

Standards Committee

Friday 13 October 2017 at **4.00 pm**

Meeting to be held in a Committee Room, Civic Centre, Barras Bridge, Newcastle upon Tyne
NE1 8QH

Contact Officer: Janet Howard, Democratic Services – Tel: (0191) 211 5048 –
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Membership

Councillors: **A Ainsley, J Beecham, D Greenhough, D Perry, G Stone and
B Shepherd**

Parish Councillors: **A Fullen**

Independent Members: **M Scrimshaw and W Lawson**

AGENDA

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1. Apologies for Absence	
2. Declarations of Interest	
Please remember to declare any personal interest where appropriate both verbally and by recording it on the relevant form (to be handed to the Democratic Services Officer).	
Please also remember to leave the meeting where any personal interest requires this.	
3. Minutes of Previous Meeting held on 14 July 2017	1 - 8
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Report by Assistant Director Legal Services	
5. CSPL Annual Report 2016-17	13 - 16
Report by Assistant Director Legal Services	

An induction loop system is available on request for meetings in the Committee Suite at the Civic Centre. Anyone wishing to use this facility should ring the Contact Officer.

6. **Standards Update** **17 - 22**
Report by Assistant Director Legal Services
7. **Review of the Council's Guidance on the use of social media - Feedback** **23 - 34**
Report by Assistant Director Legal Services
8. **Hearings - Process and Sanctions** **35 - 44**
Report by Assistant Director Legal Services
9. **Date and Time of Next Meeting**
Friday 19 January 2018 at 4.00pm

Standards Committee

14 July 2017

(4.02 - 5.33 pm)

Meeting held Committee Room, Civic Centre, Barras Bridge, Newcastle upon Tyne NE1 8QH

Present:

Chair M Scrimshaw

Councillors: A Ainsley, J Beecham, D Greenhough, G Stone and B Shepherd

Independent Members: W Lawson

Also present:

Councillor: A Tinnion (Observing)

In attendance:

John Softly, Assistant Director Legal Services
Helen Wilson, Solicitor
Laura Choake, Commissioning Programme Manager
Janet Howard, Democratic Services

1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Fullen.

2 DECLARATIONS OF INTEREST

None.

3 MINUTES OF MEETING HELD ON 7 APRIL 2017

RESOLVED – That the minutes of the previous meeting held on 7 April 2017 be agreed as a correct record and signed by the Chair.

Matters arising:

Minute 23 – Apologies for absence – In relation to the lack of attendance by Parish Councillors at Committee meetings, Helen Wilson advised the Committee that the Service Manager Democratic Services had written to the Parish Clerks to raise the issue and had subsequently been advised that Councillor Taylor had resigned from the role. Councillor Fullen had been reminded of the dates of meetings and had been passed copies of papers. It was noted that Parish

Councillors were appointed to the Committee for one year and that the next appointments were due to be made in November, so there would be a vacancy on the Committee for a short period of time.

The Chair thanked officers for the update and emphasised the importance of having representation from Parish Councillors on the Committee.

Minute 25 – Minutes of previous meeting: CSPL Annual Report 2015-16 –

Helen Wilson advised the Committee that the CSPL's Annual Report 2016-17 had been published. It stated that there would be a review of local government standards in 2017-18. The CSPL 17-18 Forward Plan stated that the review would be "based around a consultation" to be launched "in early 2018". CSPL intended to publish findings and recommendations in 2018.

There was no reference on DCLG's website to its consultation on the review of disqualification criteria for election to local government. In the circumstances, it seemed that this consultation had not yet started.

Minute 27 – Standards update – Helen Wilson advised the Committee that responses to the Law Commission's consultation on Misconduct in Public Office were still being analysed.

Minute 28 – Regional Meeting of Chairs/Vice Chairs of Standards Committees and Independent Persons – Helen Wilson advised the Committee that, in accordance with resolution (iii), a list of the Committee dates had been circulated to the regional Monitoring Officers to go to their Chairs and Vice Chairs, with a request that they confirm which meetings they wished to attend.

4 **MINUTES OF MEETING HELD ON 18 MAY 2017**

The Chair queried whether Councillor Donnelly had apologised to the Lord Mayor. Officers advised that he had not done so to their knowledge. It was noted that the apology was not required to be made in public, and that it would be expected to be made to the office of the Lord Mayor rather than to the person who at the time of the complaint had been acting as Lord Mayor.

Members were concerned that Councillor Donnelly did not seem to have complied with their request and asked that officers establish whether or not an apology had been made. Members also discussed whether a report on the outcome of the hearing should be taken to Council, including a note about whether or not the Committee's request for an apology had been met.

RESOLVED – That

- i. The minutes of the meeting held on 18 May 2017 be agreed as a correct record and signed by the Chair.
- ii. Officers to establish whether Councillor Donnelly had apologised to the Lord Mayor.

5 HEARINGS: PROCESS REVIEW

Submitted: Report of Assistant Director Legal Services (previously circulated and a copy attached to official minutes), which invited the Committee to carry out a further review of the process for the hearing of a complaint that a member has breached the Code of Conduct.

John Softly introduced the report, highlighting that there had been two hearings held in the space of seven months after a number of years during which there were none. The Committee had previously discussed the hearings procedure and sanctions in April 2017, but had noted at that time that a second hearing was being scheduled and agreed that there should be a further review once that had taken place. The second hearing took place in May 2017. Concerns raised by the Committee in April 2017 had included the length and nature of the hearing procedure itself and the range of sanctions available.

The Chair noted that the second hearing had been very different to the first and that it had highlighted a different set of issues.

The Independent Persons suggested that there should be a clear set of steps to follow prior to the hearing and that all participants should be made aware of the process. It was felt that there had been some confusion at the second hearing as to whether witnesses were to be permitted to speak.

Officers advised the Committee that there was already a pre-hearing process in the Protocol which set out the arrangements for hearings and which was provided to the subject member in advance of the hearing. As part of this pre-hearing process, officers requested the subject member to confirm their attendance and to identify any representatives and/or witnesses they wished to bring. At the last hearing the councillor had originally said he would not be attending the hearing and had only indicated otherwise shortly before the hearing. He had not indicated who he would be calling as witnesses. This meant that the issue of which witnesses would be allowed to speak had had to be dealt with at the hearing itself. This was despite the fact that he had been provided in advance with details of the pre-hearing process.

Members agreed that it was important that hearings should be open to the public so that the process was transparent but requested officers to consider what arrangements were in place if there were disruption to the hearing. Officers agreed to review the arrangements for the venue of future hearings.

Members also noted that, at the last hearing, there had been questions as to the range of witnesses who were interviewed during the course of an investigation. It was confirmed that this was a matter for the investigating officer to consider in each investigation.

On the issue of how the Committee's decision was communicated to the councillor, officers advised the decision had been published on the Council's website. It was suggested that in future the Councillor and Independent Members should receive a written copy of the decision before it was published on the Council's website.

With regard to para 30 of the hearing procedure, Members queried when the Committee would make recommendations to the Council if the councillor had not been found to be in breach of the Code of Conduct. Officers advised that this was intended to allow the Committee to identify any issues they felt should be addressed, e.g. the need for additional training or clearer guidance so as to reduce the likelihood of future complaints. Members suggested that the wording should be amended to include the words 'on any other matters arising' to make this clear.

