



Standards Committee

Date Friday 5 October 2018
Time 10.00 am
Venue Committee Room 1B - 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 7 June 2018 (Pages 3 - 6)
4. Code of Conduct Update (Pages 7 - 18)
5. Local Assessment Procedure for Code of Conduct Complaints (Pages 19 - 40)
6. Social Media Guidance (Pages 41 - 52)
7. Standards Update (Pages 53 - 56)
8. Annual Report of the Standards Committee 2017/2018 (Pages 57 - 64)
9. 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
27 September 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

This page is intentionally left blank

DURHAM COUNTY COUNCIL

STANDARDS COMMITTEE

At a Meeting of **Standards Committee** held in Committee Room 1A - County Hall, Durham on **Thursday 7 June 2018 at 10.00 am**

Present:

Councillor E Huntington (Chair)

Members of the Committee:

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

2 Declarations of Interest

Councillor E Bell declared an interest in the Code of Conduct Update report. The interest was not a disclosable pecuniary interest or other relevant interest, and the Member remained in the meeting during the consideration of the item.

3 Minutes

The Minutes of the meeting held on 22 March 2018 were agreed as a correct record and were signed by the Chair.

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).

Members were informed by the Governance Solicitor that since the Agenda had been circulated decision notices had now been issued for all complaints, and the Monitoring Officer was to provide training for the two Councils at complaints ref:- COM 138 and COM 141, 143-145 in Appendix 2, where local resolution had been decided. Dates for the training had been agreed in June and July 2018.

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 informed Members of the 'national picture' on standards issues affecting local government (for copy see file of Minutes).

Members discussed the Committee on Standards in Public Life's call for consultation on improving ethical standards in third party providers of public services, and the response to the consultation exercise regarding the review of local government ethical standards. Following a question from Councillor Batson about how the Council was making its views known in relation to the standards regime, the Head of Legal and Democratic Services and Monitoring Officer referred the Member to the response to the consultation attached at Appendix 2 of the report, and also to a previous consultation regarding disqualification criteria for Councillors. Both consultations had been considered by the Standards Committee and Constitution Working Group, and any further opportunities to submit views would be reported to Members. In addition the Officer was a member of Lawyers in Local Government which had a voice with organisations such as the Local Government Association and the Society of Local Council Clerks, which were useful forums to express the views of Councils in relation to the standards regime. All Town and Parish Councils had also been invited to respond to the consultation.

Councillor Clark noted that the Committee had been advised previously that Code of Conduct training was not mandatory and asked if this was likely to change as part of the review. The Member was informed that the inability of Councils to compel Members to comply with recommended actions and the lack of sanctions had been raised as part of the response to the consultation. It had also been said that mandatory training for all elected members would improve ethical standards, and this was being explored for Durham County Councillors as part of a review of member development, but it would be more difficult under the present regime to require Town and Parish Councillors to attend Code of Conduct training.

Councillor Clark referred to the new guidance on scrutiny committees to be published later this year and hoped that training would be provided on any changes to the overview and scrutiny system.

Resolved:

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

6 Local Assessment Procedure for Code of Conduct Complaints

The Committee considered a report of the Head of Legal and Democratic Services which presented proposals for the revision of the Council's Local Assessment Procedure for Code of Conduct complaints (for copy see file of Minutes).

Members considered the proposed revisions which were set out in the report. Councillor Bell made the point that when a complaint was made against a Councillor and the outcome of assessment was No Further Action, there was no recourse for the Councillor against the individual who had made the allegations. Despite a decision of No Further Action it could have implications for a Councillor's reputation and at election time. The Head of Legal and Democratic Services and Monitoring Officer sympathised with the position but elected officials were subject to a greater level of scrutiny than members of the public and there was limited action that could be taken in these circumstances. However it was important that any complaint was examined in accordance with the Local Assessment Procedure and the decision notice should clearly give reasons why a complaint was not to be pursued.

Resolved:

- a) That the Equality Monitoring information be omitted from the Procedure with immediate effect;
- b) The views of Constitution Working Group be sought on the remainder of the proposed changes to the procedure before reconsideration at a future meeting of the Standards Committee.

