



## **Standards Committee**

**Date** Thursday 8 June 2023  
**Time** 9.30 am  
**Venue** Committee Room 1A , County Hall, Durham

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### **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 Meetings held on 17 March 2023 and 10 May 2023 (Pages 3 - 10)
4. National Picture (Pages 11 - 18)
5. Code of Conduct Update (Pages 19 - 34)
6. Annual Report of the Standards Committee 2022/23 (Pages 35 - 44)
7. Procedure for Member Code of Conduct Complaints (Pages 45 - 102)
8. Local Government Association "Debate Not Hate" Campaign (Pages 103 - 114)
9. Appointment of Independent Persons to the Standards Committee (Pages 115 - 120)
10. 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 2023

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

Councillor J Nicholson (Chair)  
Councillor K Rooney (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 A Doig and C Foote-Wood

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**DURHAM COUNTY COUNCIL**

**STANDARDS COMMITTEE**

At a Meeting of **Standards Committee** held in Committee Room 1A , County Hall, Durham on **Friday 17 March 2023 at 9.30 am**

**Present:**

**Councillor J Nicholson (Chair)**

**Members of the Committee:**

Councillors J Atkinson, L Mavin, A Savory, T Stubbs and F Tinsley

Prior to the commencement of the meeting, Members observed a minute's silence for Councillor Beaty Bainbridge, Chair of the Council, who sadly passed away recently.

**1 Apologies for Absence**

Apologies for absence were received from Councillors L Maddison and T Smith.

**2 Declarations of Interest**

There were no declarations of interest.

**3 Minutes**

The minutes of the meeting held on 5 December 2022 were agreed as a correct record and were signed by the Chair.

**4 National Picture**

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).

In response to a question from Councillor Tinsley, the Head of Legal and Democratic Services and Monitoring Officer indicated that if a member who was subject to a code of conduct investigation resigned then it would depend on the procedures in place of that organisation if the investigation would continue. Durham County Council's provision allowed for the investigation to be reviewed and the investigation stopped if it was appropriate to do so.

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

## **5 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 complaints received by Durham County Council under the Code of Conduct for Members since the last meeting on 5 December 2022 (for copy see file of Minutes).

**Resolved:** That the contents of the report be noted.

## **6 Committee Work Programme 2023/24**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which proposed the work programme of the Standards Committee for 2023/24 (for copy see file of Minutes).

**Resolved:** (i) That the progress against the work programme approved on 10 June 2022 for 2022/23 be noted.

(ii) That the draft work programme for 2023/24 shown at Appendix 3 of the report be agreed.

## **7 Local Government Association "Debate Not Hate" Campaign and Social Media Toolkit Review**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which informed the Committee of any development in relation to the Local Government (LGA)'s Debate Not Hate campaign (for copy see file of Minutes).

The Apprentice Solicitor was in attendance to present the report and informed the Committee that since the report was published, she had attended a follow up workshop in which she spoke about the ongoing work the Council were doing to improve the Social Media Toolkit. She then advised the Committee that the Council had been asked to participate in further discussions with the Lead Researcher on the project covering the Council's Social Media Toolkit.

Councillor Tinsley commented on the recent media coverage on the use of TikTok on UK parliamentary devices and the next step would be to move to local government devices. He stated that this opened up the bigger question of the use of devices for social media that they needed to be aware of.

The Head of Legal and Democratic Services and Monitoring Officer responded that the Head of Digital Services and her team were looking at the guidance that had prompted the government to take its stance it had in relation to TikTok. The Council were also working on some guidance for Members on the use of Council resources.

**Resolved:** (i) That the report be noted.

(ii) That that the Head of Legal and Democratic Services submits a case study to the LGA in consultation with the Chair of the Standards Committee.

(iii) That the request that the Head of Legal and Democratic Services circulate the Councillors Guide to handling harassment, abuse and intimidation and make it available on the Members portal be agreed.

(iv) That the Social Media Toolkit is amended to incorporate the recommendations from the 'Civility and Respect Guide to Social Media'.

(v) That the Head of Legal and Democratic Services circulate a link to the revised Social Media Toolkit once it had been updated.

## **8 Procedure for Member Code of Conduct Complaints**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which informed the Committee of the proposed revisions to the Local Assessment Procedure and the Local Determination Procedure (for copy see file of Minutes).

The Head of Legal and Democratic Services and Monitoring Officer suggested that before the revised procedure was submitted to Council for adoption that Constitution Working Group be briefed on the procedure.

It was agreed that the recommendation be amended so that the Head of Legal and Democratic Services and Monitoring Officer be given delegated authority in consultation with the Chair of the Standards Committee to make any minor amendments that may arise from the Constitution Working Group. If there were substantive or significant changes to the procedure, then it would be brought back to Standards Committee before it was presented to Council for adoption.

**Resolved:** (i) That Constitution Working Group be briefed on the procedure for Member Code of Conduct Complaints prior to submission to Council for adoption.

(ii) That the Head of Legal and Democratic Services and Monitoring Officer be given delegated authority in consultation with the Chair of the Standards Committee to make any minor amendments that may arise from the Constitution Working Group.

(iii) Recommend to Council that it adopts the procedure for Member Code of Conduct Complaints that will replace the existing Local Assessment and Local Determination procedures.

## **9 Recruitment of Independent Persons**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which invited the Committee to consider the recruitment of Independent Persons prior to the expiry of the term of office of the existing Independent Persons in September 2023 (for copy see file of Minutes).

The Head of Legal and Democratic Services and Monitoring Officer advised the Committee that a Special meeting of the Standards Committee would be held on 10 May 2023 seeking to agree the recommendations to Council to appoint two new Independent Persons.

Members discussed the recruitment process of the Independent Persons, in particular that the Persons recruited would need to be Independent and why did they feel the need to recruit an extra Independent Person.

The Head of Legal and Democratic Services and Monitoring Officer responded that the recruitment process was tried and tested and had been used previously and successfully. The recruitment of a third Person was to provide resilience in the event that Independent Persons were away on holiday or unwell and advised the Committee that this would not be an additional cost to the Council.

In response to concerns in relation to the Independence of the Persons the Head of Legal and Democratic Services and Monitoring Officer advised that legislation defines the Independence and provided details. She also advised the Committee that they did ask questions in relation to political activity but membership of a political party did not prevent someone from becoming an Independent Person.

In response to a question from Councillor Atkinson, the Head of Legal and Democratic Services and Monitoring Officer indicated that the role on the

Independent Persons was a specific role in being consulted in relation to complaints and making representations to the Committee before it determines if there was a breach of the Members Code of Conduct and whether to impose sanctions. As part of the interview process, they do test the candidates experience of gather and review information and reach an objective conclusion such as conducting disciplinaries and/or investigations. Whilst the Committee has to hear from the Independent Person before it reaches a conclusion it is for the Committee to determine how much weight they apply to those representations; the Committee do not necessarily have to follow any recommendations that the Independent Person might make.

**Resolved:** (i) Noted that Kayleigh Louise Wilkinson is no longer able to act as Independent Person.

(ii) That the Head of Legal and Democratic Services commences a recruitment exercise with a view to appointing two new Independent Persons to the Standards Committee.

(iii) That shortlisted applicants be interviewed by the Chair and Vice-Chair of the Standards Committee supported by the Head of Legal and Democratic Services.

(iv) That A further report be presented to the Standards Committee following the interviews seeking to agree recommendations to Council to appoint two new Independent Persons.

## **10 Town and Parish Co-opted Members of the Standards Committee**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which asked the Committee to consider the nominations for Town and Parish Council co-opted representatives to the Standards Committee and agree recommendations to Council regarding their appointment (for copy see file of Minutes).

**Resolved:** (i) That the Standards Committee record its thanks to Councillor Ralph Harrison for his service to the Committee since 2015.

(ii) That the Standards Committee recommend to Council that Councillors Alan Doig and Chris FooteWood are appointed as non-voting co-opted Parish Council representatives on the Standards Committee.

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## **DURHAM COUNTY COUNCIL**

### **STANDARDS COMMITTEE**

At a Special Meeting of **Standards Committee** held in Committee Room 2, County Hall, Durham on **Wednesday 10 May 2023 at 1.30 pm**

#### **Present:**

**Councillor J Nicholson (Chair)**

#### **Members of the Committee:**

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

#### **Co-opted Members:**

Parish Councillor C Foote-Wood

#### **1 Apologies for Absence**

Apologies for absence were received from Parish Councillor A Doig.

#### **2 Declarations of Interest**

There were no declarations of interest.

#### **3 Appointment of Independent Persons to the 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.

The report summarised the recruitment exercise undertaken. Following the interviews held on Thursday 4 and Friday 5 May 2023 an addendum to the report was circulated.

The addendum report asked the Committee to consider appointing three (rather than two) new Independent Persons in view of the calibre of the applicants, the different skills, experience and approach that they would bring to the role. The Panel considered that it would be advantageous to appoint

three new Independent Persons as it would provide additional resilience for the Monitoring Officer when dealing with complaints. It would also mean that there would be greater opportunity to use different Independent Persons at different stages of the same complaint.

The Committee were advised that it is Council's responsibility to appoint the Independent Persons. However, at the annual meeting of Council on 24 May 2023, Council would be asked to delegate this responsibility to the Standards Committee as part of the annual review of the Constitution.

Therefore Committee was asked to recommend the appointment of the candidates as Independent Persons for a two-year term. If Council delegates responsibility for the appointment to the Standards Committee then a further report will be presented to the Committee in June 2023. If Council decides not to delegate responsibility to the Committee, a report will be presented with the Committee's recommended appointments at the Council meeting in June 2023.

In response to a question, the Head of Legal and Democratic Services and Monitoring Officer provided the Committee with details of the role of the Independent Persons and how they allocated these roles to the Independent Persons.

**Resolved:** (i) That the recruitment process undertaken for Independent Persons be noted.

(ii) That the Committee recommend to the appointment of three new Independent Persons to the Standards Committee with the appointments to be confirmed either by Council or the Standards Committee subject to Council's consideration of the proposed delegations to the Committee as part of the Annual Review of the Constitution at its meeting on 24 May 2023.

**Standards Committee**

**8<sup>th</sup> June 2023**

**National Picture**



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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 and cases which relate to the work of the Committee since the last meeting on 17 March 2023.

**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 10 June 2022, as part of the Annual Work Programme, this is a standing agenda item with a quarterly update to the Committee.

## **Investigation finds Councillor breached code of conduct through their actions at a planning committee meeting**

- 5 An investigation has concluded that a Councillor at West Northamptonshire breached the code of conduct through his forceful intervention at a meeting of the Council's planning committee and had predetermined his view prior to the meeting.
- 6 The investigation report found the Councillor had failed to treat the Senior Planning Officer with respect during the meeting and used his position to disadvantage the applicant applying for permission to build 45 houses within a local village by speaking and voting against the decision. The Senior planning officer had told the investigators that the councillor had implied that the officer and the planning department 'had tried to lie to members.'
- 7 A solicitor from the Council told the investigation that the Councillor's criticism of the application and department 'did not sit well with the member/officer protocol', and the Councillor should have instead raised concerns with officers prior to the planning committee meeting or requested to attend the chair's briefing prior to the committee meeting. The Solicitor added however that they considered that the report and presentation were 'deficient', which contributed to the 'stand-off between members and planning officers.'
- 8 The Councillor had come to the meeting with a prepared speech, which made it clear that he disagreed with the officer recommendation, which made representatives from the Planning Advisory Service concerned that the Councillor had come to the meeting with a predetermined view of the application. This was significant as the application was denied after the decision was made by a casting vote of the chair, and had the Councillor not taken part in the vote the application would have been granted.
- 9 The Councillor is not a member of the Planning Committee, nor a registered substitute, but the chair permitted him to act as a substitute member because the Councillor had received the necessary training to act as a substitute in relation to his roles on other committees.

- 10 The investigation report noted that there are likely lessons to be learned on both sides. Based on the evidence they had seen, the Investigators were of the view that the Councillor was not genuinely seeking to understand the reasons behind the senior planning officer's recommendations. Instead, they considered that he was grandstanding to those in the public gallery while challenging the officer in a manner that he knew would call his competence into question so as to denigrate his report.

