

<b>REPORT TO:</b>	<b>STANDARDS COMMITTEE</b>
<b>DATE:</b>	1 November 2022
<b>REPORT OF:</b>	Sandra Stewart – Chief Executive
<b>SUBJECT MATTER:</b>	<b>ETHICAL STANDARDS UPDATE</b>
<b>REPORT SUMMARY:</b>	This report is intended to brief members on any developments and news on matters of local government ethics.
<b>RECOMMENDATION(S)</b>	Members are asked to consider the report and comment on its contents (as applicable) and note its contents.
<b>FINANCIAL IMPLICATIONS:</b> (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
<b>LEGAL IMPLICATIONS:</b> (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
<b>RISK MANAGEMENT:</b>	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
<b>LINKS TO COMMUNITY PLAN:</b>	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

#### **ACCESS TO INFORMATION**

#### **NON-CONFIDENTIAL**

**This report does not contain information which warrants its consideration in the absence of the Press or members of the public**

<b>REFERENCE DOCUMENTS:</b>	The background papers relating to this report can be inspected by contacting the report author, Sandra Stewart, Chief Executive & Head of Paid Service:
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## 1. INTRODUCTION

- 1.1 This report is intended to brief members on any developments and news on matters of local government ethics.
- 1.2 It will look at news items and any relevant case law, as well as any recent published decisions from other local authorities or any of the existing standards boards.
- 1.3 It will also provide an update on the work of the CSPL that follows on from their report 'Ethical Standards in Local Government'.

## 2. COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 2.1 The independent Committee on Standards in Public life was established 25 years ago. Its remit has evolved but its role has broadly remained the same – to advise the Prime Minister, national and local government and the public on trends, issues and concerns about standards in public life.
- 2.2 Evidence-based recommendations and reports by the Committee over the years have led to the establishment of many of the standards bodies that exist today.
- 2.3 The Committee doesn't investigate individual cases but acts as the guardians of the Seven Principles of Public Life – the Nolan Principles. Everyone in public office at all levels – Ministers, civil servants, NHS staff, the police, council officers – all who serve the public or deliver public services should uphold the principles of accountability, honesty, integrity, objectivity, selflessness, openness and leadership.
- 2.4 To mark their 25th anniversary, the Committee commissioned a piece of work on the standards landscape.
- 2.5 The report, which can be found here: [Standards Landscape Final Version 1 .pdf \(publishing.service.gov.uk\)](#) provides an overview of the standards landscape effective in the central and local government and administration of the United Kingdom (UK). It provides a snapshot of the standards regime 25 years after the establishment of the Committee on Standards in Public Life in 1994 and offers a vantage point from which to view its changing shape and form.
- 2.6 Attached herewith is a standards matters summary at **Appendix A**.
- 2.7 Correspondence; Evidence from the Minister of State for the Constitution and Devolution; (26 April) Chloe Smith MP, Minister of State for the Constitution and Devolution, has written to Lord Evans submitting the government's written evidence to the Committee's Standards Matter 2 review <https://www.gov.uk/government/publications/evidence-from-the-minister-of-state-for-the-constitution-and-devolution> This is a precis set out at **Appendix B** of how the government believe standards operate. Since then there have been Three Prime Ministers, Johnson, Truss and now Sunak so it will be interesting to know if this is the prevailing view.
- 2.8 Watchdog urges Levelling Up Secretary to rethink position on local government standards, citing "clear frustration" within councils at limited powers to tackle poor behaviour. The Committee on Standards in Public Life (CSPL) has called on the Government to reconsider its position on the powers of local authorities to sanction councillors for poor behaviour.
- 2.9 In March this year the Government rejected a recommendation by the standards watchdog in its 2019 *Local Government Ethical Standards* report that local authorities should be able to suspend councillors without allowances for up to six months for breaches

of the code of conduct.

