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DIRECTOR OF STRATEGY,
PERFORMANCE AND
GOVERNANCE'S OFFICE
DIRECTOR OF STRATEGY, PERFORMANCE
AND GOVERNANCE
Paul Dodson

19 October 2020

Dear Councillor

You are summoned to attend the meeting of the:

JOINT STANDARDS COMMITTEE

on **TUESDAY 27 OCTOBER 2020 at 1.00 pm.**

Please note that this will be a **remote meeting** – Members to access the meeting via Microsoft Teams. Members of the press and public may listen to the live stream via the [Council's YouTube channel](#).

A copy of the agenda is attached.

Yours faithfully



Director of Strategy, Performance and Governance

COMMITTEE MEMBERSHIP:

CHAIRMAN	Councillor M W Helm
VICE-CHAIRMAN	Councillor W Stamp
COUNCILLORS	M G Bassenger Mrs P A Channer, CC K W Jarvis C Mayes S P Nunn Mrs M E Thompson
TOWN COUNCILLOR (non-voting)	Councillor P Stilts
INDEPENDENT PERSON (non-voting)	Mr N Hodson

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AGENDA
JOINT STANDARDS COMMITTEE
TUESDAY 27 OCTOBER 2020

1. **Chairman's notices**
2. **Apologies for Absence**
3. **Minutes of the last two meetings held on 3 September 2020** (Pages 5 - 20)

To confirm the Minutes of the two Joint Standards Committee meetings held on 3 September 2020, (copies enclosed).

4. **Disclosure of Interest**

To disclose the existence and nature of any Disclosable Pecuniary Interests, other Pecuniary Interests or Non-Pecuniary Interests relating to items of business on the agenda having regard to paragraphs 6-8 inclusive of the Code of Conduct for Members.

(Members are reminded that they are also required to disclose any such interests as soon as they become aware should the need arise throughout the meeting).

5. **Committee on Standards in Public Life- Best Practice Recommendations** (Pages 21 - 30)

To consider the report of the Monitoring Officer, (copy enclosed).

6. **Any other items of business that the Chairman of the Committee decides are urgent**

7. **Exclusion of the Public and Press**

To resolve that under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 6b of Part 1 of Schedule 12A to the Act, and that this satisfies the public interest test.

8. **Complaints against a Councillor - Future Steps** (Pages 31 - 44)

To consider the report of the Monitoring Officer, (copy enclosed).

NOTICES

Sound Recording of Meeting

Please note that the Council will be recording and publishing on the Council's website any part of this meeting held in open session. At the start of the meeting an announcement will be made about the recording.

RULE 19 – ATTENDANCE BY MEMBER AT COMMITTEE

A Member of the Council may attend Committee meetings of which he is not a member and may also speak by prior arrangement with, and at the discretion of, the Chairman. This procedure rule shall not apply to meetings of the Appointments Board, Investigating and Disciplinary Committee and Panel (all matters) and the Joint Standards Committee (when considering matters deemed to be private/confidential and where the public is to be excluded from the meeting).



**MINUTES of
JOINT STANDARDS COMMITTEE
3 SEPTEMBER 2020**

PRESENT

Councillors	M G Bassenger, M W Helm, C Mayes and S P Nunn
Town Councillor	Councillor P Stilts
Substitute Councillor(s)	A L Hull, C P Morley and C Swain
In attendance	Councillors E L Bamford, K M H Lagan, C Morris, R H Siddall and W Stamp
Independent Person	Mr N Hodson

1172. ELECTION OF CHAIRMAN

In the absence of a Chairman and Vice-Chairman, the Lead Legal Specialist and Monitoring Officer opened the meeting and a roll call of all Committee Members present and any Councillors in attendance was taken.

The Lead Legal Specialist and Monitoring Officer then sought nominations for Chairman of the Joint Standards Committee for the remainder of the municipal year. Councillor S P Nunn nominated Councillor M W Helm be elected as Chairman and this was duly seconded. There were no other nominations and this was therefore agreed by assent.

RESOLVED that Councillor M W Helm be appointed as Chairman of the Joint Standards Committee for remainder of the municipal year.