### **Review calls for changes and additional resources at council over length of time taken to address code of conduct complaints**

- 11 At its meeting in September 2022, the Committee received information in relation to a section 114 notice and the outcome of an independent governance review at Northumberland County Council. Since then, the LGA has commissioned a review into the length of time taken by the Council to deal with Code of Conduct Complaints.
- 12 The review found that the length of time taken to complete assessments of complaints or investigations was longer than what would be considered best practice. However, the report acknowledged that there were factors mitigating the delay in carry out the investigations including cultural issues, changes in the Monitoring Officer and Deputy Monitoring Officer roles, and the complexity of some complaints.
- 13 The report also highlighted that there has been a notable improvement in the time that the Council is taking to handle code of conduct complaints. The report noted that at the time of writing, the Council had only received 1 complaint in 2023, compared to the total of 40 received in 2022. The average number of days to conclude cases has dropped from 274 (as recorded in 2020), to 132 last year. The average days since the start of ongoing complaints has also dropped from 840 to 367.
- 14 It is recommended that the Council review the resources made available to the Monitoring Officer to allow code of conduct complaints to be dealt with, and that the deputy monitoring officers should be provided with training on the assessment and investigation of complaints.
- 15 Additionally, it is recommended that an annual report of the code of conduct complaints should be presented to the Standards Committee.

## **Councils call for voters to show "respect and civility" towards candidates and officers at upcoming local elections**

- 16 Prior to the local elections held throughout England on the 4 May 2023, the LGA worked with the Jo Cox Foundation to call for the public to show respect and Civility to the candidates standing for election, and the Officers working at the polling stations.
- 17 The 2023 Local Elections are the first to implement the Voter ID requirements, and the LGA has issued a reminder to voters to be "patient with hardworking local polling station staff as they implement the new changes."
- 18 The Vice-Chair of the LGA said: "These upcoming elections are incredibly important in setting the future direction of our local communities.
- 19 "The tens of thousands of people who are standing as candidates in them are doing a great public service."
- 20 The Vice-Chair added "Candidates and councillors want to engage with as many voters as possible during this election campaign. However, they should not have to experience abuse, threats, or any kind of harmful behaviour simply because of who they are, what they look like or their background. We want all voters to treat candidates with respect and to engage in positive, constructive conversations and debates and make local democracy a welcoming environment for all."

## **Local Government Association calls for measures in Online Safety Bill to tackle low level abuse of councillors**

- 21 The Local Government Association (LGA) has called for the Government to amend the Online Safety Bill, which is currently passing through the House of Lords, to include stronger provisions that will protect Councillors from abuse and encourage more members of the public to stand for election.
- 22 The Online Safety Bill, which was published in March 2022 seeks to establish a regime to address illegal and harmful content online. The Office of Communications (OFCOM) will act as the "Online Safety Regulator" under the Bill as it will confer new powers to the organisation. The Bill will introduce new threatening and false communications offences.
- 23 The LGA have said that stronger provisions are needed due to an increase in online harassment. The LGA has recommended that there are provisions incorporated into the Bill which will help to manage online

abuse towards Councillors which is not serious enough to be considered a criminal offence.

- 24 The LGA has noted in its support that it is seeing an increase in incidents of abuse, harassment and intimidation online which is directed at Councillors. Such incidents “can prevent elected members from representing the communities they serve and undermine public trust in democratic processes. We hope this Bill will go some way in addressing the concerns we have heard from our membership”
- 25 "However, we regret the removal of the harm-based communications offence by the government at committee stage in the Commons, which could have been an important tool in tackling this intimidation, harassment and abuse."

### **Department for Levelling Up, Housing and Communities” issues proposal to intervene at Croydon, appoints commissioners at Woking, and expands intervention at Thurrock, and**

- 26 A letter has been sent by the Department for Levelling up, Housing and Communities (DLUHC) to The London Borough of Croydon Council to inform them of the Secretary of State’s intentions to intervene following a progress report suggesting that Croydon Council is not meeting its Best Value Duty due to financial troubles.
- 27 The proposal of the intervention from the Secretary of State has come as a result of recent findings by Croydon's Improvement and Assurance Panel and due to the section 114 notice which was issued in November 2022.
- 28 The Council issued their first Section 114 notice in 2020, and DLUHC has expressed concerns that there has been a delay in the council taking an "effective grip of the key issues it has faced since 2020."
- 29 DLUHC notes there is evidence of poor record keeping and budget management, alongside an overall "lack of strong grip on financial management". The letter adds that at present, the Council have £161.1m of historic accounts errors which require corrections, which is putting the financial pressure on the Council.
- 30 In addition, the Council has debts of £1.6 billion, meaning its general revenue budget will be unable to meet resident’s needs without Government support. Croydon Council has benefitted from £145m of capitalisation financial support from the Government since 2020.

- 31 DLUHC set out a proposed intervention package in light of these issues, which would see directions issued requiring Croydon to follow the Panel's instructions as a necessary and expedient action to secure compliance with their Best Value Duty if the Panel are not satisfied with the progress being made.
- 32 In addition, DLUHC proposed that the improvement panel have access to any premises of the council and any document relating to the council or any employee or member of the council.
- 33 Progress reports will be made to the Secretary of State every six months under the proposals.
- 34 In March, Croydon Council released a redacted version of the independent report into the circumstances leading to the issuing on the first Section 114 notice being issued. The report detailed "organisational dysfunction at the most senior level" and recommended the council consider pursuing formal action against senior members and officers.
- 35 Further letters were sent by DLUHC to Thurrock Council, Sandwell Metropolitan Borough Council and Slough Borough Council, all of whom have issued s114 notices, effectively declaring bankruptcy.
- 36 The letter sent by DLUHC to Thurrock Council informed that the commissioners at Essex County Council (appointed in September 2022) will be given more powers in their intervention at the Council.
- 37 The expanded intervention comes following a December 2022 report from the Council's commissioners which reported a £470 million in-year funding hole in the Council's finances.
- 38 The additional powers include:
- i. Functions associated with governance, scrutiny, and transparency of strategic decision-making;
  - ii. Functions associated with the operating model and redesign of council services to achieve value for money and financial sustainability;
  - iii. All functions associated with appointment and dismissal of persons to positions of the holders, which are to be designated as statutory officer, and the designation of those persons as statutory officers;
  - iv. All functions to define the officer structure for senior positions, determine recruitment processes and recruit staff to those positions; and



- v. All functions associated with the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.
- 39 The Secretary of State for DLUHC has also sent commissioners in to Woking Borough Council after an external assurance review report was not satisfactory in assuring DLUHC that the pace or scale of the Council's response was sufficient to handle the issues it faces.
- 40 Three commissioners have been appointed and will exercise all functions relating to the financial governance, the scrutiny of financial decision-making, and strategic financial management of the Council.
- 41 The Council must follow the directions which have been set out by DLUHC within an intervention package. Within six months, the Council is required to prepare and agree an improvement and recovery plan which will explain how the Council will achieve financial stability and close the gap in its budget.
- 42 As of December 2022, Woking Borough Council has a debt of around £1.9bn in borrowing, which makes it the most indebted local authority, relative to size, in the UK.

### **Other useful documents**

- Local Government Act 1999

### **Author(s)**

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Daniel Hill

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## **Appendix 1: Implications**

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### **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

**Standards Committee**

**8 June 2023**

**Code of Conduct Update**



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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 provide Members of the Standards Committee with an update on complaints received by Durham County Council under the Code of Conduct for Members since the Committee's last meeting on 17 March 2023.

**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.

**Recommendation**

- 3 The Standards Committee is asked to;
  - (a) Note the contents of the report.

## Background

- 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 co-opted members and to adopt a Code of Conduct that is consistent with the Nolan Principles addressing the conduct that is expected of members when they are acting in their official capacity as a councillor and/or representative of the Council.
- 5 The Council 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 the town and parish councils for which the Council is the principal authority.
- 6 Expected standards of behaviour should also be embedded through effective member induction and ongoing training.
- 7 Members' failure to comply with the Code can be an issue of concern to local communities and result in a perception of poor governance. This could affect the reputation of the Council. The Council therefore maintains an open and transparent process for making complaints against members. Information and guidance on the process for making such complaints is clearly signposted and accessible on the Council's website.
- 8 These arrangements include provision for the Monitoring Officer to provide local solutions to resolve complaints without formal investigations.
- 9 The responsibility for standards activity, including the monitoring of the operation of the Code, falls within the jurisdiction of the Standards Committee. Regular oversight of complaints received enables the Standards Committee to identify particular trends or issues which might need further consideration by the Committee and/or wider training needs.
- 10 Details of complaints activity during the period between 6 March 2023 and 31 May 2023 is set out in Appendix 2. An analysis of those matters is set out below.

## **Complaints received since 6 March 2023**

### **How many complaints were received?**

- 11 There have been 20 formal complaints received between 6 March 2023 and 31 May 2023, of which:
- 2 were rejected as being outside of the scope of the Code;
  - 3 are the subject of final Decision Notices;
  - 1 was treated as withdrawn and;
  - 14 are ongoing matters.

3 of the 14 ongoing matters are related or arise out of the same facts and will therefore be dealt with under a joint decision notice in conjunction with 7 of the ongoing matters received prior to the last Standards Committee meeting.

### **Who were the Complaints from?**

- 12 Of the 20 formal complaints received during the last period:
- 4 were from members of the public;
  - 6 were from officers;
  - 8 were from Councillors and;
  - 2 complainants are unknown

### **Who were the Complaints about?**

- 13 Of the 20 formal complaints received during the last period:
- 14 were about Town or Parish Councillors; and
  - 6 were about County Councillors.

### **Which provisions of the Members' Code of Conduct were alleged to have been breached?**

- 14 Of the 20 formal complaints received during the last period, the principal provisions of the Members' Code of Conduct engaged were:
- Acting in accordance with Member Officer Protocol: 2
  - All aspects of the code engaged: 5

- Behaving in accordance with policy or legal obligations: 2
- Bullying and harassment: 5
- Dealing with resident enquiries: 1
- Disclosure of Confidential information: 1
- No code engaged: 1
- Open and transparent decision-making process: 1
- Respect: 2

### **What were the outcomes?**

- 15 Of the 3 formal complaints received during the last period which have been subject of a final Decision Notice:
- No further action was taken in relation 1 matter;
  - 1 matter has been referred for investigation and;
  - 1 matter has been referred directly to a Standards Hearing.
- 16 In respect of ongoing complaints, it would not be appropriate to comment on matters that are currently being assessed or investigated but Decision Notices will be available for inspection once the decision has been communicated to the relevant Subject Member and Complainant.

### **Complaints received prior to 6 March 2023**

- 17 During the last period, there has also been ongoing activity relating to a further 11 complaints, which were received prior to 6 March 2023 but remained ongoing at that date. Details of these also appear in Appendix 2. An analysis of those matters is set out below.
- 18 Of the 11 complaints which remained active at the date of the last meeting of the Standards Committee on March 2023:
- 2 are the subject of final Decision Notices;
  - 9 are ongoing matters
- Of the 9 ongoing matters relate to the same Parish Council and will therefore be dealt with under a collective Decision Notice.

### **Who were the Complaints from?**

- 19 Of the 9 complaints which remained active at the date of the last meeting of the Standards Committee on 17 March 2023:

- 1 was from an officer;
- 2 were from members of the public and;
- 6 were from Councillors.

### **Who were the Complaints about?**

- 20 Of the 9 complaints which remained active at the date of the last meeting of the Standards Committee:
- 8 were about Town or Parish Councillors and;
  - 1 was about a County Councillor

### **Which provisions of the Members' Code of Conduct were alleged to have been breached?**

- 21 The principal provisions of the Members' Code of Conduct engaged were:
- Failure to work constructively with employees: 2
  - Failure to act in accordance with legal obligations: 3
  - Bullying and intimidation: 2

### **What were the outcomes?**

- 22 Of the 2 complaints received prior to 6 March 2023, which have been subject of a final Decision Notice during the last period:
- No further action was taken in relation to 1 matter; and
  - 1 matter was deemed appropriate for local resolution.

Local resolution included Code of Conduct training focused on legal obligations and confidentiality.

- 23 In one of the complaints received prior to 6 March 2023, the Governance Lawyer made the decision to apply the vexatious complaints policy to the two complainants. This decision was made in consultation with the independent person and the complainants have been informed that any further complaints made by them will not be considered.

### **Why have some complaints taken longer to resolve?**

- 24 Some complaints have taken longer to resolve where it has been necessary to refer them for external independent investigation.
- 25 The Committee will be aware of the recent recruitment exercise for Independent Persons, which will provide additional resource to the Monitoring Officer in progressing complaints. Prior to this, the unavoidable absence of an Independent Person delayed the progression of some complaints where the subject member requested to consult the Independent Person prior to submitting their response to the complaints.
- 26 Some have been due to complexity, for example where there are multiple complaints or complainants, or complaints involving multiple councillors.

### **Conclusion**

- 27 This report provides a summary of the Code of Conduct Complaints handled over the last 3 months and 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**

- Code of Conduct for Councillors.
- Local Assessment Procedure.

### **Author(s)**

Katherine Marley

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## **Appendix 1: Implications**

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### **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 Code of Conduct for Members by the Council's own members and by members of parish/town councils for which the Council is the principal authority.

