

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning**

**Julie Muscroft**

The Democracy Service

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Monday 21 September 2020

## Notice of Meeting

Dear Member

### Standards Committee

The **Standards Committee** will meet in the **Virtual Meeting - online** at **10.00 am** on **Tuesday 29 September 2020**.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

**Julie Muscroft**

**Service Director – Legal, Governance and Commissioning**

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

## **The Standards Committee members are:-**

### **Member**

Councillor Paul Davies (Chair)

Councillor Bill Armer

Councillor Martyn Bolt

Councillor James Homewood

Councillor Alison Munro

Councillor Shabir Pandor

Councillor Mohan Sokhal

# Agenda

## Reports or Explanatory Notes Attached

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### Pages

**1: Membership of the Committee**

This is where Councillors who are attending as substitutes will say for whom they are attending.

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**2: Minutes of Previous Meeting**

1 - 4

To approve the Minutes of the meeting of the Committee held on 11 March 2020

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**3: Interests**

5 - 6

The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the items or participating in any vote upon the items, or any other interests.

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**4: Admission of the Public**

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

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**5: Deputation/Petitions**

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10 (2), Members of the

Public should provide at least 24 hours' notice of presenting a deputation.

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## **6: Public Question Time**

The Committee will hear any questions from the general public. Due to Covid-19 restrictions, questions should be submitted via [executive.governance@kirklees.gov.uk](mailto:executive.governance@kirklees.gov.uk) no later than 10am on 28 September 2020.

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## **7: Code of Conduct Complaints Update**

7 - 18

To receive a report looking at the complaints received since 11 March 2020

Contact Officer: David Stickley – Senior Legal Officer - 01484 221000

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## **8: Cases and News Update**

19 - 140

To receive a report setting out news and cases of interest since March 2020.

Contact Officer: David Stickley – Senior Legal Officer - 01484 221000

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## **9: Committee on Standards In Public Life Follow Up**

141 -  
150

To receive an update on the current review.

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Contact Officer: Leigh Webb

**KIRKLEES COUNCIL**  
**STANDARDS COMMITTEE**

**11 March 2020**

Present: Councillor Paul Davies (Chair)  
Councillor Bill Armer  
Councillor Martyn Bolt  
Councillor James Homewood  
Councillor Alison Munro  
Councillor Mohan Sokhal

In attendance: Mike Stow – Independent Person

**1 Membership of the Committee**

Apologies for absence were received on behalf of Councillor Pandor.

**2 Minutes of Previous Meeting**

**RESOLVED** - That the minutes of the meeting held on the 25 November 2019 be approved as a correct record.

**3 Interests**

It was noted that Councillors Armer and Bolt were Members of either a Town or Parish Council.

**4 Admission of the Public**

It was noted that agenda items would be considered in public session.

**5 Deputation/Petitions**

No deputations or petitions were considered.

**6 Public Question Time**

No questions were asked.

**7 Code of Conduct - Complaints Update**

The Committee received a report which provided an update on complaints that had been received since the last consideration at the meeting held on 11 September 2019. The Committee was informed that the report is prepared every six months and gives a breakdown of complaints received.

Since the 11<sup>th</sup> of September 2019 the Monitoring Officer has received 18 complaints relating to alleged breaches of the Code of Conduct. This figure includes multiple complaints relating to 1 councillor.

## Standards Committee – 11 March 2020

It was reported that 10 complaints relate to Kirklees Councillors (a total of 11 Councillors) and 8 relate to parish councillors. The number of identified Town or Parish councillors complained about is 6, from 2 Town or Parish Councils.

Of these:

- 3 were not progressed after the initial assessment process
- 1 was dealt with informally.
- The remaining 14 are relatively recent and 9 are currently being investigated before being considered under the initial assessment process, with the remainder being part way through the formal standards process.

The Committee was advised that since the publication of the report a one complaint had been closed taking the numbers being investigated from 9 to 8.

During consideration of the complaints update, Members of the Committee discussed the issue of non-compliance with sanctions and how decisions are publicised. With regard to non-compliance it was suggested that these cases could be publicised to help prevent sanctions being ignored. Councillor Bolt highlighted his view that in effect non-compliance with the sanctions was contrary to the Declaration of Office signed by all new Members, which states they will abide by the Council's Code of Conduct. On the wider issue of how outcomes are reported, the Monitoring Officer explained that decisions are published through the Council's website and it was a matter for the press to decide on whether these are reported in the newspaper. The Chair gave an undertaking that the issue of how the outcomes of complaints are publicised would be further looked at.

**RESOLVED** - That the report be received and noted.

### 9 Standards - Cases and News Update

The Committee considered a report which provided information on developments, news and matters of local government ethics, including relevant case law.

The report also included an update on the work of the Committee for Standards in Public Life, who, in a joint exercise with the Jo Cox Foundation, had undertaken a review of individual political parties' Codes of Conduct. The purpose was to create a 'Joint Standard' that would outline a shared understanding of the minimum standards of behaviour expected of all party members.

Furthermore it was reported that the Local Government Association (LGA) had become involved in the drafting of the model Code of Conduct that the CSPL had recommended in their report.

**RESOLVED** -

- 1) That the report be received and noted.
- 2) That the draft Model Code of Conduct be submitted to the September meeting of this Committee.
- 3) That this Committee wishes to participate in the consultation on the draft model code of conduct that is being prepared by the LGA and delegates

## **Standards Committee – 11 March 2020**

authority to the Monitoring Officer to draft a response in consultation with members of the Standards Committee and Group Business Managers.

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<b>KIRKLEES COUNCIL</b>			
<b>COUNCIL/CABINET/COMMITTEE MEETINGS ETC</b>			
<b>DECLARATION OF INTERESTS</b>			
Standards Committee			
<b>Name of Councillor</b>			
<b>Item in which you have an interest</b>	<b>Type of interest (eg a disclosable pecuniary interest or an "Other Interest")</b>	<b>Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]</b>	<b>Brief description of your interest</b>

Signed: ..... Dated: .....

## NOTES

### Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
- (b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



**Name of meeting: Standards Committee**

**Date: 29<sup>th</sup> September 2020**

**Title of report: Code of Conduct complaints update**

**Purpose of report**

To brief the standards committee on Councillor complaints under the Code of Conduct since the last Standards Committee meeting in March 2020.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <u>Strategic Director</u> & name	YES - Rachel Spencer-Henshall
Is it also signed off by the Service Director for Finance IT and Transactional Services?	Yes
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes
Cabinet member <a href="#">portfolio</a>	Cllr Graham Turner

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Has GDPR been considered? Yes**

## **1. Summary**

- 1.1 This report follows on from the report that was before the Standards Committee on the 11<sup>th</sup> of March 2020.
- 1.2 This report will look at the number of complaints received since the 11<sup>th</sup> of March 2020, along with their type and nature.
- 1.3 It will also look at which of those new complaints have been resolved and which are still subject to investigation or further action. It will also provide an update on those complaints that were received in the previous reporting period and were not resolved at the time of the previous report.
- 1.4 It will also compare this period's complaints with the previous period, to see if there are any significant differences or trends.
- 1.5 Some graphical representations of the data on complaints has been prepared, which allows for comparisons for a longer period than the report and these are at the Appendix A to this report. These include data from May 2017 and will highlight whether any trends have become apparent since then.

## **2. Information required to take a decision**

### **2.1 Complaints Summary**

- 2.1.1 Since the 11<sup>th</sup> of March 2020 the Monitoring Officer has received 60 complaints relating to alleged breaches of the Code of Conduct. This figure includes multiple complaints relating to 4 councillors.
- 2.1.2 32 relate to Kirklees Councillors (a total of 13 Councillors) and 28 relate to parish councillors. The number of identified Town or Parish councillors complained about is 3, from 3 Town or Parish Councils.
- 2.1.3 Of these 60, 24 were not progressed after the initial assessment process and 1 was reported by the complainant as being resolved. A further complaint was dealt with as a staffing issue rather than as a standards issue. Of the remaining 34, 2 were resolved informally, 18 were progressed through the formal standards process (along with 3 carried forward from the previous reporting period) and findings were made. The remaining 14 complaints are relatively recent and are currently being investigated before being considered under the initial assessment process.
- 2.1.4 There are a number of interrelated complaints involving one Town or Parish Council.

### **2.2 Update on previous complaints**

2.2.1 Of the 13 complaints recorded in the previous report as then ongoing, these have mostly now been concluded. 3 of these were taken through the formal standards process with the 18 complaints referred to in 2.1.3. 1 complaint was dealt with as a staffing issue, rather than as a standards issue. 1 complaint is on hold, pending further clarification from the complainant. 4 complaints were not taken forward. 4 were referred back to the Town / Parish Council for resolution by mediation.

### 2.3 Previous Report and comparison with the present report

2.3.1 The previous report contained a total of 18 new complaints about 11 named Kirklees members, plus a total of 6 Town and Parish Councillors, covering the period from the 11<sup>th</sup> of September 2019 to the 11<sup>th</sup> of March 2020. This compares with the current period under review, the 12<sup>th</sup> of March 2020 to the 29<sup>th</sup> of September 2020, where there is a total of 60 new complaints that related to 13 named Kirklees Councillors and 3 named Town or Parish Councillors.

2.3.2 The nature of the complaints in the present report concern the behaviour of members towards members of the public (5 complaints relating to 6 members), whilst 30 concern the behaviour of 4 members in social media posts, 1 concerns behaviour towards an officer, 22 concern behaviour at meetings, and 2 concern the behaviour of a member during lockdown.

The sources of the complaints are that 6 were received from a Town or Parish Councillor, 1 was from an officer of a Town or Parish Council, 1 was from a Kirklees Councillor, and the remaining 52 were from members of the public.

2.3.3 Comparing this to the previous report, complaints there were about the behaviour of members towards members of the public (3 complaints relating to 3 members), whilst 9 concerned the behaviour of 5 members in social media posts, 1 concerned behaviour towards an officer, 1 concerned alleged failures to comply with sanctions from a previous complaint, 3 concerned behaviour at meetings, and the final complaint concerned allegations made in the local press.

Of these 18 complaints, 5 were received from 4 Town or Parish Councillors, 2 came from Town or Parish clerks and the remainder came from members of the public.

2.3.4 Comparison between the two reports, shows that the overall number of complaints has risen from 18 to 60, whilst the number of Councillors complained about has fallen slightly to 16 from 17. The rise in overall

numbers is attributable to a high number of complaints about two Councillors in the current period.

2.3.5 In this period, we have seen 6 instances of a 'multiple' complaints, with the same complaint being made and supported by more than one complainant.

2.3.6 The total number of complaints relating to Town or Parish Councils has risen in the current period, and remains a cause for concern, particularly as the same Town or Parish Council member that was the subject of a significant number of previous complaints is again the subject of a large number of complaints, with a total of 24 complaints in this period about just this one member.

### **3. Implications for the Council**

#### **3.1 Working with People**

N/A

#### **3.2 Working with Partners**

N/A

#### **3.3 Place Based Working**

N/A

#### **3.4 Climate Change and Air Quality**

N/A

#### **3.5 Improving Outcomes for Children**

N/A

#### **3.6 Other (eg Legal/Financial or Human Resources)**

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 reputational implications.

### **4. Consultees and their opinions**

N/A

**5. Next steps**

- 5.1 The Monitoring Officer will continue to assess any complaints about members' conduct as and when they are received and will report the outcomes to this committee as appropriate.

**6. Officer recommendations and reasons**

- 6.1 It is recommended that the report is noted and the Standards Committee have regard to the information in considering the training and support requirements for Councillors.

**7. Cabinet portfolio holder's recommendations**

N/A

**8. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

**9. Background Papers and History of Decisions**

- 9.1 N/A

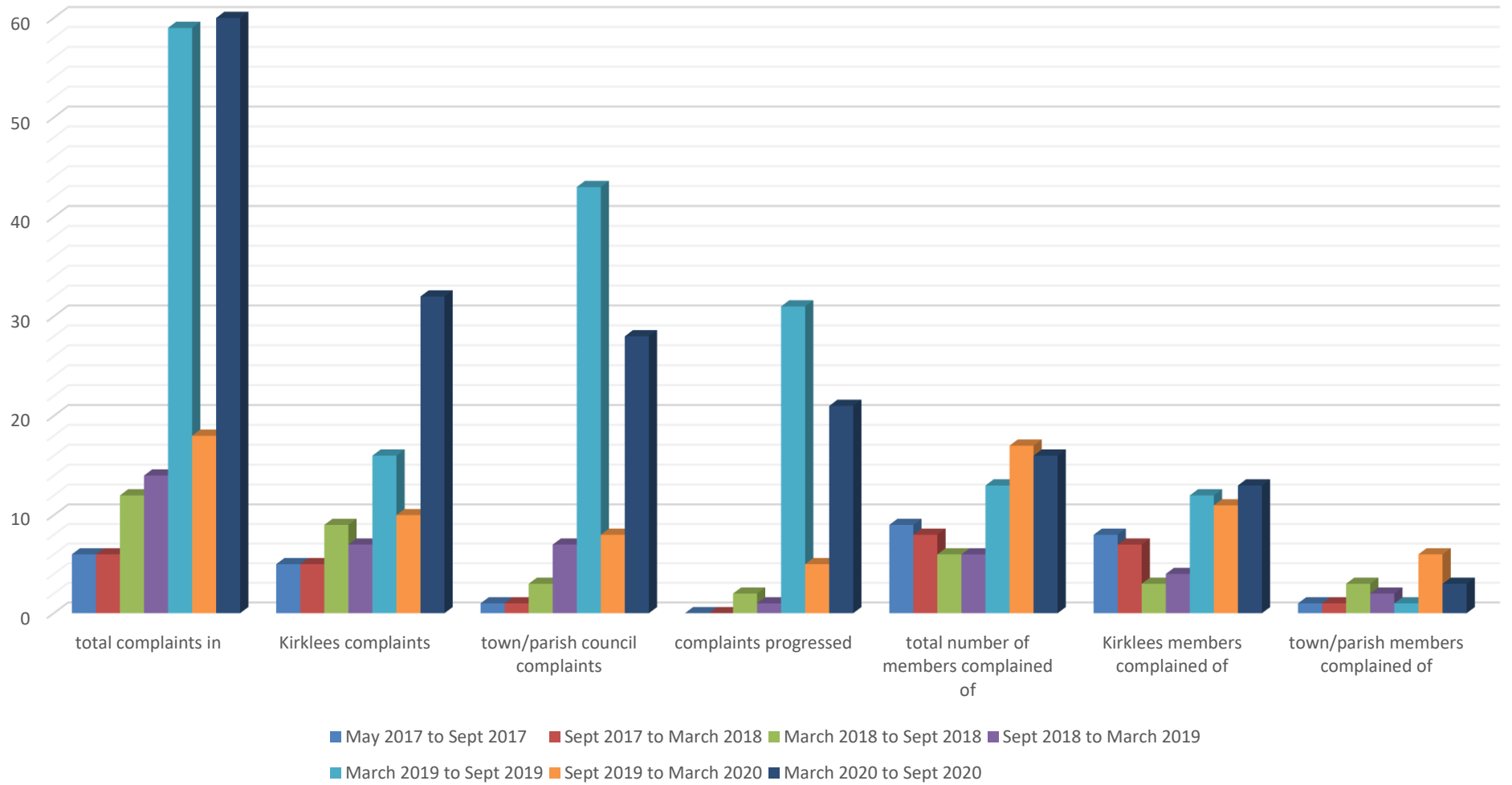
**10. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

