asian British**

- Indian
- Bangladeshi
- Pakistani
- Any other Asian background  Please state .....

**D. Black or Black British**

- Caribbean
- African
- Any other Black background  Please state .....

**E. Chinese**

**F. Any other ethnic group**

 Please state .....

**What is your sexual orientation?**

- Bisexual
- Gay Man
- Gay women/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

**What is your religion? (Tick one box only)**

- None
- Christian
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion  Please state .....
- Prefer not to say

## Habitual or Vexatious Complaints Policy

### 1. Introduction

1.1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.

1.1.2 This policy is intended to assist in identifying and managing persons who seek to be disruptive to the Monitoring Officer through pursuing an unreasonable course of conduct.

1.2 In this policy:

Habitual means: done repeatedly or as a habit.

Vexatious means: an complaint action brought for the purpose of annoying another person ~~the opponent~~ and with no reasonable prospect of success.

1.4 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer endeavours to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

### 2. Habitual or Vexatious Complainants

2.1 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

(i) Unreasonable complaints and/or unrealistic outcomes;

**and/or**

(ii) Reasonable complaints in an unreasonable manner.

2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.

2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.

2.4 The Monitoring Officer will notify complainants, in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant ~~to~~ Standards Committee.

- 2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

## Schedule A - Criteria for determining habitual or vexatious complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet **one** of the following criteria. Where complainants:

- 1) Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
- 2) Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
- 3) Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 4) Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
- 5) Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criteria.
- 6) Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
- 7) Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
- 8) Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
- 9) Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge and-or consent by of the parties involved.

- 10) Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
- 11) Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
  - Clearly does not have any serious purpose or value; or
  - Is designed to cause disruption or annoyance; or
  - Has the effect of harassing the Council; or
  - Can otherwise fairly be characterised as obsessive or manifestly unreasonable
- 12) Make repetitive complaints and allegations ~~which~~that ignore the replies ~~which~~ the Council has supplied in previous correspondence

## **Schedule B - Options for dealing with habitual or vexatious complainants**

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint is ongoing or completed.

- 1) A letter to the complainant setting out responsibilities for the parties involved if the Monitoring Officer is going to assess the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
- 2) Decline any contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact and the complainant is notified of this person.
- 3) Notify the complainant in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.

### Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation?**

If not, the information provided is insufficient. The only outcome can be that no further action is taken on the complaint and a decision notice to that effect will be issued accordingly.

- 2. Is the complaint about someone who is no longer a Member of the Council, but is a Member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the Monitoring Officer of that other authority?**

If yes, the complaint will be referred to the Monitoring Officer of that other authority to consider if he/she thinks it more appropriate to do so.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct in the last 3 years? Similarly, has the complaint been the subject of an investigation by other regulatory authorities in the last 3 years?**

If yes, there may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes, further action will not normally be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of investigation?**

If yes, investigation will not be warranted.

- 6. Does the complaint appear to be ~~simply~~ malicious, politically motivated or tit-for-tat?**

If yes, further action will not normally be warranted.

- 7. Is the complaint anonymous?**

If yes, no action will normally be taken, unless there are compelling reasons to suggest otherwise. For example, if it includes documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.

- 8. Has the Member already apologised or offered a remedy?**

| If yes, and the remedy appears adequate, then further action would not be warranted.

This page is intentionally left blank



## **PROCEDURE FOR LOCAL ASSESSMENT OF COMPLAINTS**

**June 2018**

## **Definitions**

|                              |  |
|------------------------------|--|
| <b>Code of Conduct</b>       | means the relevant Code or Codes of Conduct adopted by the Member's council or councils  |
| <b>Independent Person</b>    | the person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometimes must, be sought         |
| <b>Investigating Officer</b> | means the person appointed by the Monitoring Officer to undertake an Investigation   |
| <b>Investigation</b>         | means an investigation undertaken by the Investigating Officer   |
| <b>Local Resolution</b>      | means an informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure                                     |
| <b>Member</b>                | means the councillor of the County Council or Town/Parish Council who is the subject of a complaint under this Procedure                       |
| <b>Monitoring Officer</b>    | The County Council's statutory officer who oversees the assessments and investigations of complaints against Members under the Code of Conduct |

## 1. Introduction

The Localism Act 2011 requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct by both County Council Members and Parish Council Members.