Members expressed concern that there should be a clear end to the hearing process and suggested that any report made to Council should be factual and not subject to further debate. The Chair advised that the report could be submitted to Council with a recommendation that it was for information only, but that it would be beyond the remit of the Committee to do more than that as Standing Orders allowed for a debate on any report to Council. It was agreed that the matter be referred to Constitutional Committee to review.

Members requested that the list of sanctions available to the Committee be rearranged in order of severity so that it reflected a more natural progression from the least to most serious.

John Softly agreed that the Hearing Procedure would be circulated to all Committee members and Independent Persons by the, with any further comments or suggested amendments to be returned to him.

RESOLVED – That

- i. The report be received and comments noted.
- ii. Officers should review the arrangements for the venue of future hearings.
- iii. The Councillor and Independent Members should receive written notification of the Committee's decision before it is published on the Council's website.
- iv. Paragraph 30 of the Hearing Procedure should be amended to include the words 'on any other matters arising'.
- v. Constitutional Committee should be asked to review whether Standing Orders for Council should be amended to allow a report on the outcome of a Hearing to be received for information only and not subject to debate.
- vi. Officers should rearrange the list of sanctions to place them in order of severity.
- vii. The Assistant Director Legal Services should circulate a copy of the Hearing Procedure to all Committee members and any further comments or suggested amendments to be returned to him.

6 REGISTRATION OF GIFTS AND HOSPITALITY (2016/2017)

Submitted: Report of Assistant Director Legal Services and Service Manager Democratic Services (previously circulated and copy attached to official minutes)

which provided Committee with information on Members' registration of gifts and hospitality during the period 1 June 2016 – 31 May 2017.

Helen Wilson introduced the report.

Members highlighted that since there were no longer monthly meetings of Council, forms were often submitted for more than one month at a time, and queried whether they were being recorded properly. Officers confirmed that multi-month submissions were recorded correctly.

Members asked whether it would be possible for forms to be submitted online. Officers advised that arrangements were being made for the form to be available on-line.

RESOLVED: - That the report be received and comments noted.

7 **ANNUAL REPORT**

Submitted: Report of Assistant Director Legal Services and Service Manager Democratic Services (previously circulated and copy attached to official minutes), which advised Committee on the submission of its annual report to full Council and set out the draft annual report for 2016/17.

John Softly introduced the draft report and highlighted that the final version would be taken to full Council on 6 September. Members were advised that the report would include a review of the Committee's activity during the last municipal year and it was noted that section 13 (Complaints against Councillors) included information on the outcome of the two Hearings that had taken place in December 2016 and in May 2017.

The Chair confirmed that he would be presenting the report to Council on 6 September and asked Members to contact him to identify any issues they wished to be highlighted in particular.

RESOLVED: - That

- i. The report be received and comments noted.
- ii. Committee members to contact the Chair to advise him of any issues they wished to be highlighted in presentation of the report to Council.

8 **COMPLAINTS UPDATE**

Submitted: Report of Assistant Director Legal Services (previously circulated and copy attached to official minutes), which updated Members on the number of complaints received over the period 1 July 2016 to 30 June 2017 and the current status of those complaints.

Helen Wilson introduced the report and highlighted that it covered a longer period than usual as it included complaints which had not been resolved at the time of the last update in January 2017.

RESOLVED: - That the report be received.

9 **NEW COMMISSIONING AND PROCUREMENT PLAN**

Submitted: Report of Assistant Director Legal Services (previously circulated and copy attached to official minutes), which provided Members with information in hard copy form as requested by Committee in respect of the updated Commissioning and Procurement Plan.

John Softly introduced the report and Laura Choake (Commissioning Programme Manager) provided further details. Officers highlighted that the Plan included a summary of how social value would be built into contracting. Information was tabled (copy attached to official minutes) outlining the outcome of consultation with local partners to identify what social value in Newcastle was considered to be.

Members queried what steps could be taken to ensure that staff employed through contracts were paid the living wage, and what, if anything, could be done if they were not. There was concern that anger could be directed towards the Council.

Officers advised that the Council could not legally require providers to pay their staff the living wage unless it was possible to demonstrate the relevance of the requirement to the contract. However, there were a number of ways in which it could be actively promoted and encouraged – for example, by making sure that the budget envelope was large enough to allow for payment of the living wage, and by making sure that providers could demonstrate their commitment to it through the way the contract was structured and evaluated.

Members expressed concern that providers could potentially take advantage of the larger budget envelope to increase costs without paying the living wage. Officers advised that providers could be asked to specify their costs to ensure that this did not happen.

Members queried whether the Ethical Leadership statement had been made prominent within the process. Officers confirmed that it was being actively promoted.

Members asked how the Plan compared with those of other local authorities. Officers advised that they varied widely with some that were very similar to the Council's and others that were more along the lines of tickbox exercises. It was noted that the Council's Plan had been identified nationally as a good example.

Members asked whether the introduction of payment by results had had the desired effect. Officers advised that the impact had not been as big as had been hoped but that it was a work in progress and was gradually improving.

Members asked what would happen to the EU thresholds post-Brexit. Officers advised that they would remain UK law until such time as they were replaced by Government.

Members discussed the inclusion of stakeholders on Boards and noted that while decisions could not be handed to third parties - as the Council had to be accountable for the contracts put in place and be able to defend its decision – it was important to be able to seek the views of stakeholders and to see those reflected in decision making.

Members queried whether key stakeholders such as the North East Chamber of Commerce (NECC) and regional Trades Union Congress (TUC) had been consulted on the Plan. Officers confirmed that stakeholder events to present the Plan had taken place and that the NECC had been included in those. Internal trade union representatives had also been consulted, but not the regional office. Members suggested that the regional TUC office should also be formally consulted.

Officers agreed to keep the Committee informed of any further developments.

RESOLVED: - That the report be received and comments noted.

10 **GUIDANCE ON THE USE OF SOCIAL MEDIA - REVIEW**

Submitted: Report of Assistant Director Legal Services (previously circulated and copy attached to official minutes), which updated Members on the review of the Council's guidance on the use of social media.

Helen Wilson presented the report and highlighted to Members that, since publication of the agenda, arrangements had been made for the questionnaire attached at appendix B to be put online at "Let's Talk Newcastle". Members were advised that the questionnaire would be made available only to elected members and that the responses could be anonymous. It was also noted that there was an opportunity for all elected members to attend a regional training session on social media.

Members discussed the questionnaire and suggested amendments to allow respondents to identify (i) the type of social media they use (e.g. Twitter and Facebook) and (ii) how frequently they use each type. Officers agreed to amend the questionnaire accordingly.

In response to a query from Members, officers advised that the current guidance on use of social media had been adopted in January 2016.

RESOLVED: - That

- i. The report be received and comments noted.
- ii. Committee approved the short questionnaire seeking feedback on the Council's guidance on the use of social media, subject to amendments to identify the type of social media used as well as the frequency of such use.
- iii. Committee endorsed participation in the proposed regional training on social media.

11 **CODE OF CONDUCT FOR NON-VOTING CO-OPTees - BULLYING AND HARASSMENT**

Submitted: Report of Assistant Director Legal Services (previously circulated and copy attached to official minutes), which set out potential amendments to the Code of Conduct for Non-Voting Co-optees regarding bullying and harassment.

John Softly presented the report and highlighted that it reflected changes made to the Members' Code of Conduct in order to ensure that the code for non-voting co-optees was consistent.