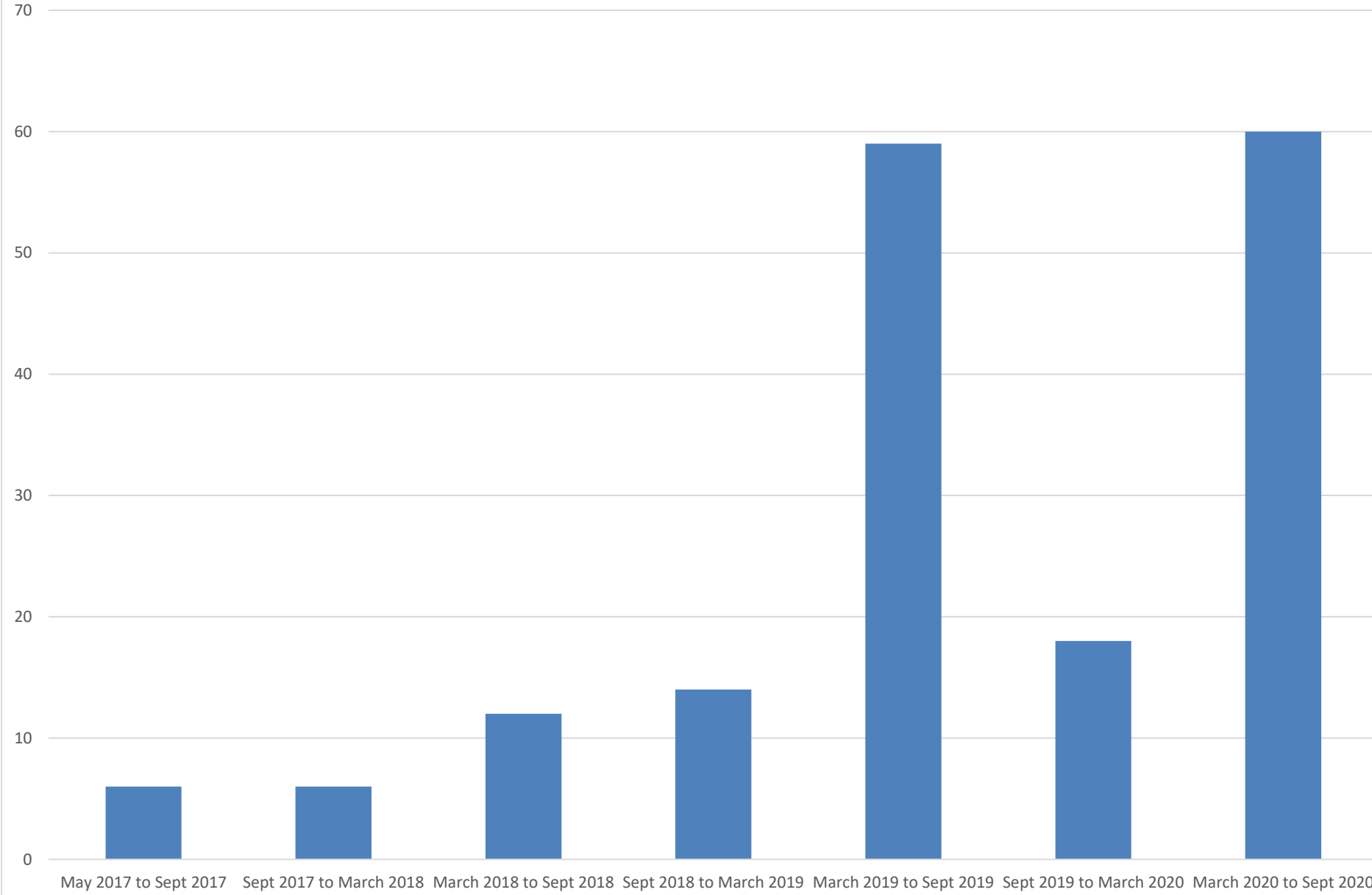
## **Appendix A**



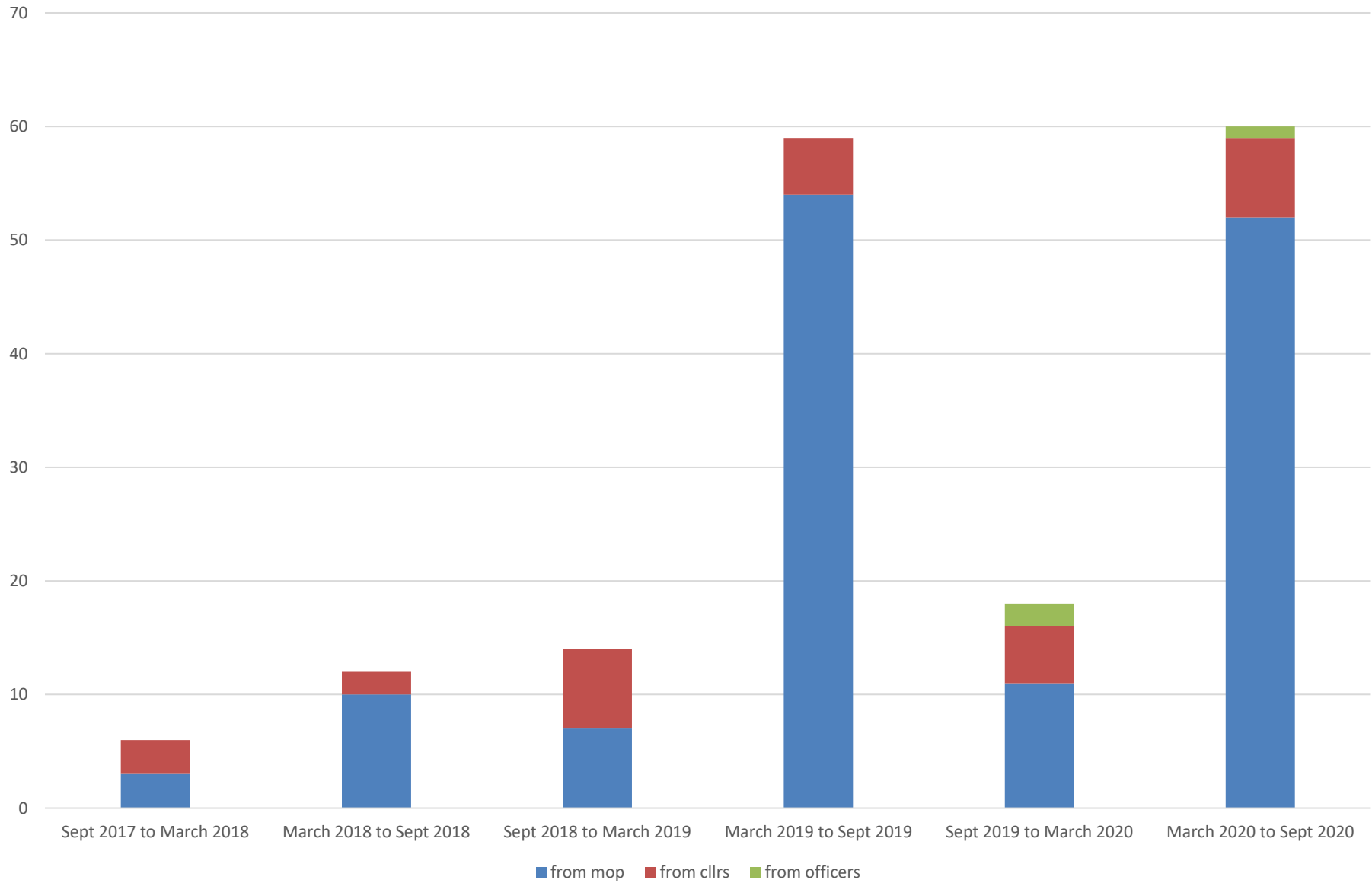
# Complaints summary



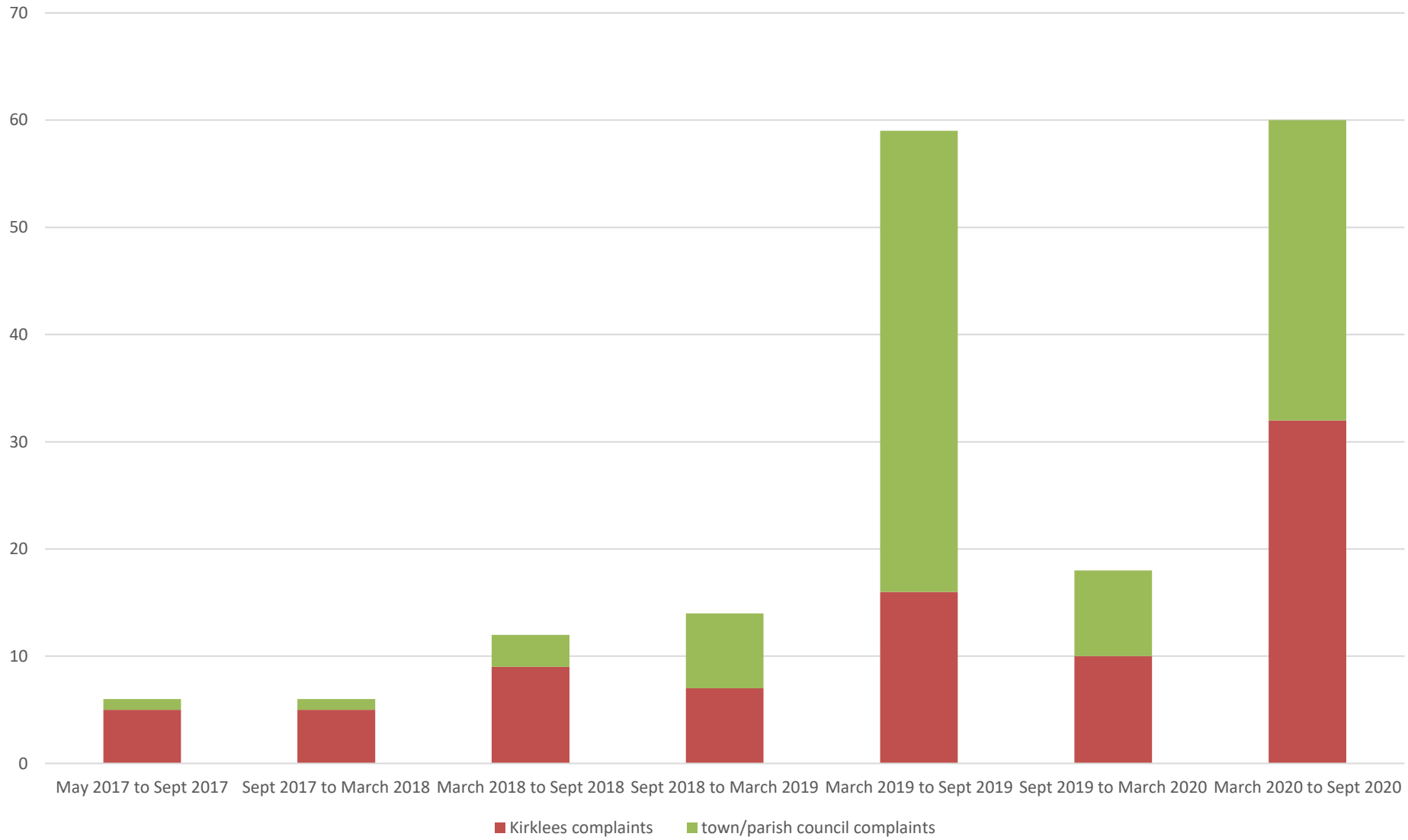
Total complaints in



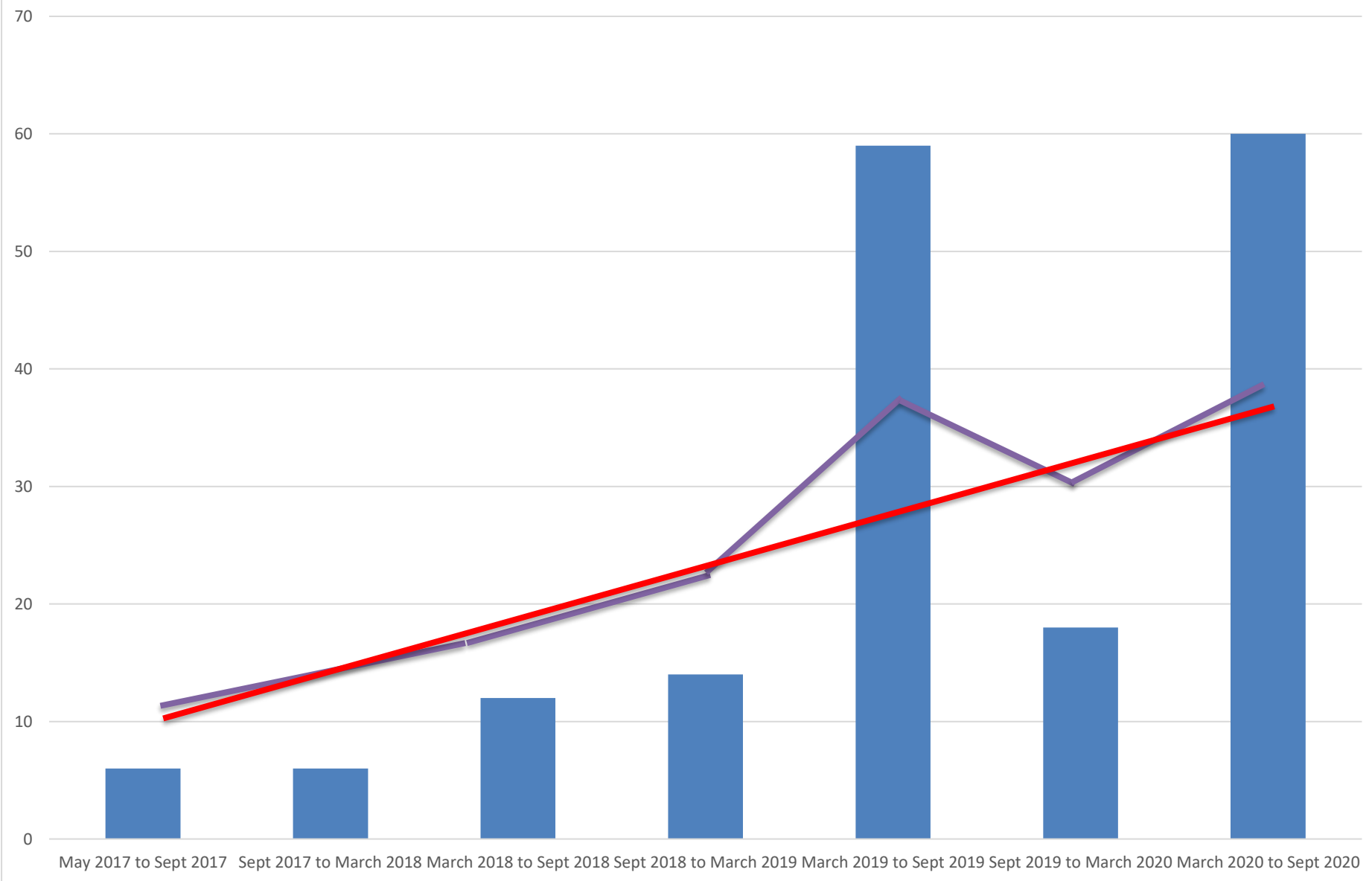
### Sources of complaints received



### Complaints - Kirklees / Town and Parish Councils



Total complaints in trends



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**Name of meeting: Standards Committee**

**Date: 29<sup>th</sup> September 2020**

**Title of report: Cases and News Update**

**Purpose of report**

To brief the standards committee on any news and cases of interest since March 2020.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <u>Strategic Director</u> & name	Yes – Rachel Spencer-Henshall
Is it also signed off by the Service Director for Finance IT and Transactional Services?	Yes
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes
Cabinet member <a href="#">portfolio</a>	Cllr Graham Turner

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Have you considered GDPR? Yes**

## **1. Summary**

- 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. Information required to take a decision**

### **2.1 News since March 2020**

- 2.1.1 A number of sources have been checked for details of any news items that are of relevance or may be of interest to the committee.
- 2.1.2 These include Local Government Lawyer, Lawyers in Local Government, the various standards boards' websites, websites of other local authorities as well as local and national media.
- 2.1.3 There are a number of articles, from the Local Government Lawyer website, which may be of interest to the committee, even if all are not directly relevant to the work of the committee. Copies of the articles are at appendix A, but the following are of particular interest.
- 2.1.4 In July 2020 Wakefield Council had to explain to residents that there were no powers to remove a councillor who had been convicted of sexual offences involving children, but was then yet to be sentenced.
- 2.1.5 In June 2020, Richard Harwood QC reported a case in which the High Court had considered the issues around lobbying. This followed the London Borough of Hackney advising planning committee members to not read correspondence sent to them concerning applications. The High Court found that such communications were an important part of the local democratic process.
- 2.1.6 In June 2020, the LLG website published a report about NALC calling for there to be a power of suspension and asking the government to take urgent action to introduce such a power.
- 2.1.7 In June 2020 it was reported that a community councillor in Wales had failed to secure an injunction to prevent the Public Service Ombudsman for Wales investigating complaints about him.
- 2.1.8 A search of local newspaper websites has thrown up a number of stories about councillor conduct, ranging from a report of one council



receiving almost 180 complaints in 6 months, to a councillor being removed from a virtual meeting, one council fighting back about social media posts and the possibility of a Standards Commission hearing being streamed online. Details are in appendix A.

## 2.2 Recent published decisions

- 2.2.1 Some Local Authorities in England publish their decisions on member complaints, as do the Standards Boards in Wales, Scotland and Northern Ireland.
- 2.2.2 The Standards Commission for Scotland has continued to work, holding hearings remotely.
- 2.2.3 A number of hearings have been listed for October 2020 and any decisions of interest will be reported to a future meeting of this Committee.
- 2.2.4 Two hearings have been held since the last report to this Committee, one of which resulted in an elected member being censured. A copy of the decision notice is at Appendix B.
- 2.2.5 The Commissioner for Standards in Northern Ireland has not published any further reports since July 2019. The Commissioner's website advises that the office is currently closed and there is reference to a number of hearings that are yet to be listed.
- 2.2.6 The Local Government Ombudsman for Wales publishes a 'Code of Conduct Casebook' periodically. There have been no 'casebooks' published so far in 2020.
- 2.2.7 The Ombudsman did publish an annual report in May 2020 and the key points to note are that there was an increase in complaints but a decrease in the number of interventions and serious cases.
- 2.2.8 There has been a drop in complaints about alleged breaches of the Code of Conduct of 18%, the report noting a decrease in what it describes as 'frivolous complaints'. An extract from the annual report is attached at Appendix B.
- 2.2.9 The Northern Ireland Local Government Commissioner for Standards reports that hearings are currently on hold, but notes that there are a number to be listed.
- 2.2.10 In England, publication of decisions remains discretionary, although the CSPL did support publishing these, so it may be the case that more decisions from English local authorities are published in due course.

2.2.11 There is in general a lack of published cases from English local authorities in this period and none of interest have been found.

## **2.3 Case Law**

2.3.1 There does not appear to have been any recent reported decisions in the Courts on any matters directly relating to local authority standards, other than the High Court case on lobbying reported on above.

## **2.4 The work of the Committee on Standards in Public Life**

2.4.1 The CSPL have been fairly quiet in follow up work to their report.

2.4.2 Since the last report, the CSPL have published the minutes of their meetings, held on the 27<sup>th</sup> of February 2020, the 19<sup>th</sup> of March 2020 and the 23<sup>rd</sup> of April 2020. There was no direct reference to the Local Government Ethical Standards report in these minutes.

2.4.3 This is probably a reflection of the fact that the Government is yet to respond to the report or to consider setting any legislative timetable to implement any of the recommended changes.

2.4.4 Having said that, the Chair of the CSPL, Lord Evans, has written to Robert Jenrick, Minister for Housing, Communities and Local Government to enquire how soon the government are likely to respond to the report, referring to a letter sent to Mr Jenrick's predecessor in October 2019, which remains unanswered.

## **2.5 Update on work from the CSPL report**

2.5.1 The Code of Conduct review that was recommended be undertaken annually is taking place, on an agreed bi-annual basis.

2.5.2 The consultation exercise has been delayed by the Covid-19 pandemic but it is hoped that this can be finalised and launched shortly.

## **2.6 LGA Consultation on the draft Model Code of Conduct**

2.6.1 This closed on the 17<sup>th</sup> of August and the LGA's response is awaited.

2.6.2 Members were asked to participate and to offer their views. Key officers were also asked to participate.

2.6.3 The outcome of the consultation was originally due to result in a finalised model code being launched by the LGA at their annual conference. However, this was delayed due to the Covid-19 pandemic

and was rescheduled for autumn 2020. It remains to be seen whether the LGA will hold an annual conference in the Autumn and, if not, whether a finalised model code will be launched independently of the annual conference.

2.6.4 It has been reported by Local Government Lawyer that LLG (Lawyers in Local Government), CIPFA and SOLACE have agreed to work together on a joint response to the LGA draft model code.

2.6.5 LLG has issued a response to the draft model code, critical of the sanctions adopted in the draft code. More controversially, it also made the case for the draft code to be mandatory.

## **2.7 LLG Social Media Toolkit**

2.7.1 Lawyers in Local Government (LLG) published their social media toolkit on the 26<sup>th</sup> of August. A copy is at Appendix C.

2.7.2 The toolkit is a comprehensive document that covers all aspects of issues that may arise from the use of social media.

## **3. Implications for the Council**

### **3.1 Working with People**

N/A

### **3.2 Working with Partners**

N/A

### **3.3 Place Based Working**

N/A

### **3.4 Climate Change and Air Quality**

N/A

### **3.5 Climate Change**

In order to minimise any impact, printing is kept to a minimum.

### **3.6 Other (eg Legal/Financial or Human Resources)**

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.

**4. Consultees and their opinions**

N/A

**5. Next steps and timelines**

- 5.1 The Monitoring Officer will continue to monitor any relevant news and cases and will report back to this committee. She will also continue to monitor and report back on the work of the CSPL.

**6. Officer recommendations and reasons**

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

**7. Cabinet portfolio holder's recommendations**

N/A

**8. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

**9. Background Papers and History of Decisions**

- 9.1 N/A

**10. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## Appendix A

## Council says it is unable to remove convicted councillor ahead of sentencing

July 15, 2020

Wakefield Council has explained to local residents that it is powerless to remove a councillor convicted of sex offences involving children.

Independent councillor Alex Kear is reported by the BBC to have admitted trying to entice a child aged under 13 to engage in sexual activity, and attempting to incite a child into pornography.

He is due to be sentenced on 20 August at Leeds Crown Court.

Gillian Marshall, the council's chief legal officer, said: "Under local authority legislation, Alex Kear remains a councillor. Wakefield Council is powerless to remove him at this stage.

"Central government has essentially left local councils powerless to take action in these situations. We do not have any authority to remove elected members from their position, regardless of the severity of their alleged crimes, unless they receive a significant custodial sentence.

"Therefore unless Cllr Kear chooses to resign, he remains a councillor. This will be reviewed when he is sentenced."

She said the council had taken "appropriate safeguarding measures" when it became aware of West Yorkshire Police's investigation of the matter.

## The right to lobby councillors: Holborn Studios 2

June 26, 2020

***A High Court judge recently considered the right of local councillors to receive correspondence from the public and to consider it when making decisions. Richard Harwood QC analyses the outcome.***

The High Court has ruled, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications.

Holborn Studios run the largest photographic studio in Europe. Redevelopment is proposed by their landlords, with a scheme which will not accommodate them. In 2017 planning permission was quashed because of an unfair failure to reconsult on amendments and a failure to disclose application documents in breach of a legitimate expectation: *R (Holborn Studios) v London Borough of Hackney* [2017] EWHC 2823 (Admin). A new application was considered by Hackney's Planning Sub-Committee in January 2019. Shortly before the meeting Holborn Studio's managing director wrote to the committee members about the officers' report and received this reply from the chair:

*"Planning members are advised to resist being lobbied by either applicant or objectors."*

Holborn Studio's solicitors, Harrison Grant, then wrote to the planning officers, copying in the committee members, explaining why the officer recommendation to refuse the application should be rejected. They also said that Hackney's approach of not allowing committee members to read representations sent to them was unlawful. A councillor replied that he had been given legal advice that he "*should forward any lobbying letters to Governance Services and refrain from reading them*". Consequently, he said, "*I have not read your email*". In an addendum report the officers responded to the solicitors' letter:

*"Members are warned about viewing lobbying material as this can be considered to be prejudicial to their consideration of the application."*

This reflected the Council's leaflet '*How to have your say at the Planning Sub-Committee*', sent to the public in advance of the meeting "*it is advised that you don't contact any of the councillors before a meeting*".

The particular issue was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in *R(Legard) v Royal Borough of Kensington and Chelsea* that "*As democratically elected*

*representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining".*

Holborn Studios relied on Article 10 of the European Convention on Human Rights and the common law. Article 10 provides *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information ... subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society"*. In *R(Lord Carlisle of Berriew v Secretary of State for the Home Department* Parliamentarians asked for the exclusion of a dissident Iranian politician from the United Kingdom to be lifted to enable her to address meetings in Parliament on issues associated with Iran. Lord Neuberger said at paragraph 91, discussing meetings with MPs and Peers:

*"These are hugely important rights. Freedom of speech, and particularly political speech, is the foundation of any democracy. Without it, how can the electorate know whom to elect and how can the parliamentarians know how to make up their minds on the difficult issues they have to confront? How can they decide whether or not to support the Government in the actions it wishes to take?"*

Baroness Hale emphasised that whilst the politician could still speak to UK Parliamentarians by video or audio link, or they could see her in Paris, the preventing a meeting at Westminster was still an interference with the Parliamentarians' Article 10 rights.

Holborn Studios also relied on the common law as being in step with Article 10 citing Lord Steyn in *R v Secretary of State for the Home Department ex p Simms*:

*"The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible. ... In Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1990] 1 A.C. 109, 283-284, Lord Goff of Chieveley expressed the opinion that in the field of freedom of speech there was in principle no difference between English law on the subject and article 10 of the Convention. ...*

*"Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" Abrams v. United States (1919) 250 U.S. 616, 630, per Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country ..."*



Dove J referred to the Local Government Association's publication "*Probity in Planning*" which says "*Lobbying is a normal part of the planning process*". It was "*indisputably correct*" that "*that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest*" (para 78). He held (para 78):

*"Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as proportionate the discouragement, prohibition or prevention of communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."*

Mr Justice Dove concluded (para 79):

*"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them."*

*81. ... The standard correspondence clearly advised against members of the public writing directly to members of the committee; there was no warrant for that advice or discouragement and it impeded the freedom of expression of a member of the public who was entitled to write to a member of the planning committee setting out in his or her own terms the points they wish to be considered in respect of an application and expect that the member would have the opportunity to read it.”*

The permission was not quashed on this ground since whilst committee members had thought they were obliged to disregard a letter from Holborn Studios’ solicitors, their points were made by their QC at the committee meeting.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The planning permission was though quashed because the council failed to make affordable housing viability assessments available to Holborn Studios and the public. These were background papers and given government policy and guidance on transparency, the public interest did not allow these to be exempt information. Dove J found that the viability material which was published to justify a reduced affordable housing contribution was ‘opaque and incoherent’.

## NALC renews calls for power to suspend councillors for up to six months

June 23, 2020

The National Association of Local Councils (NALC) has called on the Government to take “urgent action” to introduce a power for local authorities to suspend councillors for up to six months.

The introduction of such a power was **recommended by the Committee on Standards in Public Life** in a report in January 2019 to the Prime Minister on improving ethical standards in local government.

NALC has made its call after working with the Local Government Association (LGA) on the development of an updated national model code of conduct for all tiers of local government.

The LGA published the draft code earlier this month for consultation.

On the power to suspend, NALC said: “Failure to introduce this sanction alongside other measures will risk wider steps being taken to improve ethical standards, such as the model code of conduct and training for councillors and clerks, as being ineffective.

“Now more than ever, high standards of conduct in government at all levels are needed to protect the integrity of decision making, maintain public confidence and to safeguard local democracy.

“That is why NALC is also calling for the Committee on Standards in Public Life to publish a timetable for reviewing progress on the implementation of the report’s wider recommendations and best practice to ensure this important issue continues to be a priority for action.”

## Community councillor in Wales fails to secure injunction to stop Ombudsman investigating complaints against him

June 12, 2020

A High Court judge has rejected an application by a community councillor for an injunction against the Public Service Ombudsman for Wales (PSOW) to stop its investigation of complaints made against him.

Jonathan Bishop had been the subject of complaints by the former clerk, the chair and vice-chair of the Taff's Well and Nantgarw Community Council.

The application for an injunction was made on an urgent basis, before a claim had been issued.

In *Bishop v Public Service Ombudsman for Wales* [2020] EWHC 1503 (Admin) His Honour Judge Jarman QC, sitting as a judge of the High Court, said the basis of the application was that the complaints should be investigated under a local resolution procedure which had been adopted by the council, and not by the statutory procedure under Part III of the Local Government Act 2000.

Cllr Bishop asserted that the former procedure, which is an informal non statutory procedure, was appropriate where, as here, complaints were made against a councillor by another councillor rather than a member of the public.

In his pre-action protocol letter the applicant set out three reasons why the Ombudsman did not have the power to investigate the complaint. These were:

1. Issues of politeness should be dealt with under the local resolution procedure.
2. Councillors and officers are expected to have a thick skin.
3. Allegations made by the vice-chair about the applicant were made outside the political arena.

A "further aspect" was then stated to be that named members of PSOW staff had acted in a biased manner towards him in other referrals or complaints. This included that complaints against him had been treated more favourably than complaints which he had made against the complainants. Mr Bishop expanded upon this in his oral submissions by saying that his complaints were not investigated but those against him were.

The complaint by the chair of the council, Alun Fowler, was made in September 2019. The following month the Ombudsman wrote to Cllr Bishop to inform him that the complaint would be investigated.

That investigation is now in the process of collating evidence. By letter dated 31 March 2020 the Ombudsman informed Cllr Bishop that the complaint against him by the vice-chair, Helen Edmunds, would not be investigated as a stand-alone complaint but as part of the ongoing investigation.

In an email Cllr Bishop informed the Ombudsman of several medical conditions which he has, including autism spectrum disorder and also a high IQ with dyslexia, dyscalculia and dysgraphia.

In a reply sent on 6 April 2020 an assistant investigation manager at the Ombudsman's service replied, saying Cllr Bishop's comments had been noted and would be considered during the course of the investigation.

HHJ Jarman QC said Cllr Bishop's contention that the Ombudsman should not be investigating the complaints against him under the statutory procedure but that the complaints should be dealt with in the local resolution process was at the heart of his application for an injunction to stop the current investigation.

