



Democracy and Standards Committee 6th June 2023

Report Title	Code of Conduct – National Learning Case Studies
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Executive Member	N/A

Are there public sector equality duty implications?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	N/A

List of Appendices

None

1. Purpose of Report

1.1. It is the Monitoring Officer's intention to produce occasional papers highlighting case studies on the application of the Code of Conduct or matters relating to councillor behaviour from other local authorities for discussion by the Committee.

2. Executive Summary

2.1. The report contains information relating to two case studies from other local authorities for discussion.

3. Recommendations

3.1. That the Committee: -

- (i) Note the contents of the report; and
- (ii) Agree to receive information on other case studies on an ad hoc basis.

3.2. *(Reason for Recommendations – To assist in keeping members of the Committee abreast with developments in the application of the Code of Conduct by other local authorities).*

4. Report Background

4.1 Case Study 1

Teignbridge District Council – Local Government and Social Care Ombudsman

The background to this complaint is that the Member was part of a local group who had concerns about the Local Plan. They believed it was based on the wrong figures having been put in the Local Plan. Unfortunately, in dealing with this issue, the Councillor decided to use social media to target officers in a derogatory way and also to speak to them in a derogatory way. There were other incidents where there was considered to be potential disrespectful treatment of officers and fellow Councillors.

Officers wrote to the Monitoring Officer expressing concern at the behaviour of the Councillor.

Various correspondence was sent by the Monitoring Officer and an external investigator was appointed. The investigation was concluded and a report presented to the Standards Committee.

Throughout the process the Councillor asked/demanded to see the details of the complaints. The Ombudsman found:

- Fault in that an investigation had been instigated without a complaint in writing. The Localism Act 2011 is clear in that there must be an allegation in writing of a breach of the Code of Conduct. There was none here. The investigation should never have been commenced.
- Fault in that the Councillor had not been given enough details of the allegations that the Councillor had breached the Code of Conduct including the details of the behaviour or comments which were alleged to have breached the Code and by whom the allegations were made.
- Fault in that allegations against the Councillor in question were conflated with those against 2 other Councillors. This, the Ombudsman stated, suggests a lack of objectivity in officers' consideration of the Councillor's actions. This denied the Councillor a fair chance to answer the allegations.
- Fault that the Council kept no records of discussions with the Independent Person.
- Fault with the way the Council introduced new allegations into the investigation but did not make clear exactly which allegations were part of the investigation. The scope of the investigation thus became unclear.
- Fault in that when the Councillor raised issues of process, there was no review in the light of what the Councillor was saying.

- Fault in that the Councillor's rights under Article 10 of the Human Rights legislation were not consciously considered in the investigation report or at the hearing. Article 10 protects freedom of expression. This is a qualified right which means there are circumstances where the freedom can be curtailed so long as that is lawful, necessary and proportionate. Where a politician is involved there is an enhanced right to protection. Nonetheless the politician's rights should be weighed against the individual's rights – in this case of a nonelected official not to be criticised in public. In this particular case, the Council did not actively consider this matter and should have.
- That the Ombudsman would not look into the appointment of an investigator as they had no reason to criticise the appointment. The investigator worked for a consultancy specialising in such investigations and clearly had experience.

The Council was told to apologise to the Councillor and to rescind its decision and remove the decision from the website.

4.2 Case Study 2

Public Interest Report of Grant Thornton into Cheshire East Council

This concerned the impact of the Council's culture and governance arrangements during 2014 -2018. This includes the culture, behaviours and underlying governance weaknesses during this time.

This is a lengthy report giving a lot of detail. The main points are:

- Bullying and harassment by the then Leader to get his own way.
- The Leader influencing officers on decisions designed for the advantage of his preferred company even if this meant by passing or overriding the Council's established controls.
- Ineffectiveness of the Chief Executive Officer and Chief Operating Officer and Section 151 Officer who failed to stand up to the Leader and in the latter's case inappropriately acting on the former Leader's wishes or apparent wishes in relation to that company.
- The perception that the standards regime including the Code of Conduct, Protocol on Member/Officer relations, complaints system under the Localism Act 2011, the lack of an overseeing body such as the Standards Board for England and the lack of sanction were or would be ineffective against an individual in the former Leader's position of power. This was perceived as a major concern.
- The report arose out of a failed procurement exercise for a pilot of physical exercise services for children contract. The physio company in the running was owned by a friend of the Leader's but no disclosures were made by the Leader in this respect. The report says that the Leader's preference for his friend's company was shown in the nature of the Leader's communications with the Director of the company and by him disclosing a confidential Council report to the friend.
- During the period from 2009 to 2017 there were 6 Monitoring Officers. Grant Thornton stated in the report that this high turnover rate would have weakened

the Council during a period when it was most in need of robust legal advice and challenge.

- The report makes no recommendations for the current Council.
- Grant Thornton wrote that they hoped their report would “encourage the ongoing debate around the effectiveness of the standards regime for local government and support mechanisms for both officers and members facing the same intractable difficulties.”

5. Implications (including financial implications)

5.1. No implications associated with this report.

6. Background Papers

6.1. None.