



Standards Committee

Date **Friday 10 June 2022**

Time **9.30 am**

Venue **Committee Room 1A , County Hall, Durham**

Business

Part A

Items which are open to the Press and Public

1. Apologies for Absence
2. Declarations of Interest, if any
3. Minutes of the Meeting held on 11 March 2022 (Pages 3 - 6)
4. Committee Work Programme (Pages 7 - 12)
5. National Picture (Pages 13 - 30)
6. Code of Conduct Update (Pages 31 - 42)
7. Such other business as in the opinion of the Chair of the Meeting is of sufficient urgency to warrant consideration

Helen Lynch

Head of Legal and Democratic Services

County Hall
Durham
31 May 2022

To: The Members of the Standards Committee

Councillor J Nicholson (Chair)
Councillor L Maddison (Vice-Chair)

Councillors M Abley, J Atkinson, L Mavin, A Savory, G Smith, T Smith,
T Stubbs, F Tinsley and C Varty

Town and Parish Council Co-opted Representatives:

Councillors T Batson and R Harrison

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DURHAM COUNTY COUNCIL

STANDARDS COMMITTEE

At a Meeting of **Standards Committee** held in Committee Room 2, County Hall, Durham on **Friday 11 March 2022 at 9.30 am**

Present:

Councillor J Nicholson (Chair)

Members of the Committee:

Councillors J Atkinson, L Mavin, D Stoker, T Stubbs, F Tinsley (Vice-Chair) and C Varty

Co-opted Member:

Parish Councillor R Harrison

1 Apologies for Absence

Apologies for absence were received from Councillors M Abley, A Savory, T Smith and Mr T Batson.

2 Declarations of Interest

There were no declarations of interest.

3 Minutes

The Minutes of the meeting held on 2 December 2021 were agreed as a correct record and were signed by the Chair.

4 Town and Parish Co-opted Members of the Standards Committee

The Committee considered the report of the Head of Legal and Democratic Services and Monitoring Officer to formalise the arrangements for the appointments of Town and Parish Council co-opted representatives to the Standards Committee (for copy of report, see file of minutes).

Resolved: (i) That the Standards Committee agreed the process to take effect upon a vacancy for co-opted Parish Councillor or following a local election as follows:

- a) Invite CDALC to seek expressions of interest from its entire membership to be a co-opted member of the Standards Committee for a term of office of four years.
- b) Where there are greater number of expressions of interest than vacancies CDALC will ballot its membership on the nomination.
- c) CDALC will formally notify the County Council in advance of its annual general meeting of the nomination for the Town and Parish Council representative providing details of the process undertaken.
- d) The Town and Parish Council representatives will be nominated for appointment at the County Council's annual meeting or in the case of a mid-term vacancy at the next convenient meeting of the County Council.

(ii) That the Monitoring Officer works with CDALC to prepare information on the role of the Standards Committee and co-opted Parish Council Member to share with Town and Parish Council's prior to expressions of interest being requested.

5 Review of Social Media Toolkit

The Committee considered the report of the Head of Legal and Democratic Service and Monitoring Officer to invite members to review the social media toolkit for members following its implementation in 2021 (for copy of report, see file of minutes).

The Governance Lawyer was in attendance to present the report.

Members discussed the report and in response to a question regarding reference in the toolkit to "blocking social media", the Head of Legal and Democratic Service and Monitoring Officer suggested that the wording could be reviewed to clarify that it is a reference to individual's being blocked from a Member's social media page rather than blocking the use of social media altogether. She advised Members that she would review the wording for this point to make it clearer.

Resolved: (i) That the contents of the report be noted.

(ii) That the Social Media toolkit remains fit for purpose and to conduct reviews on a biennial basis subject to the review of the wording in relation to blocking individuals on social media.

6 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 monitor the progress of the matters referred to and keep the Committee updated.

Councillor F Tinsley left the meeting at 10.00 am

7 Local Assessment Procedure Update

The Committee considered the report of the Head of Legal and Democratic Service and Monitoring Officer that provided Members with the proposed revisions to the Local Assessment Procedure complaint form (for copy of report, see file of minutes).