IN THE CHAIR : COUNCILLOR M W HELM

1173. ELECTION OF VICE-CHAIRMAN

The Chairman called for nominations for Vice-Chairman of this Committee for the remainder of the municipal year and nominated Councillor S P Nunn. This was duly seconded. Councillor Nunn advised that he had not been asked to fulfil this position and confirmed that he would not be standing. The Chairman called for any other nominations and Councillor C Swain nominated Councillor W Stamp.

In response to a question regarding appointing Councillor Stamp as she was not present at the meeting, the Lead Legal Specialist and Monitoring Officer advised so long as the person nominated was a standing Member of the Committee there was nothing to prevent another Member from nominating them.

The nomination for Councillor Stamp as Vice-Chairman was duly seconded. Prior to agreeing by assent this nomination it was noted that confirmation from Councillor Stamp that she was happy to assume this post would be sought at the next meeting of the Committee she was in attendance at.

RESOLVED that Councillor W Stamp be appointed as Vice-Chairman of the Joint Standards Committee for the remainder of the municipal year.

1174. CHAIRMAN'S NOTICES

The Chairman welcomed everyone to the remote meeting, held under new regulations which came into effect on 4 April 2020 in response to the COVID-19 situation. The Chairman then asked the Committee Services Advisor to go through the general housekeeping arrangements for the meeting.

1175. APOLOGIES FOR ABSENCE AND SUBSTITUTION NOTICES

Apologies for absence were received from Councillors Mrs P A Channer, K W Jarvis, W Stamp and Mrs M E Thompson.

It was noted that in accordance with notice duly given Councillor A L Hull was attending as a substitute for Councillor Mrs Channer, Councillor C Swain as a substitute for Councillor Stamp and Councillor C P Morley as a substitute for Councillor Mrs Thompson.

1176. MINUTES OF THE LAST MEETING

RESOLVED

- (i) that the Minutes of the meeting of the Committee held on 30 January 2020 be received.

Mr Hodson, Independent Person, advised that he had been in attendance at this meeting, but this was not recorded. The Chairman advised that this would be amended.

RESOLVED

- (ii) that subject to the above amendment the Minutes of the meeting of the Joint Standards Committee held on 30 January 2020 be confirmed.

1177. DISCLOSURE OF INTEREST

There were none.

1178. STANDARDS COMPLAINT - COUNCILLOR ADRIAN FLUKER

The Committee considered the report of the Monitoring Officer advising of an independent investigation (attached at Appendix 1 to the report) that had been undertaken following receipt of a Code of Conduct complaint against Councillor A S Fluker.

The report set out the three decisions for consideration by the Committee based on the evidence before them and sanctions it could apply if it was determined that a breach of the Code of Conduct had occurred.

The Chairman referred the Committee to the procedure for complaints determination, contained within the agenda pack which it would be following for this meeting.

The Lead Legal Specialist and Monitoring Officer presented the report and introduced Mr Oram, Independent Investigator who had carried out the investigation.

In response to a question regarding the sanctions detailed on pages 11 and 12 of the report and which of these the Committee could impose, and which required recommendation and subsequent approval by the Council the Lead Legal Specialist and Monitoring Officer clarified:

- Sanction 1. This was automatic as Minutes go to the Council;
- Sanction 2. Although the Committee could issue a censure, a recommendation to the Council to issue a full censure would be of a higher level and require a vote of all Members of the Council.
- Sanction 3. This is a power invested in the Joint Standards Committee;
- Sanction 4. This would be a recommendation to the Council;
- Sanction 5. Removal from any official position would need to be a Council decision and therefore would be a recommendation to the Council.

The Chairman then invited the Investigating Officer, Mr Oram, to summarise the conclusion of his report and make any clarifying remarks.

Mr Oram provided some background information regarding the complaint received and his investigation. It was noted that Councillor Fluker had not engaged with the investigation. Members were advised that in his consideration of whether the Code of Conduct (the Code) had been breached Mr Oram had to determine whether the alleged conduct came within the jurisdiction of the Code which could only be applied when a Member was conducting Council business. For this reason he had decided that conduct when attending Conservative and selection meetings fell outside of the jurisdiction, although Mr Oram noted that the Committee could take their own view. Mr Oram drew Members' attention to section 5 of his report which set out his reasoning as to whether he felt there had been failures to comply with the Code of Conduct.