This document sets out the procedure that will apply when complaints are made about Members.

Where a complaint is justified, the Council's Monitoring Officer will seek to resolve it swiftly to the satisfaction of the complainant using Local Resolution whenever possible. Complaints will only be referred for investigation as a last resort in view of the disproportionate amount of time involved and the limited sanctions available to the Standards Committee..

Any person may make a written complaint to the Council's Monitoring Officer alleging that a councillor has acted in breach of the Code of Conduct for Members.

Any such complaint should be sent using the Complaint Form at Appendix 1 to **the Monitoring Officer, Durham County Council County Hall Durham DH1 5UL**.

This procedure should be read in conjunction with the Council's Local Determination Procedure, which applies to the process where an investigation has been completed.

## 2. Initial Notification of Complaint

- 2.1 Unless paragraph 2.2 applies, the Member who is the subject of the complaint shall, as soon as practicable after the complaint is received, be informed in writing by the Monitoring Officer of the complaint. The Member shall be sent a summary or copy of the complaint, and invited to comment upon it.
- 2.2 The Monitoring Officer shall identify which paragraphs of the Code of Conduct have allegedly been breached and (unless the complainant has requested and been granted confidentiality) the name of the complainant.
- 2.3 The Monitoring Officer may withhold the complainant's identity from the Member if s/he considers that disclosure would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers are good reasons.
- 2.4 Where the Monitoring Officer does not agree to keep the complainant's identity confidential, the complainant shall be given the opportunity to seek to withdraw the complaint (or to ask for it to be considered anonymously under paragraph 2.6 below).
- 2.5 The Monitoring Officer, in consultation with the Independent Person, may apply the Habitual or Vexatious Complaints Policy at Appendix 2 to a complaint where appropriate.
- 2.6 Complaints made anonymously will warrant consideration only if sufficient information is provided to enable them to be considered. They will usually need to be accompanied by evidence indicating an exceptionally serious or significant matter.
- 2.7 The Monitoring Officer may reject complaints without notifying the Member where s/he considers that it is clear from the details of the complaint that the Member was not acting in his or her capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

### **3. Initial Assessment**

- 3.1 The Monitoring Officer, in consultation with the Independent Person where appropriate, will, as soon as reasonable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. The Assessment Criteria contained in Appendix 3 will be applied.
- 3.2 The Monitoring Officer will decide either:
- (a) That no action should be taken in respect of it;
  - (b) To seek local resolution;
  - (c) To refer the complaint for investigation; or
  - (d) To refer the complaint to the Standards Committee.
- 3.3 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Monitoring Officer may instead refer the complaint to the Monitoring Officer of that other relevant authority if s/he thinks it more appropriate to do so.
- 3.4 If witnesses to the circumstances giving rise to the complaint are named by the complainant or by the Member, they may be contacted at this stage for comment. The complainant's and the Member's identity may be disclosed to any such witnesses.
- 3.5 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion.

The decision will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

That decision will be available for inspection by the public at the offices of the Council for 6 years beginning with the date of the decision. However, the decision will not be made available for inspection until the Member who was the subject of the complaint has received a copy of the decision.

- 3.6 A copy of the decision will also be sent to the clerk of the relevant parish/town council where applicable.

### **4. No action to be taken in respect of the complaint**

- 4.1 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

### **5. Local Resolution**

- 5.1 The Monitoring Officer will establish whether a complaint is suitable to be resolved informally before or alternatively to taking a decision on whether the complaint merits formal investigation. This may involve:

- a) Exploring whether the Member is prepared to apologise for the act or omission complained of;

- b) Arranging for the Member who is the subject of the complaint to attend a training course;
- c) Arranging for that Member and the complainant to engage in a process of conciliation;
- d) Such other steps (not including an investigation), as appear appropriate to the Monitoring Officer.