The Governance Lawyer was in attendance to present the report and provided Members with a demonstration of the online complaints form that allowed complainants to complete the form through the Council's website. The online form would also allow the Complainant to submit a complaint and request that it be considered confidentially.

In addition to the form being made available through the corporate website, customer services staff were able to support in person or on the telephone to assist with the completion of the form.

In response to questions the Governance Lawyer indicated that copies of the complaints form could be made available in larger font and confirmed that the complaints form could be completed online using a mobile device.

Members discussed the complaints form in particular that complainants could submit a form confidentially. The Head of Legal and Democratic Service and Monitoring Officer indicated that the identity of the complainant would only be withheld under exceptional circumstances.

The Head of Legal and Democratic Service and Monitoring Officer read out the confidentially part of the complaints form and suggested that this wording be included in the local assessment procedure.

Resolved: (i) That the submission of the Member Code of Conduct complaints via the Council's website be approved.

(ii) That complaints could be submitted via the Councils website with effect from 1 April 2022 be agreed.

(iii) That the confidentiality wording contained in the complaints form be included in the local assessment procedure.

(iv) That arrangements be made for the complaints form to be made available in large print.

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 the activity since the last meeting in respect of complaints received by Durham County Council against Councillors (for copy of report, see file of Minutes).

The Governance Lawyer presented the report and advised Members that training had been delivered to Esh Parish Council on the Member Code of Conduct, follow up training would be arranged on the topic of interests and Member Officer protocol.

Resolved: That the contents of the report be noted.



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

Electoral division(s) affected:

None.

Purpose of the Report

- 1 To agree the Work Programme for 2022/23.

Executive summary

- 2 There is no requirement for the Committee to have a work programme. However, it is considered good practice to have one as it helps demonstrate the work done by the Committee in promoting and maintaining high standards of ethical conduct throughout the year.
- 3 On 25 June 2022, the Committee approved a work programme in relation to the roles and functions of the Committee for the municipal year 2021/22. It is customary to agreed the work programme at the first meeting of the municipal year.

Recommendations

- 4 The Standards Committee is recommended to:
 - (a) note the progress against the work programme approved on 25 June 2021 for 2021/22.
 - (b) Comment on the draft work programme for 2022/23 shown at Appendix 3 of the report.
 - (c) Agree the work programme for 2022/23.

Background

- 5 The terms of reference of the Standards Committee are set out in Article 7 of the Constitution. They 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; and
 - (k) overview of the Protocol on Member/Officer Relations

Work Programme 2021/22

- 6 The Committee reviewed the progress against the work programme for 2021/22 at its meeting on 25 June 2022. A copy of the work programme with the details of when the items were considered is shown at Appendix 2 of this report for information.
- 7 In addition to the meetings reported as shown in Appendix 2, an informal meeting of the standards committee took place 15 February 2022 for members of the Committee to consider the arrangements for the appointment of the co-opted Members of the.
- 8 The Standards Committee undertook a review of the local assessment procedure and process to allow the introduction of a do it online form available through the Council website.

Work Programme 2022/23

- 9 The Committee is asked to agree the work programme for the municipal year. A copy of the draft work programme for 2022/23 is shown at Appendix 3.
- 10 The work programme provides the Committee with a number of key items to be reviewed throughout the year as well as standing agenda items.
- 11 It is proposed that there is a review of the local determination procedure to ensure that it remains fit for purpose, legally compliant and consistent with best practice.
- 12 It is recognised that there is flexibility in the work programme to include any other issues which arise throughout the year.

Background papers

- None.

Other useful documents

- None.

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Appendix 1: Implications

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 a planned work programme to deal with the specific roles and functions of the Committee, as set out in the Constitution, will assist 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.

