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To: Chair & Members of the Standards Commi

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Friday, 20 November 2020

Dear Councillor

STANDARDS COMMITTEE – MONDAY, 30TH NOVEMBER, 2020 AT 14:00 HOURS

I refer to your recently circulated agenda for the above meeting and now enclose a copy of the papers which were marked 'To Follow'.

Yours faithfully



Solicitor to the Council & Monitoring Officer



We speak your language
Polish **Mówimy Twoim językiem**
Slovak **Rozprávame Vaším jazykom**
Chinese **我们会说你的语言**

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STANDARDS COMMITTEE

Monday, 30th November, 2020 at 14:00 in the Virtual

Item No.	PART 1 – OPEN ITEMS	Page No.(s)
8.	Questionnaire from the Committee for Standards in Public Life.	F_PRO
9.	Publishing of Complaints Against Members	F_PRO

Bolsover District Council Standards Committee 30th November 2020

CSPL local government ethical standards 15 best practice recommendations – draft responses

1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Progress:

Progress on this has been somewhat overtaken by the Covid 19 Pandemic and the draft LGA model Code of Conduct on which the Council commented.

However the Current Code of Conduct does require councillors both to treat others “fairly, appropriately and impartially”. It also requires councillors to value colleagues and officers in a way that underpins the mutual respect required in local government. In addition the code requires councillors to treat everyone with respect. This gives confidence that bullying and harassment claims can be dealt with under the Code of Conduct.

Once the LGA model Code of Conduct is released the Code will be reviewed and a new version (based on the LGA model) adopted.

However in relation to Parish Councils, there are a variety of Codes of Conduct formats, ranging from only the Nolan Principles to Codes that mirror the District Code and indeed other forms of code too. Clearly therefore bullying and harassment are not specifically mentioned in all the Parish Councils Codes of Conduct. When the LGA model Code is agreed and launched, we will make sure the model code is promoted amongst Parish Councils including this specific point.

2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Progress:

There is no explicit provision in the Code of Conduct to cover cooperation with a formal standards investigation. However there is a requirement in the Code of Conduct for councillors to behave in accordance with the Council’s legal obligations alongside any requirements contained within its policies, protocols and procedures. A failure to cooperate with a Standards Investigation would itself be a potential breach.

This has not been a problem that has arisen for this Council.

The Council would look to the LGA model to review the Code of Conduct and make explicit provision on this.

3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Progress:

The Code is reviewed regularly. In recent years the Council has added to it guidance on the use of social media and details of the mandatory training the councillors should take.

In relation to training it is not currently legally possible to enforce this requirement. This hampers a Council's ability to ensure that its councillors are properly trained. It would be helpful to have some legal backing for enforcing this.

4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Progress:

The Code of Conduct is on the Committees Page of the Council website and can be reached with 2 clicks.

Members have access to the Code of Conduct through the same page on their iPads.

5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Progress:

An annual review of both councillors and officers gifts and hospitality is presented to Standards Committee once a year. There are so few entries there would be nothing gained by publishing it quarterly.

However the Council is in the process of introducing Mod.Gov. The next phase of this will include the Gifts and Hospitality Register and its publication. Standards Committee has previously endorsed the publication of this Register.

6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Progress:

The Council has a complaints procedure which is on the website and is also sent to complainants and subject members. The document has a copy of the code of Conduct for the District attached.

This document clearly sets out what the considerations are for each stage of the process and in relation to investigations whether it would be in the public interest (in terms of there being any public benefit) to conduct an investigation.

7: Local authorities should have access to at least two Independent Persons.

Progress:

The Council has always had 2 Independent Persons, save only where there has been a vacancy.

8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Progress:

This is always done.

9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Progress:

This situation has not arisen under the Localism Act 2011 in this Council. However the Council's Standards Committee is considering making this change and agreeing a format for such decisions to be published.

10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Progress:

This is in place. A complaints procedure is accessible on the website and is sent to complainants and subject members – see above.

