



Standards Committee

Date **Friday 3 September 2021**
Time **9.30 am**
Venue **Council Chamber, County Hall, Durham**

Business

Part A

Items which are open to the Public and Press

1. Apologies for Absence
2. Declarations of Interest, if any
3. Minutes of the Meeting held on 25 June 2021 (Pages 3 - 6)
4. Standards National Picture Update (Pages 7 - 14)
5. Code of Conduct Update (Pages 15 - 24)
6. 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
25 August 2021

To: The Members of the Standards Committee

Councillor J Nicholson (Chair)
Councillor F Tinsley (Vice-Chair)

Councillors M Abley, J Atkinson, L Maddison, L Mavin, A Savory, T Smith,
D Stoker, T Stubbs and C Varty

Parish/Town Council Representatives:

Councillors T Batson and R Harrison

DURHAM COUNTY COUNCIL

STANDARDS COMMITTEE

At a Meeting of **Standards Committee** held in County Hall, Durham - County Hall, Durham on **Friday 25 June 2021 at 9.30 am**

Present:

Councillor J Nicholson (Chair)

Members of the Committee:

Councillors M Abley, J Atkinson, L Maddison, T Smith, A Savory, D Stoker, T Stubbs, F Tinsley (Vice-Chair) and C Varty

1 Apologies for Absence

Apologies for absence were received from Councillor L Mavin, and Parish and Town Council representatives Councillors T Batson and R Harrison.

2 Declarations of Interest

There were no declarations of interest.

3 Minutes

The Minutes of the meeting held on 3 March 2021 were agreed as a correct record and were signed by the Chair.

4 Committee Work Programme

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which asked members to consider progress against the Work Programme for 2020/2021 and sought agreement to the proposed Work Programme for 2021/2022 (for copy see file of Minutes).

Resolved:

That

- a) progress against the Work Programme for 2020/2021 be noted;

- b) the proposed Work Programme for 2021/2022 as attached at Appendix 3 of the report, be agreed.

5 Appointment of Independent Persons to Standards Committee

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided an update on the recruitment of two new Independent Persons to the Standards Committee (for copy see file of Minutes).

Following a question from Councillor Stubbs, the Governance Solicitor confirmed that the term of office of the Independent Persons had been due to come to an end in September 2020 but had been extended by a further year due to the pandemic.

In response to a question from Councillor Atkinson regarding the attendance of the Independent Persons at two of the four meetings of the Standards Committee per year, the Governance Solicitor advised that this was not a requirement but was considered good practice. The Independent Persons would be encouraged to attend more than the minimum number of meetings, but there was an expectation that they would attend at least two.

Resolved:

That

- a) the recruitment process undertaken for Independent Persons be noted;
- b) Council be recommended to agree the appointment of Alan Fletcher and Kayleigh Louise Wilkinson as Independent Persons to the Standards Committee with effect from 22 September 2021 for a term of two years;
- c) Council be invited to delegate authority to the Standards Committee to consider whether to extend the appointment of the Independent Persons for a further two years in 2023, and that any such extension be reported to Council as part of the annual report of the Standards Committee.

6 Annual Report of the Standards Committee 2020/2021

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which presented the Annual Report of the Standards Committee for 2020/2021 (for copy see file of Minutes).

The report provided an overview of the work carried out during 2020/2021 and set out the future direction which the Committee intended to take during 2021/2022.

Councillor Tinsley made reference to the proposed change to the way complaints were recorded for future reporting. Complaints had historically been recorded as one complaint irrespective of the number of members subject to the complaint and it was proposed that this figure would be broken down further in future reports. The Councillor emphasised the need to highlight this change as it would appear as a spike in the number of complaints received when compared to the previous year's figures. The Governance Solicitor confirmed that the change in the recording system would be explained in future reporting.

Resolved:

That

- a) the Annual Report for 2020/2021 be noted;
- b) the report be presented to the Council meeting in July 2021.

7 Standards National Picture 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).

Resolved:

That the report be noted and Officers be requested to monitor the progress of the matters referred to and keep the Committee updated.

8 Code of Conduct Update

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided an update on activity since the last meeting in respect of complaints received by Durham County Council against Councillors, and training to members of both Durham County Council and Town and Parish Councils (for copy see file of Minutes).

Resolved:

That the contents of the report be noted.

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

Electoral division(s) affected:

None.

Purpose of the Report

- 1 To inform Members of the national picture on standards issues affecting Local Government.