## 6. Referral by Monitoring Officer for investigation

6.1 Where the Monitoring Officer refers the complaint for investigation, the procedure set out in paragraphs 6.4 to 6.10 below will apply.

6.2 The Monitoring Officer may reconsider the complaint at any time if:

- (a) As a result of new evidence or information presented by the Investigating Officer, s/he is of the opinion:
  - (i) The matter is materially more or less serious than may have seemed apparent when the s/he referred it for investigation and
  - (ii) The Monitoring Officer would have made a different decision had s/he been aware of that new evidence or information; **OR**
- (b) The person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Council, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation.

6.3 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 3.2 above.

In forming an opinion for the purposes of paragraph 6.2(a) above, the Monitoring Officer may take account of:

- (a) The failure of any person to co-operate with an investigation; **OR**
- (b) An allegation that the Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; **OR**
- (c) An allegation that another member has engaged in a related breach of the Council's Code of Conduct or that of another relevant authority.

6.4 Where the Monitoring Officer decides a complaint merits investigation s/he will appoint an Investigating Officer who may be a Council officer, an officer from another Council, or an external investigator.

6.5 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigating Officer should aim to complete the investigation within 3 months of being appointed.

6.6 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.

6.7 Where the Investigating Officer's report finds that the Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the

Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

- 6.8 Where paragraph 6.7 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.
- 6.9 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 6.10 Where the Investigating Officer's report finds that the Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearing Panel or seek Local Resolution in appropriate cases. Where such Local Resolution is not appropriate or possible the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee for local determination in accordance with the Local Determination Procedure.

## 8. **Withdrawing Complaints**

- 8.1 If a complainant requests to withdraw his/her complaint before the Monitoring Officer has made a decision on it, then the Monitoring Officer will decide whether to grant that request.

In making that decision s/he will take into account the following considerations:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

## Durham County Council

### COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

#### Your details

1. Please provide us with your name and contact details

|                           |  |
|---------------------------|--|
| <b>Title:</b>             |  |
| <b>First name:</b>        |  |
| <b>Last name:</b>         |  |
| <b>Address:</b>           |  |
| <b>Daytime telephone:</b> |  |
| <b>Evening telephone:</b> |  |
| <b>Mobile telephone:</b>  |  |
| <b>Email address:</b>     |  |

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

We will tell them your name and give them a summary or a copy of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details, of your complaint being released, please complete section 6 of this form.

Any decision letter on a complaint will identify the complainant (i.e. you) and will be available for inspection by any member of the public for a period of 6 years following the decision.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority

- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee

### **Making your complaint**

3. Your complaint will initially be considered, usually within 20 working days, by the Council's Monitoring Officer, in consultation with the Independent Person if appropriate. The Monitoring Officer will decide whether any action should be taken on your complaint. You will be advised of that decision. If the decision is to take action, the Monitoring Officer can appoint an Investigating Officer to investigate the complaint.

If your complaint is investigated and a breach of the Code of Conduct is found, the result will be reported to a Hearing Panel of the Council's Standards Committee which will then decide if there has been a breach of the Members' Code of Conduct and, if so, what action to take.

4. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of the authority of which they are a member

| Title | First name | Last name | Council or authority name |
|-------|------------|-----------|---------------------------|
|       |            |           |                           |
|       |            |           |                           |
|       |            |           |                           |
|       |            |           |                           |

5. Please explain in this section (or on separate sheets) what the member has done which you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

- You should consider the relevant Code of Conduct and identify which aspects of it you consider have been breached.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**Only complete this next section if you are requesting that your identity or details of your complaint is kept confidential**

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary or a copy of the complaint.

We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so.

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you

must cross out the statement in the box below giving your consent to such disclosure. You must also attach to this form a separate sheet which fully explains what information you want withheld and your reasons for your request to withhold it.