Counsel for the Ombudsman, Gwydion Hughes, submitted that such an injunction should not be granted for three reasons:

1. There was no good reason or urgency to justify making the application prior to the commencement of a claim.
2. There was no serious issue to be tried with a real as opposed to a fanciful prospect of succeeding at trial.
3. Exceptional circumstances would have to be shown before a court prevented a statutory investigatory body from exercising its powers of investigation, and none were shown here.

HHJ Jarman QC said it was appropriate to deal with the most substantive of those grounds first, namely the second ground that there was no serious issue to be tried.

The judge said: "In deciding whether or not to investigate, as PSOW and OVW [One Voice Wales] guidance make clear, one of the matters taken into account is the seriousness of the complaint.

"In my judgment Alun Fowler's complaint clearly goes far beyond matters of politeness or matters in respect of which he can reasonably be expected to be thick skinned. The reference to obscene and offensive language may come within that category, but the complaint continues to include allegations that the actions of the applicant have caused two clerks to resign and a third to consider her position, to enclose a long list of complaints against the applicant, that most members of the council have indicated a wish to resign if the applicant is not dealt with, and to enclose statements showing a pattern of unacceptable behaviour on the part of the applicant."

He continued: “Each of those other aspects of the complaint is in my judgment clearly capable of amounting to a lack of consideration for others and/or may reasonably be regarded as bringing the office or authority into disrepute. Each of these is in a different category to a lack of politeness or a matter in respect of which other members of the council should be thick skinned about.

“In my judgment the applicant does not have a real prospect of succeeding at trial in establishing that the complaints against him should be dealt with in the local resolution process rather than be investigated by the PSOW.”

In respect of the complaint of Helen Edmunds against the applicant, the judge noted that the Ombudsman had informed Cllr Bishop by letter dated 31 March 2020 that it had been decided not to investigate this as a standalone complaint, but as part of the existing investigation.

“Given that Alun Fowler's complaint alleges that the applicant has shown a pattern of unacceptable behaviour and the most of the members of the council had threatened resignation if the applicant is not dealt with, in my judgment that was clearly an approach which PSOW was entitled to adopt,” he said.

As for the applicant's allegation that the Ombudsman had shown bias against him in refusing to investigate his complaints, the judge noted that Cllr Bishop said that the reason the Ombudsman gave for not investigating his complaints was that he had not identified which part of the code he alleged was broken by Alun Fowler, but neither had the latter in his complaint.

“However, it is clear from reading the decision of PSOW in respect of the applicant's complaint against Alun Fowler that that is not the reason given for not investigating that complaint.”

The judge said the reasons were given in a letter from the Ombudsman to the applicant dated 6 April 2020. HHJ Jarman QC went on to cite large extracts from that letter.

He said the Ombudsman's decision was reasoned and reasonable. “It is clear that the request for references to the code in future was a request for assistance for the avoidance of doubt rather than the basis for refusal. The reasons for refusal included lack of evidence, which the applicant said he would only supply if an investigation was initiated, and lack of particularity. This was in marked contrast to Alun Fowler's complaint, which was particularised and accompanied by statements.”

The judge said another particular of bias relied upon by the applicant was that Helen Edmunds' complaint that the applicant said to her that she shouldn't come to council meetings with a communicable infection was being investigated, but his complaint about her

that she said that applicant could not help with voluntary work as a friendly face was needed, was not being investigated.

“However, as is clear from PSOW's letter concerning the former, that is not being investigated as a standalone complaint but as part of the ongoing investigation which includes an allegation of a pattern of unacceptable behaviour on the part of the applicant,” the judge said.

HHJ Jarman QC continued: “Finally, in respect of bias, the applicant says that is shown by how PSOW conducted an interview of his support worker as part of the investigation, after which the support worker wrote to PSOW saying that the draft statement which had been sent to him did not fairly reflect what he said in the interview and was in breach of data protection rights arises. In my judgment this is far from justifying the allegation of bias.”

The applicant submitted before the judge that the complaint of Helen Edmunds dealt with matters outside council business and therefore came within the principle in *Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)*.

HHJ Jarman QC agreed with counsel for the Ombudsman that this and any other jurisdictional points could be raised by the applicant in the course of the investigation (see, for example APW/001/2018-19/CT *Councillor Graham Down*).

The judge said the applicant in his oral submissions referred to his medical conditions as impacting upon the subject matter of the complaints against him and his ability to take part in the investigation.

“As indicated above he has made these known to PSOW who has indicated that they will be taken into account and that reasonable adjustments will be made in the investigation. The applicant invited me to extend time for any judicial review claim in light of these conditions, but it is not appropriate to do so unless and until a claim is issued.”

HHJ Jarman QC concluded that he was not satisfied that Cllr Bishop had shown any serious issue to be tried, and that was sufficient to justify refusing to grant the order sought.

The judge said it was not necessary for him to make findings on the other points taken by counsel for the Ombudsman.

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# 180 complaints alleging councillors' misconduct sent to South Tyneside Council - chief fears process is being 'weaponised'

Claims complainants are "weaponising" council processes as reports of alleged councillor misconduct soar in South Tyneside.

By Chris Binding

Tuesday, 7th July 2020, 3:07 pm





A large spike in complaints against councillors could be linked to a “weaponisation” of council processes, legal chiefs have said.

Since January 2020, South Tyneside Council’s monitoring officer has received a total of 178 emails, letters or calls from potential complainants.

This included complainants expressing a wish to make a complaint or sharing information in respect of “perceived elected member misconduct.”

Of this number, only 23 complainants provided further information to support their complaint, with several cases rejected or resolved without the need for investigation.

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A total of 13 complaints are currently ongoing, with many nearing conclusion following delays caused by Covid-19, the meeting heard.

“The [complaints] process itself provides for complaints or communications, that are described as being complaints but mainly aren’t, to be rejected fairly early on if they’re considered to be tit for tat, politically motivated or ‘vexatious’,” Interim Head of Legal Services, John Rumney, said.

“That said, I do think the weaponisation of the process may account for the large numbers that we have seen in recent months.

“But it is certainly nothing new and the process does provide for them [complaints] to be dealt with appropriately.”

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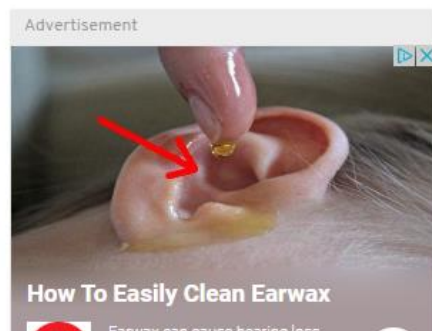
The legal chief was speaking at a Standards Committee meeting on July 6 in response to a question from Coun Doreen Purvis about the complaints process potentially being “weaponised”.

Coun Purvis said examples could include a complaint against a councillor(s) being posted on social media and staying in the public domain, regardless of whether the complaint is pursued.

At the meeting, which was broadcast live on the council’s YouTube page, councillors heard about recent steps that have been taken to improve the complaints process.

This included the introduction of a new ‘complaints form’ which helps complainants to structure their complaint and provide necessary information and evidence.

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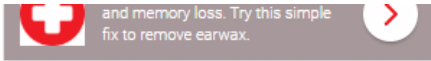
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Despite the large number of complaints, no cases have progressed to the final stage so far such as a formal hearing and/or sanction.

Independent chair of the Standards Committee, Professor Grahame Wright, said that the complaints figure of 178 may be “a little bit misleading”.

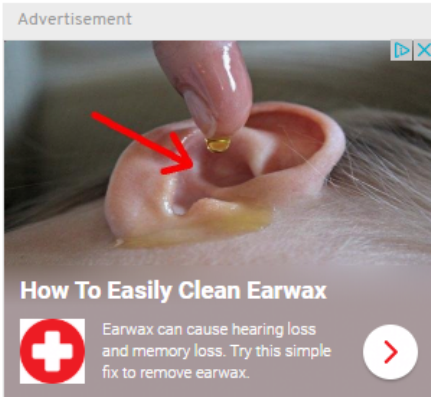




But he noted a “significant number of complaints” were still under active consideration, pending any decision

to investigate further.

Coun Anne Hetherington added that the complaints figures showed “a very serious issue” and asked if there was any previous data to look at comparisons and trends.



“I know the process for dealing with complaints against elected members since some legal reforms are a bit of a toothless tiger,” she said.

“But there are means in the council’s constitution where members can be sanctioned to a degree if a complaint is found to be proven and I would like to see that we’re actually following that through and dealing with complaints to the full extent that we’re able to.

“Particularly if we’re receiving complaints from residents that they see we’re addressing these complaints because we can’t put ourselves above the law that is there to supervise our behaviour as elected members.”

Legal officer Mr Rumney, responding, confirmed council bosses are recording complaints to allow for statistical analysis in future.

But he warned that records for previous complaints may not be available to build a historical picture.



He told the meeting: "The plan is going forward that each complaint which is reviewed and found to be capable of proceeding within the process will be given a number.

"We have already started numbering complaints so that they can be logged and outcomes recorded so statistical analysis can take place in the future.

"Whether it's possible to go back beyond the beginning of this year or late 2019 I'm not sure that the records will be there I'm afraid."

Standards Committee chair, Prof Wright, added: "If you see some of the complaints that we get they're extremely difficult to work out what exactly it is the councillor has meant to have done wrong.

"It's more that somebody is just angry and they want to blame somebody so one of the reasons we have this [complaints] form is to try and guide people so if they have a complaint they can make clear what the nature of that complaint is."

# Wellingborough councillor removed from meeting over outburst

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**A councillor was removed from a public meeting after speaking about his mental health over what he describes as bullying from his authority's leader.**

Robert Gough made the statement at a virtual Borough Council of Wellingborough meeting on Tuesday.

He claimed his mental health issues were being used against him.

Council leader Martin Griffiths said his conduct "was not acceptable". The authority said it takes "allegations of councillor misconduct very seriously".

During an agenda item on a proposed pay rise for Mr Griffiths, Mr Gough attempted to outline the impact the situation has had on his mental health recently.

He was stopped by other councillors who said correct procedures were not being followed and was eventually removed from the meeting.

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Mr Griffiths, who did not attend the meeting which was watched by the public, said: "I am incredibly saddened and sympathetic that councillor Gough is suffering at this time.

"However, the conduct last night was not acceptable at a public meeting."

Mr Gough told the **Local Democracy Reporting Service** his mental health problems, possibly linked to his time in the Army, were being used against him.

The incident was the latest issue within the Wellingborough Conservative Group in recent weeks.

Previously a group of eight councillors, including Mr Gough, had asked for a motion of no confidence in Mr Griffiths citing bullying behaviour and pre-empting of council committee meetings.

The motion did not carry because the group was one short for a vote of no confidence to take place.

Mr Gough, whose Earls Barton ward falls within Daventry constituency, was then suspended by Daventry Conservative Association following complaints against him.

An investigation is ongoing, but he automatically had the whip removed from the Borough Council of Wellingborough's Conservative group.

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# Standards Commission sets hearing date for shamed Aberdeen councillor

by Alastair Gossip

June 23, 2020, 12:10 pm



Former deputy Lord Provost Alan Donnelly

A disgraced Aberdeen councillor has been given a date for a hearing which could end in his removal from office.

Suspended councillor Alan Donnelly will face the Standards Commission on October 6 in the council chambers at Aberdeen Town House.

He was convicted of sexual assault last December and later placed on the sex offenders register, sentenced to eight months supervision and ordered to pay his victim £800 in compensation.

While Donnelly resigned from the Scottish Conservatives and was stripped of all council committee positions, the former deputy provost resisted calls to stand down as a councillor.

After complaints from fellow councillors and members of the public, Donnelly was banned while the ethical standards commissioner compiled a report into his misconduct.

Given his refusal to resign, and with councils not able to sack elected members, the Standards Commission could be the only means for Donnelly's removal from office.

The hearing in October will come more than seven months after his initial ban on March 4.

It is understood plans to have it at the Town House could still change, depending on guidance around the pandemic.

The proceedings will be streamed online.

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## 50 Backpacks in crisis as Fenland Council rips apart damaging allegations made against Wisbech councillor

🕒 PUBLISHED: 12:18 01 July 2020 | UPDATED: 12:18 01 July 2020 | [John Elworthy](#)



An organisation set up to help the homeless was in meltdown this week after its chairman Simon Crowson posted a series of malicious allegations.

Mr Crowson (Spike) used Facebook to fire off damaging accusations against a Wisbech councillor.



The claims were made on his 50 Backpacks Facebook page after he had questioned a 'victim' (a woman in her 30s) and who offered him screenshots of emails sent to Fenland Council intended to support her accusations.

Council leader Chris Boden and chief executive Paul Medd met on Tuesday and authorised an investigation.

The council later issued a statement saying they had "identified both the original email partially published last night and the full correspondence trail associated with that email.

"We can categorically confirm that this email has been completely misrepresented".

On Monday they had become aware "of serious allegations made on 50 Backpacks' Facebook page about Cllr Steve Tierney and Fenland Council.

"The allegations were that Cllr Tierney had been accused of serious sexual misconduct and that Fenland Council had 'covered up' a complaint made about Cllr Tierney's alleged behaviour.

"50 Backpacks purportedly supported their allegation concerning Fenland Council's alleged 'cover up' by publishing a partially redacted section of an email from FDC, sent in 2016."

The council found the correspondence and "we can categorically confirm that this email has been completely misrepresented.

"The email did not in any way relate to a complaint of sexual misconduct against Cllr Tierney; there has never been any complaint received by FDC against Cllr Tierney regarding sexual misconduct." 50 Backpacks had "fundamentally misrepresented" the emails. Fenland Council completely refutes 50 Backpacks' blatantly false claim that the council 'covered up' any allegations of sexual misconduct, whether by Cllr Tierney or by anyone else".

Mr Crowson has since removed the 50 Backpacks page from Facebook. In an oblique message to other Facebook pages today he says: "My job is done, so whatever happens to me or the future of 50 Backpacks is immaterial". There was no apology to either the council or Cllr Tierney.

# Plymouth councillor accused of misconduct over tweet

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor

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By **Edward Oldfield**  
05:00, 2 JUN 2020

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Plymouth City Council's Labour leader has accused a councillor of misconduct over a tweet about a colleague.

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor.

Cllr Singh, who denied the accusation, resigned from the Labour Party in September and now sits as an Independent on the city council.

He tweeted a screenshot of a Facebook post by Cllr Taylor which included a comment that one of the things she would not miss about lockdown was gin hangovers.

The comment by the Cabinet member, who has responsibility for much of the council's health response to COVID-19, is understood to have been light-hearted and was published on her personal profile, visible to friends rather than public.

However the row went public when Cllr Singh published the screenshot in a Tweet on Monday and tagged in several other accounts including the city council's official feed, Labour group leader Cllr Evans, and the city's director of public health Dr Ruth Harrell. He also tagged the city's Labour MP for Sutton and Devonport Luke Pollard, who Cllr Taylor works for.

The tweet, with a screenshot of the post, was then retweeted by Cllr Evans.

Cllr Singh commented in the tweet: "Caseworker for @LukePollard has endured many hangovers due to excessive gin consumption. Getting some support is the first step."

Cllr Taylor, the city council's cabinet member for health and adult social care, said she felt she was being hounded over a "non-issue".



**Cllr Kate Taylor made the comments on a personal social media account** (Image: Paul Slater)

She replied to Cllr Singh's tweet: "Hi Chaz. I have removed you from my social media because I don't want to engage with you so would appreciate it if you would refrain from tagging me in your posts. Your hounding of me via the council and my employer on a non-issue is now verging on harassment."

The council leader then intervened. He retweeted the post from Cllr Singh and added: "I'm reporting this to the Council today. I believe this to be Bullying and harassment by a councillor, to another."



**It is understood Cllr Evans has lodged a formal complaint**

Cllr Evans declined to comment. It is understood he has lodged a formal complaint about Cllr Singh's conduct.

Cllr Singh, who represents the Drake ward, denied his actions amounted to bullying and harassment.

He said he considered it was inappropriate for a councillor with responsibility for adult health to joke about alcohol consumption.

Cllr Taylor declined to comment on the tweets as the issue was expected to become a disciplinary matter.

Cllr Singh, who is a Sikh, resigned from the Labour Party last year after saying membership was no longer compatible with his faith.

The Labour group said the issue related to his "conduct towards another local authority."

It later emerged that the row involved comments Cllr Singh made on Twitter about a wreath-laying ceremony in Bristol.

## **Appendix B**

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on Wednesday 8 July 2020.**

**Panel Members:** Ms Ashleigh Dunn, Chair of the Hearing Panel  
Professor Kevin Dunion  
Mr Paul Walker

The Hearing arose in respect of a Report referred by Ms Caroline Anderson, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/H/3003, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Allan Henderson (the Respondent).

The ESC was represented by Mr Martin Campbell, Director of Investigations and Solicitor to the Commissioner.

**Referral**

Following an investigation into a complaint received about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 30 April 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 5.3, 5.7 and 5.18(2)(ii). The relevant provisions are:

**5.3** *You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

**Your Non-Financial Interests**

**5.7** *You must declare, if it is known to you, any NON-FINANCIAL INTEREST if:*

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code or*
- (ii) that interest would fall within the terms of the objective test.*

*There is no need to declare:*

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or*
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.*

---

*Definition of Exclusions*

**5.18** *The following paragraphs refer to General Exclusions and Specific Exclusions.*

*(2) The Specific Exclusions*

*The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:*



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*(ii) as a member of a Regional Transport Partnership (RTP);*

*In relation to (ii), the exclusion applies to any councillor who is a member of a Regional Transport Partnership established under the Transport (Scotland) Act 2005 by virtue of having been appointed by their council. The exclusion enables such a councillor to take part in the consideration and discussion of, and to vote upon, a matter relating to that RTP or in relation to which the RTP has made a representation; provided that the councillor has declared his or her interest at all meetings where such matters are to be discussed. The exclusion includes quasi-judicial and regulatory matters except any quasi-judicial or regulatory matter on which the RTP has made an application to the council, has formally objected to an application made by another party, or is the subject of an order made or proposed to be made by the council.*

**Evidence Presented at the Hearing**

**Joint Statement of Facts**

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the ESC and the Respondent. The Hearing Panel noted that it was not in dispute that, at a meeting of Highland Council's Environment, Development and Infrastructure Committee on 16 May 2019, the Respondent moved, and voted in favour of, a motion to:

- approve £170,000 worth of additional funds for work relating to Skye Airport / Aerodrome; and
- for him, as Committee Chair, to write to the Transport Secretary on behalf of the Council and also on behalf of HITRANS (being the local regional transport partnership) requesting support.

The Panel noted that HITRANS was a member of a working group established for the purpose of developing Skye Aerodrome into an airport and that the Respondent had been Chair of HITRANS since June 2017. The Panel noted that the post was unremunerated. The Panel noted that it was not in dispute that the Respondent had not declared his interest in HITRANS at the meeting of the Environment, Development and Infrastructure Committee on 16 May 2019

**Submissions made by the ESC's Representative**

The ESC's representative advised that the Respondent accepted that he had breached the Code and had apologised for doing so.

The ESC's representative noted that while councillors may be able to state truthfully that an interest they had in a matter would not influence their discussion or decision-making, they must nevertheless comply with the objective test outlined in paragraph 5.3 of the Code. The ESC's representative argued that, in this case, having applied the objective test as required, the Respondent should have declared his interest in HITRANS. This was because a member of the public with knowledge of the relevant facts, being that:

- the Respondent was the chair of HITRANS; and
- that HITRANS was a member of the working group

would reasonably conclude the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, that his interest could influence his discussion and decision-making on the matters under consideration.

The ESC's representative noted while there would be no need to withdraw in the case of an interest covered by a specific exclusion; paragraph 5.7 nevertheless requires councillors to declare any non-financial interests that would fall within the terms of the objective test. The ESC's representative noted that the specific exclusion at paragraph 5.18(2)(ii) allows any councillor who has been appointed by their Council to be a member of a regional transport partnership to take part in the consideration, discussions and voting on matters relating to that regional transport partnership, provided they declare their interest in it at the Council meeting in question. The ESC's representative advised, therefore, that in this case, the Respondent would have had to have declared the interest in the regional transport partnership in order to benefit from the



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specific exclusion at paragraph 5.18(2)(ii). The ESC's representative argued, therefore, that the failure to do so amounted to a breach of the Code.

The ESC's representative nevertheless asked the Panel to note that:

- the fact that the Respondent was Chair of HITRANS was widely known;
- the funding approved by the committee would not benefit HITRANS; and
- that the Respondent was not the HITRANS representative on the Working Group.

The ESC's representative further asked the Panel to note that the Respondent's position as Chair of HITRANS was unremunerated and that there was no question of him having gained personally from the Environment, Development and Infrastructure Committee's decision.

#### **Submissions made by the Respondent**



### **Submissions made by the Respondent**

The Respondent advised that he considered that the ESC's representative's summary of the case was accurate and fair. The Respondent advised that while his position as Chair of HITRANS was known to all members of the Environment, Development and Infrastructure Committee, he nevertheless accepted that he was aware of the terms of the specific exclusion and that he should have formally declared an interest, in order to benefit from it. The Respondent apologised unreservedly for his failure to do so.

### **DECISION**

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Henderson.
2. The Respondent had breached paragraphs 5.3, 5.7 and 5.18(2)(ii) of the Code.

### **Reasons for Decision**

The Panel noted that paragraph 5.7 of the Code states that councillors must declare any non-financial interest even if the interest is not so remote or insignificant that it could not reasonably be taken to fall within the objective test. In this case, the Panel considered that, having applied the objective test under paragraph 5.3, the Respondent should have reached the view, in terms of paragraph 5.7, that his interest in HITRANS, as a member of the Working Group, would not be perceived as being so remote and insignificant that it could not influence him. This was because the Panel agreed with the ESC's representative that a member of the public would be reasonably entitled to conclude that, as Chair of HITRANS, the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, his interest could influence his discussion and decision-making on the matters under consideration.

The Panel noted the terms of the specific exclusion under paragraph 5.18 of the Code that allowed councillors who were members of regional transport partnerships, such as HITRANS, to take part in the consideration and discussion of, and to vote upon, a matter relating to that regional transport partnership. The Panel noted however, that the specific exclusion only applies if the councillor declares his or her interest at all meetings where such matters are to be discussed. In this case, despite confirming to the Panel that he was aware of the specific exclusion, the Respondent failed to declare an interest at the Committee meeting on 16 May 2019 before taking part in the discussion and decision-making.

The Panel concluded, therefore, that the Respondent's failure to declare his interest in HITRANS at the meeting in question amounted to a contravention of paragraphs 5.3, 5.7 and 5.18 of the Code.

### **Evidence in Mitigation**

The Respondent advised that his failure to declare his interest in HITRANS at the Environment, Development and Infrastructure Committee on 16 May 2019 was simply an oversight. The Respondent explained that this had occurred largely because there had been a full agenda and a large amount of paperwork before the Committee on the date in question. The Respondent further advised that as matters before the Committee did not usually concern HITRANS, the need to declare an interest was not at the forefront of his mind.

The Respondent advised that he was embarrassed by his failure to declare an interest as required and apologised unreservedly to the complainer, Panel and ESC for the breach of the Code.

### **SANCTION**

The decision of the Hearing Panel was to censure the Respondent, Councillor Henderson.