7 Social Media Guidance

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

Resolved:

That the draft Guidance attached at Appendix 2 in the report be agreed for consultation. The consultation to last for six weeks and invite views both on the content of the draft Guidance and whether or not it should constitute formal policy.

This page is intentionally left blank

Standards Committee

5 October 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 June 2018.
3. Since the last meeting of the Committee held on 7 June 2018 there has been an increase in the number 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. A total of 36 new complaints have been logged since the last meeting, compared to 8 in the last period. However it should be noted that of those received, 17 separate complaints were received in respect of one Town Councillor (COM 158-165, 169, 171-178), one complaint referred to the full membership of a Parish Council (COM 180-188) and four Town Councillors and one County Councillor have made individual complaints about a Town Councillor (COM 189-190, 192-194).
5. Four Decision Notices have been issued in the period, one investigation is ongoing and one complaint has been referred to the Standards Committee Hearing Panel following investigation.
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
5 October 2018**

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 134	County Councillor	4 December 2017 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, 29 March 2018 and 30 July 2018	Referred to Standards Committee Hearing Panel.
COM 136	County Councillor	14 December 2017 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 completed and local resolution achieved.
COM 137	Town	25 January 2018 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.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 156	County Councillor	18 June 2018 County Councillor	<p>The complainant complains that</p> <ol style="list-style-type: none"> 1. The Councillor recently took steps to reinstate some vandalised headstones in a cemetery in complainant's ward, and gained press coverage in so doing. It is alleged that in not contacting the complainant the County Councillor displayed a lack of respect. 2. The Councillor should have adhered to the ICCM's "Management of Memorials" document and in particular its advice that anyone involved in making headstones safe should undergo sufficient training and conduct an appropriate risk assessment. In failing to do so, the Councillor has brought the Council into disrepute. 3. by taking these steps the Councillor compromised the bereavement team staff who, as a result of their actions, were then obliged to go out and make all of the headstones safe. This, it is alleged, amounts to a lack of respect for officers. 4. In taking to social media and the press to publicise their actions, together with a subsequent litter pick event, it is alleged that the Councillor has used their actions to their own advantage and again failing to accord the complainant sufficient respect. The complainant notes that the Councillor considers that the cemetery is part of their responsibility, but the complainant considers that the cemetery comes under bereavement services which is within another remit. 	4.3 (i) and (j)	18 July 2018	No Further Action.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 157	Town	21 June 2018 Member of the public	<p>The complainant alleges that the Councillor allowed her interests to conflict, contrary to the provisions of the Code of Conduct that prevent her from participating in Council business where her disclosable pecuniary interests are involved.</p> <p>The Councillor's register of interests records that she is the 'operations manager' of a charity and that this is her employment, office, trade, profession or vocation carried on for profit or gain. As a "Disclosable Pecuniary Interest" this would preclude her from participating in Council business that affected the charity. The same section of the Councillor's Register appears to record that her spouse or partner also has an interest in the charity.</p> <p>The complainant alleges that the Councillor was previously a Trustee and that her spouse or partner continues to be a Trustee. Despite this interest, the Councillor decided to nominate the charity as her chosen Mayoral charity, and there is a clear conflict of interest.</p> <p>The complainant also complains that the same charity has been nominated for two years running, which she considers unethical although no specific Code provisions are cited.</p>	Disclosable Pecuniary Interests	18 July 2018	<p>Local Resolution - Cllr asked to either cease managing the charity for her term of office or withdraw the charity's nomination as a beneficiary of Mayoral funds,</p> <p>Councillor has agreed to reduce her involvement in the charity to the extent it does not require registration as an interest.</p>
COM 158 – 165, 169, 171-178	Town	25 June 2018 – COM 158-165 3 July 2018 COM 169 9 July 2018 COM 171-178	<p>The complainants complain about social media postings on the Councillor's Facebook page. The allegations are that these postings are variously homophobic, transphobic, extremist, stir up hatred against persons on the basis of protected characteristics such as sexual orientation and religion and that the Councillor has advocated the physical chastisement of children.</p>	1, 2, 3, 6	19 July 2018	No Further Action.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			Additionally a further complaint alleges that the Councillor has been dishonest with the donations he receives for the needy			
