

## Standards Committee

3 March 2021

## Standards National Picture 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 inform Members of the national picture on standards issues affecting Local Government.

#### Executive summary

- 2 This report is for information to update the Committee on national developments, consultations and cases which relate to the work of the Committee since the last meeting on 13 March 2020.

#### Recommendations

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

## **Background**

- 4 As agreed by the Committee on 13 March 2020, as part of the annual Work Programme, this is a standing agenda item with a quarterly update to the Committee.

## **Code of Conduct Complaints and Reports**

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

## **South Tyneside Council – Councillor Robertson (19 January 2021)**

- 6 On 19 January 2021 the Standards Committee considered the investigation report of the Head of Corporate and External Affairs (Monitoring Officer) in respect of a complaint against Councillor Robertson.
- 7 The Councillor between the dates of 19 April 2019 and 13 October 2020 posted on a Facebook account in the name of ‘John Robertson’ a number of comments relating to Councillor Kilgour. This included calling her a ‘sick, nasty vindictive little excuse for a woman’. The Councillor accepted making the posts but vehemently denied that the posts were made in his official capacity.
- 8 The Investigating Officer found that the Councillor had been acting in his official capacity at the time of making the posts and that the contents amounted to a breach of the Code. The Investigating Officer recorded that the posts could reasonably be considered to be a personal criticism rather than a challenge to a political decision or idea.
- 9 This is another example of the difficulties presented when considering complaints relating to the use of social media. In this complaint the Councillor had two Facebook accounts however both were used in largely the same way. The Councillor confirmed that he did not have separate Facebook accounts for Council business and personal use, although he did have two separate Facebook accounts.
- 10 On Facebook Account 1 where the comments were posted, the Councillor was identifiable as a South Tyneside Councillor and the Investigating Officer found that the posts could reasonably be considered to have been made by Councillor Robertson in that official capacity. The posts shared on Facebook Account 1 were ‘public’, meaning anyone, including people not ‘following’ the account, could view them. The information on Facebook Account 1 fluctuated in the details it provided. Often there was no ‘Workplace’ shown but the profile

picture had been updated regularly during the relevant timeframe to include the Council Crest and information stating the name and contact details of 'Councillor John Robertson', including that John Robertson is "Councillor & Independent Alliance, opposition party Leader South Tyneside", details of Cllr Robertson's Council email address, details of the South Shields Town Hall address and details of the Council's website. Facebook Account 1 often posted during the relevant timeframe "Keep Calm and Vote Independent".

- 11 Facebook Account 2 was also in the name of 'John Robertson and there appeared to be no real difference between the two accounts in the opinion of the Investigating Officer, the account details were largely mirrored except Facebook Account 2 did at the time of the investigation state 'Work' as 'South Tyneside Independent Councillor'.
- 12 Facebook Account 1 was considered to be used for both personal and official purposes i.e. postings made as a Councillor. It is noted by the Investigating Officer that in a number of posts during the relevant timeframe, the Councillor had commented directly on council business rather than just wider political issues. The Investigating Officer had the strong view that these could, at the very least, give the impression that the Councillor was posting on Facebook Account 1 in an official capacity and as a representative of the Council.
- 13 The Councillor maintained at all times that he was not acting, claiming to act or giving the impression he was acting as a Councillor nor as a representative of the Council at the time of making these posts. The Councillor stated that he had not been provided with adequate advice or guidance in respect of the Code by any Council officer or Senior Elected Member. The Investigating Officer was able to provide details of training delivered and information sessions provided. Also, the Councillor had signed a declaration that he had read the documents. It was noted by the Investigating Officer that Code does not make allowance for inexperience however it was accepted as a separate exercise the training to both new and existing Councillors could be enhanced.
- 14 The Standards Committee, chaired by an Independent Chair were asked to determine whether, on the balance of probability, the grounds of complaint were upheld and decide whether or not there is evidence of any failure by the Councillor to comply with the Code of Conduct.
- 15 The Standards Committee considered the evidence including the report of the Investigating Officer. The Investigating Officer had accepted that there is an important but subtle distinction between the public perception of when a Member is acting in an official capacity and when, in fact and in law, the Member is actually acting in an official capacity. The Investigating Officer detailed that it was reasonable, having

considered the information provided to the Councillor on induction, that he ought to have reasonably been aware that his comments that are subject to complaint i.e. public conduct including statements made on publicly-accessible social media, in relation to Councillor Kilgour could have given the impression that he was acting in an official capacity. To suggest otherwise is seeking a very narrow understanding of public and private capacity which the Investigating Officer suggested would be undermine public confidence.

- 16 The Standards Committee determined that the Member had breached the Code of Conduct in respect of the allegations and imposed the sanction of formal 'censure' and banning him from attending the Jarrow and Boldon Community Action Forum for three months which will result in him missing at least one session.