The sanction was made under the terms of section 19(1)(a) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

### **Reasons for Sanction**

In reaching its decision on sanction, regarding the breach of paragraphs 5.3, 5.7 and 5.18 of the Code, the Hearing Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes and offered an unreserved apology in respect of the failure to declare the interest. The Panel accepted the Respondent's submission that the failure to comply with the Code was inadvertent and an oversight.

The Panel emphasised, however, that the requirement for councillors to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making. The Panel noted it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complied with them.

The Panel was nevertheless of the view that the Respondent's conduct did not warrant a more severe sanction. This was because there was no evidence that the Respondent had attempted to conceal his interest or that there was any personal gain. The Panel further noted that while it had found that the Respondent had not declared the interest as required, had he done so, he would still have been allowed to take part in the discussion and decision-making under the specific exclusion in the Code for members of regional transport partnerships.

### **RIGHT OF APPEAL**

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**Date:** 13 July 2020



**Ms Ashleigh Dunn  
Chair of the Hearing Panel**

## Extract from Annual report Ombudsman for Wales

### **Code of Conduct complaints**

#### **(a) New Code of Conduct complaints**

This year we received **231** new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

<b>Body</b>	<b>2019/20</b>	<b>2018/19</b>
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
<b>Total</b>	<b>231</b>	<b>282</b>

This decrease relates entirely to complaints made against members of Town and Community Councils. This is encouraging and suggests that standards of conduct of members of these bodies may be improving and/or that local resolution of issues may be taking place with good effect.

Nevertheless, within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

In fact, 18% of the Town and Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. In those cases, we were very grateful to the Monitoring Officer of the principal authority who agreed to visit the Council to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We take a very dim view of complaints of this nature and have, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

We categorise the subject of the Code of Conduct complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life.

The table below shows the proportion of complaints received under each principle when compared to 2018/19:

Subject	2019/20	2018/19
Accountability and openness	11%	7%
Disclosure and registration of interests	17%	17%
Duty to uphold the law	7%	9%
Integrity	10%	13%
Objectivity and propriety	2%	2%
Promotion of equality and respect	49%	51%
Selflessness and stewardship	3%	1%

As in previous years, the majority of the Code of Conduct complaints that we received during 2019/20 related to **matters of ‘promotion of equality and respect’ (49%)** and **‘disclosure and registration of interests’ (17%)**.

We are concerned that these themes continue to dominate. In fact, we have seen year on year an increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of Local Authorities or Town and Community Councils.

This suggests that members could benefit from training or refresher training on these subjects. However, our impression from investigations is that many members of Town and Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.

Our view is that Code of Conduct training is essential to becoming a ‘good councillor’. We believe that members should embrace this training as soon as they become elected/co-opted and refresh themselves on the provisions regularly. Whilst there is no statutory obligation for members of Town and Community Councils to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

## (b) Closed Code of Conduct complaints

This year we closed **235** Code of Conduct complaints. This represented a 23.7% decrease compared to the previous year. The rate of closures was also inevitably affected by the number of new complaints received. However, we are glad that we still closed more complaints this year than we received.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2019/20:



\* compared to 2018/19

All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place
- it is in the public interest to investigate that matter.

**Public interest can be described as "something which is of serious concern and benefit to the public"**

In 2019/20, we closed 202 or approximately 86% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%).

The remaining complaints taken forward to investigation represented the most serious of the complaints received.

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made one of these determinations in 85% of the Code of Conduct investigations this year.

In cases which cannot be concluded in this manner or feature serious breaches of the Code, it is necessary for us to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2019/20 we made 5 referrals - that is, we referred 2% of all the Code complaints that we closed, compared to 8 or 3% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'. We did, however, investigate a higher proportion of cases related to 'disclosure and registration of interests' than the proportion of this theme in the closed Code of Conduct complaints overall:

Subject	All closed	Closed at assessment	Closed at investigation
Disclosure and registration of interests	17%	15%	30%
Promotion of equality and respect	49%	50%	42%

### (c) Referrals

In 2019/20 we made:

- 4 referrals to the Standards Committees
- 1 referral to the Adjudication Panel for Wales

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

**Between 2016/17 and 2018/19, the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 88% of our referrals**

This year Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by us in 2018/19. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice our investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

#### (d) Lessons

As is clear from the above, we make referrals only in a very small number of cases. We do not believe that the cases that we do refer are indicative of a wider decline in member conduct. Nevertheless, outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

However, even when we do not refer a case, we try to use our investigation as an opportunity to promote good practice. We usually remind the members investigated of their obligations under the Code and, where possible include instruction on further training or engagement with the authority to prevent further possible breaches. We may also make the members aware that the matter could be taken into consideration in the event of any future complaints of a similar nature.

We think that it is important that we continue to look for innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned. Where appropriate, we also want to give members the opportunity to account for their own actions and for further development.

**We plan to revise our Guidance to Members to include analysis of recent cases determined by Standards Committees and the Adjudication Panel for Wales.**



## **Appendix C**

### **LLG, CIPFA and SOLACE to work together on response to LGA draft model code of conduct, call for monitoring officers to be legally qualified**

July 20, 2020

LLG, CIPFA and SOLACE are to work together on a response to the draft model code of conduct that the Local Government Association (LGA) is currently consulting upon.

In a joint statement the three organisations said they would jointly challenge the LGA and “share the insight of our members gained from their close working knowledge of ethical governance within the local authority context”.

LLG, CIPFA and SOLACE said: “Our response to the consultation will explore and contrast the recommendations made by the Committee on Standards in Public Life’s Ethical Review. There is consensus between our organisations on the need for sanctions tailored for local government, including parish and town councils.

“In addition, whilst outside the scope of the code, we will argue in support of other measures which we consider will promote more effective ethical governance and standards such as statutory protection for Monitoring Officers and the requirement that Monitoring Officers should hold a legal qualification.”

The statement added: “This an unmissable opportunity to work together to cement consistency and high standards in governance. Between us, we are determined to raise the bar on acceptable conduct.”

The LGA launched its consultation last month. It runs until 17 August.

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## Appendix A

# Council says it is unable to remove convicted councillor ahead of sentencing

Wakefield Council has explained to local residents that it is powerless to remove a councillor convicted of sex offences involving children.

Independent councillor Alex Kear is **reported by the BBC** to have admitted trying to entice a child aged under 13 to engage in sexual activity, and attempting to incite a child into pornography.

He is due to be sentenced on 20 August at Leeds Crown Court.

Gillian Marshall, the council's chief legal officer, said: "Under local authority legislation, Alex Kear remains a councillor. Wakefield Council is powerless to remove him at this stage.

"Central government has essentially left local councils powerless to take action in these situations. We do not have any authority to remove elected members from their position, regardless of the severity of their alleged crimes, unless they receive a significant custodial sentence.

"Therefore unless Cllr Kear chooses to resign, he remains a councillor. This will be reviewed when he is sentenced."

She said the council had taken "appropriate safeguarding measures" when it became aware of West Yorkshire Police's investigation of the matter.

# The right to lobby councillors: Holborn Studios 2

***A High Court judge recently considered the right of local councillors to receive correspondence from the public and to consider it when making decisions. Richard Harwood QC analyses the outcome.***

The High Court has ruled, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications.

Holborn Studios run the largest photographic studio in Europe. Redevelopment is proposed by their landlords, with a scheme which will not accommodate them. In 2017 planning permission was quashed because of an unfair failure to reconsult on amendments and a failure to disclose application documents in breach of a legitimate expectation: *R (Holborn Studios) v London Borough of Hackney* [2017] EWHC 2823 (Admin). A new application was considered by Hackney's Planning Sub-Committee in January 2019. Shortly before the meeting Holborn Studio's managing director wrote to the committee members about the officers' report and received this reply from the chair:

*"Planning members are advised to resist being lobbied by either applicant or objectors."*

Holborn Studio's solicitors, Harrison Grant, then wrote to the planning officers, copying in the committee members, explaining why the officer recommendation to refuse the application should be rejected. They also said that Hackney's approach of not allowing committee members to read representations sent to them was unlawful. A councillor replied that he had been given legal advice that he *"should forward any lobbying letters to Governance Services and refrain from reading them"*. Consequently, he said, *"I have not read your email"*. In an addendum report the officers responded to the solicitors' letter:

*"Members are warned about viewing lobbying material as this can be considered to be prejudicial to their consideration of the application."*

This reflected the Council's leaflet *'How to have your say at the Planning Sub-Committee'*, sent to the public in advance of the meeting *"it is advised that you don't contact any of the councillors before a meeting"*.

The particular issue was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in *R(Legard) v Royal Borough of Kensington and Chelsea* [1] that *"As democratically elected representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining"*.

Holborn Studios relied on Article 10 of the European Convention on Human Rights and the common law. Article 10 provides *"Everyone has the right to freedom of expression. This right*

*shall include freedom to hold opinions and to receive and impart information ... subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society". In R(Lord Carlisle of Berriew v Secretary of State for the Home Department [2] Parliamentarians asked for the exclusion of a dissident Iranian politician from the United Kingdom to be lifted to enable her to address meetings in Parliament on issues associated with Iran. Lord Neuberger said at paragraph 91, discussing meetings with MPs and Peers:*

*"These are hugely important rights. Freedom of speech, and particularly political speech, is the foundation of any democracy. Without it, how can the electorate know whom to elect and how can the parliamentarians know how to make up their minds on the difficult issues they have to confront? How can they decide whether or not to support the Government in the actions it wishes to take?"*

Baroness Hale emphasised that whilst the politician could still speak to UK Parliamentarians by video or audio link, or they could see her in Paris, the preventing a meeting at Westminster was still an interference with the Parliamentarians' Article 10 rights. [3]

Holborn Studios also relied on the common law as being in step with Article 10 citing Lord Steyn in *R v Secretary of State for the Home Department ex p Simms* [4]:

*"The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible. ... In Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1990] 1 A.C. 109, 283-284, Lord Goff of Chieveley expressed the opinion that in the field of freedom of speech there was in principle no difference between English law on the subject and article 10 of the Convention. ...*

*"Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" Abrams v. United States (1919) 250 U.S. 616, 630, per Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country ..."*

Dove J referred to the Local Government Association's publication "*Probity in Planning*" which says "*Lobbying is a normal part of the planning process*". It was "*indisputably correct*" that "*that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest*" (para 78). He held (para 78):

*"Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as proportionate the discouragement, prohibition or prevention of*

*communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."*

Mr Justice Dove concluded (para 79):

*"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them.*

*81. ... The standard correspondence clearly advised against members of the public writing directly to members of the committee; there was no warrant for that advice or discouragement and it impeded the freedom of expression of a member of the public who was entitled to write to a member of the planning committee setting out in his or her own terms the points they wish to be considered in respect of an application and expect that the member would have the opportunity to read it."*

The permission was not quashed on this ground since whilst committee members had thought they were obliged to disregard a letter from Holborn Studios' solicitors, their points were made by their QC at the committee meeting.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The planning permission was though quashed because the council failed to make affordable housing viability assessments available to Holborn Studios and the public. These were background papers and given government policy and guidance on transparency, the public interest did not allow these to be exempt information. Dove J found that the viability material which was published to justify a reduced affordable housing contribution was 'opaque and incoherent'. This aspect of the case is considered in detail [here](#).

# NALC renews calls for power to suspend councillors for up to six months

The National Association of Local Councils (NALC) has called on the Government to take “urgent action” to introduce a power for local authorities to suspend councillors for up to six months.

The introduction of such a power was recommended by the Committee on Standards in Public Life in a report in January 2019 to the Prime Minister on improving ethical standards in local government.

NALC has made its call after working with the Local Government Association (LGA) on the development of an updated national model code of conduct for all tiers of local government.

The LGA published the draft code earlier this month for consultation.

On the power to suspend, NALC said: “Failure to introduce this sanction alongside other measures will risk wider steps being taken to improve ethical standards, such as the model code of conduct and training for councillors and clerks, as being ineffective.

“Now more than ever, high standards of conduct in government at all levels are needed to protect the integrity of decision making, maintain public confidence and to safeguard local democracy.

“That is why NALC is also calling for the Committee on Standards in Public Life to publish a timetable for reviewing progress on the implementation of the report’s wider recommendations and best practice to ensure this important issue continues to be a priority for action.”



# Community councillor in Wales fails to secure injunction to stop Ombudsman investigating complaints against him

A High Court judge has rejected an application by a community councillor for an injunction against the Public Service Ombudsman for Wales (PSOW) to stop its investigation of complaints made against him.

Jonathan Bishop had been the subject of complaints by the former clerk, the chair and vice-chair of the Taff's Well and Nantgarw Community Council.

The application for an injunction was made on an urgent basis, before a claim had been issued.

In *Bishop v Public Service Ombudsman for Wales* [2020] EWHC 1503 (Admin) His Honour Judge Jarman QC, sitting as a judge of the High Court, said the basis of the application was that the complaints should be investigated under a local resolution procedure which had been adopted by the council, and not by the statutory procedure under Part III of the Local Government Act 2000.

Cllr Bishop asserted that the former procedure, which is an informal non statutory procedure, was appropriate where, as here, complaints were made against a councillor by another councillor rather than a member of the public.

In his pre-action protocol letter the applicant set out three reasons why the Ombudsman did not have the power to investigate the complaint. These were:

1. Issues of politeness should be dealt with under the local resolution procedure.
2. Councillors and officers are expected to have a thick skin.
3. Allegations made by the vice-chair about the applicant were made outside the political arena.

A "further aspect" was then stated to be that named members of PSOW staff had acted in a biased manner towards him in other referrals or complaints. This included that complaints against him had been treated more favourably than complaints which he had made against the complainants. Mr Bishop expanded upon this in his oral submissions by saying that his complaints were not investigated but those against him were.

The complaint by the chair of the council, Alun Fowler, was made in September 2019. The following month the Ombudsman wrote to Cllr Bishop to inform him that the complaint would be investigated.

That investigation is now in the process of collating evidence. By letter dated 31 March 2020 the Ombudsman informed Cllr Bishop that the complaint against him by the vice-chair, Helen Edmunds, would not be investigated as a stand-alone complaint but as part of the ongoing investigation.

In an email Cllr Bishop informed the Ombudsman of several medical conditions which he has, including autism spectrum disorder and also a high IQ with dyslexia, dyscalculia and dysgraphia.

In a reply sent on 6 April 2020 an assistant investigation manager at the Ombudsman's service replied, saying Cllr Bishop's comments had been noted and would be considered during the course of the investigation.

HHJ Jarman QC said Cllr Bishop's contention that the Ombudsman should not be investigating the complaints against him under the statutory procedure but that the complaints should be dealt with in the local resolution process was at the heart of his application for an injunction to stop the current investigation.

Counsel for the Ombudsman, Gwydion Hughes, submitted that such an injunction should not be granted for three reasons:

1. There was no good reason or urgency to justify making the application prior to the commencement of a claim.
2. There was no serious issue to be tried with a real as opposed to a fanciful prospect of succeeding at trial.
3. Exceptional circumstances would have to be shown before a court prevented a statutory investigatory body from exercising its powers of investigation, and none were shown here.

HHJ Jarman QC said it was appropriate to deal with the most substantive of those grounds first, namely the second ground that there was no serious issue to be tried.

The judge said: "In deciding whether or not to investigate, as PSOW and OVW [One Voice Wales] guidance make clear, one of the matters taken into account is the seriousness of the complaint.

"In my judgment Alun Fowler's complaint clearly goes far beyond matters of politeness or matters in respect of which he can reasonably be expected to be thick skinned. The reference to obscene and offensive language may come within that category, but the complaint continues to include allegations that the actions of the applicant have caused two clerks to resign and a third to consider her position, to enclose a long list of complaints against the applicant, that most members of the council have indicated a wish to resign if the applicant is not dealt with, and to enclose statements showing a pattern of unacceptable behaviour on the part of the applicant."

He continued: "Each of those other aspects of the complaint is in my judgment clearly capable of amounting to a lack of consideration for others and/or may reasonably be regarded as bringing the office or authority into disrepute. Each of these is in a different category to a lack of politeness or a matter in respect of which other members of the council should be thick skinned about.

"In my judgment the applicant does not have a real prospect of succeeding at trial in establishing that the complaints against him should be dealt with in the local resolution process rather than be investigated by the PSOW."

In respect of the complaint of Helen Edmunds against the applicant, the judge noted that the Ombudsman had informed Cllr Bishop by letter dated 31 March 2020 that it had been decided not to investigate this as a standalone complaint, but as part of the existing investigation.

“Given that Alun Fowler's complaint alleges that the applicant has shown a pattern of unacceptable behaviour and the most of the members of the council had threatened resignation if the applicant is not dealt with, in my judgment that was clearly an approach which PSOW was entitled to adopt,” he said.

As for the applicant's allegation that the Ombudsman had shown bias against him in refusing to investigate his complaints, the judge noted that Cllr Bishop said that the reason the Ombudsman gave for not investigating his complaints was that he had not identified which part of the code he alleged was broken by Alun Fowler, but neither had the latter in his complaint.

“However, it is clear from reading the decision of PSOW in respect of the applicant's complaint against Alun Fowler that that is not the reason given for not investigating that complaint.”

The judge said the reasons were given in a letter from the Ombudsman to the applicant dated 6 April 2020. HHJ Jarman QC went on to cite large extracts from that letter.

He said the Ombudsman's decision was reasoned and reasonable. “It is clear that the request for references to the code in future was a request for assistance for the avoidance of doubt rather than the basis for refusal. The reasons for refusal included lack of evidence, which the applicant said he would only supply if an investigation was initiated, and lack of particularity. This was in marked contrast to Alun Fowler's complaint, which was particularised and accompanied by statements.”

The judge said another particular of bias relied upon by the applicant was that Helen Edmunds' complaint that the applicant said to her that she shouldn't come to council meetings with a communicable infection was being investigated, but his complaint about her that she said that applicant could not help with voluntary work as a friendly face was needed, was not being investigated.

“However, as is clear from PSOW's letter concerning the former, that is not being investigated as a standalone complaint but as part of the ongoing investigation which includes an allegation of a pattern of unacceptable behaviour on the part of the applicant,” the judge said.

HHJ Jarman QC continued: “Finally, in respect of bias, the applicant says that is shown by how PSOW conducted an interview of his support worker as part of the investigation, after which the support worker wrote to PSOW saying that the draft statement which had been sent to him did not fairly reflect what he said in the interview and was in breach of data protection rights arises. In my judgment this is far from justifying the allegation of bias.”

The applicant submitted before the judge that the complaint of Helen Edmunds dealt with matters outside council business and therefore came within the principle in *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin).

HHJ Jarman QC agreed with counsel for the Ombudsman that this and any other jurisdictional points could be raised by the applicant in the course of the investigation (see, for example APW/001/2018-19/CT *Councillor Graham Down*).

The judge said the applicant in his oral submissions referred to his medical conditions as impacting upon the subject matter of the complaints against him and his ability to take part in the investigation.

“As indicated above he has made these known to PSOW who has indicated that they will be taken into account and that reasonable adjustments will be made in the investigation. The applicant invited me to extend time for any judicial review claim in light of these conditions, but it is not appropriate to do so unless and until a claim is issued.”

HHJ Jarman QC concluded that he was not satisfied that Cllr Bishop had shown any serious issue to be tried, and that was sufficient to justify refusing to grant the order sought.

The judge said it was not necessary for him to make findings on the other points taken by counsel for the Ombudsman.



# 180 complaints alleging councillors' misconduct sent to South Tyneside Council - chief fears process is being 'weaponised'

Claims complainants are "weaponising" council processes as reports of alleged councillor misconduct soar in South Tyneside.

By Chris Binding

Tuesday, 7th July 2020, 3:07 pm



A large spike in complaints against councillors could be linked to a “weaponisation” of council processes, legal chiefs have said.

Since January 2020, South Tyneside Council’s monitoring officer has received a total of 178 emails, letters or calls from potential complainants.

This included complainants expressing a wish to make a complaint or sharing information in respect of “perceived elected member misconduct.”

Of this number, only 23 complainants provided further information to support their complaint, with several cases rejected or resolved without the need for investigation.

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A total of 13 complaints are currently ongoing, with many nearing conclusion following delays caused by Covid-19, the meeting heard.

“The [complaints] process itself provides for complaints or communications, that are described as being complaints but mainly aren’t, to be rejected fairly early on if they’re considered to be tit for tat, politically motivated or ‘vexatious’,” Interim Head of Legal Services, John Rumney, said.

“That said, I do think the weaponisation of the process may account for the large numbers that we have seen in recent months.

“But it is certainly nothing new and the process does provide for them [complaints] to be dealt with appropriately.”

The legal chief was speaking at a Standards Committee meeting on July 6 in response to a question from Coun Doreen Purvis about the complaints process potentially being “weaponised”.

Coun Purvis said examples could include a complaint against a councillor(s) being posted on social media and staying in the public domain, regardless of whether the complaint is pursued.

At the meeting, which was broadcast live on the council’s YouTube page, councillors heard about recent steps that have been taken to improve the complaints process.

This included the introduction of a new ‘complaints form’ which helps complainants to structure their complaint and provide necessary information and evidence.

Despite the large number of complaints, no cases have progressed to the final stage so far such as a formal hearing and/or sanction.

Independent chair of the Standards Committee, Professor Grahame Wright, said that the complaints figure of 178 may be “a little bit misleading”.



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But he noted a “significant number of complaints” were still under active consideration, pending any decision

Coun Anne Hetherington added that the complaints figures showed “a very serious issue” and asked if there was any previous data to look at comparisons and trends.

“I know the process for dealing with complaints against elected members since some legal reforms are a bit of a toothless tiger,” she said.

“But there are means in the council’s constitution where members can be sanctioned to a degree if a complaint is found to be proven and I would like to see that we’re actually following that through and dealing with complaints to the full extent that we’re able to.

“Particularly if we’re receiving complaints from residents that they see we’re addressing these complaints because we can’t put ourselves above the law that is there to supervise our behaviour as elected members.”

Legal officer Mr Rumney, responding, confirmed council bosses are recording complaints to allow for statistical analysis in future.

But he warned that records for previous complaints may not be available to build a historical picture.





He told the meeting: "The plan is going forward that each complaint which is reviewed and found to be capable of proceeding within the process will be given a number.

"We have already started numbering complaints so that they can be logged and outcomes recorded so statistical analysis can take place in the future.

"Whether it's possible to go back beyond the beginning of this year or late 2019 I'm not sure that the records will be there I'm afraid."

Standards Committee chair, Prof Wright, added: "If you see some of the complaints that we get they're extremely difficult to work out what exactly it is the councillor has meant to have done wrong.

"It's more that somebody is just angry and they want to blame somebody so one of the reasons we have this [complaints] form is to try and guide people so if they have a complaint they can make clear what the nature of that complaint is."

# Wellingborough councillor removed from meeting over outburst

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**A councillor was removed from a public meeting after speaking about his mental health over what he describes as bullying from his authority's leader.**

Robert Gough made the statement at a virtual Borough Council of Wellingborough meeting on Tuesday.

He claimed his mental health issues were being used against him.

Council leader Martin Griffiths said his conduct "was not acceptable". The authority said it takes "allegations of councillor misconduct very seriously".

During an agenda item on a proposed pay rise for Mr Griffiths, Mr Gough attempted to outline the impact the situation has had on his mental health recently.