Executive summary

- 2 This report is for information to update the Committee on national developments, consultations and cases which relate to the work of the Committee since the last meeting on 25 June 2021.

Recommendations

- 3 The Standards Committee is recommended to:
 - (a) note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated; and
 - (b) consider any recommendations it wishes to make arising out of the content of the report.

Background

- 4 As agreed by the Committee on 25 June 2021, as part of the Annual Work Programme, this is a standing agenda item with a quarterly update to the Committee.

Code of Conduct Complaints and Reports

- 5 Since the abolition of the Standards Board for England, national statistics and case reports are no longer collated. Any cases reported are taken from news reports and general research where Councils publish details of their conduct hearings in public.

Cyril Bennis v Information Commissioner (Dismissed) [2021] UKFTT 2017_0220 (GRC)

- 6 On 10 February 2021, the First-Tier Tribunal General Regulatory Chamber (Information Rights) (the Tribunal), considered an appeal of Cyril Bennis (the Appellant) against the Information Commissioner (First Respondent) and Stratford on Avon District Council (Second Respondent).
- 7 The Appellant submitted a Member Code of Conduct complaint to the Council in September 2016 and as part of the complaint the Monitoring Officer sought the views of two Independent Persons. The Monitoring Officer informed the Appellant by letter, that the complaint would not be investigated further.
- 8 On 23 January 2017, the Appellant made a request to the Council for all correspondence relating to his complaint. The Council provided the majority of the information held but refused to provide the Independent Persons views, relying on exemptions contained in the Freedom of Information Act 2000. The decision to withhold the information was appealed to the Information Commissioner, where the decision of the Council was upheld. The Information Commissioner concluded that it was reasonable for the Council to withhold the views of the Independent Persons, on the basis that publication would be likely to inhibit the free and frank provision of future advice and would be likely to be otherwise prejudicial to the effective conduct of public affairs. The Information Commissioner also determined in this case that the public interest to withhold information was outweighed by the public interest in disclosing the information. This decision was appealed to the Tribunal.

9 In considering the case, the Tribunal noted the generalised nature of the Appellant’s case, which relied on the public interests of transparency, openness and accountability in relation to public sector activities.

10 The Tribunal was satisfied that the Council’s usual practice, notwithstanding its flexible approach but in line with that of other Local Authorities, was that the Independent Persons opinions would generally be treated as confidential and would only be published when a complaint proceeds to a public hearing, stating:

“We find that, in the context of this case, the Independent Persons provided their opinions on the merit of the complaint with a reasonable expectation that these views would not be made public...”

11 The Tribunal also found that there was a significant risk that the candour, and therefore the quality, of the Independent Persons advice to the Council would be diminished were it to become more likely that it would be made public. The decision also confirmed that the Tribunal was satisfied that the ability of the Independent Person to provide candid and uncensored advice to the Monitoring Officer was an important part of the Council’s complaint system recording:

“We find that any inhibition of the IP’s advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken.

We find in addition that there is a strong public interest in avoiding detriment to the Council’s process for dealing with complaints made against elected officials.”

12 Having considered all factors of the case, the Tribunal concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the Independent Persons candid advice, and in maintaining the effectiveness of the council’s complaint process that might otherwise be undermined.

13 The Tribunal dismissed that appeal and upheld the decision notice dated the 4 September 2017.

Darlington Borough Council – Councillor Culley (29 June 2021)

14 A Standards Committee Hearing considered the complaints from a member of the public and a jointly submitted complaint from three councillors in June 2021.

- 15 The complaint concerned a meme which was shared on Facebook on 6 September 2020 showing the words “you’re not special”. The post shared by the Member was said:
- a) To undermine and / or deny that the transatlantic slave trade has created a legacy of discrimination towards black people and contributes to the dissemination of misleading information about historical slave trades at a time when there is a global social discussion about slave trades and how they contributed towards institutional racism.
 - b) Failure by a Council member to recognise the discrimination that black people face could result in members of the public believing that the Council does not recognise problems experienced by black people; this potentially isolates black people from their Council and may discourage black people from accessing Council services.
 - c) That the post by Councillor Culley reflects poorly on Darlington Borough Council as an organisation that is ignorant to the issues affecting black people.
- 16 It was considered by the complainants that the Member had failed to comply with the Member Code of Conduct specifically for failing to treat others with respect and to bringing the office and Council into disrepute.
- 17 The Member had a private Facebook page and a public Facebook page. The ‘public’ Facebook profile was in the name of Pauline Mowden Culley Facebook.
- 18 The post appeared on the public profile, the Member did not ‘like’ the post or add any comment when sharing the meme. The post was removed after a day of being displayed and the Facebook account taken down.
- 19 The Committee considered whether the Member was acting in her official capacity. The Standards Committee Hearing found that this concerned a situation where a Member was not carrying out a formal Council role or council business but she was nonetheless deemed to have been acting in an official capacity as the Facebook page was public facing and it was acknowledged by the Member that she used this Facebook page for some posts that relate to her role as a Councillor. In doing this, the Committee found that she was making the post in her official capacity and therefore the Code of Conduct was engaged.