### **Finance**

There are no financial implications.

### **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**

There are no human rights implications arising out of the report.

### **Crime and Disorder**

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

### **Staffing**

There are no staffing implications arising out of this report other than those mentioned in paragraph 26 above.

### **Accommodation**

There are no accommodation implications.

### **Risk**

Risks	Uncontrolled Risk	Controls	Controlled Risk
Poor governance and decision-making outcomes.	High – legal challenges and/or a complaint of maladministration could be made.	Low – Members and key staff are appropriately trained and have a good understanding of the Code	Adherence with the Code, Constitution, and Procedures. Staff and Member training.

Reputational damage.	The Council could be ordered to pay compensation and/or suffer reputational damage.	requirements. This is a continuous requirement.	
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**Procurement**

There are no procurement implications.

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## **Appendix 2: Code of Conduct Complaints Activity**

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## Appendix 2: Code of Conduct Complaints Activity

6 March 2023 – 31 May 2023

Ref	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
COM 393 COM 397	5-April-22 19-April-22	Town	Officer	That the Subject Member has, in emails and on social media, been disrespectful towards fellow Councillors and an Officer of the Council.	<ul style="list-style-type: none"> <li>• Respect</li> <li>• Bullying</li> <li>• Failing to follow procedure / policy (member officer protocol)</li> </ul>	6-June-22	Ongoing – Referred for investigation
COM 413	12-Dec-22	Parish	Member	Various allegations including: GDPR breaches Bullying Failure to engage in Decision Notice recommendations Failing to disclose interests Failure to follow tendering processes	<ul style="list-style-type: none"> <li>• All aspects of the code of conduct</li> </ul>	6-April-22	No Further Action The Habitual and Vexatious complaints policy has been applied to the Complainants
FS-Case-479253074	18-Jan-23	Parish	Member	Members have given false statements during a Parish Council Meeting. Members have approved a contract on behalf of a landowner.	<ul style="list-style-type: none"> <li>• Championing the needs of residents</li> <li>• Dealing with enquiries fairly, appropriately, and impartially.</li> <li>• Not allowing pressures to deter them from pursuing the interests of the Council or the good governance of the Council in a proper manner</li> <li>• Exercise independent judgement</li> <li>• Be accountable for decisions</li> <li>• Contribute to making the decision process as open and transparent as possible.</li> </ul>		Ongoing  To be dealt with as a collective.  The opinion of an independent person shall be sought.
FS-Case-479484178	18-Jan-23	Parish	Member				
FS-Case-480006325	18/01/2023	Parish	Member				
FS-Case-479665269	18-Jan-23	Parish	Public				
FS-Case-480451746	19-Jan-23	Parish	Public				

Ref Page 30	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
					<ul style="list-style-type: none"> <li>Behave in accordance to legal obligations and that of the Council.</li> <li>Treat people with respect.</li> <li>Failure to disclose interests</li> </ul>		
FS-Case-482384231	30-Jan-23	Parish	Member				
Com 414	8-Feb-23	Parish	Member				
FS-Case-500269838	23-Mar-23	Parish	Member				
FS-Case-500989086	27-Mar-23	Parish	Member				
FS-Case-501015260	27-Mar-23	Parish	Member				
FS-Case-485616401	09-Feb-23	County	Officer	The Complainant is a Council Officer. The Member has disclosed confidential information on social media.	<ul style="list-style-type: none"> <li>Disclosing confidential information</li> <li>Bringing role of Member of Local Authority into disrepute.</li> </ul>	16-Mar-23	Local Resolution Member Code of Conduct training focusing on the confidentiality requirement and legal responsibilities in respect of exempt information.

Ref	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
Com 415	15-Mar-23	Parish	Officer	Accusations of bullying	<ul style="list-style-type: none"> <li>Respect</li> <li>Bullying and Harassment</li> <li>Value colleagues</li> </ul>	17/05/2023	Referred for investigation
Com 416	02-Mar-23	Parish	Public	Recording Minutes incorrectly Not communicating with residents Withholding information.	<ul style="list-style-type: none"> <li>Dealing with resident enquiries</li> <li>Respect</li> </ul>	28/03/2023	No Further Action
COM 417	23-Mar-23	County	Unknown	The complaint was made anonymously through the post regarding Member's occupation.	N/A	N/A	Rejected- Not acting in capacity as a member.
FS-Case-505549532	05-April-23	County	Officer	The complaint raises concern about the subject member's alleged ill treatment of staff and bullying and harassment of Council Officers. The complaint also details concerns about your alleged use of social media and the Press to unfairly criticise officers and make inaccurate and inflammatory statements about the Council, Officers of the Council and the Council's Area Action Partnerships. Additionally, the complaint includes the alleged failure to adhere to the Member-Officer Relations Protocol	<ul style="list-style-type: none"> <li>Failure to act in accordance with Member-Officer Relations Protocol</li> <li>Respect</li> <li>Bullying</li> </ul>		Ongoing, To be dealt with in conjunction with FS-Case-511445732.  This Complaint is being overseen by the Deputy Monitoring Officer.
FS-Case-505646770 Page 31	06-April-23	Town	Officer	The subject member has incorrectly handled a staffing issue relating to absence. The complainant has shown a lack of respect for Officers.	<ul style="list-style-type: none"> <li>Respect</li> <li>Seeking to confer an advantage or disadvantage</li> <li>Bullying</li> </ul>		Ongoing

Ref Page 32	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
FS-Case-505932784	07-April-23	Parish	Unknown	The complaint alleges that the subject member is acting as a sole member of the Parish Councillor and is not involving the other Councillors of their decisions. The Councillor is also acting as the Clerk and Chief Financial Officer.	<ul style="list-style-type: none"> <li>- Acting in the Public Interest</li> <li>- Open and Transparency in decision making</li> <li>- Respect</li> </ul>	N/A	To be treated as withdrawn. Upon contacting the Subject Member, we were informed that the complaint was not submitted by the Complainant who has been named on the form. The named person confirmed in writing that they did not submit the complaint.
COM 418	24-Apr-23	County	Public	The complaint alleges that the subject member has been using his position as a Councillor to interfere with a member of the public's business. The subject member is being accused of using his position as a Councillor to bully and harass a member of the public and their partner. The Subject Member video called the member of the public to intimidate her into speaking to her husband about and ongoing conflict between him and the subject member.	<ul style="list-style-type: none"> <li>- Respect</li> <li>- Acting in accordance with legal obligations</li> <li>- Bullying and Harassment</li> <li>- Seeking to confer an advantage/disadvantage.</li> </ul>		Ongoing
FS-Case-511445732	28-Apr-23	County	Officer	The complaint relates to comments made by the two Subject Members in an Article published in the Northern Echo. The Subject Members criticised the Council and Council Officers, with the article stating the Subject Members "have launched a scathing attack on non-elected officers at Durham County Council".	<ul style="list-style-type: none"> <li>- Act in accordance with Member Officer Relations Protocol</li> <li>- Respect</li> <li>- Acting in accordance with legal obligations</li> </ul>		Ongoing, To be dealt with in conjunction with FS-Case-505549532.  This Complaint is being overseen by the Deputy Monitoring Officer.



Ref	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
FS-Case-511652546	29-Apr-23	Parish	Cllr	Allegations that the Subject Members carried out works on a public pathway without authority and against advice of DCC. A physical altercation is alleged to have taken place between one Subject Member and the Complainant.	- All elements of the Code of Conduct		Ongoing, To be dealt with under a collective decision
FS-Case-511798693	30-Apr-23	Parish	Cllr	Counter-complaint for FS-Case-511652546 concerning bullying and harassment.			
FS-Case-512967377	04-May-23	County	Cllr	The complaint alleges that the subject member shared information prior to it being published in the public domain, which was against the express instruction of the HoLDS.	- Confidentiality		Ongoing
COM 419	04-May-23	Town	Public	An advertisement was placed in a Town Council newspaper which the complainant believes to have political affiliation, which is contrary to requirements under the Local Government Act 1986.	- Acting in accordance with legal obligations		Ongoing
COM 420	28-Apr-23	Town	Town Council Staff	Accusations of bullying	- Bullying - Respect - Conferring an advantage or disadvantage		Ongoing
FS-Case-514139036	09-May-23	County	Cllr	The Subject Member has made comments of a discriminatory nature on a Facebook group.	- Respect - Bringing the Role of Member or Local Authority into disrepute. - Acting in accordance with legal obligations	25/05/2023	Referred to a Standards Hearing.

Ref Page 34	Date Received	Council	Complainant type	Summary of Allegation(s)	Breach type	Decision Notice	Outcome/Status
Com 421	10-May-23	Parish	Clerk on behalf of the PC	The Subject Member has disclosed a potential data breach as a non-member of the Parish Council manages his email account for him.	<ul style="list-style-type: none"> <li>- Disclosing Confidential Information</li> <li>- Bullying and harassment</li> <li>- Respect</li> <li>-</li> </ul>		Ongoing
FS-Case-516195548	16-May-23	Town	Public	The Subject Member is alleged to be using her position as a Councillor to give her son information about the Complainant and is attempting to intimidate him online.	<ul style="list-style-type: none"> <li>- Disclosing Confidential Information</li> <li>- Conferring an advantage or disadvantage</li> <li>- Bullying and harassment</li> </ul>	N/A	Rejected – Not in capacity
COM 422	22-May-23	Parish	Cllr	The Subject Member is alleged to have been spreading malicious rumours	<ul style="list-style-type: none"> <li>- Respect</li> <li>- Confidentiality</li> </ul>		Ongoing

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

**Electoral division(s) affected:**

None.

**Purpose of the Report**

1. To provide an overview of the work of the Standards Committee during 2022/23 and to set out the future direction which the Committee intends to take during 2023/24.

**Executive summary**

2. The Standards Committee has continued to promote the principles and values of good governance within the Council and across the County. The Members of the Standards Committee are committed and dedicated to ensuring that high standards of conduct are maintained by all local elected Members.
3. This report sets out the progress made by the Standards Committee in 2022/23 in respect of the code of conduct issues for the elected Members within County Durham.
4. The report also refers to the training provided to Members as well as the annual work programme of the Standards Committee, which helps it to achieve the objective of promoting and maintaining high standards.

**Recommendations**

5. Standards Committee is asked to:
  - (a) Note the report.
  - (b) Agree the report to be presented to the Council on 19 July 2023.

## **Background**

6. There is no legislative requirement for Standards Committees to produce an Annual Report. However, doing so is recognised as good practice. The report summarises the work undertaken by the Committee to assist the Council in discharging its duty to promote and maintain high standards of conduct.
7. The report also helps to publicise the work of the Committee generally and it is also a means for the Authority itself to monitor the Committee's work.

## **Membership of the Standards Committee 2022/23**

8. For the period 2022/23, the Standards Committee comprised of 11 County Council Members and 2 Parish/Town Council Members as follows:

### **County Council Membership**

Councillor Joan Nicholson - Chair

Councillor Liz Maddison - Vice Chair

County Councillors – Councillor Mark Abley, Councillor Jim Atkinson, Councillor Lesley Mavin, Councillor Anita Savory, Councillor George Smith, Councillor Tracie Smith, Councillor Tony Stubbs, Councillor Fraser Tinsley and Councillor Chris Varty.

### **Parish and Town Council Representatives**

9. Councillor Terry Batson (Tow Law Town Council) served as a Parish Council co-opted member of the Committee from 2012 until he passed away in November 2022.
10. Councillor Ralph Harrison (Sacriston Parish Council) served as Parish Council co-opted member of the Committee from 2015 until his resignation in February 2023.
11. Councillors Alan Doig (City of Durham Parish Council) and Chris Foote-Wood (Dene Valley Parish Council) were appointed as the new Parish co-opted members of the Committee by full Council on 29 March 2023.

### **Independent Persons**

12. For the period of 2022/23 the Independent Persons were as follows:

Kayleigh Louise Wilkinson (until March 2023)

Alan Fletcher

Karen Milburn (interim from February 2023)

### **Role of the Standards Committee**

13. The Terms of Reference for the Committee are set out in the Constitution 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 Member's 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 breach by a Member of a Council Protocol, in accordance with procedures approved by the Committee;
- j) Overview of the Officers' Code of Conduct;
- k) Overview of the Protocol on Member/Officer Relations.

14. Each year the Standards Committee agrees a work programme, which reflects the Terms of Reference set out above.

### **Work for the Standards Committee during 2022/23**

15. During 2022/23 the Standards Committee met on four occasions and considered items contained within the work programme shown at Appendix 2. In addition, there was a special meeting held on 10 May 2023 to consider the outcome of the Independent Person interviews.
16. The Committee has continued to receive regular reports in relation to standards and governance issues nationally.
17. At its meeting on 5 December 2022 the Committee agreed that the Debate Not Hate Campaign would be added to the Committee's work programme so that it is kept up to date with progress and developments.
18. The work programme is intended to be flexible and items can be added during the course of the year. Accordingly, the Committee has reviewed the Council's Social Media Toolkit and considered reports relating to the appointment of Town and Parish Co-opted Members and the recruitment of Independent Persons. It has also reviewed the procedures for dealing with Member Code of Conduct complaints.