In accordance with the Procedure, the Chairman invited Members of the Committee and the Independent Person to ask the Investigator / Monitoring Officer any questions.

Officers responded to several questions raised, drawing Members' attention to specific points within the report, providing clarification and further information including:

- The Investigator had decided not to use evidence from the witness who wished to remain anonymous.
- In respect of the comment ‘hello sailor’ the Investigator advised that he had concluded in his report that Councillor Fluker had failed to treat Councillor Siddall with respect and bullied him.
- The Investigator provided further information and clarified that in his opinion the Equality Act 2020 was not applicable in this case and was happy to provide Members with further information regarding this outside of the meeting.
- The Lead Legal Specialist and Monitoring Officer provided some guidance in respect of the Localism Act and there being no requirement for a person to cooperate with investigations.
- There was legislation in relation to discrimination and harassment and when a person became a Councillor they were required to sign up to the Code of Conduct which impacts on their freedom of speech rights.

At this point Councillor C Morris wanted to raise a point of order but the Chairman would not allow this as he was not a member of the Committee. Councillor Morris continued trying to raise his point of order. In response to a request from the Chairman, the Lead Legal Specialist and Monitoring Officer advised the Committee that Councillor Morris was not a member of the Committee and only Members of the Committee could raise points of order. Any other Member wishing to speak could do so with prior agreement of the Chairman or at the Chairman’s discretion. Following further disruption the Chairman proposed that Councillor Morris be removed from the meeting. This was duly seconded and upon a vote being taken duly agreed. Councillor Morris removed from the meeting at this point.

The debate continued with further information being provided by the Officers present. In response to questions regarding the steps taken by the Investigator to contact Councillor Fluker, Members were advised that the Officer had sent a number of emails and left messages on Councillor Fluker’s telephone requesting that he contact the Officer. It was clarified that a direct instruction was not issued by the Monitoring Officer, but every opportunity had been given. Mr Oram advised that Members may consider that non-cooperation resulted in a breach of the Code of Conduct but under the Localism Act neither him or the Monitoring Officers had the powers to order any party to engage with the process. Members were reminded at this point to largely focus on the content of the Investigator’s report.

A Member sought to ask a question of Councillor R H Siddall, the complainant, as he was in attendance. Councillor C Mayes raised a point of order regarding this. Councillor Siddall indicated he was happy to answer questions and the Chairman sought confirmation from other Members that they were happy for a question to be raised. This was agreed and Councillor Siddall responded to the question.

Returning to the procedure for complaints determination the Chairman invited the Independent Person to make any representations or give advice. Mr Hodson, the Independent Person referred to the investigator’s report and the questions raised by Members during the meeting. He advised that overall, he believed that Councillor Fluker had breached the Code of Conduct and this breach was in line with the conclusions drawn by the Investigator.

Councillor S P Nunn agreed with the comments of the Independent Person and Investigator. He proposed that having considered the evidence before them, Councillor A S Fluker had failed to comply with the Member Code of Conduct. Councillor C Mayes seconded this proposal and requested a recorded vote.

Councillor J Stilts raised a point of order that the proposal be debated.

Members debated the proposal and reference was made at this time to potential breach of the Public Order Act and Equality Act. The Lead Legal Specialist and Monitoring Officer advised that in response to other parts of the Code of Conduct being mentioned Councillor Nunn needed to be clear as to which part of the Code he was proposing had been breached. The Officer advised Members that they needed to bear in mind the nature of the complaint and investigation made. The Lead Legal Specialist and Monitoring Officer then referred Members to section 6.1 of the Investigator's report which in which the Investigator had concluded that Councillor Fluker had failed to comply with sections 3.2, 3.5b and 3.5e of the Code of Conduct. If Members wished to include other sections of the Code they must ensure they had evidence for this.

Councillor Nunn clarified his proposal that Councillor Fluker had failed to comply with Section 3.2 of the Code of Conduct in respect of bullying and not showing respect and sections 3.5b and e in respect of bullying. He added that Councillor Siddall had not been shown respect and had been bullied. The Lead Legal Specialist and Monitoring Officer clarified that the proposition from Councillor Nunn was clear that the breach related to three sections of the Code of Conduct which was in line with the Investigator's conclusion. The amended proposal was duly seconded.