Appendix 2: Work Programme 2021/22

25 June 2021	<ul style="list-style-type: none"> • Confirmation of appointment of Independent Persons. • Annual Report 2021/22 • Work Programme 2021/22 • Review of national standards picture. • Complaints update.
3 September 2021	<ul style="list-style-type: none"> • Review of national standards picture. • Complaints update. • Review of Code of Conduct complaints procedure. • Co-opted membership on the Standards Committee – reported at meeting on 11 March 2022
2 December 2021	<ul style="list-style-type: none"> • Review of national standards picture. • Complaints update. • Member Training and Development. – deferred to 2022/23
11 March 2022	<ul style="list-style-type: none"> • Review of national standards picture. • Complaints update. • Review of Local Assessment Procedure – Digital Form • Social Media Guidance review. • Review of Work Programme 2021/22 and work Programme 2022/23. – deferred to first meeting of 2022/23

Appendix 3: Draft Work Programme 2022/23

10 June 2022	<ul style="list-style-type: none">• Work Programme 2022/23• Review of national standards picture.• Complaints update.
2 September 2022	<ul style="list-style-type: none">• Review of national standards picture.• Complaints update.• Annual Report.
5 December 2022	<ul style="list-style-type: none">• Review of national standards picture.• Complaints update.• Member Training and Development.• Review of Local Determination Procedure.
17 March 2023	<ul style="list-style-type: none">• Review of national standards picture.• Complaints update.• Review of work programme 2022/23 and future work programme



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 11 March 2022.

Recommendation(s)

- 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 Complaints 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.

Handforth Town Council (March 2022)

- 6 The Audit and Governance Committee for Cheshire East Council, the principal authority for Handforth Town Council, reported that 21 formal complaints had been investigated between 2018 and November 2020. Due to the complexity and nature of the allegations these were referred to a single investigator. Additional complaints were included in the investigation arising from the meetings of December 2020 which were broadcast online in February 2021. Some of the complaints related to behaviours during a remote meeting of the Council, which was broadcast on YouTube. The Acting Clerk, Jackie Weaver from the National Association of Local Councils removed a Councillor from the meeting for disrupting the meeting. The recording subsequently “went viral” and highlighted some of the challenging behaviours that Town and Parish Clerks have to deal with.
- 7 The Investigating Officer produced six investigation reports which found three Councillors were potentially in breach of the Members Code of Conduct. Following the findings of the investigation, determination notices were issued by Cheshire East's Monitoring Officer for the Councillors to attend a hearing sub-committee meeting. However this was not possible to pursue following the resignation of all three Councillors.
- 8 In the report to the Committee it was highlighted that the investigation cost more than Handforth's annual budget of £85,000, which is raised through a precept on local residents. The report recorded that although the process is undoubtedly fair, it is arguable it is not proportionate in respect of cost against potential sanction. The principal authority, Cheshire East, has a statutory obligation to investigate and is unable to recover costs of investigations even where the poor behaviour complained of is found to have occurred.
- 9 Following the publication of the report, Ms Weaver said there should be the option of placing sanctions on councillors, such as removing them from all council duties.

Councillor Baines, Chirk Town Council, Wrexham County Borough (February 2022)

- 10 The Welsh Standards Regime operates slightly differently to that in England. In Wales, there is a power to suspend as well as a right of appeal to the Adjudication Panel Wales (APW). Notwithstanding the clear differences between the regimes, it is helpful for the Committee to have an awareness of issues arising in other jurisdictions.
- 11 Councillor Baines's conduct was considered by a Standards Committee, where it was found that he had breached the code of conduct by contacting a woman's employers after she raised a grievance against him. The Committee issued a three-month suspension and required him to undertake code of conduct training and write letters of apology.
- 12 The Councillor was reported to have accepted the findings but appealed to the APW that the suspension sanction imposed was "excessive".
- 13 The APW referred the matter back to the Standards Committee with a recommendation the period of suspension be reduced to two months. After revisiting the decision the Standards Committee upheld the earlier decision and maintained the decision to impose a three-month suspension.