He was stopped by other councillors who said correct procedures were not being followed and was eventually removed from the meeting.

Mr Griffiths, who did not attend the meeting which was watched by the public, said: "I am incredibly saddened and sympathetic that councillor Gough is suffering at this time.

"However, the conduct last night was not acceptable at a public meeting."

Mr Gough told the **Local Democracy Reporting Service** his mental health problems, possibly linked to his time in the Army, were being used against him.

The incident was the latest issue within the Wellingborough Conservative Group in recent weeks.

Previously a group of eight councillors, including Mr Gough, had asked for a motion of no confidence in Mr Griffiths citing bullying behaviour and pre-empting of council committee meetings.

The motion did not carry because the group was one short for a vote of no confidence to take place.

Mr Gough, whose Earls Barton ward falls within Daventry constituency, was then suspended by Daventry Conservative Association following complaints against him.

An investigation is ongoing, but he automatically had the whip removed from the Borough Council of Wellingborough's Conservative group.

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# Standards Commission sets hearing date for shamed Aberdeen councillor

by Alastair Gossip

June 23, 2020, 12:10 pm



Former deputy Lord Provost Alan Donnelly

A disgraced Aberdeen councillor has been given a date for a hearing which could end in his removal from office.

Suspended councillor Alan Donnelly will face the Standards Commission on October 6 in the council chambers at Aberdeen Town House.

He was convicted of sexual assault last December and later placed on the sex offenders register, sentenced to eight months supervision and ordered to pay his victim £800 in compensation.

While Donnelly resigned from the Scottish Conservatives and was stripped of all council committee positions, the former deputy provost resisted calls to stand down as a councillor.

After complaints from fellow councillors and members of the public, Donnelly was banned while the ethical standards commissioner compiled a report into his misconduct.

Given his refusal to resign, and with councils not able to sack elected members, the Standards Commission could be the only means for Donnelly's removal from office.

The hearing in October will come more than seven months after his initial ban on March 4.

It is understood plans to have it at the Town House could still change, depending on guidance around the pandemic.

The proceedings will be streamed online.

## 50 Backpacks in crisis as Fenland Council rips apart damaging allegations made against Wisbech councillor

🕒 PUBLISHED: 12:18 01 July 2020 | UPDATED: 12:18 01 July 2020 | [John Elworthy](#)



An organisation set up to help the homeless was in meltdown this week after its chairman Simon Crowson posted a series of malicious allegations.

Mr Crowson (Spike) used Facebook to fire off damaging accusations against a Wisbech councillor.

The claims were made on his 50 Backpacks Facebook page after he had questioned a 'victim' (a woman in her 30s) and who offered him screenshots of emails sent to Fenland Council intended to support her accusations.

Council leader Chris Boden and chief executive Paul Medd met on Tuesday and authorised an investigation.

The council later issued a statement saying they had "identified both the original email partially published last night and the full correspondence trail associated with that email.

"We can categorically confirm that this email has been completely misrepresented".

On Monday they had become aware "of serious allegations made on 50 Backpacks' Facebook page about Cllr Steve Tierney and Fenland Council.

"The allegations were that Cllr Tierney had been accused of serious sexual misconduct and that Fenland Council had 'covered up' a complaint made about Cllr Tierney's alleged behaviour.

"50 Backpacks purportedly supported their allegation concerning Fenland Council's alleged 'cover up' by publishing a partially redacted section of an email from FDC, sent in 2016."

The council found the correspondence and "we can categorically confirm that this email has been completely misrepresented.

"The email did not in any way relate to a complaint of sexual misconduct against Cllr Tierney; there has never been any complaint received by FDC against Cllr Tierney regarding sexual misconduct." 50 Backpacks had "fundamentally misrepresented" the emails. Fenland Council completely refutes 50 Backpacks' blatantly false claim that the council 'covered up' any allegations of sexual misconduct, whether by Cllr Tierney or by anyone else".

Mr Crowson has since removed the 50 Backpacks page from Facebook. In an oblique message to other Facebook pages today he says: "My job is done, so whatever happens to me or the future of 50 Backpacks is immaterial". There was no apology to either the council or Cllr Tierney.

# Plymouth councillor accused of misconduct over tweet

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor

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By **Edward Oldfield**  
05:00, 2 JUN 2020

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Plymouth City Council's Labour leader has accused a councillor of misconduct over a tweet about a colleague.

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor.

Cllr Singh, who denied the accusation, resigned from the Labour Party in September and now sits as an Independent on the city council.

He tweeted a screenshot of a Facebook post by Cllr Taylor which included a comment that one of the things she would not miss about lockdown was gin hangovers.

The comment by the Cabinet member, who has responsibility for much of the council's health response to COVID-19, is understood to have been light-hearted and was published on her personal profile, visible to friends rather than public.

However the row went public when Cllr Singh published the screenshot in a Tweet on Monday and tagged in several other accounts including the city council's official feed, Labour group leader Cllr Evans, and the city's director of public health Dr Ruth Harrell. He also tagged the city's Labour MP for Sutton and Devonport Luke Pollard, who Cllr Taylor works for.

The tweet, with a screenshot of the post, was then retweeted by Cllr Evans.



Cllr Singh commented in the tweet: "Caseworker for @LukePollard has endured many hangovers due to excessive gin consumption. Getting some support is the first step."

Cllr Taylor, the city council's cabinet member for health and adult social care, said she felt she was being hounded over a "non-issue".



**Cllr Kate Taylor made the comments on a personal social media account** (Image: Paul Slater)

She replied to Cllr Singh's tweet: "Hi Chaz. I have removed you from my social media because I don't want to engage with you so would appreciate it if you would refrain from tagging me in your posts. Your hounding of me via the council and my employer on a non-issue is now verging on harassment."

The council leader then intervened. He retweeted the post from Cllr Singh and added: "I'm reporting this to the Council today. I believe this to be Bullying and harassment by a councillor, to another."



**It is understood Cllr Evans has lodged a formal complaint**

Cllr Evans declined to comment. It is understood he has lodged a formal complaint about Cllr Singh's conduct.

Cllr Singh, who represents the Drake ward, denied his actions amounted to bullying and harassment.

He said he considered it was inappropriate for a councillor with responsibility for adult health to joke about alcohol consumption.

Cllr Taylor declined to comment on the tweets as the issue was expected to become a disciplinary matter.

Cllr Singh, who is a Sikh, resigned from the Labour Party last year after saying membership was no longer compatible with his faith.

The Labour group said the issue related to his "conduct towards another local authority."

It later emerged that the row involved comments Cllr Singh made on Twitter about a wreath-laying ceremony in Bristol.

## **Appendix B**

### **Standards Commission for Scotland**

Have continued to work, dealing with cases by online hearings.

#### **8 July 2020 HIGHLAND COUNCILLOR CENSURED FOR FAILING TO DECLARE AN INTEREST**

A Highland Councillor, Alan Henderson, was censured by the Standards Commission at a Hearing held online on 8 July 2020 for failing to declare his interest in HITRANS (the local regional transport partnership), as required by the Councillors' Code of Conduct, at a meeting of Highland Council's Environment, Development and Infrastructure Committee on 16 May 2019.

The Hearing Panel accepted, however, that Councillor Henderson's failure to comply with the Code was inadvertent and an oversight. It noted that he had apologised unreservedly.

The Panel heard that it was not in dispute that Councillor Henderson moved, and voted on, a motion to approve £170,000 worth of additional funds for work relating to Skye Airport / Aerodrome; and for him, as Committee Chair, to write to the Transport Secretary on behalf of the Council and also on behalf of HITRANS, requesting support. The Panel noted that HITRANS was a member of a working group established for the purpose of developing Skye Aerodrome into an airport and that Councillor Henderson had been Chair of HITRANS since June 2017. While the Panel accepted that Councillor Henderson's role as Chair was unremunerated, was widely known, and that the funding approved by the committee would not benefit HITRANS, it nevertheless noted that he should have declared an interest under the terms of the Councillors' Code.

A specific exclusion in the Code for members of regional transport partnerships would have allowed Councillor Henderson to take part in this discussion and decision-making, if he had declared this interest.

The Panel concluded, therefore, that Councillor Henderson's conduct did not warrant a more severe sanction than censure.

This was because there was no evidence that he had attempted to conceal his interest or that there was any personal gain. Furthermore, if Councillor Henderson had declared the interest as required, the specific exclusion in the Code which applied would still have allowed him to take part in the discussion and decisionmaking.

Ms Ashleigh Dunn, Standards Commission Member and Chair of the Hearing Panel, said: "The requirement for councillors to declare certain interests is a fundamental requirement of the Code. A failure to do so can remove the opportunity for openness and transparency in a councillor's role and can deny members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decisionmaking." "In this case, however, the Panel had no reason to consider the failure to declare the interest was anything other than an inadvertent breach of the Code. It noted

that Councillor Henderson had made no attempt to hide his interest and had apologised to all concerned, including the complainant, for his failure to declare it.”

All councillors have a personal responsibility to adhere to the provisions outlined in the Councillors’ Code of Conduct, which is based on nine key principles, including, integrity, honesty and respect.

## Local Government Ombudsman for Wales

Extract from annual report

### **Code of Conduct complaints**

#### **(a) New Code of Conduct complaints**

This year we received **231** new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

<b>Body</b>	<b>2019/20</b>	<b>2018/19</b>
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
<b>Total</b>	<b>231</b>	<b>282</b>

This decrease relates entirely to complaints made against members of Town and Community Councils. This is encouraging and suggests that standards of conduct of members of these bodies may be improving and/or that local resolution of issues may be taking place with good effect.

Nevertheless, within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

In fact, 18% of the Town and Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. In those cases, we were very grateful to the Monitoring Officer of the principal authority who agreed to visit the Council to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We take a very dim view of complaints of this nature and have, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

We categorise the subject of the Code of Conduct complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life.

The table below shows the proportion of complaints received under each principle when compared to 2018/19:

Subject	2019/20	2018/19
Accountability and openness	11%	7%
Disclosure and registration of interests	17%	17%
Duty to uphold the law	7%	9%
Integrity	10%	13%
Objectivity and propriety	2%	2%
Promotion of equality and respect	49%	51%
Selflessness and stewardship	3%	1%

As in previous years, the majority of the Code of Conduct complaints that we received during 2019/20 related to **matters of ‘promotion of equality and respect’ (49%)** and **‘disclosure and registration of interests’ (17%)**.

We are concerned that these themes continue to dominate. In fact, we have seen year on year an increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of Local Authorities or Town and Community Councils.

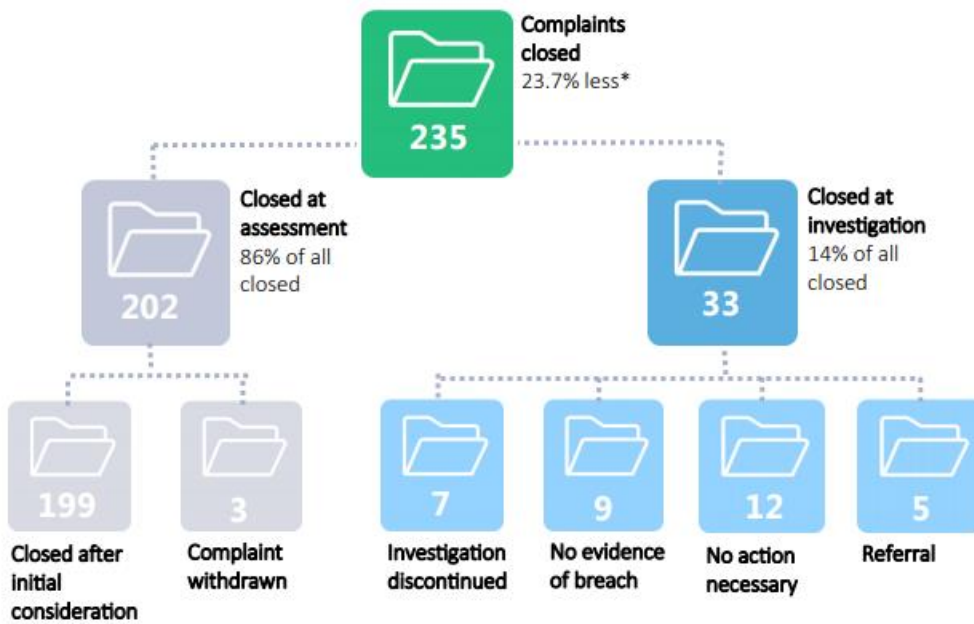
This suggests that members could benefit from training or refresher training on these subjects. However, our impression from investigations is that many members of Town and Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.

Our view is that Code of Conduct training is essential to becoming a ‘good councillor’. We believe that members should embrace this training as soon as they become elected/co-opted and refresh themselves on the provisions regularly. Whilst there is no statutory obligation for members of Town and Community Councils to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

## (b) Closed Code of Conduct complaints

This year we closed **235** Code of Conduct complaints. This represented a 23.7% decrease compared to the previous year. The rate of closures was also inevitably affected by the number of new complaints received. However, we are glad that we still closed more complaints this year than we received.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2019/20:



\* compared to 2018/19

All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place
- it is in the public interest to investigate that matter.

**Public interest can be described as "something which is of serious concern and benefit to the public"**

In 2019/20, we closed 202 or approximately 86% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%).

The remaining complaints taken forward to investigation represented the most serious of the complaints received.

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made one of these determinations in 85% of the Code of Conduct investigations this year.

In cases which cannot be concluded in this manner or feature serious breaches of the Code, it is necessary for us to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2019/20 we made 5 referrals - that is, we referred 2% of all the Code complaints that we closed, compared to 8 or 3% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'. We did, however, investigate a higher proportion of cases related to 'disclosure and registration of interests' than the proportion of this theme in the closed Code of Conduct complaints overall:

Subject	All closed	Closed at assessment	Closed at investigation
Disclosure and registration of interests	17%	15%	30%
Promotion of equality and respect	49%	50%	42%



### (c) Referrals

In 2019/20 we made:

- 4 referrals to the Standards Committees
- 1 referral to the Adjudication Panel for Wales

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

**Between 2016/17 and 2018/19, the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 88% of our referrals**

This year Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by us in 2018/19. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice our investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

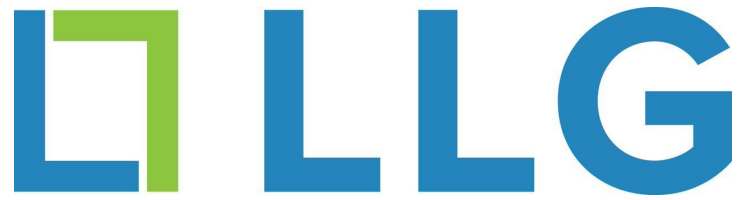
#### (d) Lessons

As is clear from the above, we make referrals only in a very small number of cases. We do not believe that the cases that we do refer are indicative of a wider decline in member conduct. Nevertheless, outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

However, even when we do not refer a case, we try to use our investigation as an opportunity to promote good practice. We usually remind the members investigated of their obligations under the Code and, where possible include instruction on further training or engagement with the authority to prevent further possible breaches. We may also make the members aware that the matter could be taken into consideration in the event of any future complaints of a similar nature.

We think that it is important that we continue to look for innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned. Where appropriate, we also want to give members the opportunity to account for their own actions and for further development.

**We plan to revise our Guidance to Members to include analysis of recent cases determined by Standards Committees and the Adjudication Panel for Wales.**

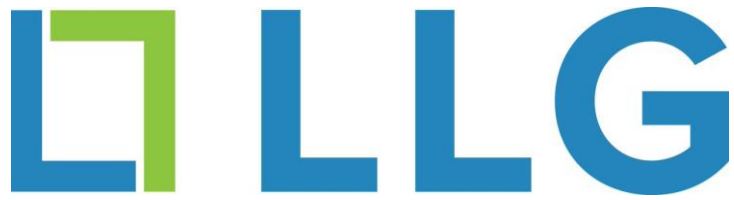


## LLG Social Media-Toolkit



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**The LLG Social Media Toolkit has been prepared by Lawyers in Local Government (LLG) for the benefit of its membership, in order to introduce the subject of social media use and resulting legal considerations which may apply.**

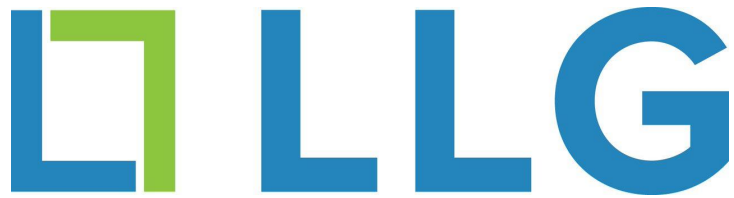


## Foreword

Unfortunately, most Councils can now lay claim to having at least one “pressure group” or “blogger” who see it as their life’s calling and personal duty to make persistent and unfounded allegations of corruption, maladministration, and misconduct (and any other allegations involving unlawful or illegal activities) against their local (or sometimes not local) Council, its elected members and officers. They have always been there in one form or another, however the internet and in particular social media have given them a significantly more elevated and wider platform from which to emerge from the shadows (albeit virtually), and from which to launch their attacks, whereas in the days of yore their reach was limited to writing letters and posting newsletters among other more traditional forms of communicating their views and theories.

Some of the more unsavoury instances have seen elected members or prospective candidates threatened with social media exposés should they continue to hold office or stand for election, whether or not there is any credibility or truth to what is proposed to be published. This has resulted in some of those subject to such threats retiring or withdrawing from public life, some before they have even had chance to launch their political careers. Such behaviour also discourages individuals from putting themselves forward for public office in the first place.

It is of course correct that those who do put themselves forward for public office, and who currently hold public office, should be subject to increased scrutiny and challenge, and that they should expect to be faced with sometimes very strong criticism. Enhanced protection therefore applies to what is said in a political arena, not only to politicians, but also to those who comment upon politics and politicians, notably the press. This is because the right protects, more broadly, the public interest in a



democracy of open discussion of matters of public concern, but this does not denote 'open season' and there is a bar (albeit one set relatively high) beyond which such challenge and criticism are unacceptable, particularly where the basis of that challenge is devoid of factual substance.

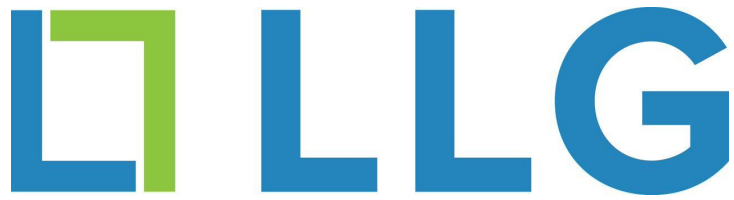
The consequence of these very public threats is to distort the democratic process. Arguably they act as an independent and unofficial pre-selection filter on candidates and a screen upon the longevity of political careers, leaving those standing for or holding office either affiliated with or supported by those making the threats, or of a particularly strong character. This cannot be right, and presently unless a public figure is in league with those making threats, a particularly thick skin is seemingly an essential part of the make-up of the modern Councillor. This is not to mention the effect that social media can have upon the wellbeing of officers and the retention of key members of staff.

The LLG Social Media Toolkit is designed to help you navigate your way around the complex and sometimes all too emotive issue of social media in advising your officers and members on the best way to protect and conduct themselves as well as ensuring your authority complies with its legal obligations.

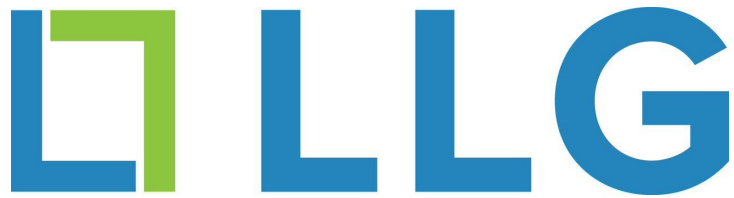
Best wishes

**David Kitson**

**Bevan Brittan**



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## Introduction

LLG recognise that the growing use of social media places additional pressure on our members to advise officers, councillors, and their authority on a range of legal implications based on wide-ranging posts, tweets and commentary published in the public domain.

Whilst the world under lockdown becomes increasingly virtual, social media has become centre stage in both personal and private lives leading to often complex and wide-ranging legal advice. How do we best manage social media from a governance and operational perspective? How do we work out what presents risk and how can that risk be mitigated?

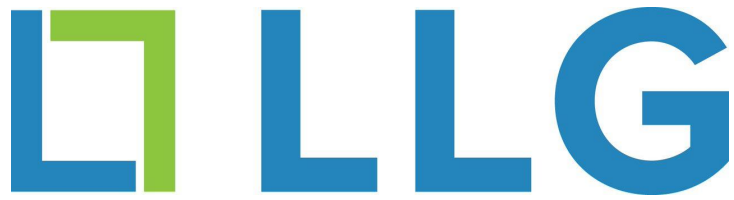
There are all too many examples of social media causing embarrassment or loss of reputation. However, there is also a darker side to social media which has increased over recent years. Malicious abuse, threats of violence and harassment are unfortunately, all too prevalent across virtual platforms. The Committee on Standards in Public Life's review on 'Intimidation in Public Life' (2017) stated "The vitality of our political culture depends upon free and vigorous expression of opinion, and it is crucial that this freedom is preserved. The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom". This is a position that LLG takes seriously, and one that we should all agree with.

LLG hopes this toolkit will assist you in providing advice to your officers and members in this complex field.

Best Wishes

*Quentin Baker*

**LLG President 2020-2021**



## 1. Defamation

### What is defamation?

- 1.1 Defamation is a complex legal area necessitating specialist legal advice. It is often a lengthy and costly pursuit of action and should be considered carefully.
- 1.2 The Defamation Act 2013 came into force on 1<sup>st</sup> January 2014. It codified and consolidated large parts of case law and previous statute. It introduced a single publication rule, addressed the 'serious harm' threshold and reversed mode of trial to a judge (as opposed to jury).
- 1.3 Simply put, if someone has posted a false statement which could cause serious harm to an individual's or organisation's reputation and character this could give rise to a claim for defamation. Defamation law both protects from damage to reputation and character and compensates for the loss and damage arising.
- 1.4 There are a number of defences to defamation, including truth, honest opinion, fair comment, publication on matter of public interest, absolute privilege, and innocent dissemination. The defences each set out specific criteria in order to meet the test for reliance upon any one of them.

### Can a local authority bring an action?

- 1.5 It is important to note that local authorities cannot themselves sue in defamation, which was a principle laid down by *Derbyshire County Council v Times Newspapers Limited* ([1993] 1 All ER 101). In that case the court held that local authorities are distinguished from corporations as democratically elected government bodies and as such, it was highly important that they





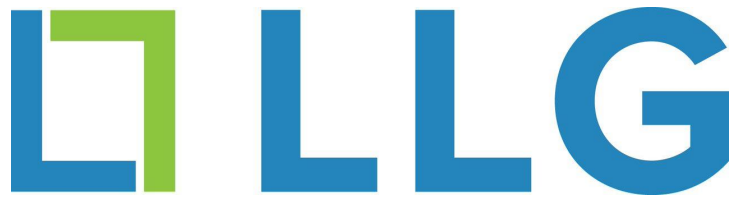
were open to criticism. The threat of defamation would therefore inhibit freedom of speech and be contrary to the public interest.

