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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 25 June 2021.

**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 25 June 2021, as part of the Annual Work Programme, this is a standing agenda item with a quarterly update to the Committee.

## **Code of 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 news reports and general research where Councils publish details of their conduct hearings in public.

## **Cyril Bennis v Information Commissioner (Dismissed) [2021] UKFTT 2017\_0220 (GRC)**

- 6 On 10 February 2021, the First-Tier Tribunal General Regulatory Chamber (Information Rights) (the Tribunal), considered an appeal of Cyril Bennis (the Appellant) against the Information Commissioner (First Respondent) and Stratford on Avon District Council (Second Respondent).
- 7 The Appellant submitted a Member Code of Conduct complaint to the Council in September 2016 and as part of the complaint the Monitoring Officer sought the views of two Independent Persons. The Monitoring Officer informed the Appellant by letter, that the complaint would not be investigated further.
- 8 On 23 January 2017, the Appellant made a request to the Council for all correspondence relating to his complaint. The Council provided the majority of the information held but refused to provide the Independent Persons views, relying on exemptions contained in the Freedom of Information Act 2000. The decision to withhold the information was appealed to the Information Commissioner, where the decision of the Council was upheld. The Information Commissioner concluded that it was reasonable for the Council to withhold the views of the Independent Persons, on the basis that publication would be likely to inhibit the free and frank provision of future advice and would be likely to be otherwise prejudicial to the effective conduct of public affairs. The Information Commissioner also determined in this case that the public interest to withhold information was outweighed by the public interest in disclosing the information. This decision was appealed to the Tribunal.

- 9 In considering the case, the Tribunal noted the generalised nature of the Appellant’s case, which relied on the public interests of transparency, openness and accountability in relation to public sector activities.
- 10 The Tribunal was satisfied that the Council’s usual practice, notwithstanding its flexible approach but in line with that of other Local Authorities, was that the Independent Persons opinions would generally be treated as confidential and would only be published when a complaint proceeds to a public hearing, stating:
- “We find that, in the context of this case, the Independent Persons provided their opinions on the merit of the complaint with a reasonable expectation that these views would not be made public...”
- 11 The Tribunal also found that there was a significant risk that the candour, and therefore the quality, of the Independent Persons advice to the Council would be diminished were it to become more likely that it would be made public. The decision also confirmed that the Tribunal was satisfied that the ability of the Independent Person to provide candid and uncensored advice to the Monitoring Officer was an important part of the Council’s complaint system recording:
- “We find that any inhibition of the IP’s advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken.
- We find in addition that there is a strong public interest in avoiding detriment to the Council’s process for dealing with complaints made against elected officials.”
- 12 Having considered all factors of the case, the Tribunal concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the Independent Persons candid advice, and in maintaining the effectiveness of the council’s complaint process that might otherwise be undermined.
- 13 The Tribunal dismissed that appeal and upheld the decision notice dated the 4 September 2017.

### **Darlington Borough Council – Councillor Culley (29 June 2021)**

- 14 A Standards Committee Hearing considered the complaints from a member of the public and a jointly submitted complaint from three councillors in June 2021.

- 15 The complaint concerned a meme which was shared on Facebook on 6 September 2020 showing the words “you’re not special”. The post shared by the Member was said:
- a) To undermine and / or deny that the transatlantic slave trade has created a legacy of discrimination towards black people and contributes to the dissemination of misleading information about historical slave trades at a time when there is a global social discussion about slave trades and how they contributed towards institutional racism.
  - b) Failure by a Council member to recognise the discrimination that black people face could result in members of the public believing that the Council does not recognise problems experienced by black people; this potentially isolates black people from their Council and may discourage black people from accessing Council services.
  - c) That the post by Councillor Culley reflects poorly on Darlington Borough Council as an organisation that is ignorant to the issues affecting black people.
- 16 It was considered by the complainants that the Member had failed to comply with the Member Code of Conduct specifically for failing to treat others with respect and to bringing the office and Council into disrepute.
- 17 The Member had a private Facebook page and a public Facebook page. The ‘public’ Facebook profile was in the name of Pauline Mowden Culley Facebook.
- 18 The post appeared on the public profile, the Member did not ‘like’ the post or add any comment when sharing the meme. The post was removed after a day of being displayed and the Facebook account taken down.
- 19 The Committee considered whether the Member was acting in her official capacity. The Standards Committee Hearing found that this concerned a situation where a Member was not carrying out a formal Council role or council business but she was nonetheless deemed to have been acting in an official capacity as the Facebook page was public facing and it was acknowledged by the Member that she used this Facebook page for some posts that relate to her role as a Councillor. In doing this, the Committee found that she was making the post in her official capacity and therefore the Code of Conduct was engaged.