Members noted that the Committee on Standards in Public Life was to undertake a review into the abuse and intimidation of Parliamentary candidates during elections, and it was suggested that the Committee should keep an eye on the progress and outcome of that review.

The Chair queried why paragraph 2 of the Code stated 'specifically any Council employee' as it did not seem relevant for co-optees. Officers advised that the wording was a vestige of the old Code of Conduct and was the same in the Members' Code. Members were reminded that the purpose of the report was to make sure that the Code for Members and the Code for Co-optees mirrored each other but that Committee could choose to review the Codes at a later date.

RESOLVED: - That

- i. The report be received and comments noted.
- ii. Committee agreed the amendments to the Co-optees Code set out in the report.

12 **DATE AND TIME OF NEXT MEETING**

Friday 13 October 2017 at 4.00pm.

Standards Committee

13 October 2017

DCLG Consultation – Disqualification criteria for Councillors and Mayors

Report by: Assistant Director Legal Services

Ward Implications: All

For Decision		
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1. Purpose of the report

1.1 This report advises Members that the Department for Communities and Local Government (“DCLG”) has published a consultation paper on updating disqualification criteria for local authority members.

2. Recommendation

2.1 Members are recommended to consider the DCLG consultation paper.

3. Introduction and background

3.1 Members may recall that, in 2016, the Minister for Local Government indicated that there would be a review of the provisions in the Local Government Act 1972 relating to the disqualification of local authority members and whether the provisions of the Localism Act 2011 have any implications for any new rules on this matter.

3.2 DCLG published its consultation paper on 18 September 2017. It can be accessed at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645454/Disqualification_criteria_for_councillors_and_mayors.pdf

The consultation will close on 8 December 2017.

3.3 The consultation paper will also be considered by Constitutional Committee at its meeting in November.

4. Existing Disqualification Criteria

4.1 Section 80 Local Government Act 1972 provides that a person is disqualified from standing as a candidate or being a member of a local authority in certain circumstances, including if they:

- have, within 5 years before being elected, or at any time since being elected, been convicted of an offence and received a sentence of imprisonment (suspended or not) for not less than 3 months without the option of a fine.

Any changes to the existing criteria would therefore require changes to primary legislation.

5. DCLG - Consultation on updating disqualification criteria for local authority members

5.1 Publishing the consultation paper, the Local Government Minister said:

“Councillors hold an important position of trust and authority in communities across England. We need to hold them to the highest possible standards.

The current rules are letting residents and councillors down by not preventing people who should never be considered for such roles from standing for election.

The changes the government is proposing would help make sure anyone convicted of a serious crime, regardless of whether it comes with a custodial sentence, will not be able to serve as a councillor.”

5.2 The DCLG consultation paper states that councillors “should be community champions” and it is therefore “vital...that they have the trust of the electorate”. The Government considers “there should be consequences where councillors...fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.” It therefore considers that the existing law on disqualification “should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour”.

5.3 The Government therefore proposes that a person will be disqualified from standing for, or holding office as, a councillor or an elected Mayor if he/she is subject to:

(i) the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as ‘being on the sex offenders register’);

(ii) a civil injunction granted under s1 Anti-social Behaviour, Crime and Policing Act 2014; or

(iii) a Criminal Behaviour Order made under s22 Anti-social Behaviour, Crime and Policing Act 2014.

5.4 The detailed proposals are set out in the consultation paper and are not therefore reproduced here.

5.5 Sexual offences

The Government considers that anyone subject to sex offender notification requirements (ie ‘on the sex offenders register’) should be barred from standing for election, or holding office, as a councillor. The bar would end once he/she is no longer subject to the notification requirements. The length of time a person will be on the register is set out in the Sexual Offences Act 2003.

5.6 Anti-Social Behaviour

The Government considers that anyone subject to an anti-social behaviour sanction issued by the court should be barred from standing for election, or holding office, as a councillor.

Anyone given a Civil Injunction or a Criminal Behaviour Order under the Anti-social Behaviour, Crime and Policing Act 2014 would therefore no longer be able to hold office.

Again, the bar would end once he/she is no longer subject to the Injunction or Order.

6. **General comments on the consultation paper**

6.1 The proposals referred to in 5.5 and 5.6 above would not apply retrospectively. This means that a member of a local authority who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order when the changes come into force would not be affected. However, that person would be prevented from standing for re-election after the changes came into force.

6.2 As members will see, Question 5 in the consultation paper asks “Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?”

6.3 Finally, it should be noted that these proposals will also apply to co-opted members.

6.4 The Committee is invited to consider the proposals in the consultation paper and whether it wishes to make any suggestions to Constitutional Committee as to what response the Council should make to the consultation exercise.

7. **Background papers**

List of background papers:- held by Assistant Director Legal Services on file YY5-1227

1. DCLG – “Disqualification criteria for Councillors and Mayors – Consultation on updating disqualification criteria for local authority members” – September 2017.

8. **Contact officer**

Helen Wilson, Solicitor, ext 25110, helen.p.wilson@newcastle.gov.uk

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Standards Committee

13 October 2017

CSPL Annual Report 2016-17

Report by: Assistant Director Legal Services

Ward Implications: All

For Information		
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1. Purpose of the report

1.1 This report advises Members about the Committee on Standards in Public Life (“CSPL”) Annual Report 2016-17 and Forward Plan 2017-18.

2. Recommendation

2.1 Members are recommended to note this report.

3. Introduction and background

3.1 Members receive occasional reports on cases and other matters relating to the standards regime. This is the latest of such reports.

3.2 CSPL is an advisory non-departmental public body. It monitors and reports on issues relating to the standards of conduct of all public office holders.

4. CSPL - Annual Report 2016-17

4.1 CSPL has published its Annual Report for 2016-17. The report includes comments on (a) local government standards and (b) ethical standards for providers of public services. An extract is attached as Appendix A.

Local government standards

4.2 The report notes that CSPL “maintains a watching brief on local government standards, and regularly receives correspondence on the issue”. It has “begun to engage with key stakeholders in identifying areas of concern to the Committee surrounding the conduct of elected and co-opted local authority members”.

CSPL has previously noted its concerns about the “slimmed down arrangements” under the Localism Act 2011.

It intends to carry out a review of local government standards in 2017-18.

4.3 In its Forward Plan for 2017-18, CSPL records that the review “will be based around a consultation that will be launched in early 2018”. CSPL intends to

publish its findings and recommendations in 2018.

Ethical standards for providers of public services

- 4.4 As the Committee is aware, CSPL decided to carry out some follow-up research on its 2014 report “Ethical standards for providers of public services” and assess how providers have used its 2015 guidance.
- 4.5 The Forward Plan states that CSPL will be publishing its findings “in late 2017” and will use this as an opportunity to raise awareness about the importance of ethical standards issues in the delivery of public services across all providers.
- 4.6 The full Annual Report can be accessed at:
<https://www.gov.uk/government/publications/setting-the-standard-strategic-plan-annual-report-2016-17-forward-plan-2017-18>

5. Background papers

List of background papers:- held by Assistant Director Legal Services on file YY5-1227

1. CSPL- Annual Report 2016-17 – July 2017

6. Contact officer

Helen Wilson, Solicitor, ext 25110, helen.p.wilson@newcastle.gov.uk

Extract from CSPL Annual Report 2016-17

“Local Government Standards

2.22 As detailed in the 2015-16 Forward Plan, the Committee maintains a watching brief on local government standards, and regularly receives correspondence on the issue. We have begun to engage with key stakeholders in identifying areas of concern to the Committee surrounding the conduct of elected and co-opted local authority members.

