



Name of meeting: Standards Committee

Date: 11th September 2019

Title of report: Cases and News Update

Purpose of report

To brief the standards committee on any news and cases of interest since March 2019.

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 Council's Forward Plan (key decisions and private reports?)	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance IT and Transactional Services? Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes
Cabinet member portfolio	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.

2. Information required to take a decision

2.1 News since April 2019

- 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 reports, 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 reports are at appendix A, but the following are of particular interest.
- 2.1.4 The Ledbury case is back in the news, this time due to attempts by the town council to recover their costs from a QC that they claim had acted negligently in advising them. The case had cost the town council over £200,000, as they defended the judicial review application, claiming that this was on the basis of the advice that they had been given.
- 2.1.5 There are also reports on two standards hearings, one following on from the leaking of emails, and one that was dependent on the issue of acting or not acting in an official capacity when using social media.
- 2.1.6 A search of local newspaper websites has thrown up a number of instances of councillors being suspended by their own parties, for all manner of things from being arrested on suspicion of 'upskirting' to calling a taxi driver a bully. Copies of these reports are at 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 published two recent decisions that may be of interest to the committee and the press releases from the commission are at Appendix B.
- 2.2.3 The Commissioner for Standards in Northern Ireland has published the outcomes of two hearings in the last 6 months. The reports have not been attached as appendices, as they are quite lengthy, but details are summarised below. If members are interested in reading the full decision notices, links have been provided.
- 2.2.4 In June 2019, the commissioner held that a former councillor had breached the code of conduct, determining that he had a pecuniary interest in a planning application that he failed to declare and spoke in support of. It is of note that the investigation and hearing continued, despite the councillor losing his seat at election. The sanction applied was censure. Members are reminded that this is not a sanction currently available to local authorities in England.
<https://nipso.org.uk/site/wp-content/uploads/2019/07/Decision-Notice-Mervyn-Rea-1.pdf>
- 2.2.5 In July 2019, an elected member was subject to a 15 month disqualification from office, following a conviction for leaving the scene of an accident and being OPL. His actions were found to have brought the council into disrepute. Again, members are reminded that such a disqualification is not a sanction currently available to local authorities in England. https://nipso.org.uk/site/wp-content/uploads/2019/07/Alderman-Derek-Hussey-Decision-Notice-ref-C00308_313-1-re-issued-17-July-2019.pdf
- 2.2.6 The Local Government Ombudsman for Wales publishes a 'Code of Conduct Casebook' periodically. The latest edition, published in May 2019 records that two matters were reported for investigation but that no breaches were found to have taken place.
- 2.2.7 In contrast to Scotland, Wales and Northern Ireland, there is as yet no requirement for decision notices to be published. As members of the committee will be aware, this is one of the proposals made by the CSPL in their report and one that has been voluntarily adopted by Kirklees.
- 2.2.8 However, there has never been any prohibition on the publication of decision notices and a number of English councils do publish their findings.
- 2.2.9 There is in general a dearth of interesting cases, but a number of recent examples have been attached at appendix B. These include one that was dismissed as being out of time, one that was a repeat breach for failing to comply with a previous standards decision and one relating to comments made by an elected member that were claimed to undermine the work of officers. There is also an older decision that

dates back to 2013, but may be of interest as it relates to the disclosure of legally privileged information.

2.3 Case Law

- 2.3.1 There does not appear to have been any recent decisions in the Courts on any matters directly relating to local authority standards.
- 2.3.2 However, one interesting decision resulted from a judicial review of Slough BC's decision to dissolve two parish councils. The decision was quashed, on the basis that the proper procedures had not been followed, these being set out in the Secretary of State's guidance.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 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

- 5.1 The Monitoring Officer will continue to monitor any relevant news and cases and will report back to this committee.

