

Standards Committee

7 June 2019

National Picture - Standards Update



Report of Helen Lynch, Head of Legal and Democratic Services

Purpose of the Report

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

Executive summary

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

Recommendations

- 3 Standards Committee are 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 December 2018, as part of the annual work programme, this will be a standing agenda item with a quarterly update to the Committee.

Code of Conduct Complaints

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

Central Bedfordshire Council – Councillor Stay (4 January 2018)

- 6 On 4 January 2018 the Monitoring Officer received a complaint from Complainant A alleging that the Member over a period of time had breached the Code of Conduct. It was alleged that the Member had:
 - a. Made allegations against third parties which he either did not believe or if he did believe them should have reported them to the Police;
 - b. Revealed details of a private meeting to a third party which was further disclosed;
 - c. Manipulated a situation as part of his own vendetta;
 - d. Advised that he was told to stop helping the Complainant;
 - e. Asked the Complainant to pursue a complaint with the Police relating to a fraudulent donation;
 - f. Tried to interfere with witnesses in criminal matters;
 - g. Sent a letter denying he had made comments which he had made.
- 7 In February 2018 the Monitoring Officer determined that no further action was required. In June 2018, the Complainant provided further evidence in support of the complaint which resulted in a formal investigation being carried out and completed in February 2019. The complaint was referred to the Standards Sub-Committee for determination.
- 8 On 4 April 2019 the Sub-Committee hearing considered the matter. The Member was advised of the hearing but was neither present nor represented. Audio files were presented to the Sub-Committee and the Sub-Committee agreed on the balance of probabilities that the recordings featured the Member and would be considered as part of the evidence.
- 9 The Sub-Committee set out the contested facts which were whether or not the Member made a statement about rumours concerning a third-party organisation; and whether or not the 2015 and 2018 recorded conversations allegedly between the Complainant and Member were genuine.

- 10 The Sub-Committee accepted on the balance of probabilities that it was the Member who was recorded on the 2015 and 2018 audio recordings and that he made the comments about rumours associated with the third-party organisation.
- 11 The Sub-Committee decided that the Member breached the following elements of the Code of Conduct:
- a. Integrity
The Member in spreading a rumour about a third-party organisation was clearly disadvantaging those people. The Member failed to report a rumour about a safeguarding issue through the appropriate channels, if at all, which was not in the public interest. The spreading of the rumour by the Member did not meet the expected level of behaviour. The comments showed a lack of respect and courtesy to the organisation and the individuals running it. The Sub-Committee found that the information divulged by the Member in the 2018 conversation was confidential and should not have been disclosed to the Complainant.
 - b. Accountability
There was a failure by the Member to act on a rumour about an alleged safeguarding issue and report it to the relevant authority.
 - c. Honesty
The spreading of the rumour by the Member did not meet the expected level of behaviour of a member; the comments showed a lack of respect and courtesy to the organisation and the individuals running it; the Member made denials concerning some of the comments he had made yet the comments were made clearly in the audio recordings but denied in writing by the Member.
- 12 The Sub-Committee decided to ensure the Member and that its findings be published.

Central Bedfordshire Council – Councillor Stay (12 January 2018)

- 13 The Monitoring Officer on 12 January 2018 received a complaint from Complainant B where it was alleged that the Member had breached the Code of Conduct. It was alleged that the Member had harassed him, was continuing to do so, had made regular degrading personal comments about him and had made false statements. It was alleged that this behaviour had brought the Council into disrepute.