The Chairman then moved to a vote.

Following the earlier request for a recorded vote by Councillor Mayes in accordance with Procedure Rule No. 13 (3) the voting was as follows:

For the recommendation:

Councillors M G Bassenger, C Mayes, S P Nunn and C Swain.

Against the recommendation:

Councillors A L Hull and C P Morley.

Abstention:

Councillor M W Helm.

The Chairman declared that this was duly agreed and sought whether Members wished to impose any sanctions. A debate ensued.

There was some discussion regarding removing the Member from any position, Committees or Working Groups and issuing a formal censure. Councillor Nunn proposed that a formal censure be issued, that the matter be referred to the Council for a written censure and that the Council should be recommended to remove the Member from any Committee or Working Group.

At this point the Lead Legal Specialist and Monitoring Officer provided the Committee with clarification that it could either issue an informal censure or recommend to the Council that it issue a formal censure. It was not possible to do both. He pointed out

that Councillor Fluker was currently a Member of the District Planning and South Eastern Area Planning Committees and the Committee could recommend to the Council that he be removed from these; however they could not remove him from the Council as he was elected to this by the public. Members were advised that Councillor Fluker had resigned from all other Committees and Working Groups and any recommendation could not refer to potential future appointments.

Following further discussion, Councillor Nunn further revised his proposition proposing that the Joint Standards Committee issue a letter to Councillor Fluker in association with the Monitoring Officer and Independent Person advising him of the outcome of the hearing today. The letter should refer to Councillor Fluker not being present and not cooperating with the investigation, that by majority the Committee had found against him and would be recommending to the Council that it issued a full censure. In addition the Committee would also be recommending that Councillor Fluker was not permitted to serve on any Committees or Working Groups for the next 12 months. Following clarification by the Chairman, Councillor Nunn confirmed that his reference to Committees included the District Planning and South Eastern Area Planning Committees.

The Chairman put the proposition of Councillor Nunn to the vote and in accordance with the request for a recorded vote (in accordance with Procedure Rule No. 13 (3)) the voting was as follows:

For the recommendation:

Councillors M G Bassenger, C Mayes, C P Morley, S P Nunn and C Swain.

Against the recommendation:

None.

Abstention:

Councillor M W Helm.

It was noted that Councillor Hull had lost her connection during the debate and therefore in accordance with the Council's Procedure Rules did not vote.

The Chairman declared that this was therefore agreed.

RESOLVED

- (i) that Councillor A S Fluker had failed to comply with the following sections of the Council's Code of Conduct:
 - 3.2 You must treat others with respect.
 - 3.5 You must not:
 - b) bully any person;
 - e) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute

- (ii) that a letter be issued to Councillor Fluker from the Joint Standards Committee, in association with the Monitoring Officer and Independent person to include the following:
- reference to how Councillor Fluker had not been present at the hearing nor cooperated with the investigation.
 - advising of the outcome of this hearing; that the majority of the Committee had found against him and would be recommending to the Council that a formal censure be issued and he not be permitted to serve on any Committees or Working Groups for the next 12 months.

RECOMMENDED

- (iii) that as Councillor A S Fluker had failed to comply with the Council's Code of Conduct the Council should issue a formal letter of censure signed by the Chairman of the Council;
- (iv) that Councillor A S Fluker not be permitted to serve on any Committees (including the District Planning and South Eastern Area Planning Committees) or Working Groups for the next 12 months.

There being no further items of business the Chairman closed the meeting at 11.24 am.

M W HELM
CHAIRMAN

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**MINUTES of
JOINT STANDARDS COMMITTEE
3 SEPTEMBER 2020**

PRESENT

Chairman	Councillor M W Helm
Vice-Chairman	Councillor W Stamp
Councillors	M G Bassenger, Mrs P A Channer, CC, K W Jarvis, C Mayes, S P Nunn, Stilts and J V Keyes
Parish Councillors	Councillor Peter Stilts
Substitute Councillor(s)	Councillor J V Keyes
In Attendance	Councillors E L Bamford, A L Hull, K M H Lagan, C Morris, N Skeens and R H Siddall

1. CHAIRMAN'S NOTICES

The Chairman welcomed everyone to the remote meeting, held under new regulations which came into effect on 4 April 2020 in response to the COVID-19 pandemic. He took Members through some general housekeeping issues together with the etiquette for the meeting and then asked Officers present to introduce themselves.