6. Officer recommendations and reasons

6.1 It is recommended that the report is noted.

7. Cabinet portfolio holder's recommendations

N/A

8. Contact officer

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9. Background Papers and History of Decisions

9.1 N/A

10. Service Director responsible

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Appendix A

Protester found guilty of preventing council meeting from going ahead: report

- June 19, 2019

A climate protester has been given a conditional discharge after disrupting a meeting of Norfolk County Council.

The [BBC has reported](#) that Richard Possnett was found guilty under the Public Meeting Act of 1908 of preventing the meeting from going ahead and was given a 12-month conditional discharge. His protest involved a local road project promoted by the council, which objectors argued would increase pollution from traffic.

Mr Possnett and others [disrupted the meeting for four hours](#) and he said on his crowdfunding page set up to raise money for his legal costs that “his only action was to sing protest songs”.

A Norfolk spokesperson said the council had nothing to add.

Complaints down but investigations and remedies up: LGO Annual Review

- July 31, 2019

Complaints to the Local Government and Social Care Ombudsman (LGO) fell by 4% to 16,899 in 2018/19, but cases brought forward for investigation rose by 5% and remedies issued jumped by 11% as complaints become more complex according to the Ombudsman’s Annual Review of Complaints.

The Ombudsman noted that there had been a 20% increase on the number of acceptable remedies offered by local authorities through their own complaints processes before matters were referred up to the LGO as more clear-cut cases were being dealt with at local level. This meant, the report said, that the nature of cases being investigated by the LGO were becoming more complex.

More than a third of complaints were about Children and Education Services, and Adult Social Care. Of particular concern, the LGO Michael King noted, was the rise in complaints about delays in Education, Health and Social Care Plans leading to children missing out on education they were entitled to.

There was a 5% rise in detailed investigations carried out (4234 compared with 4020) and, overall, the LGO upheld 58% of the cases it investigated, 1% more than the previous year. Complaints about benefits and tax were most likely to be upheld (69%), while planning and development related issues were least likely at 37%.

Of the 2456 complaints upheld, 1929 led to remedies being recommended to the authorities concerned – a rise of 11% on 2017-18.

This year the Ombudsman has published the council compliance rate with its recommendations for the first time. Local authorities are not legally obliged to implement Ombudsman recommendations, but of the 3,525 recommendations made to local authorities, 99.4% were complied with and no formal incidents of non-compliance were recorded. However, 8% of recommendations were implemented late and the Ombudsman was not happy with the council’s implementation in 1% of cases.

The LGO Michael King said: “I welcome the constructive way in which the large majority of authorities work with us to remedy injustices and to take steps to improve services for others. There were no formal incidents of non-compliance from authorities to our recommendations last year – a great sign of the sector’s openness and willingness to put things right quickly. Indeed, we have seen the number of cases where authorities have offered a suitable remedy during their local complaints process, before the complaint came to us, increase by a fifth on last year.

“The positive impact of the remedies we recommend often spreads beyond the individual that brought the complaint. This report highlights some of the landmark cases we have completed where our remedy and the positive response from the authority has resulted in significant improvements to local services.”

The Ombudsman has also launched a new interactive map which shows how individual local authorities are performing. The new map collates the annual letters the Ombudsman sends to each local authority, how often they have complied with Ombudsman recommendations, the improvements they have agreed to implement, and published decisions all in one place. The map can be viewed at <http://www.lgo.org.uk/your-councils-performance>.

A PDF copy of the report can be downloaded from

<https://www.lgo.org.uk/assets/attach/5655/LG%20Review%20-%20FINAL.pdf>

Council votes to defy Ombudsman's report

- June 11, 2019

Oadby and Wigston Borough Council has taken the unusual step of refusing to act on recommendations from the Local Government and Social Care Ombudsman.

An ombudsman's report last month criticised the way the council handled a homelessness case and recommended that housing staff be given further training.

But a council statement said councillors had voted to fully support their housing officers over the action they took.

As a result, Oadby and Wigston must now write to ombudsman Michael King explaining why it thinks the homeless referral was dealt with appropriately.