### **Recruitment of Independent Persons**

19. Under the Localism Act 2011, the Council is required to appoint one or more Independent Persons to assist in the Standards process.
20. The Independent Persons:
  - a) Must be consulted by the Authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decide on action to be taken in respect of that Member.
  - b) May be consulted by the Authority in respect of a Standards complaint at any other stage and they may be consulted by a Member or a co-opted member.
21. The Council last appointed to the role of Independent Person in July 2021. During 2022/23, one Independent Person stepped down from the role and the other was unavailable to carry out the role for a period at the start of 2023.
22. As a result, on 21 February 2023, the Corporate Director of Resources exercised delegated authority under Table 1, paragraph 12 of the Officer Scheme of delegation to appoint Karen Milner as Independent Person to

the Standards Committee on an interim basis to allow time for a recruitment exercise to be undertaken.

23. At its meeting on the 17 March 2023, the Standards Committee agreed to conduct a recruitment exercise with a view to appointing up to two new Independent Persons. The role was advertised between 20 March and 17 April 2023. Interviews were held on 4 and 5 May 2023, the outcome of which was reported to the Standards Committee on 10 May 2023. The recruitment Panel identified three strong candidates and therefore recommended to the Committee that three rather than two new Independent Persons be appointed. This means that the Council will have four Independent Persons. This will hopefully avoid the need to appoint an Independent Person on an interim basis in the event that one or more Independent Person is unavailable. It also means that different Independent Persons can be called upon to assist the Monitoring Officer or the Committee at different stages of a complaint.
24. Following the annual meeting of Council on 24 May 2023, the Standards Committee is now responsible for the appointment of Independent Persons. Therefore, the Committee will be asked to appoint Chris Hugill, David Rogers and Steven Winder as the new Independent Persons at its meeting on 8 June 2023.

**Code of Conduct Complaints**

25. In 2012, following the implementation of the Localism Act 2011 and associated changes to the Standards regime, the Monitoring Officer was appointed as the ‘Proper Officer’ to receive complaints of failure to comply with the Code of Conduct.
26. The Monitoring Officer has delegated authority, after consultation with the Independent Person, if appropriate, to determine whether a complaint requires formal investigation. Wherever practicable, the Monitoring Officer seeks resolution of complaints without formal investigation, and she has discretion to refer decisions to a Standards Hearing where she feels that it is inappropriate for her to make the decision. The Standards Committee receives a quarterly report on the discharge of this function.
27. During 2022/23 the number of breakdown of complaints regarding breaches of the Code of Conduct was as follows:

Year	1 April 2021 to 31 March 2022	1 April 2022 to 31 March 2023
Total no. of complaints received	49	71

Source of Complaints	Councillors	23	Councillors	30
	Public	20	Public	34
	Parish/Town Council employee	5	Parish/Town Council Employee	6
	Anonymous	0	Anonymous	1
Complaints against including withdrawn and rejected	County Councillors	12	County Councillors	20
	Parish Councillors	29	Parish Councillors	33
	Town Councillors	16	Town Councillors	15
	Dual-hatted	2	Dual-hatted	3
Independent Persons Involved	The Independent Person was consulted in 5 complaints. The Independent Person also attended the Standards Hearing Panel on 23 December 2021.		The Independent Person was consulted in 11 complaints by the Subject Members and consulted once by the Monitoring Officer.	
Outcomes	No Further Action	22	No Further Action	30
	Local Resolution	20	Local Resolution	12
	Investigation	3	Investigation	3
	Standards Committee		Standards Committee	
	Hearing Panel	3	Hearing Panel	0
	Withdrawn/Rejected	2	Withdrawn/Rejected	16
			Ongoing	10

28. In 2022/23 the number of complaints is higher than in previous years. There was a decrease in the number of complaints where local resolution was recommended on the previous year and a similar trend was observed in respect of the complaints where the recommendation was no further action.



**Future work plan**

The Standards Committee agreed its work programme for 2023/24 which is shown at Appendix 3. As in previous years, the work programme covers standing agenda items and allows flexibility to add additional agenda items which may arise during the course of the year.

**Background Papers**

None

**Author**

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council has a duty under section 28 of the Localism Act 2011 to ensure that arrangements are in place under which allegations relating to the Code of Conduct can be investigated and decisions can be made. The Procedure for Member Code of Conduct Complaints ensures that this is complied with.

### **Finance**

None.

### **Consultation**

None.

### **Equality and Diversity / Public Sector Equality Duty**

The Council has a legal obligation to ensure that documents which are published on its website are accessible in accordance with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018. The Procedure for Member Code of Conduct Complaints ensures compliance with this obligation.

### **Climate Change**

None.

### **Human Rights**

None.

### **Crime and Disorder**

None.

### **Staffing**

None.

### **Accommodation**

None.

### **Risk**

None.

### **Procurement**

None.

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## Appendix 2: Work Programme 2022/23

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10 June 2022	<ul style="list-style-type: none"><li>• Work Programme 2022/23</li><li>• Review of national standards picture.</li><li>• Complaints update.</li></ul>
2 September 2022	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Annual Report.</li></ul>
5 December 2022	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Member Training and Development.</li><li>• Review of Local Determination Procedure. – <b>deferred to 17 March 2023</b></li></ul>
17 March 2023	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Review of work programme 2022/23 and future work programme.</li><li>• Debate Not Hate Campaign and Social Media Toolkit Review.</li><li>• Review of Local Assessment and Local Determination Procedure.</li><li>• Town and Parish co-opted members of the Standards Committee</li><li>• Recruitment of Independent Persons</li></ul>

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**Appendix 3: Work Programme 2023/24**

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8 June 2023	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Debate Not Hate Campaign.</li><li>• Annual Report.</li></ul>
8 September 2023	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Debate Not Hate Campaign.</li><li>• Complaints update.</li></ul>
4 December 2023	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Debate Not Hate Campaign.</li></ul>
7 March 2024	<ul style="list-style-type: none"><li>• Review of national standards picture.</li><li>• Complaints update.</li><li>• Debate Not Hate Campaign.</li><li>• Review of work programme 2023/24 and future work programme.</li></ul>

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

**Electoral division(s) affected:**

None.

**Purpose of the Report**

1. To inform Standards Committee of the proposed revisions to the Local Assessment Procedure and the Local Determination Procedure and to agree the Procedure for Member Code of Conduct Complaints.

**Executive summary**

2. The Localism Act 2011 requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct by both County Council Members and Parish Council Members.
3. The Council's Local Assessment Procedure, which sets out how complaints are dealt with was adopted in 2012. It has been periodically updated since its inception with the most recent update in March 2022. The Council's Local Determination Procedure, which sets out how hearings are conducted was adopted in July 2016 and identified in the Standards Committee's annual work programme for review in March 2023.
4. The Standards Committee considered an initial draft revised Procedure at its meeting on 17 March 2023. It was agreed that the Constitution Working Group would be consulted on the proposed changes prior to the Procedure being recommended for adoption.
5. This report summarises the proposed changes to those Procedures, which include combining the Local Assessment Procedure and Local Determination Procedures into one single document, the feedback received from Constitution Working Group and recommends that the Committee adopt the revised Procedure.

## **Recommendations**

6. Standards Committee is asked to:

- (a) Consider the proposed amendments to the Procedure for Member Code of Conduct Complaints; and
- (b) Note that the Head of Legal and Democratic Services has made minor amendments to the Procedure following consultation with Constitution Working Group; and
- (c) Agree to adopt the revised Procedure for Member Code of Conduct Complaints.

## **Review of the Procedures and Proposed Changes**

7. It is good practice to periodically review the arrangements for Standards matters to ensure that they remain fit for purpose. Accordingly, the Local Assessment and Local Determination Procedures (attached at Appendix 2 and 3 respectively) have been reviewed as part of the Standards Committee Work Programme.
8. The Standards Committee considered the proposed amendments to the Procedures at its meeting on 17 March 2023. The Committee will recall that the most significant proposed change is to combine the two procedures into a single “Procedure for Member Code of Conduct Complaints”. This will mean that the arrangements for dealing with Member Code of Conduct complaints will be located in one place, making them easier to identify and more user friendly.
9. In addition to combining the two procedures, it is proposed that the presentation of the documents is updated to reflect the current corporate style with the Council’s logo and colour scheme. This together with the introduction of hyperlinks will make the procedure easier to navigate and again, more user friendly.
10. It is also proposed to make some limited substantive changes to the procedure. These include provision for the Monitoring Officer or Deputy Monitoring Officer to nominate an Officer to deputise on their behalf in relation to the initial assessment of complaints and also advising at Hearing Panels of the Standards Committee. The Monitoring Officer or Deputy Monitoring Officer will retain oversight of the handling of complaints.
11. It is proposed to include a list of considerations to be taken into account when deciding if/how a complaint should progress. The considerations, which are set out at paragraph 3.3 include:
  - Where the Member Code of Conduct is not engaged or, the conduct is unlikely to amount to a breach of the Code of Conduct.
  - Where a complaint is more than 3 months old and there is no good reason for the delay.
  - Where multiple complaints have been submitted of a similar nature.
  - Where the complaint has already been subject of an investigation or other action either at the Council or another regulatory authority in the last 3 years.
  - Where the complaint appears to be malicious, politically motivated or tit-for-tat.
  - Where the Subject Member has already apologised or offered a remedy.

12. Where one or more of the criteria at paragraph 3.3 are met, complaints will only be considered if the Monitoring Officer considers it proportionate, taking into account the potential outcome of a complaint.
13. It is also proposed to update the Procedure to reflect that where multiple complaints are submitted against the same Subject Member and/or arise out of the same facts, they may be dealt with under a single decision notice. This is again to assist with the proportionate discharge of the complaints process. The proposed changes are included at paragraph 3.5 of the Procedure.
14. The Standards Committee requested that Constitution Working Group were consulted on the revised Procedure prior to it being presented to Council for adoption. The Committee also delegated authority to the Head of Legal and Democratic Services in consultation with the Chair of the Standards Committee to make any minor amendments that may arise from Constitution Working Group prior to the Procedure being presented to Council for approval.
15. The Constitution Working Group considered the proposed revised procedure on 20 April 2023. The Group requested that the Procedure be amended to provide that where appropriate, the relevant Group Leader will be informed of a complaint against a Member of their group and also the outcome. This amendment is set out at paragraph 3.9 of the Procedure.
16. The Standards Committee is also asked to consider a further proposal to paragraphs 6.1 to 6.3. The amendment is minor and is in relation to where the decision notice of an assessment of a complaint refers the complaint to the Standards Committee for a hearing without an investigation. This is to reflect the option under the current Local Assessment Procedure which is already available to the Monitoring Officer (or a person deputising on their behalf) following an initial assessment to refer a complaint to the Standards Committee without an investigation taking place. A copy of the revised Procedure is attached at Appendix 4.
17. As part of the Annual Review of the Constitution, which was considered at the annual full Council meeting on 24 May 2023, Council delegated responsibility for the approval of the arrangements under which allegations of a failure to comply with Council's Code of Conduct for Members can be investigated and decisions on allegations can be made pursuant to section 28(6) of the Localism Act 2011 to the Standards Committee. Accordingly, it is now the responsibility of the Standards Committee to approve the revised Procedure.



**Conclusion**

18. The Standards Committee are invited to consider and adopt the revised Procedure for Member Code of Conduct Complaints.

**Background Papers**

None

**Author**

Lauren Smith

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council has a duty under section 28 of the Localism Act 2011 to ensure that arrangements are in place under which allegations relating to the Code of Conduct can be investigated and decisions can be made. The Procedure for Member Code of Conduct Complaints ensures that this is complied with.

### **Finance**

None.

### **Consultation**

Constitution Working Group considered the proposed changes to the Procedure on 20 April 2023. The revised draft presented with the report incorporates the feedback from the Group.

### **Equality and Diversity / Public Sector Equality Duty**

The Council has a legal obligation to ensure that documents which are published on its website are accessible in accordance with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018. The Procedure for Member Code of Conduct Complaints ensures compliance with this obligation.

### **Climate Change**

None.

### **Human Rights**

None.

### **Crime and Disorder**

None.

### **Staffing**

None.

### **Accommodation**

None.

### **Risk**

None.

### **Procurement**

None.