COM 166-168	Town	28 June 2018 Town Councillor	<p>The complainant complains of racially-motivated bullying and humiliation:-</p> <p>COM 166</p> <ul style="list-style-type: none"> (i) Announcing to the Complainant, at an event in May 2017, that nobody would vote for the Councillor if she stood for election because the Councillor is related to Travellers; (ii) at a Council Events Committee meeting in June 2017, handing the Complainant a document and querying whether she would be able to read it; (iii) in May 2018, discussing in a public house a desire to remove the Complainant from the Town Council; (iv) at the Town Council's AGM, suggesting that the Complainant should represent the Council on the outside body known as the Travelling Association. <p>COM 167</p> <ul style="list-style-type: none"> (i) At a Town Council meeting at which the subject of loose horses in the area was raised, asking the Complainant if they were the Complainant's horses; (ii) in May 2018, discussing in a public house a desire to remove the Complainant from the Town Council and telling another Member, who was dissenting because she did not wish to be thought of as a racist or a bigot, to 'get over it'. <p>COM 168</p> <ul style="list-style-type: none"> (i) in May 2018, discussing in a public house a desire to remove the Complainant from the Town Council, and telling another dissenting Member to 'toe the party line' on the matter. 	1, 2, 3	3 August 2018	Local Resolution. The Complainant and the subject Councillors have agreed to local mediation.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 179	County	12 July 2018 Member of the public	<p>The Complainant complains that on three occasions between April and June 2018, on Saturday mornings, garden materials (appearing to be compost and garden bark) were delivered to the Councillor's private property by council employees using council trucks. The complainant questions whether it is ethical for a county councillor to be using council vehicles and employees for their own personal use, and asks whether this cost is being met by council tax payers.</p> <p>The complaint amounts to an allegation that the Councillor has failed to behave in a manner that maintains public confidence in the Council consistently with the principle of selflessness, contrary to paragraph 4.2(a) of the Members' Code of Conduct.</p>			Currently being considered by the Governance Solicitor.
COM 180 - 188	Parish	13 July 2018 Member of the public	<p>The Complainant complains about posts on the Parish Council's Facebook page and about signage recently placed in the Council car park in the Parish. The posts and signs appear to be directed towards persuading customers of the Co-Op store to park in the Co-Op car park rather than in the Council car park.</p> <p>The Complainant considers that the social media posts and the car park signage are uncivil, harassing and potentially defamatory of the Co-Op. He refers to the Co-Op sign being 'crossed out' which he understands to mean that the Parish Council is encouraging customers to boycott the Co-Op. He questions the legality of the Council seeking to direct who may use the Council car park having regard to their intended destination. He also considers that the Members are promoting an unsafe and potentially dangerous solution to the parking problems in the village.</p>	1 and 3	2 August 2018	No Further Action.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			<p>The Complainant complains that the Council's social media policy has been breached. That policy requires that communications from the Parish Council will be "civil" and will not contain content that is knowingly harassing or defamatory. By the Parish Council's sanctioning of these communications, the complaint amounts to an allegation that each of the Parish Councillors has breached the Code of Conduct in that they have failed to treat others with respect and have brought the Council into disrepute.</p>			
COM 189 - 194	Town	20 July 2018- COM 189 26 July 2018- COM 190 30 July 2018- COM 192 31 July 2018- COM 193-194 4 Town Councillors and one County Councillor	<p>The Complainants allege that during a Council meeting of 18 July 2018, chaired by the subject Councillor, he refused to take advice from the Clerk and was abrasive and abrupt towards him. The Complainants complain that one of the Councillors present was warned that she would be asked to leave the meeting after complaining about the Chair's behaviour during the proceedings. The Complainants found his conduct towards the Clerk to be bullying and upsetting. A further Councillor complains that the subject Councillor has a vendetta against the Clerk.</p> <p>This amounts to an allegation that the Councillor has not behaved in such a way, during the conduct of his office that a reasonable person would regard as respectful, and has acted in a way which a reasonable person would regard as bullying or intimidatory.</p>	1 and 2		Subject Councillor requested to speak with Independent Person. Currently being considered by the Governance Solicitor.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 195	Parish	10 September 2018 Member of the public	The Complainant complains that the subject Councillor asked him to move his car in an unnecessarily aggressive and hostile manner.	1		Currently being considered by the Governance Solicitor.

