

Standards Committee

17th March 2023

National Picture



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 5 December 2022.

Recommendation(s)

- 3 The Standards Committee is recommended to:

note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated; and

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.

Auditors call for further debate on effectiveness of standards regime in report on former council leader and procurement

- 5 The auditing firm, Grant Thornton conducted an inquiry into the running of Cheshire East Council, covering the period between 2014-18. Their findings have been published in a report titled “Report in the Public Interest on the impact of the Council’s culture and governance arrangements during 2014 -2018”
- 6 The report details the actions and behaviour of the Leader of the Council during the period as well as the subsequent period of instability following the Leader’s resignation until 2018. The auditors concluded that there was “a pattern of bullying and inappropriate behaviour on the part of the former leader which led to distortions to good governance”.
- 7 The focus of the report concerns the awarding of a contract to a physiotherapy business which was owned by a friend of the Leader, who he subsequently went into business with. The report details that the friendship was close enough that it should have been recorded a declarable interest.
- 8 The tendering process was found to inappropriately favour this company and Grant Thornton found “numerous instances in the events investigated for this report, in which the former leader directly and indirectly set out to give an advantage to this company.” The business secured £188,000 of work per year through this contract.
- 9 Auditors wrote:

“We have concluded that the council’s former leader, appointed in May 2012 behaved in a manner that sought to influence certain senior officers into taking steps and decisions that would achieve his own objectives in relation to this company, even if this meant bypassing or overriding the council’s established controls.

“In our view, some of his wider behaviours were bullying, intimidatory and aimed at seeking to get his own way in matters without recourse to the normal procedures.”

10 Grant Thornton found that the member/officer dynamic appears at the time to have been distorted and not to have struck the right balance with members being excessively involved in service delivery or close relationships between members and service managers. The report also found that the Chief Executive and Chief Operating Officer and members of the Cabinet failed to adequately challenge and address the Leader's behaviours.

11 Grant Thornton reflect within the report that since the abolition of the Standards Board for England in 2012, there was no mechanism in place to challenge the Leader's behaviour, which allowed his dominance over Officers and Councillors. The report states:

"Under current arrangements the only direct intervention available for a council with significant governance issues is for Government to commission a best value inspection and/or appoint independent commissioners to the body.

"It is unlikely that this would have been triggered at this stage of Cheshire East's history. A key learning from this report for the sector is therefore that the inherent weaknesses identified here could create governance difficulties elsewhere in the future.

"Sector leaders, including Government should, in our opinion, now give this further consideration."

12 In relation to Local Standards Grant Thornton noted:

"Given the nature of the former leader's conduct, the matters reported here were relevant to the council's then code of conduct for Members and the officer/Member relations protocol.

"It is of major concern to us that these standards' mechanisms played little part in addressing the issues. Certain officers and Members perceived that the local standards framework would be ineffective against an individual in the former leader's position of power."

13 The Auditors have expressed the hope that their report will "encourage the ongoing debate around the effectiveness of the standards regime for local government and support mechanisms for both officers and Members facing the same intractable difficulties".

14 The report and its findings highlight the importance of a clear understanding of roles and responsibilities and the distinction between the role of Officers and Members. The report also highlights a very clear link between the culture and behaviours within an organisation and its impact on governance.

Ombudsman finds fault with ‘number of aspects’ of council investigation into Member conduct.