- 14 In February 2018 the Monitoring Officer in consultation with the Independent Person decided no further action was required. In June 2018, the Complainant provided further evidence in support of the complaint and an investigation was directed to be carried out. In February 2019 the investigation was completed and it was recommended that this matter be determined by the Standards Sub-Committee.
- 15 On 4 April 2019 the Standards Sub-Committee hearing took place. The Member was neither present nor represented. The Sub-Committee made a preliminary finding having listened to the audio recordings in the earlier complaint and accepted the audio files were genuine and not likely to have been interfered with. The Sub-Committee concluded that on the balance of probabilities it was the Member on both audio recordings and accepted these recordings as consideration of evidence.
- 16 The contested facts related to whether or not the Member made a statement about rumours concerning a third-party organisation; and whether or not the Subject Member was acting in his capacity as a Central Bedfordshire Council Councillor when he posted comments about the Complainant on social media.
- 17 The Sub-Committee had accepted on the balance of probabilities that it was the Member who was recorded on the 2015 audio recording and also that he made the comments about rumours associated with the third-party organisation. Further, the Sub-Committee determined beyond a reasonable doubt that the Member was acting in his role as a Central Bedfordshire Council Councillor when he posted comments concerning the Complainant on social media; the Sub-Committee noted there were links in the Member's social media email signature, photos and references to his role as a Councillor.
- 18 The Sub Committee decided that the following elements of the Code of Conduct had been breached:
 - a. Honesty
The letter sent by the Member to the Complainant showed it was sent with intent to deny the allegations the Member made about a third-party organisation, which was not true.
 - b. Leadership
The content of the Member's social media blogs which included cartoons and references to those helping with mental health and aging issues breached public trust and confidence.

- 19 The Sub-Committee when considering sanction noted that the earlier decision of the Sub-Committee had already applied the maximum penalty for that complaint and the Sub-Committee considered there were some overlaps. The Sub-Committee decided it would publish its findings in respect of the breach of the Code of Conduct.
- 20 The Sub-Committee considered whether any recommendations to the Council were necessary and decided that training in email and social media should be a mandatory part of Councillor training.

Burnley Council – Councillor Hosker

- 21 This relates to updates to a Standards Committee in respect of a Member's response to sanctions imposed by the Hearing Panel.
- 22 On 27 September 2018 the Sub-Committee Hearing Panel considered an allegation that Member had breached the Code of Conduct by causing or permitting the posting of particular footage on the Member County and Borough Councillor Facebook page. Following a full hearing, the Sub Committee determined that Member had breached the Code of Conduct in that the posting had footage which was of an explicit and offensive anti-Islamic nature and was likely to offend fair minded people.
- 23 The Sub-Committee also found that the action could reasonably be regarded as bringing the Council into disrepute, and was not conduct that was to be reasonably expected of a serving local councillor. The Sub-Committee also noted that it appeared that Member was endorsing the content of the video footage. The Sub Committee determined that the failure to check Facebook posts/pages regularly was a failure by Member to take full responsibility for matters within his control and showed a disregard for an earlier local resolution which had required him to personally manage his Councillor Facebook page rather than allow third parties access to it.
- 24 The Hearing Panel recommended the following:
 - a. That Member receive social media and data protection training with three months of the hearing.
 - b. The re- iteration of the previous instruction that he solely managed his Facebook pages and did not share his passwords with anyone
 - c. That the Council revisit the availability of sanctions to a Hearings Panel, specifically 15.4 which referred to Group Leaders responsibilities.

- 25 Following the hearing the Committee identified appropriate training for Member to attend and he was asked to provide his availability. The Member responded by email in November 2018 to say that he did not need the training and would not be told to go. It was also reported in the local paper that Member had refused to attend any training.
- 26 In this instance the Committee noted the limited sanctions available to the Hearing Panel when dealing with Code of Conduct matters, and the inability to impose any additional restrictions to deal with non – compliance with its recommendations. The Committee considered and resolved to direct the Council to write to the Minister of Housing, Communities and Local Government to advise him that the sanctions available for Councillors who fail to comply with the Code of Conduct are inadequate.

