

Standards Committee

5 September 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:
 - i. note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated; and
 - ii. 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.

Devon County Council – Councillor Brennan (16 July 2019)

- 6 The Monitoring Officer received a complaint alleging that a Member had breached the Code of Conduct. It was alleged that the Member had:

- a. Failed to treat others with courtesy and respect;
- b. Bullied a person; and
- c. Conducted herself in a manner or behaved in such a way as to give a reasonable person the impression that they had brought their office or the Council into.

- 7 The allegations arose from events which took place at a meeting on 25 April 2019. A report of the Monitoring Officer was presented to the Standards Committee which gave the background on actions to date including receipt of the complaints, the Members response and consultation with the Independent Person and the views of the Assessment Sub Committee. The decision of the Assessment Sub Committee was recorded that the *'views of the Independent Person be noted, but the Sub Committee exercise its discretion to suggest a different course of action to that of a formal investigation and ask Officers to bring a Report to the next meeting of the Standards Committee based on the information already submitted, notwithstanding the Subject Member must have the opportunity to comment on any draft and final Report'*.

- 8 The Monitoring Officer presented the report to the Standards Committee, reminded the Committee of their role and remit which was to determine, considering the Report in front of them, whether it considered the Code of Conduct had been breached.

- 9 The Standards Committee considered the report and it was decided that the Member had breached elements of Code of Conduct, namely to 'treat others with courtesy and respect' and not to 'behave in such a way as to bring their office or Council into disrepute'. However, there was no breach in respect of the bullying allegation.

- 10 The Standards Committee considered the sanctions available to them and agreed the following:
 - a. That the Member issue a formal and robust apology to the complainants, the wording of which is to be approved by the Group Leader and the Chair of this meeting of the Standards Committee;
 - b. That training be organised by the Monitoring Officer or her Deputy, focussing on anger management and the use and knowledge of Council processes and procedures to achieve individual aims and make good decisions on how to progress these; and
 - c. That the Member does not attend the review meetings until such times that (a) and (b) above have been undertaken.

Bournemouth Borough Council Councillor Beesley (29 March 2019)

11. In April 2017, the Monitoring Officer received a complaint regarding the Leader of the Council. The Complainants were all Members of Bournemouth Borough Council. The complaint related to alleged breaches of the Code of Conduct, and alleged breaches of the Localism Act 2011 which are criminal offences. Consequently, the Complaint was referred to Dorset Police for investigation. The Council were advised not to undertake its own investigation until after the Police investigation has taken place. Once it was decided that no further action would be taken in respect of the criminal investigation, the Council commenced an investigation. It was decided that an independent investigator was required to provide a full report.
12. The Member was alleged to have breached the following elements of the code:
 - a. compromising or trying to compromise the impartiality of Council officers;
 - b. allowing his/her conduct or behaviour to bring disrepute on the Council or compromising the Council's duty to promote and maintain high standards;
 - c. Using or attempting to use his/her position improperly for his/her or any other person's gain or loss; and
 - d. bullying, harassing or intimidating other people.
- 13 The basis of the complaint against the Member was that his business and his political activities were intertwined. The Member was hired by a Development Business to act for them over their planning application for a Hotel. The Member was alleged to have not properly disclosed this pecuniary interest in his register of DPs. The Member also attended numerous meetings with the Council's Planning officers together with his client. Additionally, the Member was using the same mobile number for both his Business and as his role as a Councillor.

- 14 The Council's DPI guidance to Members stated that any trade or profession carried out for profit or gain by a Member must be disclosed in the DPI register and must state the name of the party employing the Member.
- 15 The Member responded to the complaint and acknowledged his attendance at team meetings with the client and Planning Officers. He stated that he began each meeting with a declaration that he was attending these meetings in the capacity of a consultant advisor to his clients and that Officers were to ignore his role in the Council. The Member received advice from the Monitoring Officer at each stage of the process.
- 16 The Committee considered the following allegations:
 - a. Compromising the impartiality of those who work for the Council. Overall, the investigation found that there was no direct evidence in support of the allegation. However, there was compelling evidence from Officers who stated during interviews that they were not compromised in the way alleged. Therefore, there was no breach in respect of this ground. It was decided that it was appropriate for the Subject Member to explain his status when acting as a consultant.
 - b. Allowing his/her conduct or behaviour to bring disrepute on the Council or compromising the Council's duty to promote and maintain high standards. This ground is concerned with damage to public confidence and reputation of the individual and the Council. It was decided that a member of the public, knowing all the relevant facts, would reasonably think that the Subject Member's actions would not impact the Council's abilities to properly carry out its functions. Nor would these actions compromise the Council's duty to promote and maintain high standards. Therefore, there was no breach in respect of this ground.
 - c. Improper use of position. The evidence did not support this allegation. The Officer's evidence was compelling in showing that they did not (nor would they allow) such impropriety in their dealings with the project. It was concluded that the Subject Member did not improperly use his position for personal gain and subsequently did not breach the Code of Conduct in this respect.
 - d. Bullying. The investigation concluded that there was no evidence of bullying of these Officers in relation to this matter. There was no breach of the Code of Conduct in this respect.

- 17 The final decision was that at all material times the Member was not acting in an official capacity but in his private capacity as a consultant. None of the allegations were proven and it was decided that the Member was not in breach of the code of conduct.