I understand and agree that my name and details of this complaint will be disclosed to the persons mentioned in paragraph 1 above.

If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

### **Additional Help**

7. Complaints must be submitted in writing. This includes fax and email submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible. You should initially contact the Council's Monitoring Officer (whose contact details are given below) who will try to arrange appropriate assistance for you.

.....  
**Signed**

.....  
**Dated**

**This form once completed should be sent, along with any supporting documents, to:**

**Helen Lynch  
The Monitoring Officer  
Durham County Council  
County Hall  
Durham  
DH1 5UL**

### **Data Protection Act**

Durham County Council complies with all relevant statutory obligations. Personal information processed by the Council will be handled in accordance with the Council's privacy statement, which can be accessed at [www.durham.gov.uk/dataprivacy](http://www.durham.gov.uk/dataprivacy)

Committee Services privacy notice provides more specific information on the data collected and how it is handled, a copy of which can be accessed [www.durham.gov.uk/dataprivacy](http://www.durham.gov.uk/dataprivacy) 'legal and democracy' section.

If you have any concerns about how your data is handled, please contact either the Data Protection Officer at [DPO@durham.gov.uk](mailto:DPO@durham.gov.uk) or the Information Commissioner's Office [casework@ico.org.uk](mailto:casework@ico.org.uk).

## Habitual or Vexatious Complaints Policy

### 1. Introduction

1.1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.

1.1.2 This policy is intended to assist in identifying and managing persons who seek to be disruptive to the Monitoring Officer through pursuing an unreasonable course of conduct.

1.2 In this policy:

Habitual means: done repeatedly or as a habit.

Vexatious means: an complaint brought for the purpose of annoying another person and with no reasonable prospect of success.

1.4 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer endeavours to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

### 2. Habitual or Vexatious Complainants

2.1 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

(i) Unreasonable complaints and/or unrealistic outcomes;

**and/or**

(ii) Reasonable complaints in an unreasonable manner.

2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.

2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.

2.4 The Monitoring Officer will notify complainants in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant.

- 2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

## Schedule A - Criteria for determining habitual or vexatious complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet **one** of the following criteria. Where complainants:

- 1) Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
- 2) Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
- 3) Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 4) Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
- 5) Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
- 6) Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
- 7) Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
- 8) Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
- 9) Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the parties involved.

- 10) Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
- 11) Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
  - Clearly does not have any serious purpose or value; or
  - Is designed to cause disruption or annoyance; or
  - Has the effect of harassing the Council; or
  - Can otherwise fairly be characterised as obsessive or manifestly unreasonable
- 12) Make repetitive complaints and allegations that ignore the replies the Council has supplied in previous correspondence

## **Schedule B - Options for dealing with habitual or vexatious complainants**

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint is ongoing or completed.

- 1) A letter to the complainant setting out responsibilities for the parties involved if the Monitoring Officer is going to assess the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
- 2) Decline any contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact and the complainant is notified of this person.
- 3) Notify the complainant in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.

### Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation?**

If not, the information provided is insufficient. The only outcome can be that no further action is taken on the complaint and a decision notice to that effect will be issued accordingly.

- 2. Is the complaint about someone who is no longer a Member of the Council, but is a Member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the Monitoring Officer of that other authority?**

If yes, the complaint will be referred to the Monitoring Officer of that other authority to consider if he/she thinks it more appropriate to do so.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct in the last 3 years? Similarly, has the complaint been the subject of an investigation by other regulatory authorities in the last 3 years?**

If yes, there may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes, further action will not normally be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of investigation?**

If yes, investigation will not be warranted.

- 6. Does the complaint appear to be malicious, politically motivated or tit-for-tat?**

If yes, further action will not normally be warranted.

- 7. Is the complaint anonymous?**

If yes, no action will normally be taken, unless there are compelling reasons to suggest otherwise. For example, if it includes documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.

- 8. Has the Member already apologised or offered a remedy?**

If yes, and the remedy appears adequate, then further action would not be warranted.