This was followed by a roll call of Committee Members present and any Councillor in attendance

2. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Mrs M E Thompson.

In accordance with notice duly given Councillor J V Keyes was attending as a substitute for Councillor M E Thompson.

3. DISCLOSURE OF INTEREST

There were none.

4. STANDARDS COMPLAINT - COUNCILLOR CHRISY MORRIS

The Committee considered the report of the Monitoring Officer advising of two complaint reports (attached as Appendix 1 and 2 respectively) following receipt of complaints against Councillor C Morris.

In accordance with the Procedure for Complaints Determination the Chairman called on the Lead Legal Specialist and Monitoring Officer to present the reports. The Monitoring Officer clarified that there were two complaint reports and the Committee agreed they be considered separately. It was noted that Councillor C Morris would have an opportunity to ask questions of the Monitoring Officer after each report summary, followed by questions from Members of the Committee to the Monitoring Officer.

Prior to the presentation the Monitoring Officer, in response to a query as to why the letter from the member of the public relating to Appendix 2 was not included in the meeting papers, said that this formed part of the report from Mr Jennings and that the detail was covered in paragraph 1.2 of Appendix 2 at page 42 of the pack. He advised there was no requirement to append the letter but that he would locate the correspondence and read it to the Committee at the appropriate point on the agenda.

He then drew Member's attention to his report that set out the three key decisions for consideration by the Committee based on the evidence before them and the sanctions it could apply should it be determined that a breach of the Code of Conduct had occurred in either of the complaints.

4(a) APPENDIX 1- Complaint against Councillor C Morris

The Committee considered the report of the Lead Legal Specialist and Monitoring Officer, advising of an investigation (attached at Appendix 1 to the report) that had been undertaken following receipt of a Code of Conduct complaint against Councillor C Morris.

The Committee's attention was drawn to the Monitoring Officer's covering report that set out the three key decisions for consideration by the Committee based on the evidence before them and the sanctions it could apply should it be determined that a breach of the Code of Conduct had occurred.

In accordance with Procedure the Chairman asked the Monitoring Officer to summarise the conclusion of the first report at appendix 1. The Monitoring Officer provided the background to the report which was a result of a complaint by Councillor R P F Dewick. He said the complaint was twofold, the first part related to behaviour at a meeting of the Overview and Scrutiny Committee where Councillor Morris presented as Mr Morris, a member of the public, not as a Councillor. He advised that he had dismissed this as Councillor Morris' attendance was not as a Councillor therefore it fell outside the jurisdiction of the Code of Conduct. However, he felt the second part of the complaint relating to two Council meetings on the 3 October and 21 November 2019 respectively did engage the Code of Conduct as it related to behaviour when conducting Council business.

It was noted that the exchanges at the aforementioned Council meetings were outlined in the annexes appended to the report and that paragraph 5 provided a summary of both meetings as a continuing form of conduct. The Monitoring Officer then drew Members' attention to paragraphs 13/14 where he concluded that following his interview with Councillor Morris and further investigation as outlined in the report, Councillor Morris had failed to treat the Chairman with respect and his behaviour could reasonably be regarded as bringing his office or the authority into disrepute.

In accordance with the Procedure the Chairman then called Councillor C Morris to ask any questions of the Monitoring Officer

Councillor Morris proceeded to ask a series of questions not related to the matter at hand. At this point the Chairman interjected and requested that the questions be confined to the business of the meeting. Councillor Morris continued his line of questioning and the Chairman proposed in accordance with Rule 10 – Disorderly Conduct, that the Committee agree the member be not further heard.

Councillor Channer raised a point of order regarding the process being followed in the meeting. She felt that the discussion was diverting from the business of the meeting, was contrary to the articles of the Constitution and agreed to second the proposal unless Councillor Morris could give assurance that he would confine his questions to the business of the meeting. Councillor Morris continued in the same vein therefore Councillor Channer seconded the proposal.

The Chairman put the proposal that the member be not further heard to the Committee and upon a vote being taken it was carried.

The Chairman reverted to the agenda and in accordance with the Procedure invited Members to address their questions to the Monitoring Officer.