This page is intentionally left blank

Standards Committee

5 October 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 a revised draft of the Council's Local Assessment Procedure ("the Procedure") for Code of Conduct complaints following consultation with the Constitution Working Group on 4 September 2018.

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. It is enclosed at **Appendix 2**. It is the version presented to the last meeting of this Committee, with further changes since then shown as marked ("tracked").

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 have ceased collecting it. The Committee resolved in June to implement this amendment with immediate effect.
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.

Views of the Constitution Working Group

12. CWG were generally supportive but asked for some minor changes to be made, which are now reflected in the proposed additional text at paragraphs 2.1 and 3.1. The first is to make it abundantly clear that the subject Member is entitled to receive a full copy of any complaint. The second is to clarify that an assessment may need to be delayed where other agencies need to be involved (for example, where a complaint raises an allegation of criminal offences which require referral to the police).

Conclusion

13. The proposed changes to the Procedure are designed to give greater clarity to the procedure on assessing and investigating complaints.

Recommendation

14. That Standards Committee resolve to adopt the amended Local Assessment Procedure.

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

June 2018

Definitions

Code of Conduct	means the relevant Code or Codes of Conduct adopted by the Member's council or councils
Independent Person	the person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometimes must, be sought
Investigating Officer	means the person appointed by the Monitoring Officer to undertake an Investigation
Investigation	means an investigation undertaken by the Investigating Officer
Local Resolution	means an informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure
Member	means the councillor of the County Council or Town/Parish Council who is the subject of a complaint under this Procedure
Monitoring Officer	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 a full 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. Assessment may in some circumstances be delayed if a police or other (for example, internal Audit) investigation is first warranted.
- 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

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

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

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 '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 or the Information Commissioner's Office 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.

This page is intentionally left blank

Standards Committee

5 October 2018



Social Media Guidance

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

Purpose of the Report

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

Background

2. Members will recall that in December they agreed to develop social media guidance, and request 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. A further draft was brought to this Committee at its 7 June 2018 meeting, and it was resolved to issue that draft for consultation.
3. The responses to the consultation exercise have now been received and so the Guidance is now brought to the Committee for approval.
4. Draft Guidance is attached at **Appendix 2**.

Consultation Responses

5. The draft Guidance was sent to all County Councillors, the Independent Persons, and to CDALC. By mid-August ten responses had been received, being from eight County Councillors, one of the Independent Persons and from CDALC.
6. On the question whether it should be policy rather than guidance, two County Councillors said that it should. Two County Councillors and CDALC expressed a preference for it to be adopted as guidance. The others did not express a concluded view.

7. There was general support for its contents. Some comments were received on matters going beyond the scope of the document. Some Councillors said they did not use social media.
8. The Independent Person who responded pointed out organisations, not just natural persons, can be the subject of harassment. The Protection from Harassment Act 1997 only protects individuals, but organisations (though not public corporations or political parties) can be defamed (and, in the parlance of the Code, can be treated with disrespect).
9. One Councillor suggested the guidance (or policy) should encompass not only social media but also wider internet use, and how councillors can best use it as a promotional and informative tool rather than as a platform for personal abuse. Another Councillor suggested that the guidance should apply to all forms of communication including leaflets.
10. The draft Guidance was subsequently considered by the Constitution Working Group on 4 September (and the above consultation responses brought to CWG's attention). CWG were generally supportive. They requested that the guidance be re-circulated to Members to provide a further opportunity to comment.
11. Further consultation responses were subsequently received from three Councillors. One asked for specific advice around 'trolling' and what Members should do when they are on the receiving end of it. Another asked for the guidance to warn Members that when they are 're-tweeting' or sharing posts, this amounts to a separate act of publication. The third response was considerably more detailed and raised a number of excellent points that are worth repeating.
12. The Councillor was generally supportive, and raised the point that paragraph 17 needs amending to reflect the current use of iPads during committee meetings. The Councillor then paid particular attention to paragraphs 11 – 16 of the draft guidance.

Re para 16, I never ask anyone to be my facebook friend – I leave it to other people to seek to follow my blog, then it is their decision.

One thing you may want to consider is how councillors might respond to friendship requests from people of a young age. I accept friendship requests from people under the age of 18 but, especially if they are still at school, I send a message asking them to tell their parents what they have done, in the interests of internet safety.