- 2.10 The report had also recommended that councillors be given the right to appeal to the Local Government and Social Care Ombudsman if their local authority imposed a period of suspension. The Ombudsman would have been given the power to investigate the allegation and impose a binding decision on the council.
- 2.11 However, in its formal response the Government said: *“There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.”*
- 2.12 In a letter to Levelling Up Secretary, Simon Clarke (pictured), this week (20 October), the CSPL’s chair, Lord Evans, said: *“While we note the government’s commitment to further work to support local government, the Committee is very disappointed that many of its careful recommendations have not been accepted. We aimed in that report to produce a balanced, considered package of recommendations to strengthen the arrangements in place whilst respecting the benefits of a localised approach. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards. There is clear frustration within local authorities at the limited powers within the local government standards regime to address poor behaviour by a minority of individuals.”*
- 2.13 Lord Evans urged the Secretary of State to reconsider the Committee’s recommendations, adding that it *“would welcome a conversation with you to understand how you are taking forward the government’s stated aim to work with local authorities and their representative organisations to ensure that local government is supported in reinforcing its reputation for ethical local standards”*. He added: *“Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence.”*
- 2.14 In July the chair of Camden Council’s Standards Committee wrote to the CSPL to note that the Government’s decision not to implement the watchdog’s recommendations on sanctions had left the local government standards regime with very few powers at a local level. “In effect, the most severe sanction available to local authorities is a finding of a breach of the Code of Conduct. While in councils such as Camden with already high standards, group discipline and close media scrutiny, this does not have any detrimental effect, in other councils without such controls councillors who have behaved very badly will remain in office,” Cllr Richard Cotton said.

### **3. RECENT PUBLISHED DECISIONS**

#### **Code of conduct decision – social media posts**

- 3.1 A town council member has been found by Durham Council’s Standards Committee hearing panel to have brought Spennymoor Town Council into disrepute by posting racist and Islamophobic material on social media, and in a separate complaint, was found to have bullied two town council officers in breach of the town council’s Code of Conduct for members (the Code). For context, Durham Council Standards Committee deal with complaints about the behaviour of Durham County councillors and town/parish councillors within County Durham. In respect of the complaint about racist and Islamophobic material posted on social media, the member had two social media accounts, one where he identified himself as a councillor, and one which he did not. Posts were automatically shared between the two profiles. The question was whether the member was acting,

claiming to act or giving the impression he was acting as a representative of the town council when the posts were shared between the two profiles.

- 3.2 The independent Investigating Officer took into account the Committee for Standards in Public Life (CSPL) report, Ethical Standards in Local Government, on the issue of members acting in their “official capacity” and social media.
- 3.3 The member said the posts were merely expressing his personal opinions in a “private capacity as an individual” the posts never mentioned he was a councillor. The member stated the user settings were set to “friends” only being able to view the posts, however it was found that any Facebook user could view the posts.
- 3.4 In taking the CSPL report into account, the Investigating Officer stated that the posts by the member could be seen or interpreted as being published in an official capacity as the accounts were not independent of each other; the posts were accessible and could receive “enormous exposure.” He stated *“It’s not done in private. It’s not the equivalent of a conversation with a close friend behind closed doors. It’s the opposite of that”*.
- 3.5 The Investigating Officer cited the guidance from the Public Services Ombudsman for Wales which is contained in the CSPL report: “ If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media.... If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute ...” Having found that the town council’s Code applied to the posts, the next question the Investigating Officer considered was whether the posts breached the Code. The member stated that he was not a racist and had the posts been racist or discriminatory, these would have been removed by Facebook under its Community Standards. The member maintained his posts were protected under his right to freedom of expression.
- 3.6 The Investigating Officer described the posts as “on the wrong side of the line” between free speech and an “attack on all Muslims, a denial of their right to live in this country”. He further stated, “not only do they single out a specific group – Muslims – for offensive treatment; they offend against anyone who values democratic principles, such as pluralism, mutual respect and tolerance.”
- 3.7 One of the posts also indicated support for a white supremacist conspiracy theory, and when read alongside other posts by the member, the posts were racist and were not protected in law under the right of freedom of expression and could therefore be considered a breach of the Code in failing to show respect to others. In a separate complaint involving the same member, the Investigating Officer found that the member was disrespectful and bullying towards two town council officers which included discussing whether one officer’s employment should be terminated.
- 3.8 The remarks made in an official capacity about the officers, some on social media, despite a previous warning, were described as unfounded, unfair, distressing, humiliating, undermining and embarrassing. The behaviour harmed the public interest in good administration. The member stated that he was “being open and honest” and trying to defend himself. He never intended to bully staff and apologised. The above complaints were considered by Durham County Council’s Standards Committee hearing panel, which upheld the Investigator’s recommendations that the member had breached Spennymoor Town Council’s code of conduct for members.
- 3.9 Under sanctions, the member was required give a written apology to one of the officers; take part in mediation; undertake training on the Code of Conduct; undertake training on Member- Officer relations, as well as Equality and Diversity training within three months of the hearing. <https://www.durham.gov.uk/media/36927/Standards-Committee-Hearing->