### **General Power of Competence**

- 1.6 Whilst there has been some suggestion that local authorities can use section 1 of the Localism Act 2011 (the general power of competence) to bring a defamation claim this is untested. It is worthwhile noting that this point was specifically discussed in parliamentary debates on what was then the Defamation Bill. It was highlighted within the debate that the Bill was not intended to undermine the Derbyshire principle. Given this fact it would be very risky to rely upon the Localism Act to bring a defamation claim. In the alternative, it is open to individual officers and members to bring an action in their own name. However, due to cost and complexity it is often not an option open to many. It might be possible for local authorities to provide an indemnity in exceptional circumstances, (see *Thompson v James* [2013] EWHC 515 (QB), but extreme caution must be exercised (see section on Indemnities).

### **Can officers and members bring an action?**

- 1.7 Officers (or members) of a local authority can sue for defamation in connection with statements made about them which relate to the exercise or discharge of their duties or as an employee of the authority and where it personally relates to them (*McLaughlin v Lambeth LBC* [2010] EWHC 2726 (QB)).
- 1.8 In *Thompson v James* [2013] EWHC 515, the judge acknowledged that there would be “a serious gap in the law if members and officers of a local authority (and others who work in or for other public authorities) could not sue for libel”



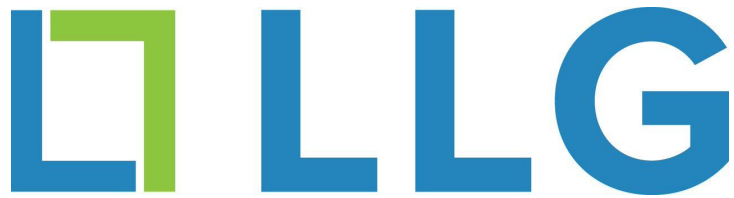
and “if those who work in or for public authorities could not defend themselves against the dissemination of falsehoods, the public would be the losers”.

- 1.9 However, the judge noted that civil servants acting in their official capacity must show a greater degree of tolerance to public scrutiny and criticism. This is not a surprise, and it reconfirms the conclusion reached by the House of Lords in the *Derbyshire* case some 20 years ago. But the judge also recognised that where a person maliciously spreads false and defamatory allegations about individuals holding public offices, a libel action may be the best means of establishing the truth and preventing repetition.
- 1.10 Where an officer or member raises defamation, it is important that they record all the relevant posts and consider whether the person in question will publicly apologise and retract the comment in the first instance. Defamation proceedings are costly and lengthy. In some cases, ignoring the communication may stop any further communication. However, if a member or officer feels the nature of the post is such that it cannot be ignored, lawyers may, after providing initial advice, seek specialist external legal advice about the options available and merits of any claim.

## **2. Indemnities**

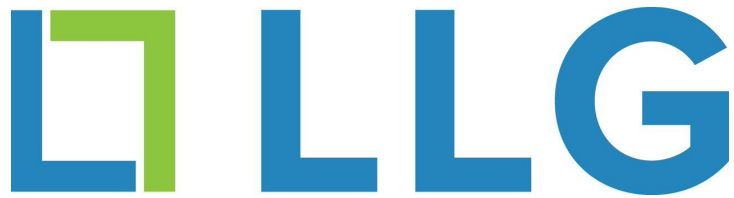
### **General**

- 2.1 An authority can provide an indemnity for a claim brought by an individual officer or member, or to assist in defending a claim under The Local



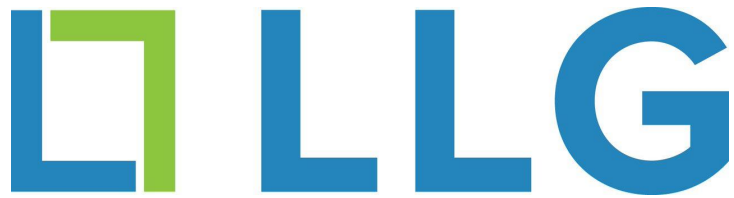
Authorities (Indemnities for Members and Officers) Order 2004 (“the 2004 Order”) where the public expenditure is justified. Under the 2004 Order, an indemnity can be granted to cover “any act or omission by a councillor or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council”.

- 2.2 An authority cannot provide an indemnity for a defamation claim brought by a councillor but can fund a defence.
- 2.3 For both councillors and officers, the 2004 Order restricts the provision of indemnities so that they cannot cover any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, recklessness, or the cost of pursuing a defamation claim. In such cases, if an indemnity had been provided, any costs incurred under an indemnity would have to be repaid to the Council or insurer.
- 2.4 Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to particular decisions or acts, if to do so would facilitate or is incidental, or conducive, to the discharge of a function of the authority.
- 2.5 Authorities should be careful when providing indemnities that no officer/councillor is involved in the decision-making process to do so, whilst having a disqualifying personal and pecuniary interest in the matter.



## **Defamation and indemnities**

- 2.6 Indemnities for defamation claims other than in relation to the defence of a member or officer of any allegation of defamation made against them are expressly excluded under Article 6 of the Local Authorities (Indemnities for Members and Officers) Order 2004. However, prior to the 2004 Order it had been established under the 2003 case of *Comminos, R (on the application of) and Bedford Borough Council* that local authorities could provide indemnities to Officers in order to bring defamation proceedings under s111 or s112 of the Local Government Act 1972. It is not settled law however whether the 2004 Order was meant to be a comprehensive code, but it might be possible to use the powers in exceptional circumstances (but not without substantial risk).
- 2.7 In *Thompson v James* [2013] EWHC 515 (QB), Mrs Thompson (who was a prolific blogger) brought a defamation claim against the Chief Executive Officer (CEO) of Carmarthenshire County Council who counter-claimed for defamation in return. The council agreed to indemnify the CEO following two senior QC's opinions and on the basis that there were exceptional circumstances under section 111 Local Government Act 1972. During the hearing, the court did not consider this particular point, but the Welsh Audit office took the view that the expenditure had been unlawful and issued a report in the public interest. They did not however subsequently follow up with legal challenge.



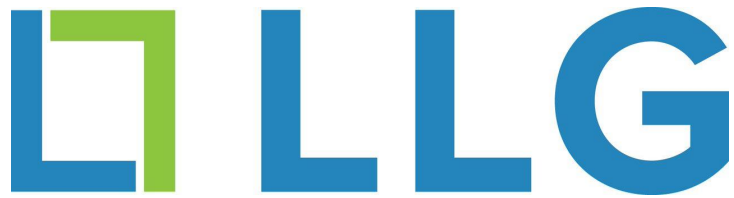
- 2.8 It is important to remember that any decision to indemnify must be Wednesbury reasonable, legitimate, proportionate, and a proper use of public resources.

### **3. Standards**

- 3.1 An increase in complaints about members' use of social media has been acknowledged by the Committee on Standards in Public Life to be a catalyst behind declining standards in conduct. One of the key issues is the capacity in which posts are being made by councillors. There is no clear definition and much depends on the facts in each case. Even where members do not disclose that they are councillors, it can still be perceived that they are posting in that capacity. It is important therefore that councillors state in what capacity they are posting or tweeting/retweeting. It does not prevent issues arising, but it should help to provide clarity.
- 3.2 The case of R (on the application of Mullaney) v Adjudication Panel for England [2009] EWHC 72 (Admin) acknowledged the sensitive nature of the exercise of whether or not a member was acting in their capacity as a member; "...These are ordinary descriptive English words. Their application is inevitably fact sensitive and so whether or not a person is so acting inevitably calls for informed judgment by reference to the facts of a given case. This also means that there is the potential for two decision makers, both taking the correct approach, to reach different decisions..."

#### **Local Initiatives and Pre-determination**

- 3.3 There has been a significant increase in the use of social media by Members during lockdown due to COVID-19. Many members are supporting



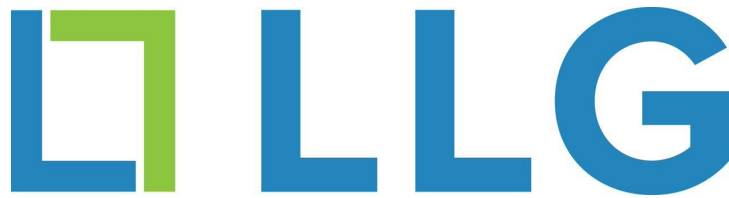
and re-posting local initiatives such as the production of protective equipment and financial assistance to those in need. But it is important that as much clarity is given as possible as to the capacity in which the member is posting these types of content. Reference to initiatives whilst using title 'Cllr' may infer to the reader that those initiatives are council initiatives or are officially supported. If there are then consequential issues arising with those initiatives (for example breaches concerning the processing of personal data), there might be an assumption that the council is liable or responsible.

- 3.4 Once a post is made it is a permanent record, and social media posts on views and voting intentions can be perceived as predetermination and result in allegations of bias increasing the risk of legal challenge and judicial review claims.

## **4. Abusive Posts & Declining Ethical Standards**

### **Ethical Standards**

- 4.1 It is becoming increasingly common for standards complaints to be made on the basis of comments Councillors have made on social media. As section 27(1) of the Localism Act 2011 places a positive duty on Councils to promote and maintain high standards of conduct amongst members, Councils must seek to do so where their members use social media. If a Council can reduce the incidence of complaints being made regarding the use of social media by Councillors, this not only saves resources but also goes towards the section 27(1) duty.
- 4.2 The issue of social media and the declining standards of behaviour both towards public figures and by elected members has been commented upon by

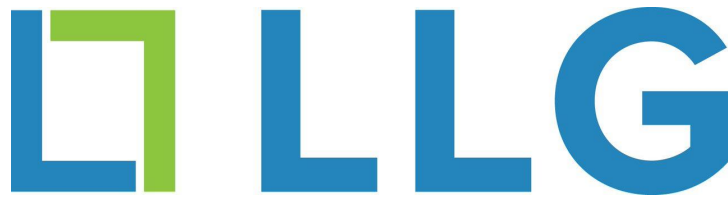


the Committee on Standards in Public Life (CSPL). The CSPL report 'Intimidation in Public Life – A Review by the Committee on Standards in Public Life' which was published in December 2017 is well worth a read. In the covering letter to the Prime Minister Lord Bew stated the following:

“...The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom. A significant proportion of candidates at the 2017 general election experienced harassment, abuse, and intimidation. There has been persistent, vile, and shocking abuse, threatened violence including sexual violence, and damage to property. It is clear that much of this behaviour is targeted at certain groups. The widespread use of social media platforms is the most significant factor driving the behaviour we are seeing...”

4.3 In the foreword to the Government’s response to the report, the Prime Minister stated:

“...the ideal of a truly plural and open public sphere where everyone can take part is in danger. A tone of bitterness and aggression has entered into our public debate. Participants in local and national public life – from candidates and elected representatives to campaigners, journalists, and commentators – have to contend with regular and sustained abuse. Often this takes the form of overt intimidation...”



4.4 In January 2019, the CSPL published their report 'Local Government Ethical Standards – A Review by the Committee on Standards in Public Life'. The report acknowledges that ethical standards are in decline and that changes are required to the standards regime to address this. The report also highlights the frequency of attacks against and the harassment of Councillors, quoting a highly topical paragraph from the written evidence submitted by the Local Government Association at page 35 as follows:

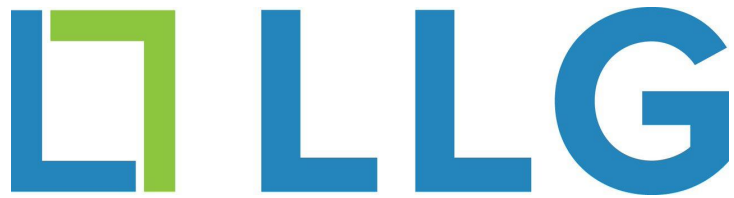
“Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.”

### **Harassment**

4.5 The Protection from Harassment Act 1997 covers both civil actions and criminal offences. There is a requirement to prove that there was a course of conduct (i.e. at least two instances) which was directed at a single person, or in the case of conduct against two or more persons, on at least one occasion in relation to each of those persons. The course of conduct must involve harassment. Harassment includes alarming the person or causing the person distress.

4.6 Unlike with defamation claims by officers or members, a council can indemnify officers and members to bring an action under the Act. The council can also start an action in its own name (section 1(1A) and 3A of the Protection from Harassment Act 1997) where there is harassment of two or more of its members or officers which the perpetrator knows or ought to know involves harassment of those persons; or by which they intend to persuade any person to do something which they are not obliged to do or not to do something which they are entitled or required to do.

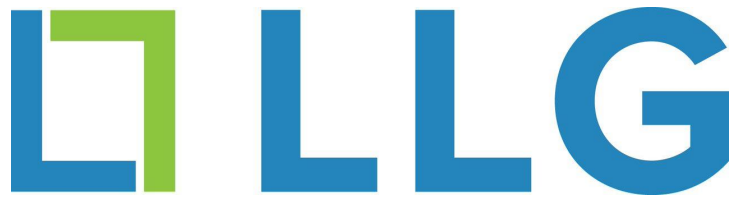




- 4.7 Bringing a civil claim from harassment is often less expensive than a claim in defamation, not least because of the possibility at interim stage of an interim injunction.
- 4.8 The ongoing publication of defamatory allegations online can constitute a course of conduct (see *Cheshire West and Chester Council & Others v Robert Pickthall* [2015] EWHC 2141 (QB) and *Coulson v Wilby* [2014] EWHC 3404).
- 4.9 The conduct complained of must be considered to “cross the boundary from the regrettable to the unacceptable,..... and be sufficiently serious to be regarded as criminal” (see *Conn v Sunderland City Council* [2007] EWCA Civ 1492). Given the Court of Appeal judgement, there is now an expectation that the conduct must be such as to attract the sanction of the criminal law. The higher threshold makes a claim quite difficult. It is important to remember that where action is sought by or in relation to members in particular, it will be difficult, and only in exceptional circumstances successful.

### **Other forms of Action**

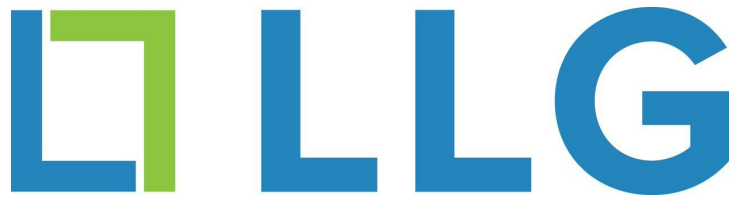
- 4.10 Other forms of action might be applicable and include the common law claim for malicious falsehood, criminal offences under the Communications Act 2003 and the Malicious Communications Act 1988, and anti-social behaviour injunctions under the Anti-Social Behaviour Crime and Policing Act 2014.
- 4.11 Crown Prosecution Service guidance in relation to both the Communications Act 2003 and the Malicious Communications Act 1988 makes it clear that a prosecution should only proceed where it involves offensive, shocking, and disturbing communications.



- 4.12 Injunctions under the Anti-Social Behaviour Crime and Policing Act would be quite novel in the context of social media postings about members and/or officer, but technically speaking it might be possible. It also has the benefit of being dealt with on the civil balance of probabilities and there is presently no case law to suggest that the conduct must be such as to attract the sanction of the criminal law as there is with injunctions under the Protection from Harassment Act 1997 (see above). Use of this legislation in this context is untested and so how a court might deal with such a case is unknown at present.
- 4.13 If officers or members receive an abusive, intimidatory or threatening communication they should keep a record of it and report it to the social media platform concerned. They should also make the council aware so that the council can keep a record and provide any appropriate advice.
- 4.14 Any posts which threaten the personal safety or security of a member or officer should be discussed with the police.
- 4.15 Engaging with an abusive communication can often encourage further, unwanted communications and may provide a platform and audience which further incites the behaviour.

## **5. Breach of Confidentiality**

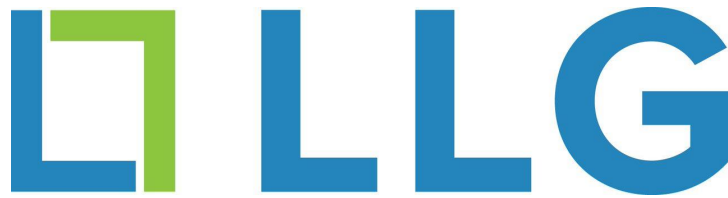
- 5.1 Breaches of duties of confidentiality (whether implied or express) can happen in all contexts, by members and officers or by third parties. An exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about



complaints or individuals who have made complaints might be disclosed. This can result in claims being brought against the council or against individuals to recover any loss or damage suffered.

### **Loss of general indemnity**

- 5.2 A general indemnity applies to officers and members under section 265 Public Health Act 1875, which is applied to all council functions by section 39 Local Government (Miscellaneous Provisions) Act 1976. The indemnity only applies when members or officers are acting bona fide in the council's interests. A breach of confidentiality is unlikely to be considered to be in the interests of the council, meaning that the member or officer involved might end up being individually liable for what could be quite large sums of money. Breaches of confidentiality are also likely to significantly undermine a council's ability to obtain best value in future due to reputational damage. In the context of contracts, third parties might not engage, hold back on sharing information with the council, or use the situation to their advantage to seek more stringent contractual terms to the detriment of the council. Breaches might also impact upon and/or effect regulatory functions in that those who are subject to regulation, or have information about breaches, might be reluctant to engage for fear of that information being disclosed.
- 5.3 There is a public interest defence to a breach of confidentiality, however it is for the person who has caused the breach to make this out.



## **6. Data Protection and the Information Commissioners Office (ICO)**

6.1 Disclosure of personal data on social media is a “processing” activity and requires a lawful basis if no exemptions to that processing apply.

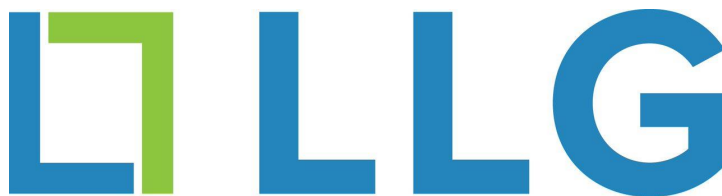
6.2 Where neither a lawful basis or an exemption apply to that processing it may be unlawful and constitute a breach of GDPR.

### **Who is the controller?**

6.3 Most social media postings by individuals are considered by the ICO to be made in a personal capacity and therefore exempt from the GDPR. However, when members post personal data on social media they could be doing so in one of four different capacities. The first of these is where the member is posting purely in their personal capacity. The ICO have however expressed a view that when processing personal data not in their own personal capacity, members could be acting in one of three further capacities: -

- a. Processing in relation to council business (where the council is the controller).
- b. Processing in relation to constituency work (where the councillor is the controller); and
- c. Processing in relation to party political matters (where the political party is the controller).

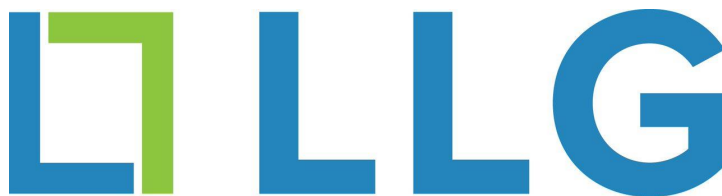
6.4 Although elected representatives are exempt from paying a data protection fee under the Data Protection (Charges and Information) Regulations 2018, they must still ensure that they adhere to the principles of the GDPR and understand best practice for managing information. Where members seek to



process the personal data for matters other than exercising members' functions then the fee exemption will not apply to that processing.

### **Personal or Household Activities Exemption**

- 6.5 The ICO considers most social media postings made by individuals are exempt under the personal or household activities exemption.. It should be noted however that in [Sergejs Buivids \(Case C-345/17\)](#) the Court of Justice European Union (CJEU) recently gave an interesting view on the application of this exemption regarding the posting of a video on YouTube by an individual, having been asked to do so by a Latvian Court (ECLI:EU:C:2019:122). This was a case concerning the pre GDPR data protection directive however the exemption under the GDPR is very much the same.
- 6.6 In that case, an individual had been taken to a police station to give a statement, and whilst there he filmed police officers going about their normal day to day business. He subsequently posted the footage on YouTube stating that he had done so to draw attention to the police acting unlawfully. When the individual was told to take the clip down by the Latvian National Data Protection Agency, he challenged them, claiming that the personal or household activity exemption or the journalism exemption applied (being one of the “special purposes” exemptions). The CJEU said that the personal or household purposes exemption did not apply as the material was published on *“a video website on which users could send and share videos without restricting access to that video, thereby permitting access to an indefinite number of people”*. The processing of personal data here, did not come within the personal or household activities. The CJEU also stated that the journalism exemption could apply but did not give a definitive view on this.



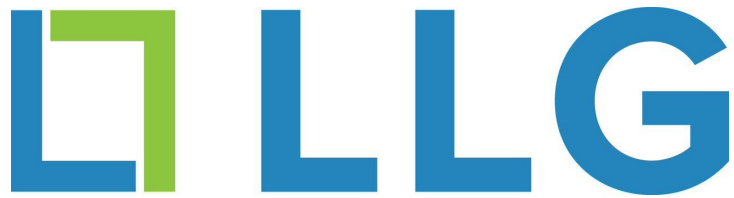
- 6.7 Although this raises interesting points, the case was very nuanced, and it remains to be seen whether this view will be more widely adopted.

### **Journalism Exemption**

- 6.8 As referred to above, the GDPR and the Data Protection Act 2018 contain an exemption applicable to processing for the “special purposes”. One of those special purposes is processing for the purpose of journalism, which could apply to the processing of personal data by ‘citizen journalists’ on their social media pages, blogs and websites. The exemption (when applicable) acts to

exempt the controller from the vast majority of obligations under the GDPR (but not the security and accountability principles). The exemption only applies where the controller considers that compliance with the GDPR provisions would be incompatible with the special purposes (this must be more than inconvenience); that the processing is being carried out with a view to publication of journalistic material; and that the publication is in the public interest, taking into account the special importance of the general public interest in freedom of expression, any specific public interest in the subject matter, and the potential to harm individuals. When deciding whether publication would be in the public interest, the controller must have regard to BBC Editorial Guidance lines, the OFCOM Broadcasting Guide, and the Editors’ Code of Practice..

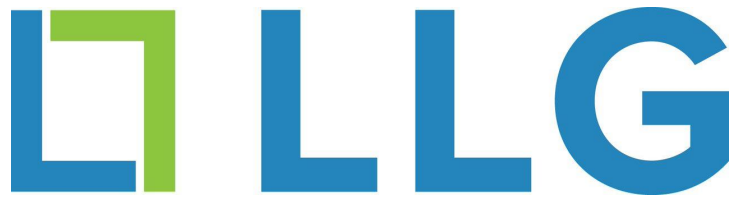
- 6.9 If those making derogatory posts on social media cannot rely on the personal or household activities exemption or the journalism exemption, they will be considered to be controllers under the GDPR meaning that there may be means of redress under the GDPR (such as the right to object). Complaints could also be made to the ICO, as well as potential proceedings being



brought under the GDPR and Article 8 for material and non-material damage against the controller for any breach.