- 15 The Local Government and Social Care has found that an investigation conducted by Teignbridge District Council into an alleged Member code of conduct complaint was flawed.
- 16 The Subject Member made a complaint to the Ombudsman accusing the Council of failing to follow procedure when investigating him, resulting in him being ‘unfairly sanctioned’ which caused damage to his ‘personal and professional reputation’.
- 17 The complaint stated that the Council:
 - Initiated the investigation without receiving a complaint regarding his conduct which is contrary to both their own policy, and the law.
 - Mislead him into believing a complaint had been received.
 - Failed to disclose details of the alleged complaint.
 - Failed to engage the due diligence of an independent person to investigate the alleged complaint.
- 18 The Ombudsman found that there were ‘a series of faults in the Council’s processes ‘concluding the investigation had not been prompted by formal written complaint.
- 19 The Localism Act 2011 states “To trigger any investigation of an alleged breach, the Council must receive details of the allegation in writings.”
- 20 The Ombudsman revealed the Council admitted that no formal complaint was received regarding the Member’s conduct. However, the Monitoring Officer had received “written complaints/concerns/ allegations” about the Subject Member which they considered to be written allegations.
- 21 The Council suggested it would be “perverse” should the Monitoring Officer have to be in receipt of a written complaint if they are aware of inappropriate conduct.
- 22 Additionally, the Ombudsman found that the Member was not given enough information about the alleged complaint, and that new allegations were introduced during the process of the investigation, but the independent person did not make it clear that these allegations were part of the investigation. The independent person’s inquiry into the Subject

Member's conduct was combined with investigation into the conduct of another Member.

23 The Council failed to consider the Member's enhanced right to free speech as an elected representative as recognised by the Courts ((see *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin))). This was relevant as the council considered his justification having made or posted comments on social media.

24 The Ombudsman recommended the Council:

- i. Accept the findings of the Ombudsman and apologise to the Member.
- ii. Rescind the decision notice of 22 July 2020 and ensure this is no longer available on the Council's website. A notice should be issued in its place to announce its withdrawal following the findings of this report and provide a link.

25 The Council is additionally required to consider the report and confirm within three months the action that has been taken or is proposed will be taken in response. The report should be considered at Full Council, Cabinet, or another appropriately delegated committee, and the Council is required to submit evidence of this under the Local Government Act 1974, Section 31(2).

26 The Council should ensure they have a written procedure for officers and independent investigators asked to consider standards complaints.

27 A spokesperson for Teignbridge District Council said:

"We are disappointed that the Ombudsman concluded that contrary to what they believed at the time, our staff did not follow the correct procedures in relation to complaints against [the Member]."

"We are already in the process of reviewing the constitution, including Members' conduct, our processes and record keeping and in the coming weeks we will review our current approach in the light of the Ombudsman's findings and recommendations."

"We apologise to [the Member] for the failure in our procedures and the impact that had on him."

"We must continue to ensure that officers are respected and supported to offer a professional, impartial and valuable service and that Members conduct themselves in accordance with the Nolan Principles enshrined in the Council's Code of Conduct which all Members have signed."

Standards watchdog issues report on how public sector leaders can maintain ethical organisational practices

- 28 A report from the Committee on Standards in Public Life titled 'Leading in Practice' has recommended that public sector leaders encourage a 'speak up culture', deliver training on ethical issues and carefully chose new hires to help maintain ethical organisational practices.
- 29 Additionally, Lord Evans the Chair of the Committee on Standards in Public Life has written to public sector leaders, asking twenty questions under six topic areas to encourage reflection and discussions around ethical leadership. The six topic areas were based upon the chapters within the report, and are linked to the Principles of Public Life, the 'Nolan Principles'.
- 30 The report encourages organisations to create regular opportunities to help employees understand the relationship between the values they are expected to demonstrate. A focus was also given on the responsibilities of senior leaders to communicate their expectations for employee's behaviour and to set the tone for their organisation. In addition, it states that senior leaders must have the willingness to address behaviour which is not consistent with the organisation's values.
- 31 The report also encourages a "speak up" culture in which employees are provided with the support and platform to speak up and safeguard those who chose to do so. The report says, "Leadership in this area requires a proactive approach, creating a range of informal and formal opportunities to listen to employees, and an ongoing commitment to building a culture where people are encouraged to speak up and are comfortable doing so."
- 32 Recommendations were also made for training, with a focus on scenario-based training to enhance decision-making skills and give a platform to discuss ethical dilemmas.
- 33 The report also calls for stronger guidance for departmental boards concerning the focus they should give to ethical issues. The boards should be concerning themselves with their departments understanding of the Principles of Public Life and the Civil Service Code and how these are reflected in behaviours and decisions.
- 34 "The committee heard about the effectiveness of bringing together data into a single report when assessing the culture of an organisation.
- 35 "It can join the dots for a range of indicators, such as 'speak up' reports, high turnover of staff, high levels of sickness, unusual patterns of staff survey scores, and customer complaints numbers, allowing a board to identify where action is required," (Page 4)