## Procedure for Local Assessment of Member Code of Conduct Complaints

## Definitions

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

# 1. Introduction

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

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

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

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

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

## 2. Initial Notification of Complaint

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

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

- 2.8 Where a complaint made to the Monitoring Officer relates to the conduct of a Town or Parish Councillor towards the Clerk, it is recommended in all cases unless exceptional circumstances can be shown that the complaint should be made by the Chair or the Council as a whole.

### 3. Initial Assessment

- 3.1 The Monitoring Officer, in consultation with the Independent Person where appropriate, will, as soon as reasonable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. The Assessment Criteria contained in Appendix 3 will be applied. Assessment may in some circumstances be delayed if a police or other (for example, internal Audit) investigation is first warranted.

- 3.2 The Monitoring Officer will decide either:

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

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

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

- 3.5 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion.

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

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

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

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

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

## 5. Local Resolution

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

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

## 6. Referral by Monitoring Officer for investigation

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

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

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

6.3 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 3.2 above. In forming an opinion for the purposes of paragraph 6.2(a) above, the Monitoring Officer may take account of:

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

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

- 6.5 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigating Officer should aim to complete the investigation within 3 months of being appointed.
- 6.6 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.
- 6.7 Where the Investigating Officer's report finds that the Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 6.8 Where paragraph 6.7 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.
- 6.9 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 6.10 Where the Investigating Officer's report finds that the Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearing Panel or seek Local Resolution in appropriate cases. Where such Local Resolution is not appropriate or possible the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee for local determination in accordance with the Local Determination Procedure.

## 7. Withdrawing Complaints

- 7.1 If a complainant requests to withdraw his/her complaint before the Monitoring Officer has made a decision on it, then the Monitoring Officer will decide whether to grant that request.
- 7.2 In making that decision s/he will take into account the following considerations:
- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
  - Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
  - Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?



## 8. Conflicts of Interest

- 8.1 Where it appears the Monitoring Officer that there is a conflict of interest which prevents the internal investigation of a Code of Conduct complaint, the Monitoring Officer will consider whether external support is required to carry out an investigation.

# Appendix 1

## Making a complaint

### Your details

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

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

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

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

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

### Making your complaint

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

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

If you are complaining about more than one member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct.

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

- You should be specific, wherever possible; about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.

- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information. You should consider the relevant Code of Conduct and identify which aspects of it you consider have been breached.

## Confidentiality

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

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

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you must fully explain what information you want withheld and your reasons for your request to withhold it.

If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint. However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

## Additional Help

Complaints must be submitted in writing, via the on-line complaint form or a form can be provided by post or e-mail on request from the Monitoring Officer. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

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

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

Helen Lynch  
The Monitoring Officer Durham County Council County Hall  
Durham  
DH1 5UL  
Or  
by email [helen.lynch@durham.gov.uk](mailto:helen.lynch@durham.gov.uk)

Revised March 2022

## Data Protection Act

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

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

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

## Appendix 2

### Habitual or Vexatious Complaints Policy

#### 1. Introduction

- 1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.
- 1.2 This policy is intended to assist in identifying and managing persons who seek to be disruptive to the Monitoring Officer through pursuing an unreasonable course of conduct.
- 1.3 In this policy:
  - Habitual means: done repeatedly or as a habit.
  - Vexatious means: an complaint brought for the purpose of annoying another person and with no reasonable prospect of success.
- 1.4 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer will endeavour to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

#### 2. Habitual or Vexatious Complainants

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

The repeated and/or obsessive pursuit of:

- (i) Unreasonable complaints and/or unrealistic outcomes;

and/or

- (ii) Reasonable complaints in an unreasonable manner.

- 2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.
- 2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.

- 2.4 The Monitoring Officer will notify complainants in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant.
- 2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

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

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

1. Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
2. Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
3. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
4. Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
5. Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
6. Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
7. Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
8. Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.

9. Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the parties involved.
10. Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
11. Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
  - (a) Clearly does not have any serious purpose or value; or
  - (b) Is designed to cause disruption or annoyance; or
  - (c) Has the effect of harassing the Council; or
  - (d) Can otherwise fairly be characterised as obsessive or manifestly unreasonable
12. Make repetitive complaints and allegations that ignore the replies the Council has supplied in previous correspondence



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

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

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

## Appendix 3

### Assessment Criteria

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

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

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

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

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

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

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

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

If yes, further action will not normally be warranted.

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

If yes, investigation will not be warranted.

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

If yes, further action will not normally be warranted.

7. Is the complaint anonymous?

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

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

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



## Local Determination Procedure

## 1. Guide To Main Provisions

### Introduction

- 1.1 Under section 28 of the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a Co-opted Member) or a member of a Parish Council in its area has failed to follow the relevant Code of Conduct. These arrangements must determine how allegations are investigated and under which decisions on allegations can be made.
- 1.2 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority, including Co-opted Voting Members of the Authority's Standards Committee, when carrying out their duties. The Code represents the standards against which the public, fellow Members, the Monitoring Officer, Investigating Officer and the Authority's Standards Committee will judge a Member's conduct.
- 1.3 This Procedure provides a summary of the process for dealing with allegations of misconduct against Members where an investigation has been completed and the Investigating Officer has found a breach of the Code of Conduct.

### Local Determination

- 1.4 Where an investigation finds evidence of a failure to comply with the Code of Conduct and local resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee for local determination.
- 1.5 The purpose of the hearing is to decide whether or not a Member has failed to follow the Code of Conduct and, if so, to decide whether or not any sanction should be applied and what form any sanction should take.

### Scheduling of Hearing

- 1.6 The Hearing Panel shall in the absence of good reason to the contrary hold a hearing in relation to an allegation within the period of three months beginning on the date of completion of the Investigating Officer's report.
- 1.7 The hearing shall not be held until at least fourteen days after the date on which the report was sent to the Member who is the subject of the allegation, unless the Member concerned agrees to the hearing being held earlier.
- 1.8 Except in complicated cases, the Hearing Panel would aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

### Appointment of Hearing Panel

- 1.9 The Hearing Panel will comprise three Members of the Standards Committee selected by the Monitoring Officer. A quorum of the Hearing Panel will be three Members. Any member who is the complainant or the subject of the complaint will not participate in the decision making process.

### Hearing

- 1.10 The Hearing Panel will act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.
- 1.11 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.
- 1.12 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

### Findings

- 1.13 Following its consideration of the matter, the Hearing Panel can make one of the following findings:
- that the Member has not failed to follow the Code of Conduct; or
  - that the Member has failed to follow the Code of Conduct, but no action needs to be taken; or
  - that the Member has failed to follow the Code of Conduct and should be sanctioned.

### Sanctions

- 1.14 If the Hearing Panel finds that a Member has failed to follow the Code of Conduct and that he/she should be sanctioned, it may take any one or a combination of the following actions:
- censure the Member (this is the only form of sanction available when dealing with a person who is no longer a Member);
  - restriction to the access and use of resources of the Authority for a maximum period of six months, provided that any such restrictions imposed upon the Member: -
    - are reasonable and proportionate to the nature of the breach; and

- do not unduly restrict the person's ability to perform the functions of a Member.
- a requirement to give a written apology;
- the removal of a member from a committee;
- a requirement to undergo training.

### Notice of Findings

- 1.15 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the relevant persons involved.
- 1.16 A summary of the decision and reasons for that decision will be published on the Council's website.

## 2. Description of Terms

### Members' Code of Conduct

- 2.1 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority when carrying out their duties.

### Complainant(s)

- 2.2 The person(s) making the complaint that a Member has breached the Code of Conduct.

### Member

- 2.3 The person against whom the complaint has been made.

### Monitoring Officer

- 2.4 The person who oversees investigations into complaints made against Members under the Code of Conduct.

### Authority

- 2.5 The Member's Council at the time of an allegation.

### Legal Adviser to the Hearing Panel

- 2.6 The Monitoring Officer, or in their absence the Deputy Monitoring Officer.

### Investigating Officer

- 2.7 The person appointed by the Monitoring Officer to undertake the investigation of an allegation.

### Head of Legal and Democratic Services

- 2.8 The designated Proper Officer for the determination of "exempt information" as defined in Schedule 12A to the Local Government Act 1972.

#### Independent Person

- 2.9 The person who is appointed by the Authority under section 28(7) of the Localism Act 2011 whose views are to be sought, and taken into account, by the Authority before it makes its decision on an allegation that it has decided to investigate.

#### Administrative Officer

- 2.10 The Head of Legal and Democratic Services, or their Deputy, and other members of their staff will provide the necessary administrative support to the Hearing Panel.

#### "Days"

- 2.11 "Days" include working and weekend days but exclude the day of dispatch and public holidays.

#### Service Arrangements

- 2.12 Correspondence and documents for the Member concerned will either be served personally or by recorded delivery.

### 3. Pre-Hearing Process

#### Notification to Member

3.1 Where a final report of an Investigating Officer which contains a finding of failure to comply with the Code of Conduct has been referred to a Hearing Panel for local determination, the Administrative Officer will write to the Member concerned to:

- (a) propose a date for a meeting of the Hearing Panel,
- (b) outline the hearing procedure,
- (c) outline the Member's rights.

In addition the Administrative Officer will ask the Member concerned to indicate within 14 days whether or not he/she:

- (a) disagrees with any of the findings of fact in the Investigating Officer's Report, including the reasons for any disagreement,
- (b) will attend the hearing in person,
- (c) wants to be represented at the hearing by a solicitor, barrister or any other person,
- (d) wants to give evidence to the Hearing Panel, either orally or in writing,
- (e) wants to call relevant witnesses to give evidence to the Hearing Panel, and if so, the Member must provide a summary of the evidence to be given by those witnesses,
- (f) wants any part of the hearing to be held in private, giving reasons under the relevant Article of the European Convention on Human rights or category of confidential or exempt information (see Appendices Two and Three)
- (g) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention of Human Rights or category of confidential or "exempt information".

#### Members' Response

3.2 In his/her reply a Member must make clear all of his/her disagreements with the findings of fact in the Investigating Officer's report during this pre-hearing stage. This will allow the Chair of the Hearing Panel, in consultation with the Monitoring Officer, to decide which witnesses will be needed. A Member will normally not be allowed to raise any new disagreements over findings of fact in the



Investigating Officer's report at the Hearing Panel itself, unless there are good reasons for doing so, such as new evidence becoming available.

- 3.3 When the response of the Member concerned has been received, or, if no response is received, once the 14 day period for responding has elapsed, the Chair of the Hearing Panel in consultation with the Monitoring Officer will agree the date, time and place for the hearing.

#### Advance Notification of Hearing

- 3.4 At least 14 days before the hearing, the Administrative Officer will give notification of the date, time and venue set for the hearing to those involved. He will also inform the Member concerned of the membership of the Panel which will consider the matter.

#### Agenda for Hearing

- 3.5 At least 7 days before the day of the meeting of the Hearing Panel, the Administrative Officer will send the following papers to each Member of the Panel, to the Member concerned, to the Investigating Officer, to the Monitoring Officer and to the Independent Person:
- (a) the agenda for the meeting of the Hearing Panel;
  - (b) a copy of the Investigating Officer's report (unless already provided); and
  - (c) where relevant, a copy of any written statement in response to the Investigating Officer's report received from the Member and the Investigating Officer's reply to the Member's response.
- 3.6 The provision of any such papers referred to in paragraph 3.14 may be made conditional upon an appropriate undertaking of confidentiality until such time as they are made available to the press and public or the Hearing Panel agrees at the commencement of the hearing that the press and public shall not be excluded from the meeting.
- 3.7 Any additional documents intended to be relied on and/or referred to at the hearing must be provided to the Administrative Officer at least 3 days before the date of the Hearing.

#### Public Access to Hearing and Documents

- 3.8 There is a presumption that hearings will be held in public and that reports for the Hearing Panel will be available before and during the hearing. However, there may be reasons, as detailed in Appendix One, which would prevent public access to the hearing (or part of the hearing) and documents (or parts of documents) to be considered by the Hearing Panel.

#### Confidentiality in advance of Hearing

- 3.9 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or Member's written statement in response to the Investigating Officer's report and/or the Investigating Officer's reply to that response is likely to disclose "exempt information", and in consequence that it is likely that the Hearing Panel will not be open to the public during consideration of these papers, he/she shall not provide copies of these papers to the press or public or permit inspection thereof by the press or public in advance of the meeting.
- 3.10 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or the Member's written statement in response and/or the Investigating Officer's reply to that response is likely to disclose "exempt information" falling within Schedule 12A to the Local Government Act 1972, he will not provide copies of such papers to, nor permit inspection by any Member of the Authority other than the Members of the Hearing Panel and the Member concerned in advance of the meeting.
- 3.11 "Exempt information" is defined in Schedule 12A of the Local Government Act 1972 as set out in Appendix Two.