Overton Parish Council – Councillor Gardiner

- 27 On 5 December 2018 Lancaster City Council as the Principal Authority considered the complaint against Councillor Gardiner of Overton Parish Council. The Standards Committee considered an exempt report from the Monitoring Officer about a Code of Conduct complaint. Initially it was proposed that consideration of the item be deferred to the next scheduled Standards Committee in January 2019, due to the Member indicating that he was unwell. At this point the Committee were made aware that the Member could be seen on the webcast of a Lancashire County Council Children's Services Scrutiny Committee meeting, which had taken place earlier that afternoon.

The Standards Committee proceeded to consider the issue. The Committee accepted the investigating officer's findings that the code of conduct had been breached and considered a subsequent course of action. It was resolved by the Council that the investigating officer's findings be accepted, that the Deputy Monitoring Officer write to the Member and the complainant explaining the outcome of this issue and the decision made public. The Committee unanimously agreed to the following statement:

The Standards Committee, having considered the report of the Monitoring Officer and upon noting Councillor Gardiner's admissions, find that the Councillor did during an Overton Parish meeting shout at a member, gesticulate with his spectacles and act in such a manner as to cause alarm and distress to another member of the public.

The behaviour of the Councillor was contrary to the Members Code of Conduct, Part 7, Section 2, Paragraph 3 – namely the requirement to treat others with respect.

Furthermore, the Standards Committee noted Councillor Gardiner's failure to engage sufficiently in the Monitoring Officer's investigation and find that the lack of engagement offends against the Standards in public life – namely accountability. Such behaviour, we find breaches the Members Code of Conduct, Part 7, Section 2, Paragraph 5 in that it is conduct which can reasonably be regarded as bringing the office of councillor into disrepute.

Lancaster City Council – Councillor Yates, Councillor Gardiner and Councillor Wilde

28 On 10 April 2019 the Council was asked to consider the outcome of the Single Purpose Standards Committee hearing relating to an investigation into leaked sensitive information and Members Conduct.

29 This was marked as an exempt item and was considered by the Council as to whether the press and public should be excluded under Section 100A(4) of the Local Government Act 1972. The Members were invited to consider Schedule 12A of the Local Government Act 1972, and also whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

30 Following discussion it was moved and seconded to have the public and press excluded, a request was made for this to be a recorded vote which failed with 14 Councillors voting 'for' and many against. Members of the press and public were permitted to remain in attendance for the item and the exemption was lifted on the report.

31 The report of was made available for publication which detailed the outcome of the Standards Committee.

Councillor Yates

32 There was a finding that the Member had brought the Council into disrepute by misleading the Council's investigators as follows:

- a. The Committee concluded that the Member misled officers during his interview on 23 August 2018 by stating that he was in the Isle of Man on the weekend of 11 - 12 of August 2018. This was re-iterated by the Member in a signed statement which contained a statement of truth. The Committee did not accept that the Councillor, at the time of the interview, mixed up his visit to the Isle of Man in mid-July with his whereabouts on 11 - 12 August 2018. The visit and the weekend of 11 - 12 August were a month apart and the Committee found that it was unlikely, given the long duration between the two dates, that the Member got the visit and the weekend mixed up.

Additionally the interview with officers took place only 10 days after the weekend of the 11- 12 August, the Committee found it unlikely that the Councillor would forget that he was at home as oppose to being on the Isle of Man. The Committee found the Members account of events to be inconsistent. On the one hand the Member maintained that he was particular about detail and on the other hand he maintained that he signed his statement without really reading the contents of the same. Under cross-examination the Member was asked why, if he believed that the statement was correct at the time, did he shortly after the interview, have cause to doubt the dates given in the statement. The Member could not give an adequate explanation to this inconsistency and he maintained that it was simply his mind playing tricks on him.