## **7. Employment Considerations**

- 7.1 Employee misconduct involving use of social media is becoming an increasing problem and one that can be difficult for employers to deal with properly. Firstly, characterisation of misconduct may be problematic e.g. does the misconduct consist of damaging the employer's reputation or does it breach a duty of confidentiality?
- 7.2 Reported cases tend to fall within the following three categories – inappropriate employee actions (for example an employee posted pictures of themselves DJing in Ibiza whilst “off sick”); using social media to make derogatory comments about colleagues, the employer, customers/clients/patients; or excessive use of social media during work hours. Different considerations will also apply to dealing with conduct which is in work or on the other hand outside work.
- 7.3 There is an implied term in all employment contracts that the working environment will be reasonable, tolerable, and congenial. The case of *Moore v Bude-Stratton Town Council* UKEAT/313/99; [2000] IRLR 676 also makes it clear that councils can also be held responsible for conduct of members towards officer. This case involved a councillor's persistent hostility and abuse against an officer. The council tried to claim that as the councillor was not employed by the authority, it was not responsible. However, the tribunal found that those circumstances did not absolve the authority from its obligations and employees could in fact resign and claim unfair dismissal. The council was therefore vicariously liable for the breach and damages flowed from that.



7.4 It is important to remember that where someone is subjected to a course of conduct that causes them distress or alarm this may give rise to cause of

action for harassment.. Online activities such as cyber bullying are also caught.

7.5 If any harassment is on the grounds of a protected characteristic (e.g. sex, race, disability, age etc.) then this might form the basis of a discrimination claim against the employer in the Employment Tribunal. A concern here is that discriminatory damages are not capped and can also include injury to

feelings. The amount of damages could therefore be very high depending on the conduct.

### **Health and Safety**

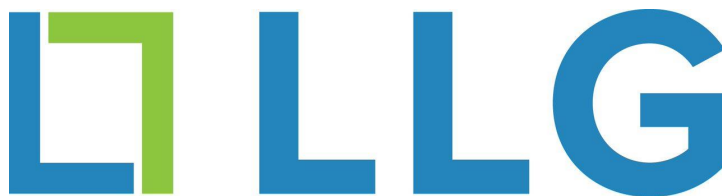
7.6 The Health and Safety etc. Act 1974 places a general legal duty on employers to ensure (so far as is reasonably practicable) the health, safety and welfare at work of all their employees. This includes protection from bullying and harassment, and other things that can affect psychological wellbeing.

Councils should have safeguards and effective monitoring in place in order to protect against risks and effectively deal with abuse as the duty may be breached by exposure to the risk without the need for actual injury or ill health.

### **Reputational Risk**

7.7 Employee conduct may damage the council's reputation even if it takes place outside of work, particularly so in the case of social media (which is where it





often happens). Cases determined in the Employment Tribunal (ET) suggest that the following factors are relevant when considering employees' use of social media: -

- a. Is it sufficiently work related? Depending on the facts there has to be some link between work and activity.
- b. Employers should not take a disproportionate view merely because the material is not putting them in the best light when it comes into the public arena.
- c. Information given to employees about the council's image and reputation as well as guidance on the use of social media are particularly relevant.

### **General Indemnity**

7.8 As set out in paragraph 5.2 above, a general indemnity applies to officers under section 265 Public Health Act 1875, which is applied to all council functions by section 39 Local Government (Miscellaneous Provisions) Act 1976. The indemnity only applies when officers are acting bona fide in the council's interests. A failure to act bona fide in the Council's interests can result in the indemnity being lost, meaning that Officers may therefore be personally liable for claims and damages, including claims by the Council against the Officer.

### **Human Rights**

7.9 The Human Rights Act 1998 is potentially applicable to employment cases resulting from the alleged misuse of social media. Human rights will not be affected by Brexit.

The three relevant rights in this context are: -

- a. Right to respect for private and family life (Article 8)

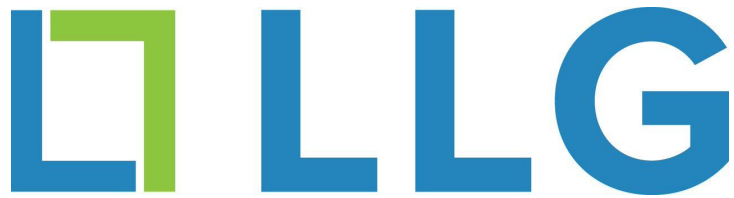


- b. Freedom of thought conscious and religion (Article 9)
- c. Freedom of expression (Article 10)

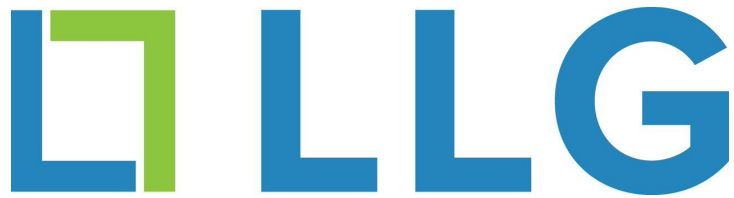
7.10 It is important to note that these are qualified rather than absolute rights and should therefore be approached in two stages. First, has the human rights article been engaged? Second, if there is an infringement, is that justified? When considering justification, proportionality must be considered which requires balancing an employees' rights against the employers' legitimate interests in protecting its reputation and other employees.

### **Case Law Examples**

- 7.11 The case of *Crisp v Apple Retail (UK) Ltd* [2011] ET/1500258/11 concerned an employee of Apple posting expletives and derogatory comments on Facebook about Apple software and working at Apple in general. The Tribunal found that Mr Crisp had no reasonable expectation of privacy even though Facebook was restricted to friends, as it was noted that Mr Crisp's comments could be forwarded without control and indeed it was a friend who had forwarded it to Apple.
- 7.12 The Tribunal found that the right to freedom of expression had been engaged, but the infringement of that right had been justified. Apple had the right to protect its reputation and had taken definite steps to do so in its training, with clear policies that stated the protection of its image was of core value and that social media comments on Apple products was likely to be seen as gross misconduct.
- 7.13 The case demonstrates that the way in which you address social media use in policies is important in being able to handle misconduct through social media by staff.

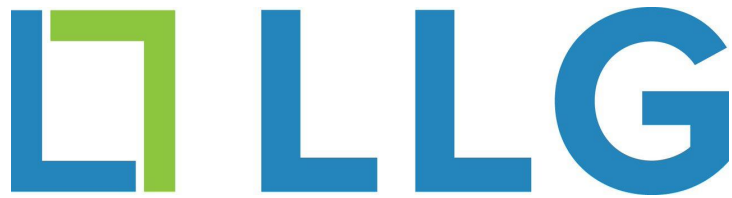


- 7.14 The case of Teggart v TeleTech UK Limited 00704/11 concerned a customer service representative in a call centre who posted obscene comments about the alleged promiscuity of a female colleague within which he also mentioned his employer, TeleTech. On becoming aware of the posts the female colleague asked Mr Teggart's girlfriend to ask him to remove the posts, however instead he chose to post more derogatory and abusive comments and was subsequently dismissed for gross misconduct for bringing TeleTech into disrepute and for harassing a fellow employee.
- 7.15 Mr Teggart claimed unfair dismissal and breach of Articles 8, 9, and 10. The Tribunal found that his privacy was not engaged as he had abandoned this by putting his comments on Facebook. Further that freedom of thought and belief did not extend to a belief about colleague's promiscuity, and that freedom of expression, although a right, must be exercised responsibly so as not to damage a colleague and her reputation. The Tribunal found that the dismissal was fair but was critical of the finding by the employer of serious disrepute as there was no evidence of that. They had made the assumption but could not prove it actually had in reality.
- 7.16 The case of Game Retail Ltd v Laws UKEAT/0188/14/DA concerned a risk and loss prevention investigator who had a personal twitter account and was followed by 65 stores in the business. Game Retail identified 25 expletive tweets by Mr Laws who had taken offence to dentists, golfers, police, his dad, and disabled people and summarily dismissed Mr Laws. The EAT found that the dismissal was fair. The tweets were not private, and he knew that he was being followed by the 65 stores. The tweets could be seen by staff and potential customers. There was more than just a theoretical risk of



reputational damage due to the number of tweets, the level of offensiveness of the comments, and due to being followed by the 65 stores.

- 7.17 In the case of *Walters v Asda Stores Ltd* an ASDA manager posted a comment on her Facebook page which stated "*even though I'm supposed to love our customers hitting them in the back of the head with a pick axe [sic] would make me feel far more happier heheh*". She denied posting the comments and argued that her account had been hacked. The Tribunal found that the subsequent dismissal was unfair because the misconduct did not amount to gross misconduct and the employer's internet policy did not specifically state that this type of conduct by managers would be viewed more seriously. Further, the employee had an exemplary disciplinary record over 10 years' service with no previous warnings.
- 7.18 This can be contrasted with the case of *Dixon v GB Eye Ltd, ET (Case. 2803642/10)*, in which Ms Dixon who had raised a grievance about changes to her role following her return from maternity leave, was subsequently suspended pending investigation for accessing her manager's email account., During suspension she posted offensive comments about her employer and colleagues on Facebook. She was dismissed and the Tribunal found that the dismissal was fair on the basis that she had breached a clear employer IT policy and the severity of the comments alone would have been sufficiently serious to dismiss.
- 7.19 Of key importance is having clear policies in place on the use of social media in all aspects of Council business and operations, as well as regular training for both Councillors and officers to consolidate understanding. It is better to be proactive in dealing with potential issues, as doing so on a reactive basis will



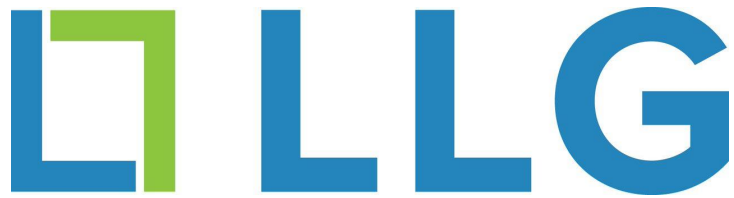
often be too late to avoid serious breaches of legislation and duties of confidence with potential for significant damage to reputation.

## 8. Social Media Management

- 8.1 When analysing the majority of case law in this area, the strength or otherwise of an employer's policies are exceptionally important and do correlate to the outcome in any given employment tribunal case.
- 8.2 Policies need to set limits or set appropriately defined acceptable usage of council resources, intellectual property use and third-party data together with setting out expectations in respect of confidentiality, prohibitions on bullying, harassment and discrimination, and on negative comments about the council, its employees, elected members, service users, business contacts or partner organisations.

### Social media management - controls

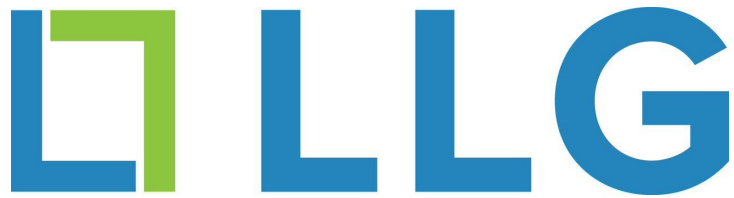




- 8.3 Whilst a disciplinary policy should state clearly the sanctions for misconduct and set expectations around maintaining the reputation of the council and not bringing it into disrepute; there will inevitably be the need to assess misconduct on a case by case basis and an acceptance that harm to the council's reputation might not always be sufficiently evidenced to rely upon.
- 8.4 Communications should be utilised to remind employees at every opportunity about the correct use of social media including at induction, within policies, through continuous training and even log on messages.
- 8.5 Where it can be demonstrated that an employee has been told that use of council resources are restricted to work matters and that social media content which is malicious, discriminatory, bullying or otherwise goes against the ethos of the council and/or harms its reputation this will help protect the council in disciplinary matters from a defence that the employee 'did not know' or 'was not told'. Failure to evidence these matters will provide the employee with a stronger defence in any external proceedings.

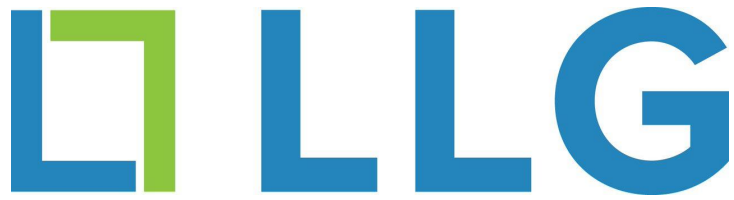
### **Monitoring of employees**

- 8.6 Monitoring of employees can take the form of routine IT monitoring or even targeted monitoring during the course of an investigation. Emails, even if deleted, are retained on a hard drive and may be retrievable using specialist software. Indeed, many cloud-based systems back up such data.
- 8.7 Monitoring online activity can be useful because it could relate to performance issues but can also mitigate against reputational damage and legal liabilities.



## Regulation

- 8.8 Monitoring is tightly regulated through a wide range of legislation. In terms of monitoring involving the processing of personal data, this is of course regulated under the GDPR and the Data Protection Act 2018. The Information Commissioners Office (ICO) has produced the [Employment Practices Code](#) which was issued under the Data Protection Act 1998 and intended to assist employers to “comply with the Data Protection Act and to encourage them to adopt good practice. The code aims to strike a balance between the legitimate expectations of workers that personal information about them will be handled properly and the legitimate interests of employers in deciding how best, within the law, to run their own businesses”. Whilst the Code is yet to be reviewed in light of the GDPR and the Data Protection Act 2018, it is understood to remain indicative of the ICO’s approach to be taken and in particular Part 3 of the Code contains guidance on monitoring at work and covers systematic monitoring which is understood to mean where an employer monitors all workers or particular groups of workers as a matter of routine; and occasional monitoring which is understood to mean where an employer introduces monitoring as a short term measure in response to a particular problem or need.
- 8.9 The Code recommends that employers set out the circumstances in which monitoring can be used, the nature of it, how the information obtained will be used, and the safeguards in place for those employees subject to monitoring. Employees should be left with a clear understanding of when information about them is likely to be obtained, why the information is being obtained, how it will be used, and who if anyone will the information be disclosed to. The Council’s IT policy needs to ensure it is GDPR compliant as this is a useful tool in controlling abuse.

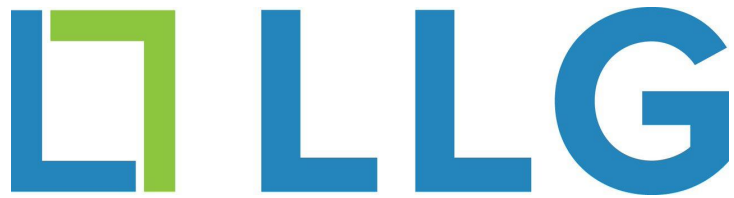


- 8.10 There are specific pieces of legislation that deal with monitoring including the Investigatory Powers Act 2016, which makes it unlawful in certain circumstances to intercept a communication in the course of transmission. It is also important to consider the Human Rights Act 1998 (in particular Article 8 in that private life might be infringed) and employee protection rights including the duty of mutual trust and confidence.
- 8.11 Monitoring must be proportionate with less intrusive methods considered at first instance. Employees should be provided with details about the purpose of monitoring including when and how it will be carried out, and employers may need to undertake an impact assessment, balancing the rights and privacy needs of the employee against the legitimate aim and needs of the employer.
- 8.12 It is good practice to reserve the right to monitor and review communications within existing policy which should reference both Council communication systems and social media. This should explain what the Council considers to be a legitimate business purpose whilst also incorporating the standards expected.

### **Policy Content**

- 8.13 A social media policy should look to include the following: -
- Coverage (the types of media and categories of people)
  - Who is responsible for implementing the policy
  - Interrelationship with other policies (e.g. IT, Disciplinary, Data Protection etc.)





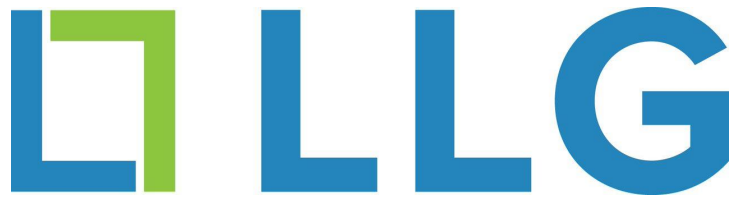
- Prohibited use
- Business use parameters
- Guidelines for responsible use
- Monitoring
- Consequence of breach and sanctions

8.14 Proactively defining what is and what is not acceptable within a social media policy minimises the risk of challenge. This can include not just discrimination and bullying but other more specific examples such as impersonating colleagues.

8.15 The policy should be clear about applying outside of office hours and regardless of whether council equipment or own devices are utilised. Disciplinary action relating to misconduct outside of office hours can be justified if the misconduct presents a real risk of damage to the reputation of the Council and or concerns a breach of confidentiality or amounts to defamation, harassment, discrimination or bullying.

8.16 Be clear about whether the Council accepts the personal use of social media within work time. Tolerable limits should be explicit to avoid confusion or any suggestion that an employee was not clear as to the restrictions.

8.17 Ensure the policy covers not just employees but consultants, contractors and councillors.

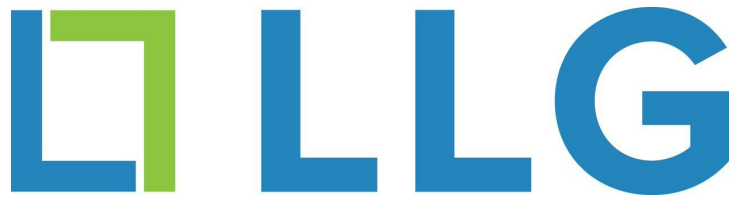


## **Guidelines**

- 8.18 Ensure staff are clear on their personal social media profile that they are speaking on their own behalf, write in the first person and use a personal email address, not a work address.
- 8.19 Where there is a possibility of identifying the individual as a council employee a disclaimer can be used to ensure the reader understands that the views expressed do not represent those of the council, (unless of course the employee has explicit authority to speak on its behalf). Employees should also be given the contact details of a named person at the Council they can report any misconduct to, should they see it on social media.

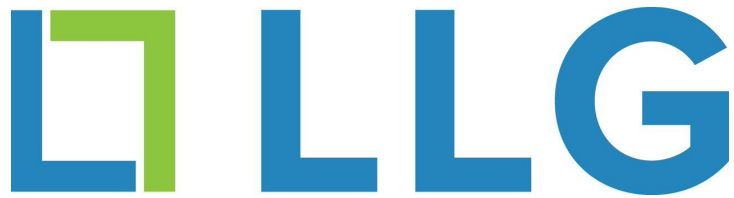
## **Key Messages to Employees**

- 8.20 Posts can go viral quickly resulting in a loss of control. Employees should be reminded that posts on social media are often permanent in nature.
- 8.21 Off the cuff or unguarded remarks should be avoided. Even the most well-intentioned posts without due consideration can have unintended consequences.
- 8.22 Employees should be reminded to maintain personal/professional boundaries and should try to imagine that they are speaking face to face to an audience, as well as understanding that there is no automatic expectation of privacy.

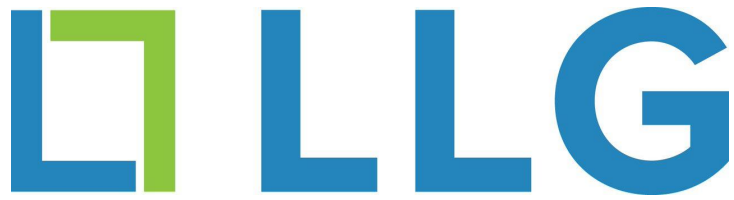


## **9. Problem Individuals and Practical Action**

- 9.1 There is no easy remedy to the issue of problem individuals and their use of social media to attack and criticise councils, members and officers, and to make allegations of corruption. As discussed, there is a much higher threshold of tolerance expected of those in public life. Successful action is not commonplace. It is costly and risks increasing or compounding the issue (particularly if such action is not successful), and in some cases these individuals will see such action as vindication that their allegations are correct, or even hold themselves out as a martyr. This is not to say that legal action should not be taken in cases where such action is demonstratively necessary, reasonable and proportionate. Legal options available in those cases are discussed in Chapter 4 above.
- 9.2 Sometimes, the individuals behind such posts do not realise the impact their behaviour has had on the employees and/or members concerned. Reporting the matter to the police who may visit the perpetrator can have an immediate and lasting effect on their behaviour.
- 9.3 There are however practical measures which can be taken to reduce the impact. These include measures such as blocking users, removing content (if able to do so but remembering to take a screen shot for evidence), and reporting content to the social media platform itself. It is important to complain to the particular social media platform and keep a record in order to build evidence that steps have been taken should legal action become necessary.



- 9.4 Whilst unpleasant content if acknowledged or addressed might reach a further audience and perpetuate the content, where the issue is already known about, a press statement on the council's own platform can help to redress misinformation. This can include a statement that any malicious allegations are without merit and could impact on council functions and the public purse. What course of action may be appropriate very much depends upon the nature of the behaviour and the context within which it sits.
- 9.5 The council's unreasonable complaints policy should include behaviour on social media and set out the measures that might be taken to address inappropriate behaviour. This might include restricting access to members and/or officers, blocking emails, banning access to council land, or initiating a single point of contact. It is important to be overt about what action may be taken and in what circumstances, as well as making sure that any measure applied is demonstratively proportionate and necessary to mitigate against potential challenges brought. Any measures applied should be reviewed intermittently and lifted when appropriate.
- 9.6 It is worth noting that section 14 of the Freedom of Information Act 2000 provides that public authorities do not have to comply with vexatious or repeated requests. The ICO have produced guidance on [Dealing with Vexatious Requests](#) which is comprehensive and expects authorities to consider whether the request has a genuine purpose in light of the objective public interest test. Regulation 12(4)(b) of the EIR contains a similar exception allowing public authorities to refuse to comply with a request for environmental information where the request is manifestly unreasonable.



## 10. Guidance for Members

10.1 Social Media can be an effective tool to promote political views and activities/projects with which members are engaged. It can also however present a minefield of delicate situations which can, if not managed correctly, place members at risk of abuse or at risk of breaching the code of conduct.

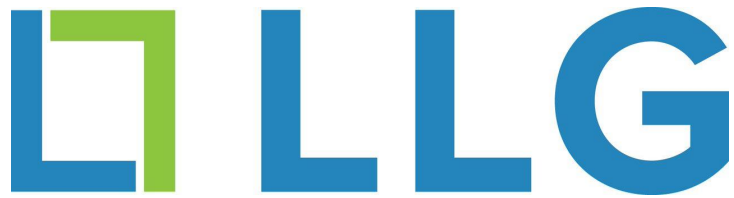
10.2 The best way to ensure that members protect both themselves and the council's interests is to encourage them to treat posting on social media in exactly the same way as they would a public speech or an article for publication either professionally or in their personal capacity. The relatively permanent nature of a social media post means that it can follow an individual around their entire lifetime and even when deleted, another person may have captured a screen shot which could be reposted.

10.3 Remembering to adhere to the code of conduct when using social media and ensuring the accuracy of content will go a long way to reaping the benefits of on-line engagement without facing potential repercussions.