Report of the Committee for Standards in Public Life on Ethical Standards

- 14 On 18 March 2022 the Government provided its response to the Committee for Standards in Public Life report into Local government ethical standards.
- 15 The Government is not minded to amend the legislation to require all Councils to adopt a model Code. It noted that the Local Government Association (LGA) had produced a model Code but that it is for individual Councils to determine whether or not to adopt it.
- 16 The Government considers that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity, risks conflating the two. Therefore, it is not minded to amend the Localism Act 2022 to permit local authorities to presume a Councillor is acting in their official capacity when considering allegations of breaches of the Code of Conduct.
- 17 In response to the CSPLs recommendations on sanctions, the Government responded that it was a deliberate policy decision by the Government at the time to differentiate the current standards regime

from the Standards Board regime. They considered that the previous regime allowed politically motivated and vexatious complaints and impacted on free speech within local government.

18 The Government consider that it would be undesirable to have a “government quango to police free speech of councillors” or a “council body sitting in judgment on political speech”. It is considered that on the rare occasions that notable breaches of the Code have occurred sanctions are available (e.g. Councillors are barred from Cabinet/Committees or representative roles, public criticism). Elected members who are part of a political group are also subject to party/group discipline. All Councillors are accountable at the ballot box.

19 The Government have however indicated that it will engage with sector representative bodies of Councillors and Officers at all tiers of local government to seek views on options to strengthen sanctions to address breaches of the Code, which do not amount to criminal activity but involve serious incidents of bullying and harassment or disruptive behaviour.

20 The Government’s full response to all of the recommendations is attached at Appendix 2 to the report.

21 The response was welcomed by the LGA which reported:

"We are pleased that the Government’s response to the Committee for Standards in Public Life report acknowledges the work the LGA has undertaken to address the issues outlined in the report through the development of a Model Councillor Code of Conduct and supportive guidance in consultation with the sector."

"We agree that there is still more to do to, but that a locally-led standards and conduct system, supported by guidance, training and good practice is the best approach. In addition, it is positive to see that the Government agrees with the principle of safeguarding elected representatives in relation to the disclosure and publishing of councillors home addresses."

22 However, the CSPL are disappointed with the response. Lord Evans said:

“while we note the government’s commitment to further work to support local government, the Committee is disappointed that many of its careful recommendations have not been accepted. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach.”

“We are pleased that many local authorities have already reviewed their approach as a result of this work and are adopting the best practice points from the report. Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence”

- 23 The Standards Committee will recall that the Council reviewed its governance arrangements to ensure that it reflected all of the CSPL’s best practice recommendations.
- 23 The Monitoring Officer will continue to report on updates on work between Government and Local Councils arising from the response to the CSPL report on ethical standards which will look to determine the best mechanisms to support improvement in areas addressed in the report.

Background papers

- None

Other useful documents

- <https://handforthtowncouncil.gov.uk/>
- <https://www.bbc.co.uk/news/uk-wales-60213715>

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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

Not applicable.

Consultation

Not applicable.

Equality and Diversity / Public Sector Equality Duty

Not applicable.

Climate Change

Not applicable.

Human Rights

Not applicable.

Crime and Disorder

Not applicable.

Staffing

Not applicable.

Accommodation

Not applicable.

Risk

Not applicable.

Procurement

Not applicable.



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Dear Lord Evans,

On behalf of the Government, I would like to thank the Committee on Standards in Public Life for its report and the recommendations arising from its review of Local Government Ethical Standards, and to all those who engaged with the Committee's work. Attached is the Government response to the Committee's individual recommendations that were directed at Government.

Vibrant local democracies flourish where the reputation of the local authority is held in high regard, where councillors' decision-making is transparent, valued and trusted by the communities they serve, and where people are willing and confident to put themselves forward as potential candidates. The standards and conduct framework within which local authorities operate must drive out corruption and promote commitment to the principles on standards in public life, and tolerance to the differing views of others. In responding to the review, the Government has taken into account the importance of protecting free speech and freedom of association within the law.

The Government is committed to working with local authorities and their representative organisations to ensure that local government is supported in reinforcing its reputation for ethical local standards.

The fact that this review had been conducted in such a collaborative way with the sector has been apparent from the outset and is borne out in the final report. I am keen that Government builds on the sector-wide enthusiasm for improvement.