Generally Members of the public do not research what they need to do to make a complaint, nor do they ask. A lot of the time I received an email from the Leader as the complaint has been made to the Leader not me.

11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Progress:

This is not within the control of the District and accordingly, there are a variety of practices amongst the Parish Councils in the few cases we have had.

It is also the case that where the allegation is against the Chair of the Parish Council it is unlikely the Council would agree to forward the complaint to me on behalf of the Clerk. If the Clerk were not able to make the complaint themselves, this would deny the Clerk an avenue to resolve the issues.

We are considering whether more Code of Conduct training for the Parish Councils and will add this to that training. Parish training is and has always been offered to Parish Councils and through the Parish Council Liaison Group. However attendance can be poor.

12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Progress:

The Monitoring Officer's role includes this support to Parish Councils in relation to complaints.

The Monitoring Officer is provided with training as required.

Resources have recently been added to the role because of an increase in work.

13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Progress:

This has not been an issue in this Council.

However at least one Deputy Monitoring Officer is appointed and can deal with such cases independently. Where necessary an external Monitoring Officer can be appointed.

14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Progress:

The Council has formed companies. The Annual Governance Statement is being reviewed and this point will be addressed.

There is a dichotomy in relation to the Nolan Principles and members' roles as once appointed to a Board of Directors the councillor should act with regard to the company's rules and the legislation governing that role. The Nolan principles apply to public life and Board membership is essentially private life, even though the appointment is from the Council.

15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

Progress:

This happens.

The Monitoring Officer meets regularly with the Leader and Deputy Leader where these matters can be discussed.

Consideration can be given to having regular meetings with other party Leaders. The problem is that the councillors (like officers) have limited time. Currently matters tend to be dealt with on an ad hoc basis with the other party Leaders.

Bolsover District Council

Standards Committee

30th November 2020

The publication of the outcome of complaints against Members

Report of the Monitoring Officer

This report is public

Purpose of the Report

- Following discussion at recent Scrutiny Committees, Members requested that an example be produced of what would be disclosed to the public in relation to completed complaints against members. This report offers suggested examples of public notices in these circumstances.

1 Report Details

- 1.1 There are a number of different outcomes as follows in relation to complaints that members have breached the Code of Conduct. These are:

Group A Following initial assessment by the MO and IP:

- No breach of the Code of Conduct
- A potential breach of the Code of Conduct but informal local action can be taken such as training, an apology etc.
- A potential breach of the Code of Conduct which requires a full investigation

Group B Following investigation and a hearing by Standards Committee:

- No breach of the Code of Conduct
- Breach of the Code of Conduct but no action
- Breach of the Code of Conduct and a sanction

- 1.2 Further to Members comments it is considered that the 2 Groups should be treated differently. Where there has been a full investigation and hearing by Standards Committee a full decision notice should be given whatever the outcome.
- 1.3 In Appendix 1 is a made up example of complaints findings at the various stages of the process.
- 1.4 Appendix 2 shows the format of potential publications of the results of the complaints process for the 2 different Groups of decisions for Members consideration.

- 1.5 As I reported to Members in the last report, the Committee for Standards in Public Life made the following recommendation in its report “Local Government Ethical Standards”

Recommendation 15:

Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are treated as trivial or vexatious; and any sanctions applied.

- 1.6 Although this is stating the minimum requirement, the recommendation is for a quarterly list of (anonymised) complaints to be produced and published for the Group A cases. As stated above, the suggested table for consideration is in Appendix 2.
- 1.7 In the event that a full investigation is carried out and a hearing is held, the decision will be published at the time. The suggested form for this is also in Appendix 2.
- 1.8 This should also be made clear on the Council’s website and the Council’s procedure amended to reflect this publication.
- 1.9 There should also be a delegation to the Monitoring Officer to allow for the publication of decisions to be altered where there is a substantive reason to do so.

2 Conclusions and Reasons for Recommendation

- 2.1 The Committee for Standards in Public Life has made it clear that they consider such decisions should be published, but have not dictated what form such publication should take. This report makes some suggestions for discussion.