2.23 In March 2017 the Committee submitted evidence to the Commons Communities and Local Government Select Committee on local government scrutiny. In this submission we drew attention to the findings from our 2015 report *Tone from the top - leadership, ethics and accountability in policing*.

2.24 This submission set out how accountability is an essential element in creating a culture where high standards of behaviour are the norm. In particular, effective, independent scrutiny is required in between the four-yearly election cycle to maintain accountability. We encourage the new Communities and Local Government Select Committee to take up this issue in the new Parliament.

2.25 In our 2013 report *Standards Matter*, we outlined our concerns at the time about the issues that may arise in local government standards following the Localism Act of 2011:

‘The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely’.

2.26 The Committee intends to undertake a review of local government standards during 2017-18. Further details regarding this are set out in the 2017-18 Forward Plan (p. 19).

Ethical Standards for Providers of Public Services

2.27 In 2013 our remit was extended to examine standards of conduct of ‘all those involved in the delivery of public services, not solely those appointed or elected to public office.’ As part of this remit, the Committee published a report in 2014 entitled *Ethical standards for providers of public services*, which made a number of recommendations to Government to ensure that proportionate ethical standards are made explicit in commissioning, contracting and monitoring arrangements for all those delivering public services.

2.28 In 2015, the Committee published online guidance addressed to providers of public services – whether outsourced or in-house – to promote high ethical standards. This guidance included practical examples and case studies for service providers.

2.29 Three years on from the Committee's original research phase on this subject, we decided to undertake some follow-up research. The aim of this follow-up work is to examine whether there have been changes in how providers uphold ethical standards since our 2014 report, and assess how providers have used our guidance. We will also be looking at how Government has responded to our recommendations for transparent commissioning based on ethical expectations.

2.30 Sheila Drew Smith, the lead Committee member on this work, delivered a speech to the CIPFA Annual Governance and Counter Fraud Summit in October 2016. In the speech we emphasised the importance of upholding the Seven Principles to promote public trust and demonstrate a commitment to good governance.

2.31 In January 2017, we wrote to the Public Accounts Select Committee to draw their attention to our 2014 report and 2015 guidance when considering evidence for their inquiry into the Crown Commercial Service. During 2017, the Committee has undertaken a number of interviews with relevant organisations, and we will publish our findings in a short report later in 2017."

Standards Committee

13 October 2017

Standards Update

Report by: Assistant Director Legal Services

Ward Implications: All

For Information		
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1. Purpose of the report

- 1.1 This report updates Members about recent publications and a recent standards case.

2. Recommendation

- 2.1 The Committee is recommended to note this report.

3. Introduction and background

- 3.1 The Committee receives occasional reports on general matters relating to the standards regime. This is the latest of those reports.

4. CSPL short review of intimidation of Parliamentary candidates and the broader implications for other holders of public office

- 4.1 The Committee on Standards in Public Life (“CSPL”) is conducting a short review of the issue of intimidation experienced by Parliamentary candidates, “and the broader implications of this for other holders of public office”, following a request from the Prime Minister.

Lord Bew, the Chair of CSPL, acknowledges that this is “not a typical piece of work” for CSPL. Its role “focuses on promoting high standards of public office holders themselves”. However, it has agreed to conduct the review “because of the wider negative impact on public life”.

Lord Bew said: “How candidates for office and holders of office are treated inevitably has an impact on who is willing to stand for office, how those in office conduct themselves, and how they relate to members of the public. The Nolan principles of public life rely on the existence of a shared understanding of procedures and practices within a broader public culture of civility, tolerance and mutual respect. It is difficult to promote and encourage the implementation of the Nolan principles without addressing concerns about changes in that wider culture.

... recent abuse and intimidation of election candidates and other public figures, and the wider issues about the role and treatment of those in public

service must be discussed and addressed. The public have a right to be angry and hostile on occasions – but, if the political culture is to respond constructively to people’s concerns, it cannot be in an atmosphere of intimidation, demeaning personal abuse, and threats of violence.”

CSPL intends to produce a report with recommendations before Christmas.

- 4.2 As well as being of general interest to the Committee, this CSPL report may also assist the Committee’s review of the Council’s Guidance on the use of social media. The latter is the subject of a separate report on today’s agenda.

5. “The Voice of the Councillor” – Final report of the De Montfort University and Municipal Journal Councillor Commission

- 5.1 De Montfort University’s Local Governance Research Unit and the Municipal Journal have published the final report of the Councillor Commission. This research project heard from councillors across England about their work and “the pressures they face in governing their communities”.

The report includes the following comments about standards: “Councillors understand the need for a national legal and regulatory framework that surrounds the office of councillor and for those regulations to cover matters such as ... ethical standards ... Indeed, there is widespread recognition, given there are some 18,000 councillors across England, that not all will be paragons of virtue and the wrongdoings of a few do reflect badly on the entire population of councillors ... The view is widespread that government reacts to either problems or perceived problems of councillors’ activity in an overly centralised fashion.”

However, the researchers identified “one current of opinion ... that central government is far too prescriptive when it comes to aspects of controlling councillor behaviour ...” The “other identifiable current of opinion” was for more clarity from government regulations.

- 5.2 Whilst the above findings are interesting, they are probably not surprising.

6. Case – Hussain v Sandwell MBC

- 6.1 At its meeting on 7 April 2017, the Committee received a Standards Update report which included the case of R v Sandwell MBC. Members may recall that a councillor had applied for a stay of a local authority’s standards and other investigatory procedures brought against him pending the outcome of his claim for judicial review of those procedures.

The Court of Appeal had granted him permission to bring judicial review of the authority’s decision that he had breached its code of conduct. However, the local authority began another formal standards complaint in June 2016 and it was due to be heard by a sub-committee in March 2017. In addition, the monitoring officer was considering whether a further standards complaint should be raised. The councillor asserted that the authority’s procedures currently underway were, and any continuation of them would be, unlawful on grounds that included allegations of ultra vires, political motivation, bias and oppression.

The court granted the application and held that there was a real prospect of the judicial review being successful and that the authority's processes were unlawful pending formal determination. The authority was directed not to take any further steps in connection with the June 2016 complaint or in the monitoring process until the outcome of the judicial review.

- 6.2 The High Court has now dismissed the councillor's application for judicial review and ruled that the authority can continue its investigations into allegations of serious misconduct by the councillor.

The allegations about the councillor's conduct included alleged conduct which predated the Localism Act 2011 ("the Localism Act"). It was argued on behalf of the councillor that the authority had no power to investigate that conduct. The court rejected that argument.

It also rejected a suggestion that the authority had acted outside its powers in commissioning a pre-formal investigation to establish if there was any substance in the allegations. The council had a duty to adopt formal "arrangements" for investigating allegations of misconduct under s28 of the Localism Act "but this did not preclude it from carrying out any investigations other than under those Arrangements."

The question of bias was also raised as a ground of challenge because a solicitor who produced a report as part of the pre-formal investigation process made inappropriate remarks. It was accepted that the remarks were objectionable and unacceptable, but the court had to consider whether the report was tainted by actual or apparent bias. The court found no evidence of actual bias. As for apparent bias, the court found that the comments could be viewed by a third party as reflecting a degree of personal hostility towards the councillor which could lead to a conclusion that the report could be affected by bias. However, the authority had had the solicitor's report reviewed by Leading Counsel. The court considered that this substantially reduced the risk of transference of bias. In addition, the allegations had been subject to further investigation and had been referred to the authority's standards committee for a decision. The court therefore concluded that any taint of bias was so remote from the committee's decision that there was no identifiable risk that the decision could be affected.