The Lead Legal Specialist and Monitoring Officer responded to several questions raised, drawing Members' attention to specific points within the report, providing clarification and further information as follows:

- That for completeness, the issue of the Overview and Scrutiny Committee meeting in November 2019, whilst dismissed at today's meeting, was included in the paperwork as it formed part of the original complaint.
- That the reason these issues were being considered this late was due to the February Joint Standards Committee (JSC) being cancelled, the March meeting being cancelled due to COVID-19 and the decision by the Interim Measures Group that it was not appropriate to consider such items until it was possible to hold a formally constituted JSC.
- That when considering what weight to attribute to the former Chairman not willing to bring a complaint the Committee should focus, not so much on the complainant, but on the conduct.
- That the sense that Councillor Morris was unaware of his responsibilities as a Councillor (Section 11 of the report) came from the interview process, not in response to a direct question on responsibilities but from the denial of any type of interference, or interruption on his part. Councillor Morris' main concern was his rights and not an appreciation of his responsibilities as a Councillor to abide by the constitution, alongside all other Members. In addition, he reminded Members that at paragraph 9 in the report he cited Rule 23' that the decision of the Chairman should be final'.
- That Article 10 Freedom of Expression under the Human Rights Convention applied to Maldon District Council (MDC) as a Public Body. The Code of Conduct had to be read in light of Article 10. The Code of Conduct (COC) and

Article 10 were completely in harmony. The Committee had to decide whether it was legitimate for a Councillor, when you have rules of procedure for meetings, to disobey those conduct rules and choose when he/she does or doesn't obey those rules. If the Committee deems that behaviour is acceptable then you will find there is no disrespect.

A debate ensued around the flow of exchanges contained within the annexes and the different styles of engagement. It was acknowledged that all Members had different styles of delivery but that it was important to achieve a balance in order to be effective. It was further acknowledged that it was important all had a right to speak. Members felt it would be helpful to hear back from Councillor Morris regarding his views on responsibilities as a Councillor, acting within, and respecting the rules of the Council.

Before recalling Councillor Morris, the Chairman asked the Monitoring Officer to read out the Independent Person's views on the report to the Committee. It was noted that these had been circulated previously to all Committee members. The Chairman then invited Councillor Morris back to the meeting.

Councillor Channer asked Councillor Morris how he understood his responsibilities as a Councillor in the Chamber. In response Councillor Morris said he abided by the Nolan Principles, he was responsible to the public that voted him in and as such responsible for tackling any form of wrong doing.

At this point as a result of certain Councillors being named inappropriately by Councillor Morris and in accordance with Procedure Rule 8, paragraph 16 – Respect for the Chairman, the Chairman stood.

Councillor Jarvis, noting that it was important to strike a balance to function effectively asked Councillor Morris about working together for the greater good. Councillor Morris said he had great respect for Councillor Jarvis and acknowledged that some may not like his methods but could not deny his results. Councillor Jarvis reiterated that procedures and regulations were essential in order to function as a Council, that change was happening and working together going forward could achieve great results.

Councillor Nunn then put forward a proposition that having read the report carefully and listened to the evidence and comments he felt that the behaviour issue at the Overview and Scrutiny Committee in November 2019 should not have been before the Committee as there was no breach. The other two concerns he felt were close to the mark, however, he noted that recent times had been difficult for all as evidenced by the earlier Joint Standards Committee (JSC). He did not believe that the evidence before the Committee represented a breach of the Code of Conduct on the part of Councillor Morris. This was seconded by Councillor Mayes.

A debate ensued where some Members felt that there was a balance to be struck and that it was difficult not to conclude that his actions brought the Council into disrepute. This was evidenced in the Monitoring Officer report and the views of the Independent Person. Other Members felt that Councillor Morris had been limited in his opportunities to speak hence his actions and that he had never been disrespectful to them. All Members agreed that the Overview and Scrutiny element of the complaint be dismissed.

The Chairman then put Councillor Nunn's proposal that the first element of the complaint relating to Mr Morris should not have been brought before the committee. That in respect of the second element Councillor Morris' behaviour was very close to the mark but given it was a heated debate in the context of very difficult times for the Council as demonstrated by the earlier JSC meeting that Councillor Morris had not failed to comply with the Members' Code of Conduct. This was duly seconded by Councillor Mayes.