3 Consultation and Equality Impact

- 3.1 As previously suggested, Members should consider consulting the Parish Councils as this will affect what happens with their complaints.
- 3.2 There are no equality impact considerations in relation to the decision to advertise. However equality impact will be considered in relation to individual decisions.

4 Alternative Options and Reasons for Rejection

- 4.1 The suggested format of publications is attached to this report for Members consideration. Any alternatives or suggestions from Members can be considered at the meeting.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 This is a policy change. There is no cost to this.

5.1.2 In terms of risk, this would be a consideration in relation to each set of notices and not in relation to the overall decision.

5.2 Legal Implications including Data Protection

5.2.1 The legal and Data Protection issues will need to be considered in relation to each publication.

5.3 Human Resources Implications

5.3.1 None

6 Recommendations

6.1 That Members consider the suggested publication formats attached to this report and approve (with amendments or changes) a suggested format.

6.2 That Members consider whether to consult with or inform the Parish Councils of the intention to publicise complaints outcomes in accordance with this report.

Subject to Members decision on 6.2:

6.3 That a quarterly report of anonymised complaints is published in relation to the Group A cases as described in paragraph 1.1

6.3 That a decision notice is issued as soon as reasonably practicable following a decision in the Group B cases as described in paragraph 1.1

6.4 That such notices are published by being placed on the Council’s website.

6.5 That the Monitoring Officer is given delegated authority not to publish in accordance with this report where to do so would breach the law or endanger an individual or where there is some other substantive reason justifying non publication.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC: Revenue - £75,000 <input type="checkbox"/></i> <i>Capital - £150,000 <input type="checkbox"/></i></p> <p><i>NEDDC: Revenue - £100,000 <input type="checkbox"/></i> <i>Capital - £250,000 <input type="checkbox"/></i></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	<p>No</p>
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	<p>No</p>
<p>Has the relevant Portfolio Holder been informed</p>	<p>N/A</p>

District Wards Affected	None
Links to Corporate Plan priorities or Policy Framework	None

8 Document Information

Appendix No	Title
1	Examples of decisions made on complaints
2	Suggested publication formats
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Sarah Sternberg, Monitoring Officer	Ext 2414

Report Reference –

Examples of decisions made on complaints

Group A examples:

1 Complaint 1

The complainant stated that the Parish Council had made a decision to paint a fence red when it should have decided to paint it blue.

Finding that there was no breach of the code of conduct by a Cllr. This was a complaint about the Parish Council's decision and therefore not within the jurisdiction of the complaints process under the Localism Act 2011.

2 Complaint 2

The complaint was that Cllr Fred Smith, a District Cllr, said at a tree planting ceremony "blast those old people being so slow. They need to get a move on". He was overheard by the complainant and several others.

Finding that Cllr Smith was acting as a councillor and that the statements breached the Code of Conduct in that they showed a lack of respect and ageism. However, it was considered to be a matter where a local solution could be used. The Monitoring Officer spoke to the Cllr and advised him on those aspects of the Code of Conduct requirements.

3 Complaint 3

District Cllr Cynthia Paine was said by the complainant to have said "oh no we have a **[racist term]** here now". There were several witnesses. However Cllr Paine denied having said this.

Finding that this should proceed to a full investigation.

4 Complaint 4

The complaint is the same as Complaint 3. An investigation has been carried out which has found on the balance of probabilities that the statement was not made by the Cllr and that what she had said had been misheard by the witnesses.

5 Complaints 5 and 6

The complaint is the same as Complaint 3 save that there is a finding of a breach of the Code of Conduct. The decision in Complaint 5 is that no sanction should be applied. The decision in Complaint 6 is that a sanction should be applied.