- 20 For the interpretation of the meme the Panel found that while some of the statements made in the meme are correct historically, the statement 'You're not Special' was problematic. The Committee considered it to be a superficial statement and it could be said that it failed to adequately consider the true scale and impact of slavery on different groups. The sharing of the meme was in their view ill-judged and the 'you're not special statement' was considered offensive. This could give rise to a finding of a failure to treat with respect and also bringing the office of Councillor or the Council into disrepute.
- 21 The Panel went on to consider freedom of expression, in particular Article 10 of the European Convention of Human Rights. A finding of a breach of the Code of Conduct could potentially interfere with the Members freedom of expression and if this is the case it must be justifiable to do so.
- 22 The meme that was shared was about a matter of public debate/interest, arising against the backdrop of the issues raised during 2020 about racism and slavery. The Committee considered the post to be a political speech made by an elected member and therefore was afforded enhanced protection for freedom of expression.
- 23 Freedom of expression is not however an absolute right and even the enhanced protection afforded to political speech would not be available for grossly offensive statements or statements that amount to hate speech. The Committee found that whilst they considered the meme offensive, they did not think that it is of a level to be considered as grossly offensive or to amount to hate speech. It was noted that that the meme was not specifically directed towards any particular person or group. Neither does it mention the transatlantic slave trade.
- 24 The Committee found that the sharing of the meme was within the limits of freedom of expression, the Committee found that there was not a breach of the Code as a failure to treat with respect or in turn to bring the office or Council into disrepute.
- 25 The Committee concluded that that the Member had not breached the Code of Conduct. It did however recommend that additional guidance to be made available to all members about the use of social media. It also was recommended that a review be undertaken to update the Code of conduct to reflect the rapid changes in social media platforms.

## **National Developments**

### **Local Government Association Guidance on Model Code of Conduct**

- 26 Members will be aware from earlier reports, that in December 2020, the Local Government Association (LGA) developed and published a Model Councillor Code of Conduct in association with key partners. The Model Code was prepared in response to the recommendation of the Committee of Standards in Public life Local Government Ethical Standards 2019.
- 27 The adoption of the Model Code was considered by the Standards Committee on 3 March 2021 and full Council in Durham County Council on 26 May 2021, where it was agreed that the existing code reflected the best practice with minor amendments required.
- 28 Guidance for the Model Code of Conduct was published on 8 July 2021.
- 29 The guidance reflects the provisions of the Code and is available as a standalone document intended to provide easy access to the guidance. The LGA have confirmed that it will undertake an annual review of the guidance and the Code to ensure it continues to be fit for purpose, incorporating advances in technology, social media, case law and changes in legislation.
- 30 The Standards Committee are asked to note the publication of the LGA guidance and note that Monitoring Officer will continue to monitor any changes to the model Code or guidance.

#### **Background papers**

- None

#### **Other useful documents**

- [https://www.bailii.org/uk/cases/UKFTT/GRC/2021/2017\\_0220.html](https://www.bailii.org/uk/cases/UKFTT/GRC/2021/2017_0220.html)
- <https://democracy.darlington.gov.uk/ieListDocuments.aspx?CIId=228&MIId=2363&Ver=4>
- <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

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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.