### **Cottingham Parish Council – Councillor Duke (July 2020)**

- 17 The Monitoring Officer submitted a report detailing the local investigation of complaint concerning Councillor Duke of Cottingham Parish Council to the Assessment Sub-Committee in July 2020.
- 18 It was alleged that the Councillor had acted beyond his powers as a parish councillor by removing an advertising board at the complainant's shop and that whilst doing so he had intimidated the complainant's daughter who was working at the shop.
- 19 Following an investigation, the Monitoring Officer had concluded that no further action should be taken as it had not been possible to establish whether a breach of Cottingham Parish Council's Code of Conduct had occurred.
- 20 The views of the Independent Person had also been sought who commented that it was regrettable that the complainant's daughter had endured an unpleasant scene whilst at the shop. Although the complainant believed that they had identified the male concerned, from an online picture, as the Councillor, the Councillor had been elsewhere on the day that the incident occurred and had confirmation from his client and an associate. The CCTV footage which the complainant possessed and which may have been helpful was no longer available for the Investigating Officer to consider.
- 21 The Independent Person was satisfied that the report by the Investigating Officer was comprehensive in covering differing avenues of thought and felt it to be very balanced but was sorry that it did not lead to a clear cut resolution for either party but was in agreement that there was doubt and insufficient evidence to reasonably conclude that there had been breaches of the Code of Conduct.

- 22 The Assessment Sub-Committee heard that the Councillor on the day in question was working from 8.45am to 4.15pm breaking concrete on a driveway. The Monitoring Officer told the Sub Committee "Councillor Duke says he was elsewhere. I cannot see a clear way of coming down on one side or the other because would imply one party is being dishonest."
- 23 The Assessment Sub-Committee agreed that no further action could be taken, as it is not possible to establish whether a breach of paragraphs of the Code of conduct.

### **Committee for Standards in Public Life**

- 24 At the Standards Committee on 9 December 2020 Members received a report from the Monitoring Officer informing of the update provided to the Committee for Standards in Public Life (CSPL) on the progress made on the best practice recommendations. CSPL had confirmed that the outcome of their request for progress updates would be published. This has been published as the progress made by the authorities who have responded can be found at <https://www.gov.uk/government/publications/local-government-ethical-standards-progress-made-against-best-practice-recommendations>.
- 25 CSPL in its review found that the vast majority of Councillors and Officers wanted to maintain the highest standards of conduct in their own authority. This was also reflected in the positive responses received from local authorities which had been received that that they have already implemented or are taking steps to implement our best practice recommendations.
- 26 Many of the councils had elements of the best practice in place and were reviewing their practices to comply fully. For example, with respect to the best practice recommendation: Codes should have prohibitions on bullying and harassment, many councils said that their codes contained provisions that members should treat others with respect. With respect to our best practice recommendation: Councillors should comply with formal standards provisions, many councils said that whilst not explicitly articulated in their code, such provisions were contained within their protocols and procedures for handling standards complaints.
- 27 Of the 213 local authorities who had responded by 17 December 2020:
- 75.6 % said they have prohibitions on bullying and harassment in their code of conduct, or were putting them into place. Other councils we heard from were waiting for finalisation of the LGA model code of conduct to review how best to include prohibitions on bullying and harassment.

- 51.2 % said they have provisions in their code of conduct requiring councillors to comply with formal standards investigation. Most of the other councils we heard from said that they were waiting to see what the LGA model code of conduct looked like before they adapted their own codes of conduct to incorporate our best practice.
- 98.6 % said their code is readily accessible or were making changes to make the code accessible - published and available on council premises.
- 86.4 % said they update their gifts and hospitality register regularly and have made it readily accessible to the public.
- 98.6 % said they consulted an Independent Person as to whether to undertake a formal investigation on an allegation.
- 98.6 % said they had clear guidance on their websites informing members of the public how to make a complaint under the code of conduct.
- 93.9 % said that their senior offices had arrangements for meeting with political group leaders/whips to discuss standards issues.

29 CSPL had recommended that a Model Code of Conduct would be prepared and presented to Councils to consider adoption. The LGA have prepared the Model Code of Conduct and a separate report on this is presented within the items to be considered by the Committee on 3 March 2021. CSPL also made a series of recommendations to Government on reforms including those which would require changes to primary legislation. To date the Government has not responded to the recommendations of the CSPL despite its publication in January 2019.

### **Background papers**

- None

### **Other useful documents**

- <https://www.shieldsgazette.com/news/politics/council/jarrow-councillor-banned-from-committee-over-facebook-comments-about-rival-3141080>
- <https://www.southtyneside.gov.uk/article/60220/Committee-meeting?formid=147785&pageSessionId=b758e9d5-9fbb-4c72-97d6-26ffa9169ca6&fsn=eefdd6e4-5dc9-47e0-981b-375844b55e08>

- <https://www.eastriding.gov.uk/council/committees/standards-committee/standards-committee/>

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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.