- 36 The report encourages public sector organisations to consider incorporating assessments of a candidate's values align with the Principles of Public Life into their recruitment processes, particularly when recruiting senior leadership roles.

"Ensuring that the values are assessed as part of the performance management process both incentivises behaviour that is aligned with the Principles and ensures that the commitment of leaders to high standards is reflected through into the decisions, they make about the people they manage."

- 44 The Monitoring Officer is considering how the Council can consider the recommendations in the report to ensure that the Council it has strong ethical practices.

Government sets expectations in Best Value Notice to unitary council beset with governance problems

- 37 The Department for Levelling Up, Communities and Housing (DLUHC) has shared ministers "remain concerned" as to Middlesbrough's capacity to comply with its Best Value Duty, following a series of reports last year covering the Governance issues within the unitary authority.

- 38 The Best Value duty is imposed on an Authority under Section 3 of the Local Government Act 1999. The legislation requires the best value authority to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.'

- 39 In July 2021, the Council's external auditors, Ernst & Young, concluded within the Council's Draft Statement of Accounts for 2021/2022 that the "culture and governance arrangements at the authority have not been operating as expected and that this is undermining the effectiveness of the Council's governance framework". Multiple instances where the authority took significant decisions without following its own established policies and procedures were also identified.

- 40 In September 2022, concerns were raised by the Chartered Institute of Public Finance & Accountancy (CIPFA) over "significant issues" involving divisions between the unitary's Members and officers. Issues including found "mistrust and dysfunction between Members and Officers" were found within their 'Middlesbrough Council culture and governance' report.

- 41 On 24 January 2023, a Best Value Notice letter was issued to the Council's Chief Executive. A Best Value Notice is a formal notification that the DLUHC has concerns regarding an authority's capacity to meet its Best Value Duty under the Local Government Act 1999. The notice acts

as a request that the authority engages with the Department to provide assurance of improvement.

42 The Notice contains the following expectations the DLUHC has for Middlesbrough, primarily to:

- Continue to deliver the agreed action plan, accepted at full council, "at pace and meet the set milestones, also setting out clearly how success will be measured.
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- To complement the existing engagement between the department and the authority, including "contact at working level should occur on a quarterly basis initially.
- Fully and promptly meet any information requests "The Department will also look to the Governance Improvement Board for assurance on your authority's plan and its delivery as part of our engagement on this matter."

43 A joint statement from Middlesbrough Mayor Andy Preston, and Council Chief Executive Tony Parkinson in which they addressed the Notice said:

they "remain committed" to their Governance Improvement programme and "are fully engaged with the Chartered Institute of Public Finance and Accountancy (CIPFA) on this work".

"We've already taken steps to address these issues and put in place an action plan, and we're pleased that DLUHC has acknowledged the progress we've made so far."

"We fully acknowledge the seriousness of the Best Value Notice and are committed to demonstrating the progress the DLUHC rightly expect."

"Alongside our everyday activities, our dedication to ensuring positive cultural and governance changes will continue."

Redcar and Cleveland Standard Hearing Panel into behaviour and potential code of conduct breaches by the Council Leader.