'Miss X', who had connections with Oadby and Wigston but lived in another council area, had applied for housing as she feared domestic violence where she was.

An ombudsman service statement said that despite her fears Oadby and Wigston did not take a homelessness application from her.

The ombudsman's investigation found fault with the way Oadby and Wigston dealt with the family, and said its reasoning for not taking a homelessness application was flawed.

Ombudsman Michael King said: "It is important for councils to be aware of their homelessness obligations and properly assess when they have a duty towards people. When vulnerable families are involved, it is particularly vital. It is not enough to pass the responsibility onto other councils simply because the person has applied to two separate councils for help.

"I have made some very simple, practical recommendations to help improve the council's services for other homeless people and I would urge the council to review my report and accept the improvements I have asked it to make."

He said Oadby and Wigston should pay the woman £500 for the injustice caused and provide training to its housing staff "to ensure they can identify when a homelessness application should be taken".

Bill Boulter, chair of Oadby and Wigston's service delivery committee said: "It is unfortunate that the council finds itself disagreeing with the local government ombudsman's interpretation of the legislation.

"At the point of first contact with Miss X the council were aware that a homeless application had been made to Authority A. Authority A had accepted the application and provided Miss X with temporary accommodation and was in the process of referring the application to this council.

"In the circumstances the council is of the view that it was not required to take a further application but it was required to consider the referral in accordance with the legislation and the ombudsman found that the council made its decision on the referral within the timescale given by law and that the council was entitled to reject the referral."

He said Oadby and Wigston subsequently exercised its discretion to accept a homeless application when a suitable property became available and it became clear that the temporary accommodation provided by Council A was unsuitable for Miss X and her family.

She though refused the temporary accommodation concerned as unsuitable, although the ombudsman subsequently found that it was suitable.

A report to an Oadby and Wigston meeting last week said: "Housing legislation contains provisions into how a homeless referral should be dealt with and places a continuing duty on the referring authority to provide temporary accommodation whilst the referral is determined.

"Councillors agreed that in the circumstances of the referral officers view that a further application was unnecessary was correct."

Jo Cox Foundation brought in to help find cross-party approach to tackling intimidation in public life

- May 21, 2019

The Jo Cox Foundation is to act as independent support in efforts to agree a cross-party approach to tackling intimidation in public life, the Committee on Standards in Public Life has said.

This follows the Committee's previous meetings with the parties to follow up the recommendations made in its 2017 [report on intimidation in public life](#).

Lord Evans, chair of the CSPL, said: "I am delighted that The Jo Cox Foundation has undertaken to act as independent support to help make further progress towards a common approach to tackle intimidation and abuse during election campaigns.

"It is important to democracy that individuals standing for public office or campaigning are able to do so without fear of intimidation. From our meetings with them, it's clear that the political parties have done a great deal of work internally to address intimidatory behaviour and improve their own processes to call out and address unacceptable behaviour where they can. Building on that, there is goodwill and commitment from the political parties at Westminster to make further joint progress."

Catherine Anderson, Chief Executive of The Jo Cox Foundation, said: "Jo's murder in 2016 is a constant reminder to us that the threat of violence and intimidation towards MPs, candidates or anybody else in public life can never be acceptable.

"We all value vigorous political debate and freedom of speech but that should not extend to abusive behaviour designed to intimidate and silence people. It threatens our democracy itself.

"From our regular discussions with all the parties we know that they recognise the importance of restoring civility and respect to our public discourse and we look forward to working with them and with the committee to find an agreement on how this can be achieved."

Earlier this month the Government confirmed it is to legislate to introduce a new electoral offence of intimidating a candidate or campaigner during the run up to an election, either in person or online. It will also legislate to clarify the electoral offence of undue influence of a voter.