A recorded vote was requested by Councillor S P Nunn and seconded by Councillor C Mayes and in accordance with Procedure Rule 13 (3) the voting was as follows:

For the Proposal

Councillors M G Bassenger, K W Jarvis, J V Keyes, C Mayes, S P Nunn and W Stamp.

Against the Proposal

Councillors Mrs P A Channer and M W Helm.

Abstention

There was none.

RESOLVED that Councillor Morris had not breached the Members Code of Conduct (in relation to the complaint detailed in appendix 1 to the report).

Councillor Morris thanked the Committee and the Councillors.

4(b) APPENDIX 2 – Complaint against Councillor C Morris

The Committee considered the report of the Deputy Monitoring Officer, advising of an investigation (attached at Appendix 2 to the report) that had been undertaken following receipt of a Code of Conduct complaint against Councillor C Morris.

The Committee's attention was drawn to the Monitoring Officer's covering report that set out the three key decisions for consideration by the Committee based on the evidence before them and the sanctions it could apply should it be determined that a breach of the Code of Conduct had occurred

In accordance with Procedure the Chairman, in the absence of the report author Mr Jennings, the Deputy Monitoring Officer, asked the Lead Legal Specialist and Monitoring Officer to summarise the conclusion of the second report. The Monitoring Officer provided the background to the report which was a result of a complaint by a member of the public Mr Tom Kelly. He also referenced another anonymous complaint noted at paragraph 1.11 in the report.

The Monitoring Officer then read aloud the formal complaint from Mr Kelly dated 14 February 2020. The complainant referenced disgust at the behaviour in the Chamber that showed utter contempt for the Council as a regulatory body. In summary the report concluded at paragraph 1.14, page 44 of the report that there was a breach of the provision of the adopted Local Code of Conduct for Councillors at paragraph 3.2, not showing respect and at 3.5 (e) bringing the authority or his office into disrepute.

At this point Councillor Mrs P A Channer declared a non-pecuniary interest as she knew Mr Kelly, he was one of her residents in her role as County Councillor.

Councillor M W Helm declared a non-pecuniary interest as he had known Mr Kelly some years ago and Councillor S P Nunn declared a non-pecuniary interest as he was acquainted with Mr Kelly.

Prior to Councillor Morris posing his questions Councillor Nunn asked to speak. He asked the Monitoring Officer where in the report the use of the word 'accosted' was clarified and what the rationale was for including the anonymous complaint at 1.11. In response the Monitoring Officer referred to the clarification of the use of the word 'accosted' in paragraph 1.4. and with reference to including the anonymous complaint at 1.11 he said it was for completeness and that the Committee was welcome to dismiss it, or he could read it to the Committee. Councillor Stamp proposed that it be removed from the record and this was seconded by Councillor Nunn. A recorded vote was requested by Councillor C Mayes and duly seconded.

The Chairman put Councillor Stamp's proposal that paragraph 1.11 be removed from the record. In accordance with Procedure Rule 13 (3) a recorded vote was taken, and the results were as follows:

For the proposal

Councillors M G Bassenger, Mrs P A Channer, M W Helm, K W Jarvis, J V Keyes, C Mayes, S Nunn and W Stamp.

Against the Proposal

None

Abstention

None

A debate ensued around paragraph 1.10 of the report, the reference to the Chairman's age and his inability to do the job. Some Members felt this comment, made in public in the chamber did demonstrate disrespect, as age was a protected characteristic. Other Members expressed concern regarding the tone of the complaint, the fact that Councillor Boyce had not complained, the use of mobiles by all Members and the fact that there was no dress code so references to individual style were inappropriate

In response to a comment made during the aforementioned debate the Monitoring Officer clarified that he believed Mr Jennings, Deputy Monitoring Officer, in his report was not relating the comment about age to the equalities legislation but more to the issue of a failure to show respect.

In accordance with the Procedure the Chairman then invited Councillor Morris to put his questions and the Monitoring Officer responded as follows:-

- that he had first met Mr Kelly in 2002;
- that Mr Kelly was not a serial complainant, this was the first complaint he had received from him;
- that he knew Mr Kelly to be very forthright in his views;
- that he agreed with Councillor Morris regarding the response from the Leader and the Chairman and the inappropriate use of the word 'accosted' in this instance.