Paras 13-15 offer advice about running a social media page, and it is here that, if any changes are to be made, they need to be made.

Para 15 is the best advice. You may wish to warn councillors about tactics such as trolling and dogpiling which are intended to bounce the victim into an unwise response. Councillors need to remember that every word goes world-wide, and is often screenshotted to use as ammunition for years to come. Make sure that your harmless statement cannot be read a different, negative way – this is easier when making the initial post than in the heat of debate.

When interacting on social media, it always needs to be at the forefront of a councillor's mind that writing on social media is equivalent to making a formal statement in a public meeting. They are putting their professional and political persona on display.

One piece of advice I would give would be for councillors to decide what they want their social media presence to achieve, and then to keep the different functions separate. (Do not, for instance use your public councillor blog for private interactions – have two separate facebook pages.)

All this applies particularly to Para 13, which is only appropriate in certain contexts.

There are three basic types of public councillor-blog:

- (1) Information sharing only*
- (2) Information-sharing but allows comment and debate*
- (3) Also allows members of the public to initiate debate*

(My blog is at level 2, with occasional forays into level 3)

Where a social media presence is at level (1) only, it can be tremendously useful for a councillor. It allows them to keep their residents informed, not only of what is going on in the county and the ward, but of what the Council and they as a Councillor are achieving. I regard this information-sharing role as an essential element of my role in the local community.

The problems arise when the blog begins to move away from level (1) towards level (2) which – as both facebook and twitter allow responses – it very easily tends to do. What councillors need to understand is that their only control over what other people say is post hoc. Hence the need, if you have a social media presence, to monitor it regularly.

I am not hostile to the sentiment “there is no need to respond to everything” but I find that I need to keep a very careful eye on the comments on my blog, especially where two members of the public are disagreeing with each other on my timeline ... on a political blog, things get out of hand very quickly.

Similarly, I would probably disagree with “it is generally best to allow disagreement rather than to seek to censor it.” I do allow contrary opinions on my blog, but I seek consensus, seek to convince, and I am not going to allow my blog to carry content which is libellous or unpleasant towards myself, the Council or my political party. That is my right, and it is my blog – I do not go onto other people’s timelines slagging them off.

Councillors’ control over the content of their social media lies in their ability to moderate their blog – to delete and to block. Not everybody who comments is doing so constructively and sincerely. People very often hesitate to delete or block, but setting clear guidelines, warning, and then acting firmly, pretty soon establishes ‘the rules’ for a blog, and the people who come on regularly will be people prepared to follow the rules.

In that respect, I am dubious about Para 14: “Promptly admit to mistakes”. What I would say here is that it depends on the mistake. Obviously if it is factual error then it is easily corrected. However, with opinions, strategies, statements etc. I would advise NOT admitting ‘mistakes’ online. On social media it is impossible to ‘apologise-and-move-on’. If you really are in a pickle, seek advice.

One final point. Everything above is written on the assumption that the councillor is projecting a social media presence via their own facebook/twitter accounts, and wishes to regulate those accounts professionally and safely.

That does not, of course, address the case of councillors who are trawling the internet getting involved in discussions and debates on other people’s timelines, where they have no control

whatsoever over the replies and how their comments are used. Any councillor doing this needs to be especially wary of incriminating themselves.

Changes following consultation

13. Following the Independent Person's comments it is proposed to add the words "or an organisation" after "about a person" at paragraph 3 (defamation).
14. The comments recorded in paragraph 9 above are considered to go beyond the anticipated scope of the document.
15. The balance of commentators thought the document should be adopted as Guidance rather than Policy. This is also your officers' recommendation.
16. The warning about sharing or re-tweeting being a separate act of publication is considered to be covered by paragraph 12 of the draft Guidance.
17. Advice about 'trolling', and what to do about it, has been added at paragraph 15, and a number of the comments in the detailed response from the Councillor cited above have also been incorporated in paragraphs 11 – 16. In particular, the Guidance is now clearer that Members should not be afraid of moderating or blocking unacceptable comments, and the advice subsequent to that about allowing disagreement is to be seen in that context.

Recommendation

18. Members are asked to agree and adopt the amended draft Guidance (as having the status of Guidance).

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.