Suggested publication formats

List of Cases which do not proceed to investigation (Group A cases)

Date of receipt	Part of Code of Conduct alleged to have been breached.	Name of Council	Whether a potential breach was found	Reasons for decision.
dd/mm/yy	None identified	Anytime Parish Council	No	The complaint was about a Parish Council decision not a breach of the code by a councillor. It is not therefore covered by the complaints process.
dd/mm/yy	Lack of respect for members of the public. Ageist comments	Anywhere District Council	Yes	A breach was found in that statements were made which showed a lack of respect for members of the public and which were ageist. The Cllr has been advised by the Monitoring Officer on the rules in the code of Conduct.
dd/mm/yy	Use of racist language	Anywhere District Council	A potential breach was identified.	An investigation is to be carried out to establish the facts.

Suggested publication formats

Following investigation and a hearing by Standards Committee (Group B cases)

Complaint 4

Bolsover District Council

Complaint against a Member under the Localism Act 2011

Outcome of hearing on dd/mm/yy

Ref MC12

Complainant: Mr W Compton

Subject Member: Cllr Cynthia Paine

Council: Anywhere District Council

Hearing at Standards Committee: dd/mm/yy

Complaint

District Cllr Cynthia Paine was said by the complainant to have said “oh no we have a **[racist term]** here now”.

The original complaint was that this was a breach of the Code of Conduct in terms of breaches of the Nolan Principles respect for others, racism

What Standards Committee took into account

Evidence from the investigator [list of facts and findings found in the investigation]

Evidence from the Subject Member, Cllr Paine [List of submissions at the Standards Committee Hearing]

Standards Committee Decision

Decision

The Standards Committee found that on the balance of probabilities, the Code of Conduct had not been breached for the following.

The facts established were:

- .
- .

The Standards Committee reasons for the decision are:

- .
- .

What happens now?

This notice is sent to all parties and is published on the Council’s website.

Right of Review

There is no right of review.

If you believe this complaint has not been administered satisfactorily, you may complain to the Local Government and Social Care Ombudsman at the following address:

[Local Government and Social Care Ombudsman contact details]

Signed: Sarah Sternberg Monitoring Officer

Dated: dd/mm/yy

Suggested publication formats

Following investigation and a hearing by Standards Committee (Group B cases)

Complaints 5 and 6

Bolsover District Council
Complaint against a Member under the Localism Act 2011
Outcome of hearing on dd/mm/yy

Ref MC12

Complainant: Mr W Compton

Subject Member: Cllr Cynthia Paine

Council: Anywhere District Council

Hearing at Standards Committee: dd/mm/yy

Complaint

District Cllr Cynthia Paine was said by the complainant to have said “oh no we have a **[racist term]** here now”.

The original complaint was that this was a breach of the Code of Conduct in terms of breaches of the Nolan Principles respect for others, racism

What Standards Committee took into account

Evidence from the investigator [list of facts and findings found in the investigation]

Evidence from the Subject Member, Cllr Paine [List of submissions at the Standards Committee Hearing]

Standards Committee Decision

Decision

The Standards Committee found that on the balance of probabilities, the Code of Conduct was breached for the following.

The facts established were:

- .
- .

The Standards Committee reasons for the decision are:

- .
- .

Sanctions applied:

For complaint 5:

No sanction is to be applied for the following reasons. **[These are examples of reasons which could be agreed by the Standards Committee]:**

- The Cllr has resigned.

- The Cllr has already offered an apology and undergone training.
- Some other sufficient reason agreed by Standards committee.

For complaint 6

[Again these are examples of reasons which could be agreed by the Standards Committee]

- In view of the seriousness of the breach, Standards Committee requires that Cllr Paine be given a public censure at Council.
- The Cllr should undergo a formal training with an external trainer on racism and racist language. This should be arranged by the Monitoring Officer and the Equalities Officer.
- The Cllr should give an apology to the Council for the use of the racist language, the lack of respect shown and for bringing the Council into disrepute.

What happens now?

This notice is sent to all parties and is published on the Council's website.

Right of Review

There is no right of review.

If you believe this complaint has not been administered satisfactorily, you may complain to the Local Government and Social Care Ombudsman at the following address:

[Local Government and Social Care Ombudsman contact details]

Signed: Sarah Sternberg Monitoring Officer

Dated: dd/mm/yy