Town council told there are insufficient grounds to recover £200k costs run up after unsuccessful defence of judicial review

- May 3, 2019

A town council has accepted the advice of a leading QC that there are insufficient grounds to make any claim with any likelihood of recovering costs after it was left more than £200,000 out of pocket when it unsuccessfully defended a judicial review claim brought by one of its councillors.

Ledbury Town Council had commissioned Richard Clayton QC of Ely Place Chambers to review the handling of the litigation.

The case arose out of sanctions imposed by the town council in 2016-17 on Cllr Elizabeth Harvey following a complaint by the clerk and deputy clerk.

Cllr Harvey was barred from sitting on committees or representing the council on outside bodies. These restrictions continued even after she was found by a Herefordshire Council-appointed external investigator, Jonathan Goolden of Wilkin Chapman, not to have been in breach of the code of conduct.

Cllr Harvey [challenged the restrictions successfully by judicial review](#), with a High Court judge ruling that the council was not able to sanction her other than going through the procedural safeguards of a code of conduct process.

Mrs Justice Cockerill also found that the conduct of the grievance process through which the restrictions were imposed was unfair.

A [report on Richard Clayton QC's advice](#) revealed amongst other things that:

- There were insufficient grounds to claim against the Herefordshire Association of Local Councils, which had advised at the start of Cllr Harvey's case. Even if Ledbury could establish that HALC had acted negligently, the council would not be entitled to compensation as a result. The fact that the council relied on the positive advice of its QC to defend the case meant that HALC could not be responsible for any of the council's subsequent financial losses. This was because the town council went on to take further advice from solicitors and barristers.
- The legal issues in the case were complex and that the mere fact that the view of QC instructed on Cllr Harvey's case – namely that it had a 75% chance of winning the case – was rejected by Mrs Justice Cockerill provided no basis whatsoever for alleging that the QC had acted negligently. The town council had originally been advised by a junior barrister that the High Court would quash the council's decision, but Ledbury decided its outside solicitors should seek advice from a QC with significant public law experience. The QC advised on several occasions that the council had not acted unlawfully in addressing the complaints against Cllr Harvey as an employment issue rather than under the statutory procedure prescribed by the Localism Act.

The report said the council was "satisfied that Mr Clayton rigorously considered all available options and have reluctantly accepted his advice that there is no realistic prospect of recovering any money back".

In an annual report given last Sunday (28 April), Ledbury chairman Cllr Nina Shields said: "I very much hope that the new council will draw a line under this. Otherwise it will be like a festering sore that will waste energy and continue to do damage. Our solicitor has advised that to spend any more money on this will raise issues about the council's duty of care."

Councillors criticised over attitude towards investigation into email leak

- April 17, 2019

Three Conservative councillors have been found to have brought Lancaster City Council into disrepute.

The three were judged by a standards hearing after a dispute last year in which information about a Labour councillor's affair with a staff member was leaked from the council's email system to the *Daily Mail*.

No suggestion was made that any of the trio leaked the information but the standards committee was dissatisfied with their attitude towards an investigation carried out for it into the matter. The investigation into the leak is expected to continue.

They were all found to have brought the council into disrepute. Peter Yates was additionally found to have misled officers and was removed from the standards committee.

Andrew Gardiner was also found to have intimidated and misled officers, and was censured by the council and John Wild to have bullied an officer. Both councillors were censured.

The report was originally intended for confidential debate by full council, but councillors resolved [to take it in public session](#).

In a separate standards hearing Cllr Gardiner was found to have during an Overton Parish meeting shouted at a member, gesticulated with his spectacles and acted “in such a manner as to cause alarm and distress to another member of the public”.

Chief executive hits out at anonymous letter that led to police investigation

- April 11, 2019

The chief executive of Flintshire County Council has written to all councillors to denounce an anonymous letter about his appointment 12 years ago.

Colin Everett said in a letter reported in local media, and confirmed as authentic by the council, that an anonymous letter circulated to councillors and others “includes false and defamatory material” and was “clearly motivated by malice”.