### **Disqualification**

- 3.10 A Maldon District Council member has been disqualified after being found guilty at Chelmsford Crown Court in February 2022 of breaching a non-molestation order. The member was given eight months in prison (suspended for 18 months). Section 80(1)(d) of the Local Government Act 1972 states that if a custodial sentence of three months or more is handed down, then the elected member is automatically disqualified.
- 3.11 Previously in September 2021, Maldon District Council (the Council) upheld six complaints against the member who was found to have failed to treat others with respect; bullied officers and other members; to have disclosed confidential information about another member on social media; and had deliberately attempted to undermine the Council's Code of Conduct process, bringing his office and the Council into disrepute.
- 3.12 Prior to the conviction, the Standards Committee had been due to consider another investigation report into further complaints made about his disruptive behaviour at subsequent council meetings. <https://www.bbc.co.uk/news/uk-england-essex-60560151>

### **Conduct at Planning Meeting**

- 3.13 The Monitoring Officer for Babergh and Mid Suffolk District Council was forced to bring a planning committee to a halt mid-session after some councillors were seen to be passing a document to each other that was not part of the planning application papers before the committee.
- 3.14 The document was a feasibility plan showing an earlier alternative layout for a development site and dates from 2020. Once the issue was raised, the Council's Monitoring Officer immediately adjourned the meeting to investigate any procedural irregularities. Each committee member was interviewed by the Monitoring Officer and there was no evidence that there had been any attempt to influence the committee members or Councillor disqualified after receiving 8 month suspended sentence Councillor removed from Planning Committee until further training provided influence the outcome of the planning decision when the document was circulated by some of the committee members. Members confirmed that they considered the document to be immaterial to the planning application.
- 3.15 During the investigation, one committee member revealed information that demonstrated that they "did not have the requisite skills and understanding of the planning process" and has been removed from the committee until further training on the planning process is provided.
- 3.16 The Monitoring Officer concluded that the integrity of the planning process had not been undermined by the circulation of the old plan as members had not been influenced when the plan was shared. Members were instructed to disregard the document, however due to the planning committee not being able to reconvene in its original form, the application heard at the committee was struck through, and the process will start afresh, that is, the officer will repeat their presentation and the speakers will be invited to repeat their submissions to ensure the process is fair, transparent and legally sound. <https://www.midsuffolk.gov.uk/news/statement-regarding-investigation-into-procedural-irregularities-during-babergh-planning-committee-meeting/>
- 3.17 The report of the Council's Monitoring Officer can be found here: <https://www.midsuffolk.gov.uk/assets/Communications/Planning-Committee-10-August-2022-Investigation-Report.pdf>

#### **4. DECLARATIONS OF INTEREST**

- 4.1 Members ordinarily complete their register within the 28 day period of being elected. However, members are reminded that this is a live document and therefore needs to be reviewed regularly to ensure it is up to date. Failure to keep their register of interests up to date could lead to a complaint being received against a member that it is not accurate and also misleading.
- 4.2 In order to improve compliance and act as a prompt all elected members were asked to confirm their records were correct at the last Council meeting in September. The records are currently being updated.

#### **5. RECOMMENDATION**

- 5.1 Members are asked to consider the report and comment on its contents (as applicable) and note its contents.