The court also rejected the councillor's claim of political motivation. It accepted the council's evidence that none of its decisions had been taken for an improper political purpose.

The councillor's challenge therefore failed on each of the grounds

- 6.3 When this matter was reported to Committee in January, it was noted that whilst the case was certainly of interest, it was important to remember that the facts were very specific. In the circumstances, it seemed that this case was probably not of "general application".

However, in view of the judge's comments referred to above, the case is of "general application" after all. The judgement clarifies that 'pre-formal investigations' are permissible and that there is no gap between the pre and

post Localism Act standards regimes. It is probably unlikely that many authorities will now need to consider investigating allegations relating to conduct prior to 2012. However, it is helpful to have clarification on the scope of investigations.

7. Law Commission's Consultation on Misconduct in Public Office – Update

- 7.1 At the time of writing this report, the Law Commission's website indicates that responses to its consultation on Misconduct in Public Office are still being analysed.

8. DCLG review of disqualification criteria for election to local government – Update

- 8.1 DCLG has now published a consultation paper on updating disqualification criteria for local authority members. That consultation paper is the subject of a separate report on today's agenda.

9. Request for a "Right to Recall"

- 9.1 The legal press recently reported that Thurrock Council has written to DCLG to request legislation for a new "Right to Recall" councillors "in the event of significant conduct or ethical breach, similar to that put in place by the Recall of MPs Act 2015".

The Deputy Leader of Thurrock Council is quoted as saying "If changes were to be implemented then, should a councillor fall foul of an agreed set of criteria – like not attending meetings, conviction of a crime or breaching the members code of conduct – voters would have the choice to recall their representative and go to the ballot box to choose another candidate.

As councillors, we are effectively immune from our residents calling time on any bad practices until a future election. It is the belief of this council that significant lapses of judgement and behaviour do warrant sanctions far sooner in some instances, and that our bosses – the electorate- should have a say in calling time on such elected representatives."

- 9.2 It is clear from the regional standards meetings that many other authorities have concerns about the lack of effective sanctions.

This request from Thurrock Council is another instance of an authority finding the sanctions under the Localism Act 2011 inadequate.

However, unless any sanction has statutory backing, it will depend on the willingness of members to agree to be bound by it. As a result, there is some doubt as to how effective a right to recall will be in practice. In addition, a right to recall would, of course, result in a by-election.

10. Background papers

None

11. Contact officer

Helen Wilson, Solicitor, ext 25110, helen.p.wilson@newcastle.gov.uk

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Standards Committee

13 October 2017

**Review of the Council's Guidance on the use of social media –
Feedback**

Report by: Assistant Director Legal Services

Ward Implications: All

For Decision		
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1. Purpose of the report

- 1.1 This report updates members on the review of the Council's guidance on the use of social media ("the Guidance").

2. Recommendation

- 2.1 The Committee is recommended to (a) note the feedback on the Guidance, (b) consider any necessary actions and whether any additional measures are necessary and (c) note the level of attendance at the regional training session on social media.

3. Introduction and background

- 3.1 The Guidance was circulated to all Members in January 2016. A copy is attached as Appendix A.

The Guidance is intended to supplement the Code of Conduct for Members. It is a summary of a more detailed guidance note produced by the Local Government Group ("Connected councillors: A guide to using social media to support local leadership"). The Guidance was approved by the Committee and reviewed by the Assistant Director Policy, Communication and Performance.

- 3.2 At its meeting on 7 April 2017, the Committee noted that one of the key themes of the regional meeting of Chairs/Vice Chairs of Standards Committees and Independent Persons held earlier that month had been members' use of social media and the provision of advice and guidance to members. The Committee subsequently resolved there should be a review of the Guidance, its effectiveness and its use by members.
- 3.3 On 14 July 2017, the Committee approved a short questionnaire to be sent to all Members seeking feedback on the Guidance.

Officers agreed to collate the replies and bring a report back to the Committee once the deadline for responses had passed.

The Committee also endorsed participation in proposed regional training on social media.

4. Review of the Council's existing guidance on the use of social media – online survey and responses

- 4.1 The short survey was sent to all members of Council [, the 2 Independent members of Standards Committee and the 2 Independent Persons] on 17 July 2017. It was available online (via let's Talk Newcastle). However, any member who preferred a paper copy of the survey was invited to ask for one.

The purpose of the survey was to assess the effectiveness and use of the Guidance.

The questions from the survey are attached as Appendix B.

Responses were requested by 1 August 2017. The reason for the short timescale was because the survey included a question asking whether members were interested in attending the proposed regional training.

Notwithstanding the above, the survey was available online until the end of August. However, as only 23 responses had been received by that date, the deadline was extended to 22 September.

3 Members asked for paper copies of the survey.

- 4.2 33 responses were received by the extended deadline.

This represents 41.46% of the possible replies.

The responses are summarised below:

4.2.1 Q1 Do you use social media on a regular basis?

Yes – 25

No - 8

4.2.2 Q2 If yes, which type of social media do you use?

Facebook - 10

Twitter - 5

Other – 2

More than one - 11

4.2.3 Q3 If yes, on average, how frequently do you use it?

Daily - 21

Weekly - 3

Monthly - 3

4.2.4 **Q4 Are you aware of the Guidance on use of social media by elected members (approved by Standards Committee and circulated by email on 20/1/16)?**

Yes - 20

No - 13

4.2.5 **Q5 If yes, have you found the Guidance useful?**

Yes – 14

No - 5

4.2.6 **Q6 If yes, what in particular did you find helpful?**

11 responses were received for this question.

Common themes included:

- clarification (of 'dos and don'ts', roles, language and tone)
- common sense approach

Other comments included the following:

"Will read"

"Avoid using it"

"... If you would not say something to a person's face, don't put it in social media."

"... it is just common sense and I don't use social media for council matters other than to maybe congratulate a local group of some success."

"Parts are helpful"

"I find that it is useful as it helps with what we can and cannot say particularly with regards to our position as elected members."

"The distinctions and risks when using social media as a councillor."

"It's good to know what the expectations are and to know that all members receive the same guidance"

"I never use Facebook as a political platform it is social only and I am careful what I post"

4.2.7 **Q7 If you have not found the Guidance useful, please tell us why?**

4 respondents replied to this question. 3 did not use social media. The 4th

respondent commented “The complexity of using” social media “and its effectiveness is understated”.

4.2.8 **Q8 Would you find further (more detailed) guidance useful?**

15 responses were received for this question.

Yes/probably/possibly – 9

No – 5

The other respondent commented “Social media should not be used at all until the official record or process has been formally notified. The guidance should be stronger on this”.

Additional comments were:

“I’m fairly clear from my training at work ... what is and isn’t acceptable but would be good to get more guidance in my role as a Cllr. If the guidance was last distributed in Jan 2016 there are several elected members who joined after this (perhaps 8 of us) so need to consider e mailing out the existing guidance again.”

“... I don’t plan to increase my current usage to council matters.”

I want to know what people find useful about social media and why they bother.”

“... it would be nice to get training in how to use social media more effectively as local representative.”