The Government agrees with the Committee's conclusion that there have been benefits from local authorities being responsible for ethical standards, including the flexibility and

discretion to resolve standards issues informally. However, we also recognise the role of Government in ensuring that the system is robust.

The number of requests for legislation in the Committee's recommendations to strengthen the standards and conduct framework and its safeguards is considerable. As indicated in this response, the Government believes that some of these suggestions do not need a legislative response but can be more appropriately, effectively, and swiftly taken forward by local authorities as best practice. The Committee will recognise that the Government and Parliament has taken a different view on these matters when it legislated for the Localism Act 2011.

I thank the Committee for their work on the review and for their patience whilst Government carefully considered their recommendations, and I personally look forward to continuing to work with you as Government progresses the commitments made in this response with the sector.

Yours sincerely,

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

KEMI BADENOCH MP

**Minister of State for Equalities
and Levelling Up Communities**

Government response to the Committee on Standards in Public Life review of local government ethical standards

This Government response confines itself to the Committee's recommendations directed at Government, other than with regards to the first recommendation. The response to recommendations 10, 12, 13, 14 and 16 have been grouped together and therefore appear out of numerical order below.

Recommendation 1

The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.

The Localism Act 2011 states that relevant authorities must promote and maintain high standards of conduct by members and co-opted members. It requires these authorities to adopt a code of conduct for their councillors.¹ Authorities can determine the content of their own code of conduct. However, codes must conform to the seven 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Relevant authorities for the purposes of these requirements include local authorities in England, namely county councils, district councils, London borough councils and parish and town councils.

It is for individual councils to set their own local code, in line with the Act. The Government has previously published a light-touch illustrative code of conduct.

The Local Government Association has worked with sector representative bodies to update its own suggested code of conduct, with the intention that this new suggested code could establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances and priorities. The Local Government Association published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.

Recommendation 2

The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.

¹ References to councillors in this document also should be deemed to include elected mayors.

This issue was brought up in the Committee's work on intimidation in public life, and the Government has already taken forward several steps in this regard. The Government is open and receptive to further steps to help prevent intimidation.

The Government agrees with the principle behind this recommendation – which safeguards elected representatives - and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it.

The Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address.

Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

Recommendation 3

Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.

The Government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.

As the Government outlined to Parliament in March 2021 on tackling intimidation in public life: 'It is important to distinguish between strongly felt political debate on the one hand, and unacceptable acts of abuse, intimidation and violence on the other. British democracy has always been robust and oppositional. Free speech within the law can sometimes involve the expression of political views that some may find offensive': a point that the Government has recognised in a Department for Education policy paper². But a line is crossed when disagreement mutates into intimidation, which refuses to tolerate other opinions and seeks to deprive others from exercising their free speech and freedom of association.'

It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

² Higher education: free speech and academic freedom Feb 2021
<https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom>

Recommendation 4

Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.

The Government agrees that local authority elected representatives should act in good faith in the public interest and not seek to influence decisions for personal gain, for malicious intent or to further the interests of any business or any other organisations which they may be affiliated with.

The Local Government Association have updated their [own suggested code of conduct](#) to state that the code applies when “[a member’s] actions could give the impression to a reasonable member of the public with knowledge of all the facts that [they] are acting as a [member]”.

It is for individual local authorities to ensure that their codes of conducts are regularly updated, comprehensive and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

Recommendation 5

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.

The electorate must have confidence that the decisions of their elected representatives are being made in the best interests of the community they have been elected to serve. Unpaid roles may need to be declared if it is relevant to council business, and councillors should recuse themselves if necessary if discussions relate to private bodies, they are involved in.

The Government is mindful that councillors have a right to a private life, and rights of freedom of association outside their role as a councillor. It is frequently the case that people in public life have a complex pattern of interests and play a variety of roles with different types of organisations, including community interest groups and charities.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

Recommendation 6

Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record gifts and hospitality received over a value of £50 or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.

The Local Government Association's suggested code of conduct published in January 2021 includes a requirement for members to "register... any gift or hospitality with an estimated value of at least £50". However, it did not contain any requirements relating to the total value of gifts or hospitality received from the same source over a sustained period.

Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The Government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available.

Recommendation 7

Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to the matter".

Section 31 of the Localism Act 2011 requires that a councillor must not participate in a discussion or vote on a matter where they have a disclosable pecuniary interest in any matter to be considered at the meeting. Section 30(3) of the Localism Act 2011 further provides that any relevant pecuniary interests of a councillor's spouse or partner are considered as a disclosable pecuniary interest of the councillor.

The Committee's report reflects concerns that the disclosable pecuniary interest arrangements infringe on the privacy of a councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

Recommendation 8

The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh" and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.

When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.

Recommendation 9

The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.

The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices.

The substantive policy suggestion has merit but will depend on circumstances. In cases where there is no case to answer from an unfounded complaint, it should not necessarily be a legal requirement to publish details of that unfounded complaint.

Recommendation 10

A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.

Recommendation 12

Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.

Recommendation 13

Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.

Recommendation 14

The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.

Recommendation 16

Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.

It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors.

On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box.

As part of the Government's response to the Committee's report on intimidation in public life, the Government recommended that every political party establish their own code of conduct for party members, including elected representatives.

The Government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

Recommendation 11

Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.

The Government agrees in principle.

Initial soundings with the sector indicate that some local authorities already provide legal indemnity for Independent Persons.

The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation.

Recommendation 15

The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g., bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.

The Government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled and would encourage this as best practice by the sector.

The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

Recommendation 17

The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.

The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.

The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.

Recommendation 18

The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

It is a criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption.

The Government does not agree with this recommendation, but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption.

The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

Recommendation 20

Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.

The Government does not agree that this is necessary and has no plans to repeal Section 27(3) of the Localism Act 2011.

The Government considers that the adoption of the principal authority's code or the new model code is a matter for local determination.

There are merits in achieving consistency within principal authority areas to eliminate potential confusion amongst constituents and elected members but there may be instances where a parish council may want to add to the code of their principal authority to reflect local circumstances.

Recommendation 21

Section 28 (11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.

The Government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

Recommendation 22

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.

The three statutory officers in local government are the Monitoring Officer, the Head of Paid Service (Chief Executive) and the Chief Finance Officer (often referred to as the Section 151 Officer).

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons. The Committee consider that the disciplinary protections for statutory officers should be enhanced, by extending disciplinary protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

The Government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations.

The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

Recommendation 23

The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.

The Government agrees with the principle that openness is essential.

Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites, and Government is recommending that this is adopted as a best practice recommendation.

The Government published the UK National Action Plan for Open Government 2021 – 2023 in January 2022. This includes a commitment on local transparency.³ The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.

Recommendation 24

Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1998.

Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. They are prescribed by an order made by the Secretary of State (for Business, Energy and Industrial Strategy) for this purpose. A complete list of prescribed persons is available here: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>.

Local councillors would not meet the criteria of being external to an individual’s workplace in relation to matters affecting the council and could therefore not be considered as a ‘prescribed person’ for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament.

However, the Government recognises that this may provide a further check and balance against council corruption or wrongdoing and is open to further representations on the matter on how local accountability can be strengthened in this regard.

³ <https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023#local-transparency>

Standards Committee

10 June 2022

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 16 formal complaints received between 28 February 2022 and 31 May 2022. Of those complaints one was rejected on the basis that it was outside of the jurisdiction of the Monitoring Officer for complaints to be considered, namely a Parish Meeting. There have been 11 final decision notices issued in the last period the outcome of each complaint shown at Appendix 2.
- 6 In respect of the ongoing complaints 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.

Training

- 7 As part of the member induction, the Monitoring Officer has offered and delivered training to newly elected members of the Council following by-elections.
- 8 The Governance Lawyer has delivered training to a member following a recommendation of informal resolution in respect of a code of conduct complaint.

Conclusion

- 9 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

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 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.