- 20 For the interpretation of the meme the Panel found that while some of the statements made in the meme are correct historically, the statement 'You're not Special' was problematic. The Committee considered it to be a superficial statement and it could be said that it failed to adequately consider the true scale and impact of slavery on different groups. The sharing of the meme was in their view ill-judged and the 'you're not special statement' was considered offensive. This could give rise to a finding of a failure to treat with respect and also bringing the office of Councillor or the Council into disrepute.
- 21 The Panel went on to consider freedom of expression, in particular Article 10 of the European Convention of Human Rights. A finding of a breach of the Code of Conduct could potentially interfere with the Members freedom of expression and if this is the case it must be justifiable to do so.
- 22 The meme that was shared was about a matter of public debate/interest, arising against the backdrop of the issues raised during 2020 about racism and slavery. The Committee considered the post to be a political speech made by an elected member and therefore was afforded enhanced protection for freedom of expression.
- 23 Freedom of expression is not however an absolute right and even the enhanced protection afforded to political speech would not be available for grossly offensive statements or statements that amount to hate speech. The Committee found that whilst they considered the meme offensive, they did not think that it is of a level to be considered as grossly offensive or to amount to hate speech. It was noted that that the meme was not specifically directed towards any particular person or group. Neither does it mention the transatlantic slave trade.
- 24 The Committee found that the sharing of the meme was within the limits of freedom of expression, the Committee found that there was not a breach of the Code as a failure to treat with respect or in turn to bring the office or Council into disrepute.
- 25 The Committee concluded that that the Member had not breached the Code of Conduct. It did however recommend that additional guidance to be made available to all members about the use of social media. It also was recommended that a review be undertaken to update the Code of conduct to reflect the rapid changes in social media platforms.

National Developments

Local Government Association Guidance on Model Code of Conduct

- 26 Members will be aware from earlier reports, that in December 2020, the Local Government Association (LGA) developed and published a Model Councillor Code of Conduct in association with key partners. The Model Code was prepared in response to the recommendation of the Committee of Standards in Public life Local Government Ethical Standards 2019.
- 27 The adoption of the Model Code was considered by the Standards Committee on 3 March 2021 and full Council in Durham County Council on 26 May 2021, where it was agreed that the existing code reflected the best practice with minor amendments required.
- 28 Guidance for the Model Code of Conduct was published on 8 July 2021.
- 29 The guidance reflects the provisions of the Code and is available as a standalone document intended to provide easy access to the guidance. The LGA have confirmed that it will undertake an annual review of the guidance and the Code to ensure it continues to be fit for purpose, incorporating advances in technology, social media, case law and changes in legislation.
- 30 The Standards Committee are asked to note the publication of the LGA guidance and note that Monitoring Officer will continue to monitor any changes to the model Code or guidance.

Background papers

- None

Other useful documents

- https://www.bailii.org/uk/cases/UKFTT/GRC/2021/2017_0220.html
- <https://democracy.darlington.gov.uk/ieListDocuments.aspx?CIId=228&MIId=2363&Ver=4>
- <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

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Appendix 1: Implications

Legal Implications

The Council has a duty under section 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. Ensuring that the Standards Committee is kept up to date with national Standards issues is expected to facilitate compliance with this duty.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

None.

Procurement

None.

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Standards Committee

3 September 2021

Code of Conduct Update



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

Electoral division(s) affected:

None

Purpose of the Report

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

Executive summary

- 2 The report provides an update on the complaints of alleged breaches of the Code of Conduct currently being assessed and those which have been completed. Complaints are considered in accordance with the council's Local Assessment Procedure dated May 2021.

Recommendation

- 3 The Standards Committee is recommended to note the contents of the report.