“Not at present.”

“It was helpful to some extent, but more detail would be useful.”

4.2.9 **Q9 Would you be interested in attending a training course (to be held at North Tyneside Council)?**

Yes - 12

No - 10

Possibly - 2

5. Suggested Actions

5.1 As mentioned earlier, the purpose of the survey was to assess the effectiveness and use of the Guidance. Based on the limited number of responses received, Members have generally found the Guidance to be useful and helpful.

However, it is disappointing that 13 respondents were not aware of the Guidance. One of the 13 stated that he/she became a councillor after the

Guidance was issued. This may explain why at least some of the respondents were not aware of it.

It would therefore be appropriate to re-issue the Guidance and ask Members to confirm they have read it.

- 5.2 The Committee is invited to consider whether it considers any additional measures are necessary.

6. Regional Training

- 6.1 At its meeting on 14 July 2017, the Committee endorsed attendance at a regional training session on social media, to be delivered by IODA.

As previously mentioned, the survey therefore included a question asking if members were interested in attending such training.

- 6.2 The training was subsequently scheduled for 10 and 11 October (2 sessions each day) at North Tyneside Council's offices. Places were limited as the training was to be interactive.

8 members asked to attend a session and places were booked for them.

- 6.3 At the time of writing this report, the training sessions had not taken place. Any further information/feedback will be reported verbally to the Committee at the meeting.

7. Background papers

None

8. Contact officer

Helen Wilson, Solicitor, ext 25110, helen.p.wilson@newcastle.gov.uk

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Guidance on use of social media by elected members
(Issued: January 2016)

Social media is a collective term used to describe easy ways to create and publish on the internet. People generally use the term to describe how organisations and individuals share content – text, video and pictures – and create conversations on the web.

It has grown substantially over recent years as a means of communicating and sharing information. Popular sites include Twitter, Facebook, Pinterest, Blogger, Wordpress and YouTube.

The important thing to remember about social media is that it's social. It's about communication.

1. Maintaining good 'netiquette'

Councillors, just like anyone, should take due regard of internet security and, to ensure that communications remain proper and appropriate, the following practical points may assist:

- Make your commenting policy clear

You will need to take note of the comments that other people make on your site. It may be a fine line to tread, but if you allow offensive or disrespectful comments to stand on your site then it can put off other members of your community, and you may even be called to account under the Code of Conduct for Members. For blogs, the easiest way to handle this is to moderate comments and to state clearly on your site that you're doing so and reasons why comments may be rejected. For Facebook or other social networks, including multi-media sites like YouTube and Flickr where people can post public or semi-public messages to your profile, you will need to regularly check on messages (you can be notified by email) or disable message posting.

- Allow disagreement

Some comments may not accord with your views, but on the other hand deleting the comments of people who disagree with you will backfire. You cannot stop them from posting the same comment elsewhere, then linking back to your site and saying you are gagging those who disagree with you.

- Think before you publish

Words cannot be unspoken and even if you delete a hastily fired off blog post or tweet, it will probably have already been read and will be referenced or duplicated in places on the web beyond your reach. If you include photographs or other images, you may need to consider whether anyone shown in the photographs or images might reasonably object.

- “Following” and “friending”

Some of the terminology in social media, like ‘following’ or ‘friending’ can imply an intimacy that’s not really there. Both terms just mean you have linked your account to someone else so you can share information. Experienced internet users are used to this, but some members of the public may feel uneasy when their councillor begins following them on Twitter before establishing some sort of online relationship. Some Members wait to be followed themselves first.

Do make use of other communication functions that social media allows you. Twitter’s ‘list’ function, for example, can help you to follow local people in a less direct way. Bloggers are, however, almost invariably happy for you to link to them.

You must think carefully about who you request to be ‘friends’ with or accept ‘friend’ requests from. Requesting or accepting, for example, an officer of the Council as a ‘friend’ on a social network site must not compromise the professional and impartial relationship between officers and elected members. Generally this should be avoided.

- If you make a mistake

Social media is transparent, the best bloggers admit mistakes rather than try to cover them up (which is not possible online). Amending your text and acknowledging your mistake – perhaps by putting a line through the offending words and inserting a correction, or providing an update section at the bottom of a blog post - shows you are not pretending it never happened, and it’s much better than just deleting it when dealing with online misfires.

- Avoid the difficult users

As you begin to use social media, you’ll find some argumentative characters out there. Don’t get bogged down. You don’t have to respond to everything. Ignore if necessary.

2. Legal Considerations

In the main, Members have the same legal duties online as anyone else (see below), but failures to comply with the law may have more serious consequences. There are some additional duties around using a Member’s website for electoral campaigning and extra care needs to be taken when writing on planning, licensing and other quasi-judicial matters.

a) Libel

If you publish an untrue statement about a person which is damaging to their reputation they may take a libel action against you. This will also apply if you allow someone else to publish something libellous on your website if you know about it and don’t take prompt action to remove it. A successful libel claim against you will result in an award of damages against you.

b) Copyright

Placing images or text on your site from a copyrighted source (for example extracts from publications or photos) without permission is likely to breach copyright. Avoid publishing anything you are unsure about, or seek permission in advance. Breach of copyright may result in an award of damages against you.

c) Data Protection

Avoid publishing the personal data of individuals unless you have their express written permission.

d) Bias and pre-determination

If you are involved in determining planning or licensing applications or other quasi-judicial decisions, avoid publishing anything on your blog that might suggest you don't have an open mind about a matter you may be involved in determining. If not, the decision runs the risk of being invalidated.

e) Obscene material

It goes without saying that you should avoid publishing anything in your blog that people would consider obscene. Publication of obscene material is a criminal offence.

f) Bullying and Discriminatory comments

Behaving in a discriminatory, bullying or harassing way towards any individual including making offensive or derogatory comments relating to sex, gender reassignment, race (including nationality), disability, sexual orientation, religion or belief or age via social media by posting images or links or comments could, in certain circumstances, result in criminal sanction.

f) Electoral periods

The Electoral Commission requires that candidates provide a return of expenditure on any form of advertising or campaign literature and that includes web advertising. There are additional requirements, such as imprint standards, for materials which can be downloaded

from a website. Full guidance for candidates can be found at:

www.electoralcommission.org.uk.

While the above list is not exhaustive it does highlight some of the more obvious issues. If you are in any doubt, speak to John Softly, Assistant Director Legal Services and Monitoring Officer. Almost all of these pitfalls can be avoided if your online content is objective, balanced, informative and accurate.

3. The Members' Code of Conduct

It is worth pointing out that Members can have 'blurred identities' when they have a social media account where they comment both as a Member and as a private individual. For example, you may have a Facebook account where you've posted about a great night out (in your personal/private capacity) and another time explained the Council's position on pothole repair (in your councillor capacity). It may be clear in your mind when you are posting in a private capacity or as a councillor, but it could be less clear to others.

Such blurred identities might, for example, have implications where your views are taken as those of the Council or political party, rather than your personal opinion. So it is important to be clear in your social media accounts/profiles, then you can be confident as to what you can and cannot say while you are representing the Council or political party.

How you use your online identity will also determine how online content will be treated in respect of the Members' Code of Conduct. Councillors are expected to communicate politically. As explained above there is a difference between communicating on behalf of the Council, for example blogging as a councillor or as a private citizen, and the former will be held to a higher standard than the latter.