## Standards Committee

7 June 2018



## Social Media Guidance

---

### Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

---

#### Purpose of the Report

1. To discuss draft Social Media Guidance and approve for consultation.

#### Background

2. Members will recall that in December they agreed to pursue a proposal to develop social media guidance, and asked the Monitoring Officer to bring a draft of that guidance to a subsequent meeting. Draft Guidance was brought to the March meeting of this Committee and deferred for changes to be made following the input of the Council's Communications Unit.
3. As before, it is proposed to issue the draft Guidance for consultation with County Councillors, CDALC, the Independent Persons.
4. Draft Guidance is attached at **Appendix 2**.
5. It is proposed to issue the Guidance for consultation for a period of six weeks, which should give sufficient time for adequate consideration by consultees, and would enable the Committee to consider the outcome of the consultation at its next meeting in September 2018.
6. As before, it is proposed that the Guidance will have the status of guidance issued by the Standards Committee, pursuant to the Committee's constitutional function of promoting and maintaining high standards of conduct by Members and Co-Opted Members of the Council and Parish and Town Council Members.
7. If that is agreed by the Committee, the Guidance would not constitute formal policy adopted by the Council but the Committee could have regard to the guidance when determining complaints against Councillors.

8. If the Committee instead consider that the Guidance ought to have the status of policy then it would need to go through full Council in order to be binding upon Members as part of the Code of Conduct. It is proposed that this question will also be asked as part of the consultation exercise.

### **Recommendation**

9. Members are asked to agree the draft Guidance for consultation as set out in the report. The consultation will last for six weeks and will invite views both on the content of the draft Guidance and the status it ought to have.

---

**Contact:    Laura Renaudon, Governance Solicitor            Tel: 03000 269886**

---

---

## **Appendix 1: Implications**

---

**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It is anticipated that specific guidance on the use of social media by Members will help achieve compliance with this duty as well as potentially reducing the number of related complaints received about Councillors.

This page is intentionally left blank

## Appendix 2

### Social Media Guidance for Councillors

1. Three of the important Nolan Principles applying to those in public life are “Openness”, “Accountability” and “Leadership”. That means Councillors should be as open as possible about the actions and decisions they take, submit to an appropriate level of public scrutiny, and lead by example. Social media can be a vital tool for public debate and its use by Councillors is encouraged.
2. There are however some pitfalls to be aware of, and this local Guidance is produced to help Councillors avoid these. This Guidance does not tell Councillors what social media is, or which blogs or networks might be used effectively. It assumes that Councillors are aware of those. It deals with the pitfalls that specifically apply to the role of local Councillors.

### A LEGAL CONSIDERATIONS

3. Like anyone else publishing material, Councillors will need to be aware of the laws that apply to published material. Some of the main ones are these:
  - **Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages;
  - **Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you;
  - **Harassment:** it is an offence to repeatedly pursue a campaign against a person that is likely to cause alarm, harassment or distress;
  - **Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so;
  - **Incitement:** it is an offence to incite any criminal act;
  - **Discrimination and ‘protected characteristics’:** it is an offence to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010);

- **Malicious and obscene communications:** it is an offence to send malicious or obscene communications

4. Additional considerations apply to Councillors.

#### Bias and pre-determination

5. Members sitting on regulatory committees such as planning or licensing should be aware that they are allowed to have a view but not have gone so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council's decision is then open to challenge and could be invalidated, and the 'disrepute' provisions of the Code could be engaged.

#### Equality and discrimination

6. The Council is a public authority required to comply with the Equalities Act 2010. As noted above it is an offence to discriminate against anyone based on their protected characteristics. The Council must also have 'due regard' to the Public Sector Equality Duty (which consists of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations) and that applies to Councillors when appearing to act in their official capacity.

#### Electioneering

7. Council resources, including any the use of social media on Council mobile devices or IT equipment, should not be used for political/campaign purposes. Particular care should also be taken when using social media during the pre-election period. The Electoral Commission has further guidance including on the requirements to provide a return of expenditure on election advertising which includes web advertising.