## 4. Hearing Procedure

### Legal Advice

- 4.1 The Hearing Panel may at any time seek legal advice from the Legal Adviser during the hearing or while the Hearing Panel considers the outcome. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

### Member Attendance or Representation

- 4.2 The Member may arrange to be represented or accompanied at the hearing at his/her own expense by a solicitor, counsel or another person.
- 4.3 If the Member does not attend the hearing, the Hearing Panel may consider the Investigating Officer's report and the Independent Person's views in the Member's absence. If the Hearing Panel is satisfied with the Member's reason for not being able to attend the hearing, then it may arrange for the hearing to be held on another date.
- 4.4 Where the Hearing Panel proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who may be present such rights as would otherwise be accorded to the Member concerned.

### Order of Business

- 4.5 The order of business at the meeting shall be as follows:
- (a) Disclosures of interest. The Chair will invite Members to declare any interest they may have in the matter.
  - (b) Introduction of Members of the Hearing Panel, the Investigating Officer, the Monitoring Officer, the Member against whom a complaint has been made, any representative of the Member, any witnesses and, the Independent Person.
  - (c) If the Member is not present, consideration as to whether to adjourn or to proceed in his/her absence.
  - (d) Consideration as to whether the press and public should be excluded from the meeting. The Hearing Panel will take into account any representations from the Investigating Officer, the Member concerned or his/her representative and the Independent Person with reasons why the Panel should make such an exclusion.
  - (e) A note of the issues which the Hearing Panel will have to consider in deciding whether or not to exclude the press and public is set out in Appendix Three.
  - (f) The Hearing Panel will then make a determination on whether to exclude the press and public. Where the Panel decides not to exclude the press and public, the Administrative Officer will at this point provide copies of such relevant documentation to any members of the press and public who are present.
  - (g) The Investigating Officer will present his/her own reports. The Investigating Officer will address only the issue of whether the Member has acted in breach of the Code of Conduct. The Investigating Officer may introduce any witnesses required to substantiate any matter. Members of the Hearing Panel and the Independent Person may question the Investigating Officer and any witness on any matter within their competence. The Hearing Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer by the cross-examination of the witness either directly by the Member (or their representative) or through the Chair.
  - (h) Presentation by Member. The Member (or their representative) will address only the issue of whether he/she has acted in breach of the Code of Conduct. The Member (or their representative) may introduce witnesses required to substantiate any matter contained in his/her written statement (where relevant). Members of the Hearing Panel and the Independent Person may question the Member and any witness

on their evidence. The Hearing Panel may give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member (or their representative) by the cross-examination of the witness either directly by the Investigating Officer or through the Chair.

- (i) Where the hearing is dealing with an Investigating Officer's report and the Member seeks to dispute any matter in the report where he/she had not given notice of intention to dispute in his/her written statement, the Investigating Officer will draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:
  - (i) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
  - (ii) to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
  - (iii) to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (j) Members of the Hearing Panel have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigating Officer, the Member concerned and any witnesses in order to obtain sufficient information to enable the Hearing Panel to come to a decision on the issue.
- (k) The Independent Person will be asked to provide their view about whether the Member has acted in breach of the Code of Conduct. The Independent Person may request an adjournment of the hearing if they require time to form their view before presenting it to the Hearing Panel.
- (l) The Hearing Panel will adjourn into another room with the Monitoring Officer, where it will consider in private session whether the Member has acted in breach of the Code of Conduct. At any stage in its consideration they may return to ask any further questions of the Investigating Officer or the Member, or seek legal advice.
- (m) At the conclusion of its consideration, the Hearing Panel will return and the Chair will advise the Investigating Officer and the Member or his/her representative of its decision as to whether the Member has acted in breach of the Code of Conduct, and the reasons for that decision.

- (n) If the Hearing Panel concludes that the Member has acted in breach of the Code of Conduct, it will then hear representations from the Investigating Officer and then the Member or his/her representative as to whether the Hearing Panel should take any action against the Member and what form any action should take. Members of the Panel may ask questions of the Investigating Officer, the Member and the Independent Person and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- (o) The Hearing Panel will then adjourn into another room together with the Monitoring Officer where they will consider in private session whether to take any action in respect of the Member and what form any such action should take.

The sanctions available to the Hearing Panel are set out in Appendix Four. The Hearing Panel will then return and the Chair will advise the Member of its decision.

#### Non-Co-operation

- 4.6 Where the Investigating Officer states that any Member or Officer of the Authority has failed to co-operate wholly or in part with the procedure, the Hearing Panel will consider whether to make a formal complaint to the Standards Committee or to the relevant authority, respectively, about such failure to co-operate.

#### Costs

- 4.7 Where the Investigating Officer secures the attendance of any person to give evidence to the Hearing Panel, the Authority will reimburse any reasonable costs which the person may incur in so attending.

#### Additional Evidence

- 4.8 A Hearing Panel may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Hearing Panel; but the Hearing Panel shall not adjourn the hearing on more than one occasion under these provisions.

## 5. Notice of Findings of Hearing Panel and Confidentiality of Information

#### Report to Standards Committee

- 5.1 As soon as reasonably practicable after the Hearing Panel has made its determination in respect of an allegation, the Monitoring Officer will give written notice of that determination and the reasons for such determination to:

- (a) the Member who is the subject of that determination;

- (b) the Investigating Officer;
- (c) the Standards Committee;
- (d) the Independent Person;
- (e) the Standards Committee of any other local authority of which the Member is, or was at the time of the alleged misconduct, a Member; and
- (f) any person who made the allegation that gave rise to the investigation; and

subject to paragraph 5.2 below, arrange for a summary of the finding to be published on the Council's website.

5.2 Where the Hearing Panel determines that there has not been a breach of the Code of Conduct:

- (a) the notice under paragraph 6.1 will state that the Hearing Panel found that the Member concerned had not failed to comply with the Code of Conduct of the and will give its reasons for reaching that finding; and
- (b) if the Member concerned so requests, the Monitoring Officer will not publish a summary of the finding in any local newspaper.

5.3 Where the Hearing Panel determines that there has been a failure to comply with 6.1 the notice will:

- (a) state that the Hearing Panel found that the Member concerned had failed to comply with Code of Conduct of this or another Council but that no action needs to be taken in respect of that failure;
- (b) specify the details of the failure;
- (c) give reasons for the decision reached by Hearing Panel; and

5.4 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice under paragraph 6.1 will:

- (a) state that the Hearing Panel found that the Member concerned had failed to comply with the Code of Conduct of this or the Code of Conduct of another Council;
- (b) specify the details of the failure;
- (c) give reasons for the decision reached by the Hearing Panel;

- (d) specify the sanction imposed,

#### Confidentiality

5.5 No Member or Officer of the Authority shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out below:

- (a) the disclosure is made for the purposes of enabling the Monitoring Officer or Investigating Officer to carry out his/her functions or the Hearing Panel to carry out its functions in relation to the matter;
- (b) the disclosure is made in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
- (c) the disclosure is made enabling a Standards Committee or sub-committee of a Standards Committee to perform any of its functions in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
- (d) the person to whom the information relates had consented to the disclosure;
- (e) the disclosure is made in pursuance of a statutory requirement for disclosure;
- (f) the information has previously been disclosed to the public with lawful authority;
- (g) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

## Appendix 1 - Public Access to hearings and documents

Hearings will be held in public where possible to make sure that the hearing process is open and fair.

### Confidential information and 'exempt information'

- 1 There are two circumstances in which hearings (or parts of hearings) can or should be held in private.
  - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
  - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the Local Government Act 1972 (see Appendix 2). However, regulations also provide for three additional categories of 'exempt information' in relation to the Hearing Panel.
    - (i) Information which is subject to any obligation of confidentiality.
    - (ii) Information which relates in any way to matters concerning national security.
- 2 The rules about confidential information are different from the rules about 'exempt information'. Hearing Panels must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

### Deciding to withhold 'exempt information'

- 3 The Hearing Panel will carefully consider any decision to withhold exempt information from the public. The Hearing Panel will follow Article 6 of the European Convention on Human Rights, as there is an obligation to do so under Section 6(1) of the Human Rights Act 1998. The Hearing Panel has a duty to act fairly and in line with the rules of natural justice.
- 4 Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved.
- 5 If the Hearing Panel decides to exclude the public to prevent 'exempt information' being revealed, it will only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt



information', the public will only have to be excluded while that witness is giving evidence.

- 6 If evidence is heard in private, the Chair of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

#### Access to documents

- 7 As a general principle, the agenda and reports to be discussed at a Hearing Panel will be available to the public before and during a hearing. The Investigating Officer's report will be one of the reports before the Hearing Panel.
- 8 However, the Head of Legal and Democratic Services has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private.
- 9 After a hearing, sections of the Hearing Panel's reports, which relate to parts of the hearing held in private, will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.
- 10 When considering whether or not to exclude the public from a hearing, the Hearing Panel will also need to say which parts of the reports before the hearing are not to be made available for public inspection.
- 11 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, will be available for public inspection for a specific period of up to six years after that hearing has taken place.

## Appendix 2 - "Exempt Information"

Categories of exempt information under Schedule 12A of the Local Government Act 1972.

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes -
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Source: Appendix 2 is an extract from the Local Government Act 1972.

## Appendix 3 - Exclusion of Press and Public

### Issues for Consideration

- 1 At the meeting, the Hearing Panel will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
- 2 The Hearing Panel must act in accordance with Article 6 of the European Convention on Human Rights, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the "trial" in the interests of:
  - (a) Morals
  - (b) public order
  - (c) national security in a democratic society
  - (d) where the interests of juveniles or the protection of the private life of the parties so require or
  - (e) in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Member or Investigating Officer can demonstrate over-riding reasons within one of the five headings above for the press and public to be excluded.

- 3 Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Hearing Panel) with the exercise of this right except such as is:
  - (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
  - (b) necessary in a democratic society in the interests of:
    - (i) national security
    - (ii) public safety
    - (iii) the economic well-being of the country
    - (iv) the prevention of crime or disorder

- (v) the protection of health and morals (which would include the protection of standards of conduct in public life) or
- (vi) the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence, so that the presumption of a public hearing set out in Article 6 would appear to come within the exception set out in paragraph (b)(v) above, unless either the Investigating Officer or the Member demonstrates to the Hearing Panel's satisfaction that a public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Member or of the should over-ride that public interest.

- 4 Where the Hearing Panel concludes that the interest of protecting the privacy of the Member or of the Authority should over-ride the public interest in a public hearing, the Hearing Panel remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Hearing Panel has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
- 5 Where the Hearing Panel does not resolve to exclude the press and public from the meeting, the Head of Legal and Democratic Services will then be required to provide copies of the agenda and reports to the press and public and other members of the Authority, and to permit inspection of any background papers.

## Appendix 4 - Sanctions available to the Hearing Panel

A Sanctions available in respect of a Member who has ceased to be a Member at the date of the Hearing Panel

1 Censure of the Member

B Sanctions available in respect of a Member who remains a Member at the date of the Hearing Panel

Any one, or a combination, of the following:

1 Censure of the Member;

2 Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;

3 Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority

4 Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member –

(a) are reasonable and proportionate to the nature of the breach; and

(b) do not unduly restrict the Member's ability to perform his functions and duties as a Member;

5 A requirement that the Member submit a written apology.

6 A requirement that that Member undertake training as specified by the Hearing Panel.

7 A requirement that that Member undertake conciliation as specified by the Hearing Panel.

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## Procedure for Member Code of Conduct Complaints

### Contents

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## Definitions

### Authority

The Subject Member's Council at the time of an allegation.

### Code of Conduct

The relevant Code or Codes of Conduct adopted by the Subject Member's council or councils.

### Complainant(s)

The person(s) making the complaint that a Subject Member has breached the Code of Conduct.

### Head of Legal and Democratic Services

The designated Proper Officer for the determination of "exempt information" as defined in Schedule 12A to the Local Government Act 1972.

### Independent Person

The person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometime must, be sought.

### Informal Resolution

An informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure.

### Investigating Officer

The person appointed by the Monitoring Officer to undertake the investigation of an allegation.

### Investigation

An investigation undertaken by the Investigating Officer.

### Legal Advisor to the Hearing Panel

The Monitoring Officer, or in their absence the Deputy Monitoring Officer or their representative.

### Monitoring Officer

The person appointed in accordance with section 5 of the Local Government and Housing Act 1989 who oversees investigations into complaints made against Subject Members under the Code of Conduct.

### Subject Member

The person whom the complaint has been made against.



## 1. Introduction

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

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

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

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

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## 2. How to make a complaint

2.1 Complaints must be submitted via the online [Code of Conduct complaint form](#). However, if you require assistance to make your complaint or you would prefer the form to be provided by post or email, please email [democraticservices@durham.gov.uk](mailto:democraticservices@durham.gov.uk) or telephone 03000 269712.