The key to whether your online activity is subject to the Code of Conduct for Members is whether you are giving the impression that you are acting as a councillor, and that is the case whether you are in fact acting in an official capacity or simply giving the impression that you are doing so.

One way to separate your personal/private business from your activities as a councillor is to have two separate accounts - one for personal/private business and the other for councillor activities. The latter account would have the title of Councillor in the profile name to clearly identify the role you are undertaking when using that account. This separation of accounts will assist in managing friends' lists and the content of any tweets/post etc. However, even then, you still need to be careful to ensure that what you say on your personal/private business account does not compromise your position as a councillor.

Aspects of the Members' Code of Conduct will apply to your online activity in the same way it does to other written or verbal communication you undertake. Councillors should comply with the general principles of the Code in what they publish and what they allow others to publish.

You will need to be particularly aware of the following sections of the Code:

- Treating others with respect - avoid personal attacks and any disrespectful, rude or offensive comments;
- Refraining from publishing anything you have received in confidence;
- Ensuring you do not bring the Council, or your councillor role, into disrepute.

Further information in relation to this guidance is available from the Assistant Director Legal Services and Monitoring Officer whose contact details are:

e-mail: john.softly@newcastle.gov.uk

tel: 0191 2777047

Appendix B

Guidance on use of social media by elected members (Issued January 2016)

Request for Feedback (on behalf of Standards Committee)

1. Do you use social media on a regular basis?
Yes/No
2. If yes, which type of social media do you use?
Twitter Facebook Other
3. If yes, on average, how frequently do you use it?
Daily Weekly Monthly
4. Are you aware of the Guidance on use of social media by elected members (approved by Standards Committee and circulated by e mail on 20/1/16)?
Yes/No
5. If yes, have you found the Guidance useful?
Yes/No
6. If yes, what in particular did you find helpful?
7. If you have not found the Guidance useful, please tell us why
8. Would you find further (more detailed) guidance useful?
9. Would you be interested in attending a training course (to be held at North Tyneside Council)?
Yes/No

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Standards Committee

13 October 2017

Hearings - Process and Sanctions

Report by: Assistant Director Legal Services

Ward Implications: All

For Decision		
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1. Purpose of the report

- 1.1 This report (a) suggests proposed amendments to the process for a hearing of a complaint that a member has breached the Code of Conduct and (b) considers the issue of sanctions and non-compliance.

2. Recommendation

- 2.1 The Committee is recommended to consider this report.

3. Introduction and background

- 3.1 The procedure to be followed at a Hearing, and the sanctions available to the Committee if it concludes that there has been a breach of the Code of Conduct, are set out in Appendix 2 of the Council's Protocol "Arrangements for dealing with Complaints against Councillors" (Part 5.4G of the Charter ("the Protocol")). The relevant extracts are attached to this report as Appendix A.

- 3.2 Following Hearings in December 2016 and May 2017, the Committee has reflected on the operation of the existing procedure in practice.

The Committee received reports at its meetings in April and July ("the July meeting"). At the July meeting the Committee identified a small number of proposed amendments. The Committee also requested that a copy of the pre-hearing process be circulated to members of the Committee.

- 3.3 The Committee has also requested advice on any action available to it in the event of a Member's non-compliance with a sanction imposed by the Committee.

4. Hearings Process – suggested amendments

- 4.1 Hearing Procedure – paragraph 30 – as requested by the Committee, the words "on any other matters arising" will be inserted at the end of paragraph 30 so that it reads as follows:

"If the Committee decides that the Member is not in breach of the Code of

Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority on any other matters arising.”

- 4.2 Sanctions – Schedule 2 to Appendix 2 - The Committee requested that the list of sanctions be rearranged to reflect “a more natural progression”.

In the circumstances, it is suggested that the order of the sanctions listed in Schedule 2 is amended to read as follows:

1. Issuing a formal censure.
2. Publishing its findings in respect of the Member’s conduct on the Council’s website.
3. Reporting its findings to Council, or to the Parish Council, for information.
4. Recommending to Council, or to the Parish Council, the issue of a formal censure by the Council or by the Parish Council.
5. Instructing the Monitoring Officer to, or recommending that the Parish Council, arrange training for the Member.
6. Recommending to the Council, or to the relevant Parish Council, that the Member be removed from any or all Committees or Sub-Committees (subject to the approval of the member’s Group if applicable).
7. Recommending to the Council, or to the Parish Council, that the Member be removed from being the chair or vice chair of any Committees or Sub-Committees
8. Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
9. Recommending to the Council, or to the Parish Council, that the Member be removed, from one or more outside appointments to which he/she has been appointed or nominated by the Council or by the Parish Council.

- 4.3 At the July Committee meeting, Members resolved that Constitutional Committee be asked to review whether the Council’s Standing Orders should be amended to allow notice of the outcome of a Hearing to be received for information only and not subject to debate at Council.

This will be referred to Constitutional Committee when the Standing Orders are next reviewed.

5. Pre-hearing Process – suggested amendments

- 5.1 As requested at the July meeting, a copy of the pre-hearing process was subsequently circulated to members of the Committee.

Generally, the comments received indicated that no changes are required.

However, it was pointed out that the Pre-hearing Process and Hearing procedure do not specify what will happen if the Subject Member fails to notify the Monitoring Officer whether he/she intends to call any witnesses. Whilst it is implicit, it would be helpful to make clear that the risk of failing to comply is that the Subject Member may not be able to call witnesses at the Hearing.

It is therefore suggested that the following note is inserted after paragraph 3 of the Pre-hearing Process:

“NOTE: If the Subject Member fails to notify the Monitoring Officer within the above timescale whether he/she intends to call any witnesses to give evidence to the hearing, the Subject Member may not be allowed to call any witnesses at the hearing.”

In practice, it would be a matter for the Committee to decide whether witnesses should be allowed to speak, notwithstanding a failure to give the requisite notice.

6. Sanctions and non-compliance

6.1 As the Committee is aware, the Localism Act does not prescribe the range of “actions” (sanctions) that a local authority can take. However, the Act does envisage that some action can be taken against a member who fails to comply with the code of conduct.

In February and March 2012, Standards Committee and Constitutional Committee were advised that, in the circumstances, the actions available to the Council are limited to its common law powers. The Committees therefore considered the available sanctions suggested by case law from before 2000 and a leading Counsel’s opinion obtained by ACSeS.

A report from Constitutional Committee and Standards Committee (“Localism Act 2011 – A New Standards Regime”) was subsequently considered by City Council on 13 June 2012. Council agreed the initial arrangements for dealing with standards complaints (including the sanctions set out below) at that meeting:

- *Standards Committee issuing a formal censure;*
- *Full Council, or the Parish Council, issuing a formal censure;*
- *Referral of the Standards Committee findings to full Council, or to the Parish Council, for information;*
- *Publication of the Standards Committee’s findings by such means as it thinks fit;*
- *Council, or the Parish Council, removing the member from any or all Committees or Sub-Committees for a specified period (subject to the approval of the member’s Group if applicable);*
- *The Leader of the Council removing the member from the Cabinet, or from particular Portfolio responsibilities;*
- *The Council, or the Parish Council, removing the member for a specified time from all or specified outside appointments to which s/he*

- has been appointed by the Council or by the Parish Council; or*
- *The Council, or the Parish Council, offering training to the member.*

These are reflected in the list of possible sanctions set out in Schedule 2 to Appendix 2 of the Protocol (see the attached extract).