### Setting the Scene

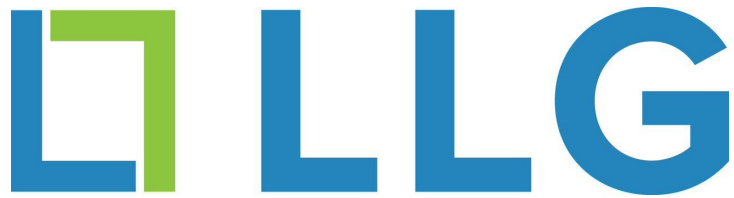
10.4 The following are examples of social media use by members which have given rise to complaints and/or reputational damage.

10.5 In January 2020, a councillor retweeted an article which said that Countdown star Rachel Riley was a "fascist" and an "Israeli state terrorist sympathiser". An investigation commissioned by the council found that the councillor's



Twitter account biography listed them as a councillor but that they were acting in a personal capacity at the time and therefore had not breached the council's code of conduct. The findings were accepted by the council's standards committee, but it said councillors should be given more training on social media use.

- 10.6 In April 2020, a councillor who was taking part in a day of fasting during Ramadan, shared a photograph of bacon and boiled eggs and tagged the Muslim Council of Britain with the caption: 'Up early to start my fast for #LibDemIftar! Really not sure I'll get through to the evening, but we'll see!' Following complaints, the councillor said that "This is a learning experience, and I'd prefer to be honest about it than not. Sorry if it caused offence". He also explained "it was 4am and I was half asleep."
- 10.7 In April 2020, a councillor shared a picture of Greta Thunberg on Facebook in response to her statement that "my generation will start a revolution" and added the caption: "Your generation can't work 40 hours in a week, can't decide whether you're a boy, or a girl or 'other' or can't eat meat without crying". A number of complaints were made about his post, in particular that it was transphobic. The councillor later apologised however the Scottish Conservatives received calls for the councillor to resign from the party or be suspended, with constituents threatening to file complaints with the Commissioner for Ethical Standards in Public Life (who investigate complaints about councillors in Scotland).
- 10.8 In May 2020, a councillor faced calls to resign after sharing a tweet headed "Things I trust more than Boris" which set out a list including: an injection from Dr Harold Shipman; a taxi ride from John Worboys, and the Covid-19 virus.

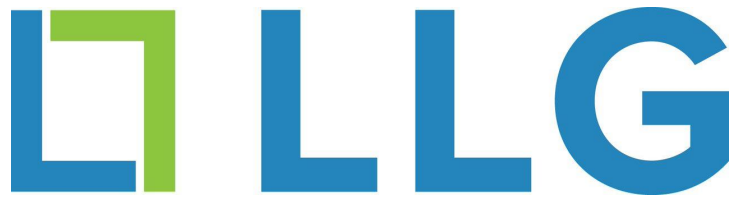


The councillor retweeted that they ‘trusted criminals and the covid virus more than the prime minister’ on their personal twitter account. The councillor did delete the retweet following criticism from the local MP who said it was repulsive and shocking. In response, the councillor said that they had learnt their lesson and would be more careful in the future adding that their poor eyesight had caused them to retweet without looking at it.

### **Legal Areas**

10.9 The following is a list of legal areas which should be taken into account when using social media: -

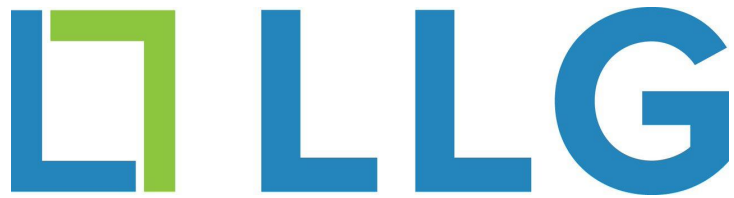
- a. Defamation: if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages.
- b. Copyright: publishing information that is not yours, without permission, may also result in an award of damages against you.
- c. Harassment: it is an offence to pursue a course of conduct against a person that is likely to cause alarm, harassment, or distress.
- d. Data protection: do not publish personal data of other people, including photographs, without their express permission to do so.
- e. Incitement: it is an offence to incite any criminal act.
- f. Discrimination and ‘protected characteristics’: it can be unlawful to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010).
- g. Malicious and obscene communications: it is an offence to send malicious or obscene communications.
- h. Judicial review of decisions on the basis of bias and/or predetermination.



### **Professional or Personal Capacity?**

- 10.10 Section 27(2) of the Localism Act states that the Code of Conduct applies when members are acting in their official capacity. This can present significant grey areas in the context of social media, where the line between acting in an official or in a private capacity can be a difficult one to draw. Often Councillors will state that they were posting in a private capacity, whereas complainants will state the opposite.
- 10.11 Councillors should be mindful that the public may view them as acting as a councillor whatever their intention at the time. Utilising a council mobile phone or technology for the purposes of electioneering and political campaigns is not allowed. Indeed, Councillors should only access their personal social media accounts through personally held technology and not that provided by the council, with appropriate restrictions enabled to ensure that posts are not publicly accessible to all. Any reference to an individual holding office as a councillor on a social media site runs the risk that any content added by that individual is attributable to them as an elected member.
- 10.12 When using social media councillors are able to share strong views on matters of political interest. In *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) Mr Justice Hickinbottom stated at paragraph 38 that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated...”.





### **Bias and pre-determination**

10.13 Members sitting in particular on regulatory committees such as planning or licensing should be aware that they are allowed to have a view, but not go so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council's decision is then open to challenge and could be invalidated, and the 'disrepute' provisions of the Code of Conduct could be engaged.

### **Property and Data Protection**

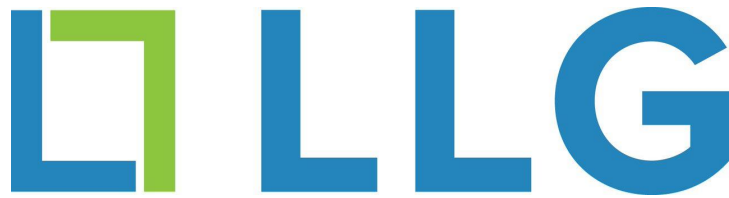
10.14 It is important at all times to respect confidentiality, financial, legal and personal information. Policy that has yet to be announced should not be disclosed.

10.15 Personal information about other councillors should not be disclosed. An informal tone of voice is often desirable within agreed boundaries, but remember that when using official accounts, members are the voice of the council.

### **The Employment Context**

10.16 It should be remembered that officers within the council are employees of the council. Members have responsibilities toward them in relation to ensuring and maintaining the mutual relationship of trust and confidence owed to them.

10.17 In the Heesom Case (which was an appeal by a Welsh Councillor against findings that he had been in breach of the Code of Conduct in his behaviour

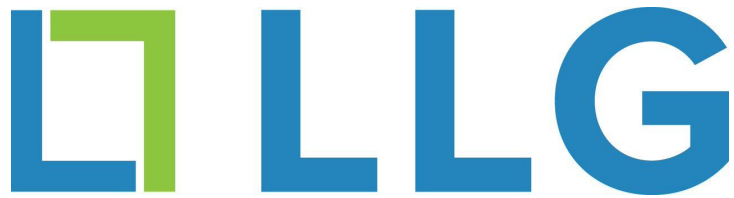


towards officers), Mr Justice Hickinbottom (referring to the case of Janowski v Poland (1999) 29 EHRR 705) stated the following at paragraph 42 of the judgment:

“...Civil servants are, of course, open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them. As well as in their own private interests in terms of honour, dignity and reputation, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration...”

10.18 Where Councillors themselves make allegations against officers via social media (or otherwise), it can impact upon the mutual duty of trust and confidence between the officer and the Council. Indeed, at paragraph 82 of the Heesom case Mr Justice Hickinbottom stated:

“In *Moores v Bude-Stratton Town Council* [2001] ICR 271, a council employee resigned because of abuse and allegations of dishonesty at the hands of a backbench member of the council for whom he worked. The councillor was censured by the council at its next meeting, and the employee asked to reconsider; but he refused and pursued a claim for unfair dismissal. It was argued on his behalf that there was a duty on every local councillor arising out of his or her position as councillor not to do anything calculated and likely to destroy or damage the relationship of confidence and trust between the council and the council's employees (page 277D-E) ...the majority accepted that argument, and held that



councillors were under a duty of trust and confidence for breach of which the council would be liable...”

10.19 Councillors also need to be alive to inappropriate comments and content posted by third parties in response to their own posts. Whether by failing to respond at all or by actively engaging with third parties without addressing the offending content, this could be seen to undermine trust and confidence and at worst, be taken to condone such activity.

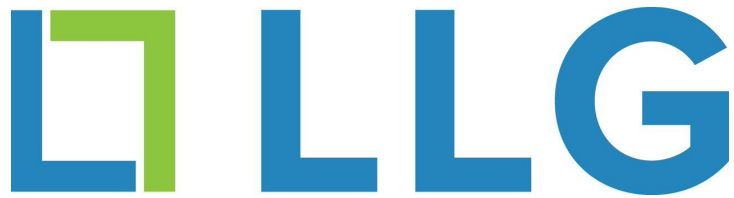
10.20 Finally, section 2(1) of the Health and Safety at Work etc Act 1974 states that: “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”

10.21 Councillors should therefore be very careful when referring to officers on social media, raising concerns or complaints through the appropriate council policies and procedures only.

### **Note**

**It should be noted that at the time of writing this, the LGA are currently consulting on a new model member code of conduct which includes a presumption that councillors are acting in an official capacity. This does require legislative change which the LGA acknowledges and which may or may not happen within the foreseeable future.**

**The CSPL recommended that “Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches”.**



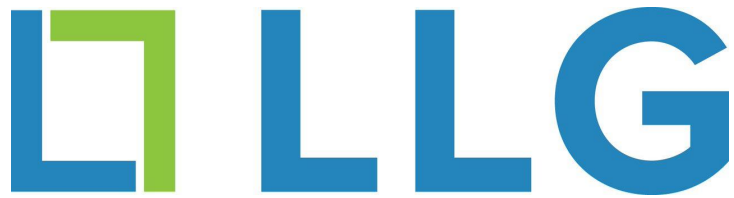
The LGA draft code states “The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting] in [public or in] your capacity as a member or representative of your council,...” and “These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media”

The draft code also states “Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes”

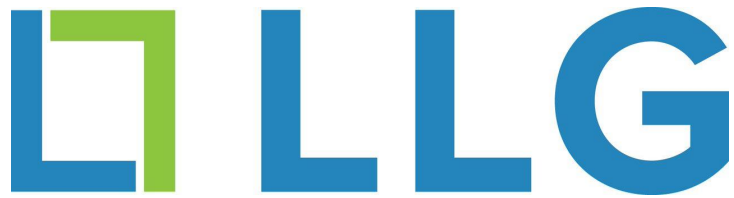
## 11. Do’s and Don’ts

### DO: -

- 11.1 Have in place policies for both officer use and use by elected members in their capacity as a Member of the Council – back this up with a policy on unreasonable complaint behaviour.
- 11.2 Provide regular training to elected members and to officers, particularly those who are given access to social media accounts on behalf of the Council.
- 11.3 Restrict the number of officers authorised to use the Council’s social media accounts (normally comms officers or dept heads).
- 11.4 Require officers and elected members to sign up to the Council’s policies on social media use.



- 11.5 Consider hosting elected members blogs through modern.gov therefore allowing a degree of control but be careful in relation to the code of publicity and particularly purdah (Council resources must not be used for party political purposes).
- 11.6 Remember that FOIA/EIR and DPA Subject Access requests might be made via social media.
- 11.7 Actively respond to people who engage with you – this shows that the Council is listening and responsive. It also allows Councils to be involved in and address issues at an early stage.
- 11.8 Deal with inappropriate content quickly where possible.
- 11.9 Be mindful of the Council's duties towards employees and others.
- 11.10 Use social media during crisis situations – this provides an immediate interface with persons affected and allows quick dissemination of advice and critical information. Include its use in emergency plans.
- 11.11 Use it to live broadcast meetings therefore increasing transparency, engagement and understanding.
- 11.12 Use it for consultation purposes.



11.13 Ensure staff report back regularly on usage and activity in order to assess strategy and any issues.

### **DON'T**

11.14 Ban or shy away from the use of social media.

11.15 Assume that social media will look after itself.

11.16 Forget that anything you post is permanent and available to the world at large.

11.17 Forget that it is a two-way tool.

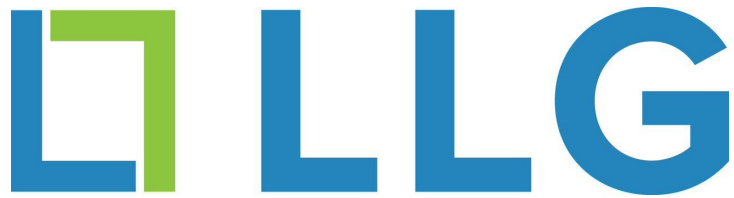
11.18 Get drawn into arguments and debates on social media – where individuals are expressing dissatisfaction direct them to the right place to make their complaints.

## **12. Social Media Suggested Guidelines for Inclusion**

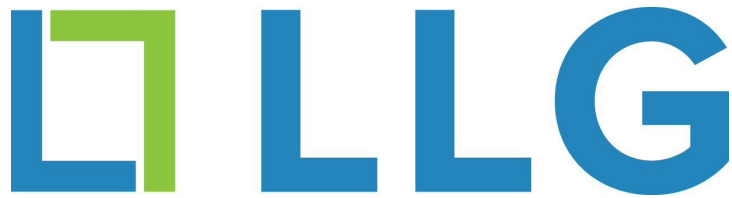
12.1 Be clear as to the objective of your engagement: e.g. consultation, influencing, communication.

### **Potential Guidelines**

- I. Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.



- II. Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
- III. Proper copyright and reference laws should be observed when posting on-line.
- IV. When posting on your own social media accounts and referencing your authority be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own, and complying with the code of conduct and council's policies on social media together with the law.
- V. Discriminatory content is prohibited and may be unlawful and criminal.
- VI. You must be mindful of the political sensitivities within which individuals operate in their day jobs.
- VII. You must not disclose any information which is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.
- VIII. You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker or are advising the decision maker.
- IX. You should show respect for other's opinions.
- X. You should uphold the code of conduct and any values policy.



- XI. You should contact the Communications Team (and/or your line manager if relevant) immediately if you make a mistake or spot something you are concerned about.

### 13. Useful Links: -

LGA ['Handling Abuse on Social Media'](#)

LGA ['Councillors and Social Media'](#)

LGA ['Councillors Guide to Handling Intimidation'](#)

The Welsh Local Government Association ['Social Media and Online Abuse'](#)

CSPL ['Local Government Ethical Standards Review'](#)

CSPL ['Intimidation in Public Life Review'](#)

LGA ['A Basic Guide to Social Media'](#)



### Acknowledgements: -

**LLG would like to thank David Kitson, Sarah Lamont and Wesley O'Brien from Bevan Brittan, and Durham County Council.**

**Legal Notice:** -The LLG Social Media Toolkit has been produced by LLG for the benefit of its membership only. It may not be copied, transmitted or otherwise distributed to anyone who is not a member of LLG without prior express written consent.





**Name of meeting: Standards Committee**

**Date: 29<sup>th</sup> September 2020**

**Title of report: Committee on Standards in Public Life Follow up**

**Purpose of report**

To brief the standards committee on the current review being undertaken by the Committee on Standards in Public Life (CSPL).

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <u>Strategic Director</u> & name	Yes – Rachel Spencer-Henshall – 10 <sup>th</sup> September 2020
Is it also signed off by the Service Director for Finance IT and Transactional Services?	Yes – Eamonn Croston
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes – Julie Muscroft
Cabinet member <a href="#">portfolio</a>	Cllr Graham Turner

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Have you considered GDPR? Yes**

## **1. Summary**

- 1.1 This report is intended to brief members the current follow up being conducted by the CSPL.

## **2. Information required to take a decision**

### **2.1 The work of the Committee on Standards in Public Life**

- 2.1.1 The CSPL did indicate, when their report was originally published, that they would review the implementation of their best practice recommendations with local authorities to measure their progress.
- 2.1.2 The Cabinet Office has now written to the Chief Executives of local authorities in England reminding them of this and advising that they will be following up progress on the implementation of the recommendations in the Autumn of 2020. A copy of their letter is at Appendix A
- 2.1.3 A reminder of the recommended best practices was also sent and a copy of this is at Appendix B.

### **2.2 Kirklees progress on best practice recommendations**

- 2.2.1 There were a total of 15 best practice recommendations. Appendix C sets out the recommendations together with a summary of what we are doing in Kirklees in response to the recommendations. As members will note from previous reports about the report from CSPL and the table in Appendix C that we were already meeting most of the recommendations or have taken steps to do that.

## **3. Implications for the Council**

### **3.1 Working with People**

N/A

### **3.2 Working with Partners**

N/A

### **3.3 Place Based Working**

N/A

### **3.4 Climate Change and Air Quality**

N/A

### **3.5 Climate Change**

In order to minimise any impact, printing is kept to a minimum.

### 3.6 Other (eg Legal/Financial or Human Resources)

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.

#### 4. Consultees and their opinions

N/A

#### 5. Next steps and timelines

- 5.1 The CSPL have indicated that they will write to the Chief Executive in the autumn, seeking an update on progress towards implementing the best practice recommendations.

#### 6. Officer recommendations and reasons

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

#### 7. Cabinet portfolio holder's recommendations

N/A

#### 8. Contact officer

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

#### 9. Background Papers and History of Decisions

- 9.1 Agenda item 8

<https://democracy.kirklees.gov.uk/documents/g5638/Public%20reports%20pack%2006th-Mar-2019%2010.00%20Standards%20Committee.pdf?T=10>

- 9.2 Agenda item 8

<https://democracy.kirklees.gov.uk/documents/g6032/Public%20reports%20pack%2011th-Sep-2019%2010.00%20Standards%20Committee.pdf?T=10>

#### 10. Service Director responsible

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000

[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## **Appendix A**

**Sent:** 06 July 2020 12:02

**To:** Jacqui Gedman <[Jacqui.Gedman@kirklees.gov.uk](mailto:Jacqui.Gedman@kirklees.gov.uk)>

**Subject:** Fwd: Best practice in local government, follow up by the Committee on Standards in Public Life

### **FOR THE ATTENTION OF THE CHIEF EXECUTIVE**

I am writing from the Committee on Standards in Public Life to follow up recommendations made in our January 2019 [report](#) on local government ethical standards.

In that report, we identified some best practice recommendations which represent a benchmark for ethical practice and which we expect any local authority should implement.

We said in our report that we would review the implementation of those best practice recommendations in 2020. We completely understand the unexpected and unprecedented pressures that local authorities are facing this year with COVID-19, so we are not of course asking for an immediate response. The purpose of this email is to let you know that we will be writing again in the autumn to ask you for your progress against these recommendations. I have attached a list of the best recommendations for ease of reference, but they are of course also set out in the report.

If you have any questions, please do just let us know. Otherwise, we wish you well and look forward to being in touch again later this year.

Yours sincerely

Lesley Bainsfair (Ms)

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## Appendix B



List of best practice

# List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

**Best practice 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.

**Best practice 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.

**Best practice 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.

**Best practice 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.

**Best practice 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.

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

**Best practice 7:** Local authorities should have access to at least two independent persons.

**Best practice 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.



**Best practice 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.

**Best practice 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.

**Best practice 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.

**Best practice 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.

**Best practice 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.

**Best practice 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.

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

## Appendix C

<b>CSPL best practice suggestion</b>	<b>Kirklees progress</b>
<p><u>Best practice 1:</u> 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.</p>	<p><u>Best practice 1:</u> The Code of Conduct already included a prohibition on bullying and harassment, but it has been updated to better define what is meant.</p>
<p><u>Best practice 2:</u> 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.</p>	<p><u>Best practice 2:</u> Councillors are already required by the Code of Conduct to engage with the standards process and the code makes it clear that a failure to do so is capable of being a breach in itself. There is currently no prohibition on trivial or malicious allegations, but all complaints made are subject to an initial assessment and any that are considered to be so are dismissed.</p>
<p><u>Best practice 3:</u> 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.</p>	<p><u>Best practice 3:</u> In Kirklees the code is reviewed annually without a wider consultation, as well as when anything occurs that may prompt a review. A wider consultation will take place every other year as part of the annual review of the code of conduct.</p>
<p><u>Best practice 4:</u> 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.</p>	<p><u>Best practice 4:</u> The Code is readily visible on the Council's website, with a link from the homepage to a dedicated complaints page that contains a link to the Code of Conduct from the 'Councillor Complaints' option. There was a project underway to check which Kirklees buildings held printed Codes and to ensure that all did, but this was interrupted by the pandemic and still needs to be completed.</p>
<p><u>Best practice 5:</u> Local authorities should update their Gifts and Hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</p>	<p><u>Best practice 5:</u> This is done and is administered by Councillor Support.</p>



<u>Best practice 6:</u> Councils should publish a clear and straightforward public interest test against which allegations are filtered.	<u>Best practice 6:</u> This is something that has been incorporated into the Standards process.
<u>Best practice 7:</u> Local authorities should have access to at least two Independent Persons.	<u>Best practice 7:</u> Authority was given to extend the appointment of the present Independent Person and to recruit a second. Work on this has been affected by the pandemic and the adverts still need to be placed and a recruitment exercise undertaken.
<u>Best practice 8:</u> 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.	<u>Best practice 8:</u> This is already part of the Kirklees standards process and consultation is routine.
<u>Best practice 9:</u> 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.	<u>Best practice 9:</u> This has now been adopted and a webpage has been set up for the publication of decision notices.
<u>Best practice 10:</u> 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.	<u>Best practice 10:</u> The Kirklees website has a dedicated Councillor Complaints page and this information is recorded there.
<u>Best practice 11:</u> 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	<u>Best practice 11:</u> This is a matter for Town and Parish Councils and the Monitoring Officer has made chairs aware of this best practice point.

whole, rather than the clerk in all but exceptional circumstances.	
<u>Best practice 12:</u> 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.	<u>Best practice 12:</u> The Monitoring Officer is involved with Standards matters in the Town and Parish Councils, providing advice, guidance and training. It is anticipated that, now that the majority of Town and Parish Councils have adopted the Kirklees code, that any training developed for Kirklees Councillors on the Code of Conduct can be offered to Town and Parish Council with a very minimal cost.
<u>Best practice 13:</u> 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.	<u>Best practice 13:</u> There are processes in place to deal with any conflicts of interest that arise within the standards process. The Monitoring Officer is able to call on one of her deputies or, if the circumstances require someone from outside Kirklees, one of the Monitoring Officers of the other West Yorkshire authorities. Whilst there is no formal deputy chair of the Standards Committee, the Committee is able to appoint one on a temporary basis should the chair be conflicted.
<u>Best practice 14:</u> 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.	<u>Best practice 14:</u> Currently, KNH is Kirklees Council's only wholly controlled subsidiary company and the financial reports do contain relevant information. Kirklees Stadium Development Limited (Kirklees Council has a 40% share) and Calderdale and Kirklees Careers (Kirklees Council has a 50% share) are not currently reported on in any annual governance statement.
<u>Best practice 15:</u> Senior officers should meet regularly with political group leaders or group whips to discuss Standards issues.	<u>Best practice 15:</u> The Monitoring Officer meets with the GBMs on a regular basis. The Standards Committee meets twice yearly.