He said Flintshire had received previous correspondence with the same typeface and similar material but the person concerned had not identified themselves.

“For a letter-writer to moralise about councillors and officers whilst behaving in this way is hypocrisy,” Mr Everett said.

“We believe we know the identity of the letter-writer but do not have proof. If any member knows the identity of this person they should advise [monitoring officer] Gareth Owens and myself immediately.”

The content of the letter gave grounds for suspicion that a senior councillor aided the writer by disclosing confidential and privileged information, the chief executive said, warning that if the councillor could be identified “immediate action will be taken against them”.

Local press reports confirmed by the council suggest allegations have been made about the way in which Mr Everett was appointed as chief executive in 2007.

Without elaborating on its contents, Mr Everett said the letter’s circulation had “caused untold damage to those to whom it refers”.

Mr Everett said police had recently investigated the circumstances of his appointment and had “received a tape recording of an old conversation amongst councillors, held on council premises, about my appointment.

“The conversation, now in wider circulation, includes false information and it undermines my reputation and standing. The police investigated the issue thoroughly and are not taking any further action.”

He warned any repetition of false statements by any councillor “could lead to legal action against both the individual and the employer itself”.

Detective inspector Chris Bell, of North Wales Police, said: “We received a report of alleged misconduct in public office at Flintshire County Council.

“A number of individuals attended voluntary interviews under caution and following a thorough investigation it was concluded that there was not enough evidence to proceed. The investigation has closed and no further police action taken.”

Councillor who called for PM to be hanged for treason did not breach code of conduct: report

- April 3, 2019

A councillor convicted of making offensive Facebook posts about the Prime Minister did not breach the code of conduct, an investigation has found.

Wilkin Chapman Solicitors decided that Richard Alderman was not acting in an official capacity when he made the statements and so had not breached the code.

Mr Alderman, an Independent, was elected to Rutland County Council last July in a by-election in Oakham South West, where he tied with the Liberal Democrats and won by drawing lots.

A few days later the council received complaints about the content of his Facebook postings, which included a call for Theresa May to be hanged for treason.

Council leader Oliver Hemsley said at the time: "We wholly condemn the use of racist and bigoted behaviour. This is not acceptable in our communities or our council."

He said he believed Mr Alderman, who resigned as a councillor in February, had breached the code and referred the matter to the monitoring officer and police.

Mr Alderman was convicted last September of four offences under the Communications Act and sentenced to a six-month curfew between 7pm and 7am.

This had the effect of preventing him attending council meetings, so leaving him liable to disqualification for non-attendance.

Rutland refused in December to grant him a dispensation to avoid this.

A council statement in February noted Mr Alderman had resigned and said his former seat would be contested on 2 May.

The [report by Wilkin Chapman](#) explained: "What must be considered here is to gauge an objective view. That is, whether the actions of Councillor Alderman were such that a member of the public, knowing all the relevant facts, would reasonably think that his actions were so significant that it would impact on the council's ability to properly carry out its functions."

It said it was "evident from the complaints received by the council that Councillor Alderman's comments caused concern to a number of people.", but "we consider that a reasonable person would realise that Councillor Alderman's comments were his individual opinions and did not represent the views of the council".

UPDATED: Gloucester city councillor suspended from Conservative Party after being arrested on suspicion of 'upskirting' at TK Maxx

Officers were called to TK Maxx, in Northgate Street on Thursday June 27

Tory councillor suspended after he compares Labour MP to the Ku Klux Klan



David Harding

Contributor

Yahoo News UK 18 July 2019

A Conservative councillor has been suspended after comparing black Labour MP David Lammy to the **Ku Klux Klan**.

David Burgess-Joyce, a Wirral councillor, sparked shock and anger when he made the comments on Twitter.

Mr Lammy had been tweeting about racist comments made by US President Donald Trump, when he told female congresswomen to 'go back home'.

The Labour MP was complaining that Tory leadership hopefuls Boris Johnson and Jeremy Hunt had failed to condemn the words used by the President as racist.