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 378	Parish	10.11.21	The complainant is unhappy with the representations of three Councillors in respect of a planning application.	<ul style="list-style-type: none"> • Respect • Not to confer an advantage or disadvantage on any person. 	31.05.22	No further action The representations which were made by the Councillors were arising from concerns which had been presented to them as local members, it is essential that the member present the views of the community which were presented to the Planning Committee and appropriate weight was attached.
COM 379	County	17.12.21	The Member at planning committee failed to show respect to the Complainant and participated in an item which he had declared an interest on.	<ul style="list-style-type: none"> • Respect • Not to confer an advantage or disadvantage on any person 	04.04.22	No further action On review of the planning meeting the comments made by the Chair were not considered to be contrary to the code. The Member had taken advice in respect of his interest and did not consider that he had an interest in the item considered by the committee. If the complainant considers that the members were bias or demonstrated pre determination this can only be determined by the Court on a judicial challenge.
COM 380	Parish	22.12.21	An email was sent by the Member which made comments about the	<ul style="list-style-type: none"> • Respect 	31.03.22	Local Resolution.

			complainants. The complainants were not the intended recipients and upon learning of this the Member apologised.			The member was asked to provide an apology to the complainants within 14 days of the DN.
COM 383 (all Council)	Town	17.02.22	The Council submit a complaint relating to two Facebook posts by the Member which are said to be contrary to the Code.	<ul style="list-style-type: none"> • Champion the needs of residents • Deal with representations or enquiries fairly • Listen to the interests of all parties • Contribute to making the Authority's decision-making processes • Respect • Disrepute. 	21.04.22	<p>Local Resolution</p> <p>The Member was acting in his official capacity at the time of the post and accepted that his post was an error on his part.</p> <p>It was recommended that:</p> <ol style="list-style-type: none"> 1. The Member is to provide written apologies to the Council and the CIC for the post of 13 January 2022 and the repetition of the original post on 18 January 2022. 2. The Member is to undergo refresher training delivered by the Clerk on the use of social media, to review the relevant Council guidance on the use of social media and the Member Code of Conduct. <p>The recommendations are to be complied with within 28 days of the decision notice and confirmed as completed to the Monitoring Officer with copies of the apologies provided.</p>

COM 385	Town	22.02.22	The Member responded to correspondence from the Complainant which included the use of the words 'Local Councillor' which the Complainant considered was used as a veiled threat or warning. Also the Complainant found the tone to be dismissive.	<ul style="list-style-type: none"> • Respect • Disrepute 	19.05.22	Local Resolution The Code was engaged by the use of the word Councillor which purported to be acting in the official capacity. The Councillor was recommended to refamiliarise himself with the code of conduct and take care in his future communications including those with the public when he is acting or giving the impression of acting in his official capacity.
COM 386	Parish	April and May	The Member is said to have been aggressive in the tone of his emails to a fellow councillor and this is considered to be bullying It is also alleged that the Member has discriminated the Member.	<ul style="list-style-type: none"> • Respect • Bullying 		In progress – additional information presented in May 2022.
COM 387	County	03.03.22	During the Council meeting on 26 January the Member made a personal attack on a fellow Councillor and her political history. This behaviour is considered to be contrary to the code.	<ul style="list-style-type: none"> • Respect • Value and engage with colleagues with respect 	31.05.22	No further action The comments were political speech at a Council meeting and afforded the protection of article 10.
COM 388 and COM 390	County	February and March	It is said that the members failed to show respect at a Council meeting towards other members.	<ul style="list-style-type: none"> • Respect 	20.04.22	No further action There was no evidence to support the allegations that members were singled out by in

						interjections during speeches. The member followed the procedural rules for reminders to members including on points of order. In respect of Member 2, the comment was retracted at the meeting and in any event is considered to be covered by political speech, article 10 protection must be balanced to exercise democracy which includes providing challenge.
COM 389	County	07.03.22	The Complainant states that the Member has abused her position as a Councillor when dealing with the moderation of a Facebook page relating to a school which she is a Trustee of the Board and there is an ongoing dispute.	<ul style="list-style-type: none"> • Respect • Not to confer an advantage. 	29.03.22	No further action Councillor was not acting in their official capacity.
COM 391	Parish		It is alleged that the members have breached data protection policy and recorded meetings when requested not to do so.	<ul style="list-style-type: none"> • Failure to comply with procedure. 	05.05.22	No further action Referred to Parish Council to consider/determine data protection allegations as not within the scope of the Monitoring Officer (MO) to determine if data breach. If data breach then may refer back to the MO to consider a code breach. Matters relating to the police investigation are not appropriate for the MO to