2.2 When making your complaint you should include the following information:

- (a) Your name, address, and other contact details
- (b) The name(s) of the Subject member(s) who the complaint is against and the name of the Council that they represent.
- (c) Details of the complaint including, where possible, date(s) of the alleged misconduct (if you cannot provide exact dates, it is important to give a general timeframe), witnesses and their details and any other supporting information.

2.3 Your address and contact details will not usually be released unless necessary to deal with the complaint. However, we will tell the following people that you have made a complaint:

- the Subject Member(s) whom the complaint is about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

2.4 We will tell the Subject Member(s), your name and give them a summary or a copy of your complaint. We will give them full details of the complaint where necessary or appropriate to be able to deal with it. We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so. If you have serious concerns about your name and the details of your complaint being released, please state these on the complaint form. Please be aware that any decision notice on a complaint will identify the complainant (i.e. you) and will be available for inspection by any member of the public for a period of six years following the decision.

2.5 Where the Monitoring Officer or a person deputising on their behalf does not agree to keep your identity confidential, you will be given the opportunity to seek to withdraw your complaint (or to ask for it to be considered anonymously). Complaints made anonymously will warrant consideration only if sufficient information is provided to enable them to be considered. They will usually need to be accompanied by evidence indicating an exceptionally serious or significant matter.

2.6 The Monitoring Officer or a person deputising on their behalf may also make the decision to withhold your identity from the Subject Member if s/he considers that disclosure might prejudice any future investigation.

2.7 If you wish to withdraw your complaint before the Monitoring Officer or a person deputising on their behalf has made a decision on it, then the Monitoring Officer will decide whether to grant that request.

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

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

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### 3. Assessment of complaint

3.1 The Monitoring Officer or a person deputising on their behalf, in consultation with the Independent Person where appropriate, will, as soon as reasonably practicable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. Assessment may in some circumstances be delayed if a police or other (for example, internal Audit) investigation is first warranted.

3.2 For a complaint to be considered it must fall within the jurisdiction of the Monitoring Officer. The Monitoring Officer or a person deputising on their behalf can only consider complaints where a Subject Member was acting as a councillor or giving the impression that they were acting as a Councillor, or a representative of the Council and that the member was in office at the time of the alleged conduct.

3.3 The Monitoring Officer or a person deputising on their behalf will also take into account the following considerations before deciding if a complaint warrants further consideration under the procedure:

- Where the Member Code of Conduct is not engaged or, the conduct is unlikely to amount to a breach of the Code of Conduct.
- Where a complaint is more than 3 months old and there is no good reason for the delay.
- Where multiple complaints have been submitted of a similar nature.
- Where the complaint has already been subject of an investigation or other action either at the Council or another regulatory authority in the last 3 years.
- Where the complaint appears to be malicious, politically motivated or tit-for-tat.
- Where the Subject Member has already apologised or offered a remedy.

3.4 Once an initial assessment has taken place, the Monitoring Officer or a person deputising on their behalf will decide either:

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

3.5 Where multiple complaints are submitted concerning the same Member(s) and/or are similar in nature the Monitoring Officer or a person deputising on their behalf may decide to consider the complaints under one decision notice.

3.6 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Monitoring Officer or a person deputising on their behalf may instead refer the complaint to the Monitoring Officer of that other relevant authority if s/he thinks it more appropriate to do so.

3.7 Where the Monitoring Officer or a person deputising on their behalf requires further information they may contact the complainant, the Subject Member, any witnesses to

the complaint or the Clerk (where applicable). The complainant's and the Subject Member's identity may be disclosed to any such witnesses.

3.8 The Subject Member(s) will be notified that a complaint has been made against them and they will be given 10 working days from the date of the notification to submit any comments they may have. If the Subject Member(s) requires an extension of time to provide their response, they must submit their reasons in writing to the Monitoring Officer or a person deputising on their behalf who will decide if it is appropriate to grant the extension.

3.9 Where appropriate the Monitoring Officer or a person deputising on their behalf will notify the relevant political Group Leader of the Subject Member of the complaint and the outcome.

3.10 The Monitoring Officer or a person deputising on their behalf, will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion. The decision will be sent as soon as possible to the complainant and to the Subject Member who is the subject of the complaint.

3.11 The decision will be available for inspection by the public at the offices of the Council for 6 years beginning with the date of the decision. However, the decision will not be made available for inspection until the Member who was the subject of the complaint has received a copy of the decision. A copy of the decision will also be sent to the clerk of the relevant Parish/Town council where applicable.

## 4. Informal Resolution

4.1 The Monitoring Officer or a person deputising on their behalf will establish whether a complaint is suitable to be resolved informally before or alternatively to taking a decision on whether the complaint merits formal investigation, this is called informal resolution. Informal resolution may involve:

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

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## 5. Investigations

5.1 The Monitoring Officer will consider the following questions before referring the complaint to an investigation:

- Has the complainant submitted enough information?
  - How long ago the alleged complaint occurred?
  - Has the complaint already been the subject of an investigation or other action either at the Council or another regulatory authority in the last 3 years?
  - Does the complaint appear to be malicious, politically motivated or tit-for-tat?
- Has the Subject Member already apologised or offered a remedy?
- Does the complaint justify the cost of an investigation?

5.2 Where the Monitoring Officer decides that a complaint should be referred for investigation, and after consulting the Independent Person, they will appoint an Investigating Officer. This may be another officer of the council, an officer of another Council or an external investigator.

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

5.4 The Investigating Officer will normally write to the Subject Member and the complainant, and they may also ask to speak or meet with them. This will be to gain a greater understanding of the nature of the complaint and find out who they need to interview as part of their investigation.

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

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

5.7 Where paragraph 5.6 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.

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

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

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

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

5.11 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 5.10 above. In forming an opinion for the purposes of paragraph 5.10(a) above, the Monitoring Officer may take account of:

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



## 6. Hearings

6.1 Where the assessment of the complaint or where an investigation finds evidence of a failure to comply with the Code of Conduct and informal resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee for local determination. The purpose of the hearing is to decide whether or not the Subject Member has failed to follow the Code of Conduct and, if so, to decide whether or not any sanction should be applied and what form any sanction should take.

6.2 The Hearing Panel will usually be convened within three months beginning on the date on which the Monitoring Officer receives the Investigator's Monitoring Officer report or the date of the decision notice recommending that the complaint be referred to hearing.

6.3 The hearing shall not be held until at least fourteen days after the date on which the report or the decision notice recommending that the complaint be referred to hearing was sent to the Subject Member, unless they agree to the hearing being held earlier.

6.4 The Hearing Panel will usually aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

6.5 The Hearing Panel will comprise three Members of the Standards Committee. A quorum of the Hearing Panel will be three Members. If the complainant or subject member is a member of the Standards Committee, they will not sit on the Hearing Panel.

6.6 The Hearing Panel will act in an inquisitorial, rather than an adversarial manner, seeking the truth in relation to the conduct of the Subject Member on the balance of the information available to it. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.

6.7 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.

6.8 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

6.9 The Hearing Panel can make one of the following findings:

- that the Subject Member has not failed to follow the Code of Conduct; or
- that the Subject Member has failed to follow the Code of Conduct, but no action needs to be taken; or
- that the Subject Member has failed to follow the Code of Conduct and should be sanctioned.

6.10 If the Hearing Panel finds that the Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may take any one or a combination of the following actions:

- censure the Subject Member (this is the only form of sanction available when dealing with a person who is no longer a Councillor);
- restriction to the access and use of resources of the Authority for a maximum period of six months, provided that any such restrictions imposed upon the Subject Member:
  - are reasonable and proportionate to the nature of the breach; and
  - do not unduly restrict the person's ability to perform the functions of a Member.
- a requirement to give a written apology;
- the removal of the Subject member from a committee;
- a requirement to undergo training.

6.11 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the Complainant, the Subject Member and (if applicable) the Clerk to the Town or Parish Council.

6.12 A summary of the decision and reasons for that decision will be published on the Council's website which will include a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person and the reasoning of the decision maker and any sanction applied.

## 7. Habitual or Vexatious Complaints

- 7.1 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer will endeavour to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.
- 7.2 In this policy habitual means done repeatedly or as a habit. Vexatious means a complaint brought for the purpose of annoying another person and with no reasonable prospect of success.
- 7.3 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:
- The repeated and/or obsessive pursuit of:
- (i) Unreasonable complaints and/or unrealistic outcomes;
- and/or
- (ii) Reasonable complaints in an unreasonable manner.
- 7.4 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.
- 7.5 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.
- 7.6 The Monitoring Officer will notify complainants in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant.
- 7.7 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach, then their status will be reviewed.

## **Schedule A – Criteria for determining habitual or vexatious complaints**

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

- i. Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
- ii. Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
- iii. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- iv. Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
- v. Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
- vi. Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
- vii. Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
- viii. Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental

health disability and there is a need to be sensitive in circumstances of that kind.

- ix. Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the parties involved.
- x. Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
- xi. Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
  - a) Clearly does not have any serious purpose or value; or
  - b) Is designed to cause disruption or annoyance; or
  - c) Has the effect of harassing the Council; or
  - d) Can otherwise fairly be characterised as obsessive or manifestly unreasonable
- xii. Make repetitive complaints and allegations that ignore the replies the Council has supplied in previous correspondence

## **Schedule B – Options for dealing with habitual or vexatious complaints**

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

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

DRAFT

Local Government Association “Debate  
Not Hate” Campaign

8<sup>th</sup> June 2023



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**Report of Legal and Democratic Services**

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

**Electoral division(s) affected:**

None

**Purpose of the Report**

- 1 To inform Members of any developments of the Local Government Association (LGA)'s Debate Not Hate campaign.

**Executive summary**

- 2 The LGA's Debate Not Hate campaign aims to raise public awareness of the role of councillors in their communities, encourage healthy debate and improve the responses and support for local politicians facing abuse and intimidation.
- 3 The Standards Committee added the Campaign to its work programme in December 2022 so that it can remain up to date with activity relating to and progress of the campaign.
- 4 At its meeting in March 2023, the Standards Committee agreed that the Head of Legal and Democratic Services, in consultation with the Chair would submit a case study to the LGA in relation to the support provided by the Council to members in relation to abuse and intimidation. This report provides the Committee with an update in relation to that work and other matters relevant to the campaign.

**Recommendation(s)**

- 5 The Standards Committee is asked to:
  - (a) Note the Report.

## **Background**

- 6 The LGA's Debate Not Hate campaign aims to raise public awareness of the role of Councillors in their communities, encourage healthy debate and improve the responses and support for local politicians facing abuse and intimidation.
- 7 At the meeting in March, the Committee received an update in relation to the LGA's Supporting Councillors with Abuse Project and a summary of a workshop that Officers had attended. In response to the contributions made during that workshop, the County Council were asked to provide a case study in relation to the support that it provides Councillors in response to abuse and intimidation. The Committee agreed that that the Head of Legal and Democratic Services, in consultation with the Chair of the Standards Committee would submit a case study to the LGA.

## **Supporting Councillors with Abuse Case Studies**

- 8 Accordingly, in April 2023, the Head of Legal and Democratic Services met with the lead researcher on the Supporting Councillors with Abuse Project ran by the LGA to explain the support provided and arrangements in place for Members experiencing abuse and intimidation.
- 9 Discussions centred around Durham County Council's relationship with Durham Constabulary and the Council's social media toolkit and training. The lead researcher was provided with a copy of the Social Media toolkit to assist her in producing the case studies.
- 10 As a result of the meeting, the LGA have produced two case studies, 'Reporting abuse and establishing productive relationships with the police' and 'Using social media safely'.
- 11 The Head of Legal and Democratic Services consulted the Chair of the Standards Committee, the Deputy Police Constable, the Council's Comms team, and the Health and Safety Team on the content of the case studies.
- 12 The LGA have confirmed that the case studies are currently going through their internal approval process, and they are aiming to publish them by the end of June.
- 13 The Standards Committee will be provided with a copy of the case studies following the publication by the LGA.