#### Human Rights

8. Article 8 of the European Convention provides that public authorities should not interfere with the right of individuals to a private and family life without lawful authority to do so, and where it is necessary, proportionate, and in pursuit of

one of the aims set out in Article 8(2). (These are national security, public safety, economic well-being, health or morals, prevention of crime or disorder, or protecting others' rights). Observing the use of social media by other people (even on 'open' profiles) can engage Article 8.

## **B CODE OF CONDUCT**

Councillors may use social media in both an official and personal capacity but they must be aware that the public may perceive them as acting in either capacity when that is not their intention. Any social media account which could be potentially linked to a councillor would need to meet the standards of the code of conduct.

9. The particular sections of the (County Council's) Code most likely to give rise to complaints are the requirements to treat others with respect; not to bring the office of Councillor or the Council into disrepute; and prohibiting the disclosure of confidential information.
  
10. You should also consider your position carefully as to whether your online 'followers' or 'friends' are "close associates", for the purpose of declaring interests and participation in meetings where their well-being or financial position would be affected.

## **C 'NETIQUETTE'**

11. Councillors will need to monitor and, where appropriate, censor or remove the contributions made by others to their sites. Allowing defamatory or offensive statements to remain on a site can become the Councillor's own legal problem as the 'publisher' of the material, and could also give rise to Code issues where allowing comments to remain could be seen as condoning or endorsing them. The council has a clear approach to the moderation of social media on its website at [www.durham.gov.uk/socialmedia](http://www.durham.gov.uk/socialmedia) and it is recommend that councillors apply the same to moderating their accounts.

12. Similarly, 'liking', 'sharing' or 're-tweeting' posts could be seen as an endorsement of them and legally this can be a separate instance of publication, by the Councillor, to which all the legal and Code considerations would apply.
13. Beyond that it is generally best to allow disagreement rather than to seek to censor it. However there is no need to respond to everything and unhelpful online arguments should be avoided. Be professional, respectful and polite, even (or especially) when corresponding with those who do not return the courtesy.
14. Promptly admit to mistakes.
15. Avoid using social media when you are tired, angry, upset or your judgment may be impaired.
16. Think carefully about who to 'follow' or 'befriend' online. Online 'friendships' with council officers should be avoided as they may compromise the appearance of impartial advice. It is inadvisable to 'follow' anyone without a good reason – some constituents may find it uncomfortable (and see the Human Rights comments above). Many Councillors wait to be 'followed' before returning the compliment.

#### **D USE OF SOCIAL MEDIA DURING COMMITTEE MEETINGS**

17. Use mobile devices sparingly, discreetly and with common sense at meetings, considering the impression they are giving to others. Councillors should be mindful that regulatory committees such as planning or licensing require the Councillor to alert officers to any lobbying material they have received. This would be difficult if it arrives on Twitter and is read by the Councillor during the course of a meeting.

18. Mobile devices enable councillors to manage their busy lives when time is at a premium. There may be occasions when texting or e-mailing between Councillors during meetings on matters relevant to the debate at hand may be valuable (on the same basis as circulating paper notes) However it is important for Councillors not to give the impression that insufficient attention is being given to the discussion at the meeting. That could lead to the relevant decision coming under challenge if Councillors are perceived to have made a decision without having properly listened to the debate. It could also result in Code complaints of a failure to treat others with respect or of bringing the Council into disrepute.

### **FURTHER READING**

1. "Connected Councillors: A guide to using social media to support local leadership", IDeA, March 2010 and other guidance available on the Local Government Association website ([www.local.gov.uk](http://www.local.gov.uk)).
2. LGA's Knowledge Hub may contain useful information (<https://knowledgehub.local.gov.uk/>)
3. Sign on to Twitter at <https://twitter.com/> and Facebook at <https://en-gb.facebook.com>
4. Terms and conditions for both sites are available at <https://www.facebook.com/terms> and <https://twitter.com/en/tos>

This page is intentionally left blank