						consider whilst the investigation is ongoing.
COM 392	Town	27.03.22	The Member was said to have discriminated against the complainant in considering a complaint presented to the Council. It was also alleged that the Member had a conflict of interest when this matter was considered at Council and Sub-Committee.	<ul style="list-style-type: none"> • Respect • Not to confer an advantage. 	31.05.22	<p>No further action</p> <p>The Member confirmed that this was not a matter which could be considered by the Council as it related to policy for the allotment association but noted regret that the policy did not match that which would have been in place with the Town Council.</p>
COM 393 and COM 397	Town	05.04.22 and 19.04.2022	It is alleged that the member has at meetings, in emails and on social media behaved in a manner which is contrary to the code towards officer and Councillors	<ul style="list-style-type: none"> • Respect • Bullying • Failed to follow procedure/policy (member officer protocol) 	31.05.22	Referred for investigation.
COM 394	Town	01.04.22	One member shared a news article relating to the complainant on social media which resulted in comments being made about the complainant this included a comment by the other member.	<ul style="list-style-type: none"> • Respect 	19.04.22	<p>No further action</p> <p>The post by the Councillor did not contravene the code and the comment made by others including a fellow Councillor did not give rise to a breach of the Code. The report shared was a factual news article and the comments which followed were as a result of the factual reporting of the complainant.</p>

COM 395	Parish	03.04.22	It is alleged that the Council has failed to act with transparency in the production and availability of the minutes and financial reports. The Complainant considers that the Council has failed to achieve best value for the public funds including the salary awards.	<ul style="list-style-type: none"> Behave in accordance with all legal obligations, and policies. , 		In progress
COM 396	Meeting		No response from Parish Meeting	<ul style="list-style-type: none"> Not quoted 	Rejected 13.04.22	The complaint related to members of the Parish Meeting.
COM 398	County	28.04.22	It is alleged that the Member has revealed confidential information about the Complainant and therefore breached data protection. The complainant also raises concerns with the Members involvement in providing support to the Ukraine relief and also raises concerns about the actions of the member in respect of the housing complaints raised by the complainant.	<ul style="list-style-type: none"> Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially; Behave in accordance with all legal obligations, and policies. , 		In progress
FS-Case-419742951	County	04.05.22	The complainant launched an appeal on social media for Ukraine. It is alleged that the Member did not follow the procedures in place for the collection and donation of items. It is also alleged that the Member has made posts on social media	<ul style="list-style-type: none"> Respect Behave in accordance with all legal obligations and policies. 		In progress

			<p>which are misleading and inaccurate.</p> <p>Further information has been presented as part of the complaint alleging that the member has failed to register an interest.</p>			
FS-Case-418894813	Parish	29.04.22	<p>The Member did not declare an interest in an item of business which it is said she had an interest in.</p>	<ul style="list-style-type: none"> • Not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing the interests of the Council or the good governance of the Council in a proper manner. • Behave in accordance with all legal obligations and policies. 		In progress
FS-Case-418876382	Parish	29.04.22	<p>It is alleged the Member allowed a person speaking at the meeting to influence Members and decision making in respect of a contract award. .It is also said</p>	<ul style="list-style-type: none"> • Listen to the interests of all parties. • Behave in accordance with 		In progress

			that the Member allowed two Councillors to be personally verbally attacked by the supplier who was at the meeting.	all legal obligations and policies. • Respect		
COM 399	County	16.05.22	It is alleged the Member made comments in an email sent to all Members, the comments made are alleged to be contrary to the code of conduct	• Respect		In progress
COM 400	Town	23.05.22	The Member sent an email to an officer of the Council which contained inflammatory, discriminatory and threatening language toward Councillors.	• Respect • Bullying • Disrepute		In progress