Complaints

- 4 The council has a duty under section 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 to consider allegations about breaches of the Codes of Conduct for Members, by the council's own members and of members of parish/town councils for which the council is the principal authority.
- 5 There have been 9 formal complaints received between 18 June 2021 and 25 August 2021. There have been 8 final decision notices issued in the last period and the outcome of each complaint shown at Appendix 2. There have been no complaints which have been rejected at the pre initial assessment stage.
- 6 COM 360 and COM 364 relating to a Town Councillor have been referred for investigation. COM 322-COM 324 relating to the same Councillor have been referred for consideration by a Hearing Panel of the Standards Committee which is expected to be considered in late October 2021.
- 7 It would not be appropriate to comment on those complaints that are currently being assessed/investigated but Decision Notices will be available for inspection once the decision has been communicated to the Member subject to the Complaint.

Conclusion

- 8 The report is intended to provide an overview of complaints handling to assist the Standards Committee to fulfil their role in promoting and maintaining high standards of conduct.

Background papers

- Local Assessment Procedure dated May 2021.
- Decision Notices.

Contact:	Kamila Coulson-Patel	Tel: 03000 269674
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Appendix 1: Implications

Legal Implications

As outlined in the report.

Finance

There are no financial implications arising out of the report.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

There are no equality and diversity implications arising out of the report.

Climate Change

There are no climate change implications arising out of the report.

Human Rights

None

Crime and Disorder

There are no Crime and Disorder implications arising out of the report.

Staffing

There are no staffing implications.

Accommodation

There are no accommodation implications.

Risk

None.

Procurement

There are no procurement implications.

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Appendix 2: Code of Conduct Complaints Activity

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
COM 322, 323 and 324	Town	04.01.21	<p>The Member made a post on Facebook suggesting the removal of an officer post from the Town Council. There was also a suggestion that the Member required that the officer to attend a budget workshop meeting where he sought to single out the officer.</p> <p>The Member published an email between a Member and an officer of the Council on social media which is considered to be a data breach and has been reported to the ICO.</p> <p>There have been instances since November 2019 to December 2020 where the Member has targeted the Complainant and undermined the Complainants role within the Council by making comments at meetings and on social media. It is alleged that the conduct of the Member amounts to a breach of the code as well as the social media policy and member officer protocol.</p>	<ul style="list-style-type: none"> • Respect. • Bullying or intimidatory behaviour. • Not to disclose confidential information. • Must act in accordance with all procedures. 	<p>14.05.21 (investigation referral)</p> <p>09.08.21 (standards hearing panel)</p>	Referred for consideration by Panel of the Standards Committee.
COM 327 and 345	Town	19.01.21	An Employment Tribunal claim was brought against the Council. The Tribunal in its Judgement dated the 4th January 2021 upheld two allegations, namely that the employee had been unfairly dismissed and was subject to	<ul style="list-style-type: none"> • Respect. • Not to intimate or improperly influence. 	09.03.21	Referred for investigation

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
			<p>disability discrimination by way of a failure to make reasonable adjustment. The Complainant was not the Claimant in the Employment Tribunal but is aware of the Judgement which has been widely reported. The Complainant asserts that the conduct of the Council as recorded in the Judgement demonstrates breaches of the code.</p> <p>A further complaint was presented regarding the conduct of the members at the meeting on 15 March 2021.</p>	<ul style="list-style-type: none"> • Not to compromise the impartiality of anyone who works for or on behalf of the Council. • Disrepute. • Comply with any Standing Orders, policies and procedures adopted by the Council . • Not to disclose confidential information. 		
COM 338 and 339	Town	19.02.21	The Complainant considers the tone and language used in emails amount to a breach of the code.	<ul style="list-style-type: none"> • Disrepute. • Bullying or intimidatory behaviour. • Respect 	24.08.21	No further action The conduct of the Member did not amount to a breach of the code. The Complainant was reminded that she too is subject to the Code of Conduct.
COM 347	Parish	22.04.21	It is alleged that the complainant was subject to a barrage of verbal abuse at a Council meeting from those complained of.	<ul style="list-style-type: none"> • Respect • Bullying or intimidatory behaviour. • Disrepute 		In progress
COM 350	Parish	28.05.21	It is alleged that on 9 September 2020 the member failed to declare an interest on an item relating to the allotments of which she is a tenant.	<ul style="list-style-type: none"> • Respect • Bullying or intimidatory behaviour. • Disrepute. 	13.08.21	Local Resolution The posts made on social media were not made by the Member and of the one post made, this was in the