## **LGA's response to the Online Safety Bill**

- 14 The LGA have published their responses to the current version of the Online Safety Bill (OSB) and have said that they support the overall aims of the Bill. Their response to the amendments references the Debate not Hate campaign, and they express that they hope the OSB will help to tackle abuse, harassment and intimidation which is directed at individuals holding elected office.
- 15 The most recent version of the bill has removed the requirement for services to regulate content which is deemed harmful for adults. This has been replaced with the requirement to ensure that adult users should be able to disengage with such content should they wish.
- 16 The LGA have said that they are concerned that the removal of such clause will weaken the ability of the OSB to tackle abuse which will not satisfy the criminal threshold for the new communication-based offences which the act will introduce.
- 17 They believe that some amendments, such as this removal will make it more difficult to tackle the low-level abuse directed at Councillors, highlighting the findings of the 2022 Councillor Census which found seven in ten Councillors report experiencing abuse, harassment, or intimidation.
- 18 The LGA have shown their support for the user verification and user empowerment duties covered in the OSB. It is hoped that such provisions will assist in tackling online abuse and intimidation. The LGA had previously called for a focus of the OSB to be to prevent abusive content prior to it being posted.
- 19 The OSB will introduce new communication-based criminal offences which includes a false communication offence, and a threatening communication offence. The LGA has said that they 'broadly welcomes these offences.'
- 20 The LGA has shared concerns that the thresholds for the false communication offence has not been adequately set. They particularly question if there may be liability for prosecution should an individual share/re-share false information without knowing that it is false.
- 21 Additionally, they have shared their regret in the removal of the harmful communications offence, which was removed at the committee stage. The LGA has said that they remain concerned that low-level abuse directed towards elected representatives will not be captured under these new offences.

- 22 The OSB includes a provision which will aim to protect democratic content. The LGA have said that they are concerned that the language used throughout the clause is very broad, and that there should be clear guidelines for what content should be considered to be 'of democratic importance'.
- 23 They are also concerned that the clause protecting democratic content may unintentionally protect harmful disinformation that may be classified as 'political speech' They have asked that the Government work with bodies such as themselves, and political parties to consider such unintentional consequences when developing a code of practice for Ofcom.
- 24 The LGA are also asking social media platforms to look to introduce safeguarding measures which will be aimed towards individuals holding elected office, which would include fast track routes to reporting abuse, intimidation, and harassment.
- 25 At present, the OSB is in the Committee Stage within the House of Lords, with the next sitting scheduled for 22 June 2023.

## **Background papers**

- The LGA's Call for evidence quantitative data  
<https://www.local.gov.uk/publications/lgas-call-evidence-quantitative-data>
- [Online Safety Bill, Second Reading, House of Lords, 1 February 2023 | Local Government Association](#)

## **Other useful documents**

- LGA Debate Not Hate Public Statement  
<https://www.local.gov.uk/about/campaigns/debate-not-hate/debate-not-hate-sign-our-public-statement>

## **Author(s)**

Katherine Marley

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## **Appendix 1: Implications**

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### **Legal Implications**

There are no specific legal implications arising from this report. The issues referred to in this report will assist the Council in complying with its obligations under section 27 of the Localism Act 2011 to promote and maintain high standards of conduct.

### **Finance**

There are no financial implications.

### **Consultation**

Constitution Working Group are being consulted on the proposals in respect of the Debate Not Hate Campaign. The Standards Committee will also receive a similar report at its meeting in December 2022.

### **Equality and Diversity / Public Sector Equality Duty**

No Implications

### **Climate Change**

No Implications

### **Human Rights**

There are no direct Human Rights implications arising out of the report. However, when considering allegations of abuse and intimidation, it is necessary to consider a balance between protecting Councillor's from harassment and complying with Article 10 – Freedom of Expression of the European Convention of Human Rights.

### **Crime and Disorder**

Incidents of abuse and intimidation may amount to criminal behaviour. The Debate Not Hate Campaign is intended to reduce incidents of abuse and intimidation and therefore have a positive impact on crime and disorder.

### **Staffing**

No Implications

### **Accommodation**

No Implications

### **Risk**

No Implications

**Procurement**

No Implications

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**Appendix 2: Debate Not Hate The impact of abuse on local  
democracy.pdf ([coventry.gov.uk](http://coventry.gov.uk))**

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# Councillors' guide to handling harassment, abuse and intimidation

Practical steps that you and your council can undertake to protect yourself as a person in a public position.



## Introduction

The role of local government is to set out and deliver local priorities and services on behalf of local communities. Councillors are local leaders and champions, bridging the gap between residents and local government. They take decisions on behalf of local residents and champion the issues affecting them. Becoming and serving as a councillor is a huge privilege and responsibility, but it also means councillors are very visible and often easily accessible to residents.

A pressing concern facing those in public office is the increasing levels of intimidation, harassment and abuse they are experiencing. While debate and expressing different views is all part of a healthy representative democracy, these unacceptable behaviours undermine the key democratic principles of free speech, debate and engagement, and sometimes pose a risk to councillors' safety. Thankfully, serious incidents remain very rare.

Councillors, their peers, political parties, council officers and, when necessary, the police, all have a role to place in addressing harassment, abuse, and intimidation. We are aware that the growth in public intimidation can put people off standing for election and this issue may affect some more than others. However, prospective and elected councillors should bear in mind that they are not alone in dealing with abuse and intimidation and there are an increasing number of ways to protect themselves and be supported by those around them.

We want to encourage more people to stand for election, including a more diverse range of people to represent their local communities. We do this through the **Be a Councillor** [<https://www.local.gov.uk/be-councillor>] campaign and resources like this Guide and others under the **Civility in Public Life** [<https://www.local.gov.uk/publications/improving-digital-citizenship-practical-guide-councillors>] programme.

In recognition of the impact of abuse and intimidation of councillors, the LGA has come together with the Welsh LGA, the Northern Ireland LGA and the Convention of Scottish Local Authorities to produce this and other guidance.

## Using this guidance

The aim of this Guide is to provide councillors and councils with practical steps they can follow to decrease the likelihood of experiencing harassment, abuse and intimidation and give them some ideas on how to respond should an incident occur. The Guide has been developed based on the most relevant research, and best practice recognised across a range of organisations, as well as the direct experience of councillors.

Throughout the Guide we have provided some examples of criminal offences which may be relevant, however these examples are not exhaustive. You should report any concerns about behaviour or conduct, whether online or in person, which make you feel uncomfortable or unsafe to the police who have a duty to take your report seriously.

A summary of what you can expect from the police and other criminal justice agencies is included later in this Guide. Supporting councillors dealing with harassment, abuse and intimidation is of utmost importance given the potentially harmful impact that such actions have on their and their family's mental health and wellbeing. **Councillors who feel anxious, worried or seeing their daily routines adversely affected should speak with their local GP.**

We are aware that support available to councillors may vary from council to council across the four nations. We would encourage councils, political parties and others supporting councillors to consider the **Advice for supporting councillors section** [<https://www.local.gov.uk/advice-supporting-councillors>] of this guide, which includes helpful tips and case studies, and consider advice from other associations across the UK as necessary.



Finally, this guidance does briefly consider the issue of online abuse, including on social media. However, we know that this issue is of growing significance and so the LGA has produced a separate suite of guidance to support councillors using social media.

Please note that this Guide does not take the place of legal advice or personalised advice from the police on offences or personal security. If you are concerned about your personal safety or security as a result of abuse, harassment or intimidation contact the police.



**Councillors' guide to handling harassment, abuse and intimidation**

[Councillors' guide to handling harassment, abuse and intimidation | Local Government Association](#)

**Definition of harassment, abuse and intimidation**

[Definition of harassment, abuse and intimidation | Local Government Association](#)

**General advice on handling abuse and intimidation**

[General advice on handling abuse and intimidation | Local Government Association](#)

**Practical advice for handling online abuse**

[Practical advice for handling online abuse | Local Government Association](#)

**Practical advice for handling physical abuse and personal security**

[Practical advice for handling physical abuse and personal security | Local Government Association](#)

**Practical advice for handling psychological abuse and impact on wellbeing**

[Practical advice for handling psychological abuse and impact on wellbeing | Local Government Association](#)

**What legal support is there?**

[What legal support is there? | Local Government Association](#)

**Advice for supporting councillors**

[Advice for supporting councillors | Local Government Association](#)

**Basics on communicating with residents, colleagues and officers**

[Basics on communicating with residents, colleagues and officers | Local Government Association](#)

**Further resources**

[Further resources | Local Government Association](#)

**Standards Committee**

**8 June 2023**



**Appointment of Independent Persons to the Standards Committee**

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

**Electoral division(s) affected:**

None.

**Purpose of the Report**

- 1 To appoint three new Independent Persons to the Standards Committee.

**Executive summary**

- 2 At its meeting on 10 May 2023, the Standards Committee received an update as to the recruitment process for Independent Persons, which commenced on 20 March 2023.
- 3 The Standards Committee agreed to recommend the appointment of three new Independent Persons in accordance with section 28 of the Localism Act 2011.
- 4 Full Council has historically been responsible for the appointment of Independent Persons. However, at its annual meeting on 24 May 2023, it delegated this responsibility to the Standards Committee.
- 5 This report recommends therefore recommends that the Standards Committee appoints three new Independent Persons.

## **Recommendation**

- 6 The Standards Committee are recommended to:
- (a) Appoint Chris Hugill, David Rogers and Steven Winder as Independent Persons to the Standards Committee with effect from 12 June 2023 for a term of two years.
  - (b) Request that the Chair writes on behalf of the Committee to Karen Milner, to thank her for her support as interim Independent Person.

## Background

- 7 The Localism Act 2011 sets out the requirements in relation to Local Government Standards and it requires the appointment by the authority of at least one Independent Person.
- 8 The functions of the Independent Person in relation to Standards are:
  - They must be consulted by the authority and their views taken into account before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect to that member.
  - They may be consulted by the authority in respect of a Standards complaint at any other stage; and
  - They may be consulted by a member or co-opted member of the Council or a parish council against whom the complaint has been made.
- 9 The role of the Independent Person was widened under the Local Authority's (Standing Orders) England (Amendment) Regulations 2015. In the case of proposed disciplinary action against a statutory officer, the Council is required to invite the Independent Persons who have been appointed for the purposes of the Members Code of Conduct regime to form an independent panel and take into account any recommendation of that panel before taking a decision to discipline or dismiss.
- 10 On 17 March 2023, the Standards Committee agreed to commence a recruitment process for new Independent Persons. On 10 May 2023, the Standards Committee received an update as to the outcome of interviews for Independent Person, which were held on 4 and 5 May 2023.
- 11 The Committee had initially intended to appoint up to two Independent Persons. However, having considered the representations of the Panel, the strength of the three candidates and the benefits of having four independent persons (including the existing Independent Person), the Committee agreed to recommend the appointment of three candidates.
- 12 The Committee supported the Panel's recommendation that Chris Hugill, David Rogers and Steven Winder be recommended for appointment.
- 13 At that point, full Council was responsible for the appointment of Independent Persons. However, at the annual meeting on 24 May 2023, Council agreed (as part of the annual review of the Constitution) to delegate this responsibility to the Standards Committee. Accordingly, the Standards Committee is asked to confirm the appointments.

- 14 It is proposed that the appointments will commence on 12 June 2023 for a term of two years. Standards Committee will be asked to consider whether to extend their term of office for a further two years in 2025.
- 15 Once appointed, the Independent Persons will be invited to induction training with the Monitoring Officer. They will be expected to attend at least two meetings of the Standards Committee a year.
- 16 The existing Independent Person has confirmed that he is able to recommence his work on behalf of the Committee. If the Committee appoints the three new Independent Persons, the Council will no longer require assistance from Karen Milner who was appointed in February 2023 on an interim basis.
- 17 The Monitoring Officer and her team are grateful to Ms Milner for her support during the interim period. She has been consulted by Officers and subject members to complaints. Her input has been greatly valued and appreciated. It is suggested that the Chair writes to Ms Milburn on behalf of the Committee to thank her for all her support over the last few months.

### **Background papers**

- None.

### **Other useful documents**

- None.

### **Author(s)**

Helen Lynch

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## **Appendix 1: Implications**

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### **Legal Implications**

Section 28 of the Localism Act 2011 requires the Council to have an Independent Person in place.

### **Finance**

The role of Independent Person is not remunerated. However, the Council will reimburse reasonably incurred travel and subsistence expenses. Where appropriate, the Council will pay for the Independent Person to attend training. These costs are met from the Legal and Democratic Services budget.

### **Consultation**

The Chair and Vice-Chair of the Standards Committee conducted the shortlisting and interviews for the role of Independent Person.

### **Equality and Diversity / Public Sector Equality Duty**

The recruitment exercise was conducted in accordance with the Council's recruitment arrangements in relation to equality and diversity to ensure fairness.

### **Climate Change**

None.

### **Human Rights**

The role of Independent Person helps to ensure that complaints against Members and disciplinary proceedings against Statutory Officers are dealt with fairly.

### **Crime and Disorder**

None.

### **Staffing**

None.

### **Accommodation**

None.

**Risk**

There is a legal requirement to have a minimum of one Independent Person. Should no Independent Person be appointed, the Council will be at risk of legal challenge for not complying with the requirements of the Localism Act 2011, in the event that the Council is without an Independent Person in September 2023, which is when the existing Independent Persons term ends.

**Procurement**

None.