Cornwall Council – Councillor Brady of Saltash Town Council (15 April 2019)

- 18 The Monitoring Officer considered a complaint concerning the alleged conduct of a Member. The Councillor is alleged to have breached the following:
- a. You must treat others with respect;
 - b. You must not treat others in a way that amounts to or which may reasonably be construed as unlawfully discriminating against them;
 - c. You must not bully any person;
 - d. You must not attempt to intimidate others;
 - e. You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute;
 - f. You must not use or attempt to use your position as a member of the Council improperly to confer on or to secure for yourself or any other person an advantage or disadvantage; and
 - g. You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members.
- 19 The allegations related to a series of emails sent by the Member to the Complainant. The Member also copied other Members into the emails.
- 20 The subject matter of the email concerned a previous complaint made by the Member about the Complainant. This previous complaint related to the Complainant failing to advise the Chairman that she was leaving the room when a matter concerning non-payment of Council Tax was discussed during a meeting of the Council. The Member alleged these actions conflicted with the Local Government Financial Act 1992 whereby it states all Members should declare whether they have Council Tax arrears before voting on a matter. The complaint was rejected on the ground of lack of evidence. As a result of the emails, the Complainant felt obliged to disclose personal medical details to explain why she had urgently left the room in order to address the allegations.
- 21 The Monitoring Officer found that it was unnecessary for the Member to act in this manner and should he have wished to discuss the matter with the Complainant he should have done so in a private manner and not in an open email. The Monitoring Officer also felt that the nature of the emails where often threatening, the Member threatened to seek legal

advice and to involve police. By copying other Members in to the emails, the Monitoring Officer found that this was an attempt to intimidate the complainant and to gain potential support.

- 22 The Member sent the emails using his Councillor email address and the emails related to matters that had been subject to previous code of conduct complaints. Therefore, the Monitoring Officer was satisfied that the Member was acting in his official capacity as a Councillor at the time of sending the emails.
- 23 It was concluded that the Member was in breach of all alleged elements of the code apart from part 2 (treating others in a way that unlawfully discriminates against them) and part 6 (using your position as a Member improperly to confer on or to secure for yourself or any other person an advantage or disadvantage).
- 24 Following the finding of a breach, the Monitoring Officer made the following recommendations:
 - a. The Member writes a meaningful apology to the Complainant; and
 - b. The Council censure the Member and should consider publishing the Censure in a local publication available to those living within the vicinity.

Cornwall Council – Councillor Hicks of St. Allen Parish Council (26 February 2019)

- 25 The Monitoring Officer considered a complaint concerning the alleged conduct of a Member. The Subject Member was alleged to have breached the following elements of the Code of Conduct:
 - a. Failure to disclose an interest;
 - b. You must treat others with respect;
 - c. You must not intimidate or attempt to intimidate others;
 - d. You must not do anything that could reasonably be regarded as bringing your office or you authority into disrepute; and
 - e. You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members.
- 26 The basis of the complaint was that the Subject Member had failed to declare an interest in a matter discussed during a Parish Council Meeting. The matter discussed related to the development of a new footpath to a Byway which lay on the Member's land.
- 27 Under the Code, a member should declare an interest and leave the room when the agenda item is presented or as soon as they become aware that an interest occurs.

- 28 The Member's response was that his land did not have any rights of way and so was not expecting the footpath item to have anything to do with his land. The Member did leave the room after the matter has been partly discussed and after the discussion had become heated.
- 29 The Monitoring Officer found that taking part in this discussion showed that the Member knew of his interest and so should have adhered to the Code and left the room prior to any discussion taking place.
- 30 It was also alleged that the Member spoke disrespectfully to Complainant A during and after the meeting. Complainant A stated that during the meeting when speaking about the matter relating the footpath, she was subject to a 'verbal onslaught'. The Member allegedly spoke over her and interrupted her, swore several times all in a raised voice. This allegation was supported by the minutes of the meeting. After the meeting, the Member approached Complainant A and stated, "had enough now? Happy now? Finished?". Although these comments were not witnessed the Monitoring Officer found on the balance of probabilities that the incident did take place.
- 31 Regardless of comments taking place outside the meeting, as they were made in reference to the earlier item under discussion, the Monitoring Officer found the Member to be acting in his official capacity as a Councillor.
- 32 Complainant B alleged that the Member proposed a bribe in exchange for being able walk on the land in question. The Subject Member was alleged to have stated "Give me £100 grand and I will let you walk in" in reference to coming on to his land.
- 33 Following the finding of a breach, the Monitoring Officer made the following recommendations:
- a. The Member should apologise in writing to both complainants.
 - b. The Member should attend code of conduct training for his failure to declare a non-registerable interest.
 - c. The Member should not take part in any discussions relating to the footpath in future.

Background papers

- None

Other useful documents

- <https://democracy.devon.gov.uk/mgAi.aspx?ID=19518>
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- <https://www.bournemouth.gov.uk/councildemocratic/CouncilMeetings/CommitteeMeetings/StandardsCommittee/2019/03/29/agenda/agenda-and-reports.pdf>
- <https://www.cornwall.gov.uk/media/38394799/ccn044-18-19-decision-notice-councillor-brady-saltash-town-council.pdf> (Decision Notice Ccn039)
- <https://www.cornwall.gov.uk/council-and-democracy/councillors-and-democracy/standards-committee-information/decision-notices-april-2018-to-march-2019/> (Decision Notice Ccn039)

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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.