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
			The member as part of her election campaign used a public village Facebook page to advertise litter picks. On 4 th May the Member and her partner posted false allegations and commented on the complainants conduct on the public village Facebook page.	<ul style="list-style-type: none"> To declare interests on matters where an interest exists. 		personal capacity and the allegations made in the were reported to the police for action. In respect of the interest, the Member was recommended to review her interest form within 28 days of the decision notice and keep this under regular review during her term of office.
COM 351	County and Parish	08.06.21	It is alleged that the Member failed to declare an interest and misrepresented the views of a local Councillor.	<ul style="list-style-type: none"> Be accountable. Behave in accordance with all legal obligations. policies, protocols and procedures. Value colleagues and staff and engage with them in an appropriate manner. Respect. Disrepute. 	13.08.21	No further action The Member did not have an interest to declare in respect of the application. In relation to the allegation that the views of the complainant were misrepresented was not considered a breach, but advice was issued within the decision notice to make the identity of individuals clear in applications to avoid confusion.
COM 352	Town	08.06.21	It is alleged that the Member failed to acknowledge both the complainant and his wife who had a stall at the event. The complainant considered this to be abject ignorance and made the complainant and his wife, who were new to the area, feel that they were unwanted at the event or in the area.	<ul style="list-style-type: none"> Respect. 	13.08.2021	Local resolution There was no finding of a breach of the code in respect of the conduct of the Member at the event. It was recommended that the Council undertake equality and diversity training to ensure that they continue to

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
						promote high ethical standards.
COM 353	Town	17.06.21	The Member sent an email to the Clerk and Councillors containing information which was from a member of the public relating to a legal dispute which was marked without prejudice and confidential.	<ul style="list-style-type: none"> • Disrepute. • Not to disclose confidential information. • Comply with any Standing Orders, policies and procedures adopted by the Council. 	07.07.21	No further action The member had permission to share the information with the councillors and clerk.
COM 354, COM 357 COM 361, COM 362 and COM 365	Parish	June - August	The complaint relates allegations relating to multiple members of the council.	<ul style="list-style-type: none"> • Respect • Disrepute. • Bullying or intimidatory behaviour • Not to disclose confidential information. • Must act in accordance with all procedures. 		In progress.
COM 342, 355 and COM 366	Parish and County	June - August	It is alleged that the Member has not acted in accordance with the code of conduct, alleging that he has been abusive, threatening and intimidating. The allegations are made by former Councillors and members of the public.	<ul style="list-style-type: none"> • Respect. • Disrepute. • Bullying or intimidatory behaviour. 		In progress.
COM 356	Town	23.06.21	The Member made a post on social media which was said to be a breach of	<ul style="list-style-type: none"> • Respect. • Disrepute. 	13.08.21	No further action

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
			the standing orders and in turn the Code of Conduct.			The wording of the post was not considered a breach. The wording did not confirm an action of the Council simply that this would be looked at not confirming that this has been agreed and would be done.
COM 358	Parish	23.06.21	The Complainant does not consider that the correct process was followed by the Parish Council for the co-option of the complainant which was considered on 3 rd June.	<ul style="list-style-type: none"> Comply with any Standing Orders, policies and procedures adopted by the Council 		In progress
COM 359	County	05.07.21	It is alleged that the Member at a planning committee: <ul style="list-style-type: none"> (1) made a statement about a call with the complainant which was factually incorrect; (2) the statement about the complainant it could be inferred that the complainant has lied or mislead; (3) did not have a mandate to speak on behalf of the Sedgefield Town Council at the meeting; and (4) the comments towards the officer regarding the accuracy of the report presented at the committee was disrespectful. 	<ul style="list-style-type: none"> Bullying or intimidatory behaviour 		In progress.

Ref	Council	Date	Allegations	Breach type	Decision Notice	Outcome/Status
COM 364	Town	15.07.21	The Councillor posted content on social media which was said to be contrary to the code.	<ul style="list-style-type: none"> • Respect • Bullying or intimidatory behaviour. • Not seek to improperly confer an advantage or disadvantage on any person. • Comply with any Standing Orders, policies and procedures adopted by the Council 	13.08.2021	Referred for investigation.
COM 368	County	30.07.21	It is alleged that leaflet produced relating to the Energy Recovery Facility (ERF) contains an incorrect statement which is said to mislead the public.	<ul style="list-style-type: none"> • Value colleagues and staff. • Respect • Disrepute 		In progress.
COM 369	County and Town	02.08.21	It is alleged that the Member has been abusive towards fellow Councillor and has a pattern of bullying towards the complainant.	<ul style="list-style-type: none"> • Respect • Disrepute 		In progress.