- 44 Redcar and Cleveland Borough Council have held a Standards Hearing Panels investigating the potential breach of the Code of Conduct by the Leader of the Council.
- 45 The hearing, which took place in February, found that when acting in her capacity as a Councillor, the Leader breached the Redcar and Cleveland Borough Council Code of conduct in relation to treating others with respect; acting contrary to the duty to promote and maintain high standards of conduct, bringing the office or Council into disrepute and using the position of Councillor improperly to confer and advantage or disadvantage.
- 46 The Panel considered the breaches to be serious, and that they would reduce both the Public's Confidence in the Leader's ability to fulfil her duties as a Councillor and adversely affect the reputation of Members in the Council generally.
- 47 The committee did not uphold the breaches of the Code in respect of bullying and harassment and compromising the impartiality of those who work for or on behalf of the Council.
- 48 At the hearing, the Leader apologised for her actions towards Council Officers and recognised, in her own words, that she had "crossed the line." This apology was welcomed by the Panel.
- 49 The Panel recommended that the Leader engages in training with the Monitoring Officer on the Code of Conduct, and the handling of personal conflicts of interest. Additionally, The Panel decided on the following sanctions:
- (i) The decision notice be made public when the Panel Chair had approved it; and
 - (ii) The Panel recommends to Council that Councillor Lanigan be censured.
- 50 The events that occurred in which the Councillor breached the Code date back to 2019. The context of the incidents was that within Easington, which is one of the villages included within the Loftus Ward of Redcar and Cleveland Council., The Cenotaph is positioned adjacent to two private residences, which are owned by the two Complainants retrospectively.
- 51 Since 2019, the Leader and her husband have been engaged in a dispute with the Complainants due to plants which had been planted on the border between one house and the Cenotaph.

- 52 Within Easington, there are a number of war memorials, including the Easington Cenotaph, with all of these memorials being owned and maintained by the Council. The Cenotaph has also been the subject of community volunteer activity to maintain and upkeep the memorial with one of the frequent volunteers being the Leader's husband.
- 53 The main events leading to these complaints were:
- I. Councillor Lanigan requested that a Council Officer sends a letter on Council headed paper which requiring the complainant to remove the trees.
 - II. During an argument between the Councillor, her husband, the complainant and other individual, the Leader phoned the police, identified herself as a Councillor and requested Police assistance.
 - III. The Leader was personally involved in seeking authorisation from the Council to burn refuse on the site of the Cenotaph. This burning caused nuisance to one complainant.
 - IV. In July 2021, in which the Leader's husband threw a "three-foot-high tree with an 18-inch root ball" at a Council Officer, after he was shouted at by the Leader for having damaged some hedges on the Cenotaph site whilst strimming the grass.
 - V. In August 2021, the Leader's husband assaulted the complainant's husband. At the time of the assault the Leader, identified herself as the Leader of the Council, and accused the complainant's husband of being the assailant. Additionally, she verbally supported her husband's veiled threats towards the complainant's family. The Leader's husband was convicted of common assault for this incident.
 - VI. Within the minutes of an October meeting, it was also noted that the Leader made comments about the complainant's family which the complainant contested to be untrue. The Panel have found these accusations to be wrong.

Background papers

- **Cheshire East Council Report in the Public Interest on the impact of the Council's culture and governance arrangements during 2014 – 2018**
[Report in the Public Interest on the impact of the Council's culture and governance arrangements during 2014 -2018 \(cheshireeast.gov.uk\)](https://www.cheshireeast.gov.uk)
- **Teignbridge District Council (21 004 645)**
[21 004 645 - Local Government and Social Care Ombudsman](https://www.teignbridge.gov.uk)
- **Leading in Practice A review by the Committee on Standards in Public Life**
[Leading in Practice – A review by the Committee on Standards in Public Life \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)
- **Middlesbrough Council Best Value Notice issued on 24 January 2023**
[Middlesbrough Best Value Notice \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)
- **Standards Hearing Panel in Relation to Possible breaches of the Code of Conduct.**
<https://www.redcar-cleveland.gov.uk/sites/default/files/2023-02/Decision%20Notice%20-%20Hearing%20Panel.pdf>

Other useful documents

- Local Government Act 1999
- [Middlesbrough Council statement of accounts - 2021-2022](https://www.middlesbrough.gov.uk)

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Appendix 1: Implications

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.