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 or an organisation 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 and it is recommended that councillors apply the same to moderating their accounts. If you let people post comments then you should have clear and prominent guidelines about when you will moderate comments or block people from posting to the site. You should regularly monitor your site, and not be afraid to follow these guidelines.

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, although this should not dissuade you from your objective of seeking to persuade or to foster consensus. 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 of fact.

15. Avoid using social media when you are tired, angry, upset or your judgment may be impaired. Be aware that 'trolling' posts can be intended to bounce you into an unwise response to be used against you, and always consider whether anything you write might be interpreted in a way you do not intend. If 'trolling' becomes unacceptably harassing then report it to the Police and seek advice from, as appropriate, Member Support or your parish clerk.

16. Think carefully about who to 'follow' or 'befriend' online, and be cautious about accepting 'friend' requests from anyone under the age of 18. 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 (other than official equipment for the meeting) 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).
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>

Standards Committee

5 October 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: Review of Local Government
Ethical Standards**

3. The CSPL report that they received 317 responses to their consultation exercise and expect to publish their report by the end of the year. The outcome of the consultation will be reported to the Committee in due course.

NALC Research

4. In order to inform its submission to the current review by the Committee on Standards in Public Life, the National Association of Local Councils carried out a survey of England's local councils to seek their views. Some 90% of parish and town councils surveyed would support a single, mandatory code of conduct, that research has revealed.
5. The NALC survey also found that nearly 70% of local councils would like new powers to impose additional sanctions.

6. “At the moment sanctions used by local councils include apologies and training. However, around 60% of local councils believe these are neither sufficient to punish breaches of the code of conduct or deter future breaches,” the association said.
7. Almost 40% of local councils meanwhile stated that their members had not received any training and 20% reported that most members did not understand the rules around declaring interests.
8. Cllr Sue Baxter, chairman of NALC, said: “NALC does not believe the current ethical standards arrangements are working as well as they could and a review of the regime is something we have long called for. We would like to see stronger sanctions available to local councils, including the power of suspension and disqualification.
9. “In light of our research, we are also asking the government to invest £2m towards a national training programme that would see all new councillors undertake training on ethical standards and the code of conduct as part of their induction.”

Court Cases

[Brown’s \(Patrick\) Application \[2018\] NIQB 62](#)

10. This case concerned whether the Local Government Code of Conduct in Northern Ireland applied to councillors’ conduct in their private lives. The appellant had been suspended as a councillor for 6 months following a criminal conviction for drink-driving. He sought to argue that this conduct did not occur in his capacity as a councillor and therefore that the Code had no application. The judge noted that the relevant provisions of the Code were to be observed “at all times in relation to conduct which could reasonably be regarded as bringing your position as councillor or your council into disrepute”. The associated Guidance confirmed that the rule applied to councillors “**at all times**, not just when you are acting in the role of councillor” and accordingly the appeal against the councillor’s suspension was dismissed.

Recommendation

11. 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.

This page is intentionally left blank

Standards Committee

5 October 2018

Annual Report of the Standards Committee 2017/2018



Report of Helen Lynch, Head of Legal and Democratic Services

Purpose of the Report

1. To inform the Council of the work of the Standards Committee during 2017/18 and to set out the future direction which the Committee intends to take during 2018/19.

Background Information to the Annual Report

2. Although there is no legislative requirement for Standards Committees to produce an Annual Report, doing so is recognised as good practice. Not only does the report publicise the work of the Committee to the wider general public, it is also a means for the Authority itself to monitor the Committee's work.
3. References to Articles in the Council's Constitution in this report are to those that existed during 2017 – 2018. It has since been amended, and the Standards Committee's Terms of Reference are now set out in Article 7.

Membership of the Standards Committee 2017/2018

4. The Standards Committee is comprised of 11 County Council Members and 2 Parish/Town Council Members as follows:-

County Council Membership

Councillor B Kellett – Chairman
Councillor E Huntington – Vice Chairman

County Councillors E Bell, J Bell, J Clark, M Clarke, T Henderson, M McGaun, M McKeon, J Nicholson and A Savory.

Parish and Town Council Representatives

Councillor Terry Batson is a consultant Arborist and a former Local Government Officer. Councillor Batson is also a Member of Tow Law Town Council.