- 6.2 In the absence of sanctions such as suspension, an authority has limited scope for action if a member does not co-operate with the sanctions imposed by the Committee.

A member who belongs to a political group may find that the group brings pressure on him/her to comply with any sanction which has been imposed.

Adverse press coverage might result in a member deciding to co-operate. However, not all members may be concerned about adverse press coverage.

If a Member fails to comply with the sanctions imposed by the Committee, he/she might find himself/herself the subject of a new complaint of breach of the code.

- 6.3 As this Committee is aware from previous discussions, there is very little scope to strengthen the sanctions under the current legislative regime.

Members will no doubt recall that the Monitoring Officer wrote to DCLG in 2016 about the lack of statutory sanctions under the Localism Act 2011. The response from DCLG indicated that the Government was “committed to reviewing the standards arrangements established in the Localism Act and this review should take place in the next year”. The response also said that the points raised in the Monitoring Officer’s letter “will be taken into account, as part of that review”.

- 6.4 We await the Government’s review with interest.

However, one local government commentator takes the view that the Government “will not have legislative time” to consider the standards regime and suggests it is up to local authorities “to make a case and propose a solution or options”. In the circumstances, based on his own experience and comments from colleagues, he proposes to let the Government know about “gaps” in the current arrangements. These “gaps” include the absence of sanctions “and teeth” which, in his view, “means that the regime has fallen partially at least into discredit”.

Officers understand that other authorities continue to make representations to the Government. For example, as mentioned in the Standards Update report on today’s agenda, Thurrock Council has written to DCLG calling for a “Right to Recall” councillors.

In the meantime, as mentioned elsewhere on today’s agenda, the Committee on Standards in Public Life (“CSPL”) has indicated that it intends to carry out a review of local government standards in 2017-18.

- 6.5 Members will no doubt recall the Honiton Town Council case, reported to the Committee in April this year. The case clarified that training is a valid

sanction. However, there was also an acknowledgement that a member cannot be forced to attend training. Therefore, if he/she refuses to attend the required training, there is no further sanction that can be imposed except publicity.

7. Background papers

List of background papers:- held by Assistant Director Legal Services on file YY5-1227:

1. Newcastle Charter – Part 5.4G – Protocol - Arrangements for Dealing with Complaints against Councillors

8. Contact officer

Helen Wilson, Solicitor, ext 25110, helen.p.wilson@newcastle.gov.uk

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Schedule 1 to Appendix 2

Hearing Procedure

Interpretation

In this Schedule and in Schedule 2 -

1. 'Member' means the Subject Member, including his/her nominated representative where the context reasonably allows this.
2. 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake the investigation or his or her nominated representative.
3. 'Committee' means the Standards Committee.
4. 'Council' means Newcastle City Council.
5. 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council or someone appointed for this purpose from outside the Council.
6. 'Code of Conduct' means the Code of Conduct with which the complaint alleges the Member has failed to comply.
7. 'Independent Persons' means the persons appointed by the Council under s28 Localism Act 2011.

Representation

8. The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

Legal advice

9. The Committee may take legal advice, in private if necessary, from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the Investigating Officer if they are present.

Non attendance by the Member

10. If the Member does not attend the hearing, the Committee may consider the Investigating Officer's report in the Member's absence. If the Committee is satisfied with the Member's reason for not being able to attend the hearing, it may arrange for the hearing to be held on another date. Where the Committee proceeds in the Member's absence, this procedure shall be adapted as necessary, giving any representative of the Member who is present such rights as would have been given to the Subject Member.

Setting the scene

11. After everyone involved in the hearing has been formally introduced, the Chair should explain how the Committee will conduct the hearing.

Preliminary procedural issues

12. The Committee should then resolve any issues or disagreements about how the hearing should proceed, which have not been resolved during the pre-hearing process.

Making findings of fact

13. After dealing with any preliminary issues, the Committee should then move on to consider whether there are any significant disagreements about the facts contained in the Investigating Officer's report.
14. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
15. If there is a disagreement, the Investigating Officer should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer by the cross-examination of the witness either directly by the Member (or his/her representative) or through the Chair.
16. The Member should then have the opportunity to make representations to support his/her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
17. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Member.
18. If the Member disagrees with most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.
19. If the Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, s/he must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Member's explanation for not raising the issue at an earlier stage and any comments of the Investigating Officer or Monitoring Officer, the Committee may then:

- (a) Continue with the hearing, relying on the information in the Investigating Officer's report;
 - (b) Allow the Member to make representations about the issue, and invite the Investigating Officer (or Monitoring Officer) to respond and call any witnesses, as necessary;
 - (c) Postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if they are not already.
20. The Committee will usually consider the representations and evidence in private.
 21. The Chair will then announce the Committee's findings of fact.

Did the Member fail to follow the Code of Conduct?

22. The Committee will then consider whether, based on the facts it has found, the Member has failed to follow the Code of Conduct.
23. The Member should be invited to give relevant reasons why the Committee should decide that s/he has not failed to follow the Code of Conduct.
24. The Committee should then consider any verbal or written representations from the Investigating Officer.

25. The Committee may, at any time, question anyone involved on any point they raise in their representations.
26. The views of the Independent Persons, if present, will be sought and the Member and Investigating Officer will be given the opportunity to make representations on any such views which may be given.
27. The Member should be invited to make any concluding representations to the Committee
28. The Committee will usually then consider their final decision in private.
29. The Chair will then announce to those present at the hearing the Committee's decision as to whether the Member has failed to comply with the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

30. If the Committee decides that the Member is not in breach of the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code of Conduct

31. If the Committee decides that the Member has been in breach of the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Member as to:
 - (a) whether the Committee should take any action; and
 - (b) what form any action should take.
32. The Committee may question the Investigating Officer, Monitoring Officer and Member, and take legal advice, to ensure it has the information it needs to make an informed decision. It shall also invite, and take into account, the views of any Independent Person who is present.
33. The Committee will then deliberate in private to consider whether to take any action, and, if so, what the action should be. The actions available to the Committee are set out in Schedule 2.
34. The Chair will announce the Committee's final decision on appropriate action to those present.

Recommendations to the Authority

35. After considering any verbal or written representations from the Monitoring Officer and/or the Investigating Officer, the Committee will consider whether it should make any recommendations to the Council and/or any relevant parish council, with a view to better promoting high standards of conduct among their members in light of the facts of the case which has been heard.

The written decision

36. The Committee will announce its decision on the day. It will issue a full written decision as soon as reasonably possible after the end of the hearing.

Further information

37. At any stage prior to the conclusion of the hearing, the Committee may adjourn the hearing (on one occasion only) to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.

Schedule 2 to Appendix 2

Actions available to the Committee

1. Issuing a formal censure.
2. Recommending to Council, or to the Parish Council, the issue of a formal censure by the Council or by the Parish Council.
3. Publishing its findings in respect of the Member's conduct.
4. Reporting its findings to Council, or to the Parish Council, for information.
5. Recommending to the Council, or to the relevant Parish Council, that the Member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable).
6. Recommending to the Council, or to the Parish Council, that the Member be removed from being the chair or vice chair of any Committees or Sub-Committees
7. Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
8. Instructing the Monitoring Officer to, or recommending that the Parish Council, arrange training for the Member.
9. Recommending to the Council, or to the Parish Council, that the Member be removed, from one or more outside appointments to which he/she has been appointed or nominated by the Council or by the Parish Council.