32 The Committee determined that the Member should be removed from the Standards Committee.

Councillor Gardiner

33 The Committee found that the Member has breached two aspects of the code specifically:

- a. He had brought the Council into disrepute by misleading the Council's investigators and by his failure to take part in the investigation;
- b. That he has been guilty of conduct that amounted to intimidation of a person who is likely to be involved in the investigation or in its administration. This involved intimidation of the Chief Executive and intimidation during the interview with Cllr Wild. In particular, the Committee concluded that the Member misled officers during the investigation into the leak of sensitive data. The Member emailed the Council's Monitoring Officer on 9 September 2018 stating that he did not know anything about the standards hearing scheduled for 13 August 2018 until it was published by the Daily Mail (the 16-17 August 2018). The Committee did not accept the Member's assertion. The Committee concluded that the Member knew about the subject matter by 14 August 2018. The Member was invited to attend an interview about his knowledge concerning the data leak by the Monitoring Officer on 6 and 11 September 2018. The Councillor failed to cooperate with the reasonable requests of the Monitoring Officer and on the 12 September 2018 stated that "I do not have time sorry I will not TAKE PART IN THIS DEBARCLE (sic)"

The Committee found that the Member's misleading statement and failure co-operate with the Council's Monitoring Officer was a course of conduct that offended against the principles of accountability, openness and honesty. As such they were found to be actions or

omissions that brought the Council into disrepute. On the afternoon of 23 August 2018 Member contacted the Council's Executive Office and demanded to speak with the Chief Executive about a Standards Committee matter. He reported that he felt that one of his colleagues was being mistreated or bullied. The Member threatened to go to the press if the matter was not resolved that day. The threat of going to the press was inappropriate conduct by the Member and the Committee found that the threat made in respect of the Standards Committee matter amounted to intimidation of a person (the Chief Executive) involved in the administration of the investigation.

On 3 September 2018, following the complaint to the Chief Executive's office, the Member attended the interview of Cllr Wild. It was explained to him that it was inappropriate for him to be in attendance. The Member did not take any active part in the interview. The Committee found, having carefully considered the evidence on the matter, that the Member's presence at the interview was a means of asserting control or influence over Cllr Wild. The Committee considered this to be inappropriate conduct and intimidation contrary to paragraph 3 of the Members Code of Conduct.

34 The Committee determined that the Member was to be censured in the minutes of the hearing.

Councillor Wild

35 The Committee found that the Member had breached two aspects of the Code in that he:

- a. Had brought the Council into disrepute by seeking sensitive information to pass onto members of the public; and
- b. That he did bully a member of staff on 13 August 2018. In particular, the Committee concluded that the Member had telephoned the Council's democratic services department on the afternoon of 13 August 2018 and that the purpose of the Member's call was to seek confirmation as to the identity of a member of public connected to the Standards Committee case of 13 August 2018. The Committee found that the telephone call was a misuse of the Member's powers in that the request to a junior member of staff was such as to undermine the junior officer. This was considered to be a course of behaviour defined as bullying in the Code of Conduct.

The Member was later interviewed by officers on 3 September 2018. Cllr Gardiner attended the interview in support of the Member. Towards the end of the interview the Member repeatedly asked officers for the name of the subject member of the public. He informed

officers that he wanted the name to pass onto his customers. The Committee found that the request, and the Member's stated motive for the same to be unacceptable behaviour. The Member's inappropriate requests for information evidenced a lack of integrity. This being the case, the behaviour was such as to bring the office of Councillor or the Council into disrepute contrary to paragraph 5 of the Members Code of Conduct.

36 The Committee determined that the Member was to be censured in the minutes of the hearing.

Background papers

- None

Other useful documents

<http://www.centralbedfordshire.gov.uk/council/councillors/meetings/standards-sub-committee/overview.aspx>

<https://burnley.moderngov.co.uk/documents/g687/Public%20reports%20pack%2016th-Jan-2019%2018.30%20Audit%20and%20Standards%20Committee.pdf?T=10>

<https://committeeadmin.lancaster.gov.uk/ieListDocuments.aspx?CId=299&MIId=7265&Ver=4>

<https://committeeadmin.lancaster.gov.uk/ieListDocuments.aspx?CId=305&MIId=7050>

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Appendix 1: Implications

Legal Implications

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. 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.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

None.

Procurement

None.