Councillor Ralph Harrison is a former Member of Chester le Street District Council who continues to serve his local community as a Member of Sacriston Parish Council.

Independent Persons

5. Under the Localism Act 2011, the Council was required to appoint one or more Independent Persons to assist in the Standards process.
6. The functions of the Independent Persons are:
 - a) They must be consulted by the Authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decide on action to be taken in respect of that member.
 - b) They may be consulted by the Authority in respect of a Standards complaint at any other stage and they may be consulted by a member or a co-opted member.
7. In September 2012 the Council appointed the following persons:-

John Dixon Dawson. John is from Peterlee and is currently Head of Post Graduate Programmes at the University of Sunderland Business School. He has a career going back to 1986, which has involved various placements at universities in the North East, four years as a non-Executive Director at an NHS Trust and seven years as a Deputy Town Clerk.

Peter William Jackson. Peter is from Newton Hall and is retired. Originally from the private sector having fulfilled the roles of Factory Manager, General Manager, Managing Director, Group Technical Executive and Sales Manager. He has also served on the Youth Employment Committee of the Council and the Police Consultative Committee for Durham County Council.
8. The Independent persons were appointed for a four year term with effect from 25 September 2016 and this is their second term of office.
9. In 2017/2018 the Independent Persons were involved in seven cases and one Standards Committee Hearing Panel.

Role of the Standards Committee

10. The Members of the Standards Committee have a common interest in that they believe in principled local politics and value their role as champions of high standards of conduct amongst local politicians.
11. In accordance with Article 9 of the Constitution of Durham County Council, the roles and functions of the Standards Committee are as follows:

- (a) promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council and Parish and Town Council Members;
- (b) assisting Members and Co-opted Members of the Council and Parish and Town Council Members to observe the Members' Code of Conduct and where appropriate, the Planning Code of Practice;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct and the Planning Code of Practice;
- (d) monitoring the operation of the Members' Code of Conduct and the Planning Code of Practice;
- (e) advising, training or arranging to train Members and Co-opted Members of the Council and Parish and Town Council Members on matters relating to the Members' Code of Conduct and Planning Code of Practice;
- (f) granting dispensations to Members and Co-opted Members of the Council from requirements relating to interests set out in the Members' Code of Conduct and Planning Code of Practice in circumstances where this function has not been delegated to the Monitoring Officer;
- (g) the assessment and/or referral for investigation of allegations of misconduct on the part of Members and Co-opted Members of the Council and Parish and Town Council Members, if requested to undertake this function by the Monitoring Officer;
- (h) the determination of allegations of misconduct on the part of Members and Co-opted Members of the Council and Parish and Town Council Members;
- (i) dealing with any alleged breach by a Member of a Council Protocol, in accordance with procedures approved by the Committee;
- (j) overview of the Officers' Code of Conduct;
- (k) overview of the Protocol on Member/Officer Relations.

Parish and Town Council Sub-Committee

12. Article 9 of the Constitution enables the Standards Committee to appoint a sub-committee comprising three Councillors. The remit of the Sub-Committee will be to support Parish and Town Councillors and their Clerks in maintaining high standards of conduct, whether through training or otherwise, and for this purpose to maintain close links with the County Durham Association of Local Councils. There have been no appointments to this Sub-Committee during 2017/18. Support and training has been carried out by officers.

Code of Conduct Complaints

13. In 2012, following the implementation of the Localism Act 2011 and associated changes to the Standards regime, the Monitoring Officer was appointed as the 'Proper Officer' to receive complaints of failure to comply with the Code of Conduct. The Monitoring Officer has delegated power, after consultation with the Independent Person, if appropriate, to determine whether a complaint merits formal investigation. Wherever practicable, the Monitoring Officer seeks resolution of complaints without formal investigation and she has discretion to refer decisions to the Standards Committee where she feels that it is inappropriate for her to make the decision. The Standards Committee receives a quarterly report on the discharge of this function.
14. During 2017/18 the number and breakdown of complaints regarding breaches of the Code of Conduct was as follows:-