David Lammy
@DavidLammy

Come back again with a real apology Councillor [@BurgessJoyce1](#). This is pathetic. Your attempts to normalise racism and whitewash the murders and lynchings of black men and women are despicable. Enjoy your suspension. The Conservatives should make it permanent.



Cllr. David Burgess-Joyce @B... · 22h
Mr Lammy, if Mr Trump is racist then he's no doubt learnt it from you. You're an expert in virtue-signalling black issues. You pretend to speak for black people yet you do more damage to community cohesion than any KKK

Cllr. David Burgess-Joyce @Bu...
My apologies if I've inadvertently offended anyone this morning but this country for its diversity and tolerance and am happy to conde

Fife councillor suspended for calling taxi driver a bully loses legal battle



by **Craig Smith**

August 3 2019, 8.01am

A Fife councillor who was suspended for making inappropriate remarks to a taxi driver seeking to renew his licence has had an appeal against his sanction rejected.

David MacDiarmid, SNP member for the Howe of Fife and Tay Coast ward, was given a two-month ban from serving on the council's regulation and licensing committee after he was deemed to have contravened the councillors' Code of Conduct.

His comments were made after Police Scotland had outlined concerns about allegations of violence and controlling and abusive behaviour in relation to the taxi driver at a committee meeting in December 2015.

MacDiarmid told the applicant he did not "understand why two women would live with you never mind get married to you" and described him as a "bully".

The Standards Commission for Scotland found Mr MacDiarmid's remarks had amounted to a personal attack and were insulting, contrary to the Code of Conduct which states elected members must ensure they act fairly when taking decisions on such matters.

Labour councillor suspended in anti-Semitism investigation

🕒 25 July 2019



🔗 Share

A Labour councillor has been suspended from his local party group while allegations he wrote anti-Semitic posts on Facebook are investigated.

Manchester council leader Sir Richard Leese suspended Majid Dar after images of his posts were shared on Twitter.

Sir Richard said he believed the posts were "anti-Semitic and, in at least one case, grossly so".

Mr Dar said he was "apologetic", but explained his words criticised Israel and Zionism, not Jews.

Labour councillor 'suspended' after string of complaints from women

Wavertree councillor David Cummings had also been filmed calling a Labour colleague a 'pathetic little f****g b***h'.

SHARE



By [Jonathan Humphries](#) Senior Reporter & [Liam Thorp](#)
20:50, 13 JUL 2019 | UPDATED 20:51, 13 JUL 2019

A Labour councillor says he has been suspended by the party following a string of complaints from women.

Wavertree councillor David Cummings was [recently filmed calling party colleague and Member of the European Parliament, Theresa Griffin, a 'pathetic little f****g b***h'](#) over a pint in a pub.

ADVERTISEMENT

Cllr Cummings had [already received five formal complaints in a short period last year](#), from fellow Labour councillors, party members and members of the public - with accusations that his behaviour was "volatile and aggressive".

The ECHO understands all the complaints made against Cllr Cummings have come from women.

Today Cllr Cummings posted on Facebook: "I have just received a letter suspending me as a Labour councillor."

Hull councillor John Abbott suspended from Conservative Party as police investigate complaint

He continues to serve as a councillor

SHARE



By [Angus Young](#)
12:04, 25 JUL 2019 | UPDATED 12:20, 25 JUL 2019

NEWS

[City councillor John Abbott](#) has been suspended by the [Conservative Party](#).

The politician is understood to be the subject of a [police](#) investigation after a complaint was made against him by a member of the public.

As yet, no charges have been brought in relation to the complaint.

As well as being suspended by his party, he has also been suspended from the Conservative group at the [Guildhall](#).

However, he continues to be a [councillor representing the Bricknell ward](#) without any official party affiliation.

In a statement, a Conservative party spokesman said: "Mr Abbott has been suspended from the party."

Appendix B