Year	1 April 2017 to 31 March 2018	1 April 2016 to 31 March 2017
Total no. of complaints received	41	70
Source of Complaints	Councillors 14 Members of the public 25 Parish/Town Council employee 1 Anonymous 1	Councillors 35 Members of the public 20 Parish/Town Council employee 3
Complaints against	County Councillors 13 Parish Councillors 13 Town Councillors 15 Dual-hatted 0	County Councillors 12 Parish Councillors 13 Town Councillors 43 Dual-hatted 2
Independent Persons Involved	7 plus 1 Standards Committee Hearing Panel	4 plus 1 Standards Committee Hearing Panel
Outcomes	No Further Action 30 Local Resolution 8 Local Investigation 3 Standards Committee Hearing Panel 1	No Further Action 66 Local Resolution 4 Standards Committee Hearing Panel 1

15. There has been a decrease in the number of complaints received in 2017/2018 compared to the previous year but there has been an increase in the number of complaints where Local Resolution was recommended, and three were referred for Local Investigation by the Monitoring Officer. Of the total number of complaints received, eight of these related to the behaviour of Councillors in meetings and seven were allegations regarding the perceived inappropriate use of social media.

Work of the Standards Committee during 2017/18

16. During the year the Committee has met on four occasions. The Committee received updates on the current status of complaints and of the 'national picture' on Standards issues affecting Local Government. A Work Programme for the Committee was agreed at the December 2017 meeting.
17. The Committee was consulted on proposals by the Department for Communities and Local Government to update disqualification criteria for local members, and agreed revisions to the Code of Conduct and the protocol on member/officer relations which were adopted by the Council in May 2018. The Committee also commented on the review of Local Ethical Standards undertaken by the Committee for Standards in Public Life.
18. The Chair and Vice-Chair of the Committee accompanied the Monitoring Officer to the regional meeting of Monitoring Officers, Chairs/Vice-Chairs of Standards Committees and Independent Persons on 2 April 2017.

Training and Development

19. Elections to the County Council and Parish and Town Councils were held in May 2017 and training on the Code of Conduct for all new County Council members was held on 15 May 2017, which although not mandatory, was attended by 33 out of the 41 new members. The Monitoring Officer held a training session on the Code of Conduct for all Parish and Town Councils on 3 October 2017 which was attended by representatives from 18 Parish Councils. At the request of Cornforth Parish Council the Governance Solicitor provided Code of Conduct training to its members on 13 November 2017. Neighbouring Parish/Town Councils Bishop Middleham, Ferryhill, Chilton and Kirk Merrington were invited to the session.
20. Members of the Standards Committee attended a regional training session on the use of social media on 10/11 October 2017, and the Chair and Vice-Chair of the Committee observed a meeting of Newcastle City Council's Standards Committee on 13 October 2017.

Moving Forward

21. The Standards Committee is continually dedicated to its responsibility to champion and promote high standards of conduct amongst the County's local politicians. The Committee will continue to provide support and advice where necessary to local Councils and in conjunction with the County Durham Association of Local Councils.
22. Complaints regarding the perceived inappropriate use of social media platforms are on the increase both locally and nationally, and Guidance is being developed on this topic to assist both County and Parish and Town Council Members. Changes to the Local Assessment Procedure which are designed to give greater clarity to assessing and investigating complaints, are being considered.

Conclusion

23. The Standards Committee has continued to promote the principles and values of good governance within the Council and across the County. The Members of the Standards Committee are committed and dedicated to ensuring that high standards of conduct are maintained by all local elected Members.

Recommendation

24. It is recommended that:-
- a) Standards Committee note the report and;
 - b) the report be presented to the County Council on 31 October 2018.

Contact: Laura Renaudon Tel: 03000 269886

Appendix 1: Implications

Finance – None specific to this report.

Staffing – None specific to this report.

Risk – None specific to this report.

Equality and Diversity - None specific to this report.

Accommodation - None specific to this report.

Crime and Disorder - None specific to this report.

Human Rights - None specific to this report.

Consultation - None specific to this report.

Procurement - None specific to this report.

Disability Discrimination Act - None specific to this report.

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 and to have in place arrangements under which allegations can be investigated and decisions made. As explained in paragraph 2 of this report, the publication of an Annual Report aids the public understanding and awareness of the committee's work and demonstrates how the Council discharges its s. 27 duty.

This page is intentionally left blank