The Monitoring Officer addressed further questions including clarifying that reading the comments made by the Strategy, Policy and Communications Manager in context regarding the behaviour in the Chamber she was saying that Councillors should behave in a respectful manner not dissimilar to the workplace, in other words if this behaviour had happened in the workplace it would have been dealt with there and then.

A debate ensued where Members commented on the narrowness of the investigation and the need to garner a larger range of officer views. It was noted however that there was access to the complete audio recording of the meeting which was paramount.

The Chairman asked if Members felt that Councillor Morris had breached the code of conduct.

Councillor Mayes said that having listened to the debate and witnessed the events in person she could not see there was any evidence to support the five complaints listed. She proposed that there had been no breach of the code of conduct based on the evidence presented. This was seconded by Councillor Jarvis.

A brief debate ensued where some Members still expressed concern regarding the comment on a protected characteristic. However other Members agreed that the comment had not been delivered in an aggressive manner. It was acknowledged that all points had been fully debated, everyone's style differed, there was no breach and it would be good if Councillor Morris took on board some of the comments raised about working together going forward,

A recorded vote was requested by Councillor S P Nunn and seconded by Councillor C Mayes.

The Chairman put Councillor Mayes' proposal that Councillor Morris had not breached the Code of Conduct based on the evidence presented in this particular instance. In accordance with Procedure Rule 13 (3) a recorded vote was taken, and the results were as follows:

For the Proposal

Councillors M G Bassenger, K W Jarvis, J V Keyes, C Mayes, S P Nunn and W Stamp.

Against the Proposal

Councillors Mrs P A Channer and M W Helm,

Abstention

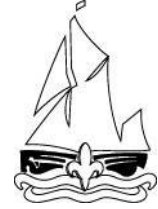
There were none

RESOLVED that Councillor C Morris had not breached the Members' Code of Conduct (in relation to the complaint detailed in Appendix 2 to the report).

There being no further items of business the Chairman closed the meeting at 4:01 pm.

M W HELM
CHAIRMAN

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REPORT of MONITORING OFFICER

to
JOINT STANDARDS COMMITTEE
27 OCTOBER 2020

COMMITTEE ON STANDARDS IN PUBLIC LIFE – BEST PRACTICE RECOMMENDATIONS

1. PURPOSE OF THE REPORT

- 1.1 To set out the Council's position in relation to the Committee on Standards in Public Life - Best Practice Recommendations

2. RECOMMENDATIONS

- (i) To consider **APPENDIX 2** and make any necessary recommendation to Council

3. SUMMARY OF KEY ISSUES

- 3.1 In July the Council received a letter from the Committee requesting a review of the Council's practices as compared to the best practice recommendations (see **APPENDIX 1**)
- 3.2 The Council's present and proposed practices are set out in **APPENDIX 2** in relation to each of the 15 best practice recommendations

4. IMPACT ON STRATEGI THEMES

- 4.1 Any improvements in best practice will increase public confidence in the conduct of members

5. IMPLICATIONS

- (ii) **Impact on Customers** – Public confidence in the decision-making process should be increased
- (iii) **Impact on Equalities** – None
- (iv) **Impact on Risk** – None

- (v) **Impact on Resources (financial)** – None
- (vi) **Impact on Resources (human)** – Increase in workload of Monitoring Officer
- (vii) **Impact on the Environment** – None

Background Papers: None

Enquiries to: Simon Quelch – Monitoring Officer – 01621 854477

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**Committee on
Standards in
Public Life**

Sent by email
to Local Authorities in England
For the attention of the Chief Executive

July 2020

LOCAL GOVERNMENT ETHICAL STANDARDS

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

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

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

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

Secretariat
Committee on Standards in Public Life

APPENDIX 1

List of Best Practice Recommendations

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

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

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

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial. 19 List of best practice

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

APPENDIX 1

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

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

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COMMITTEE ON STANDARDS IN PUBLIC LIFE REPORT - BEST PRACTICE RECOMMENDATIONS

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

What are bullying and harassment? These terms are used interchangeably by most people, and many definitions include bullying as a form of harassment. Harassment as defined in the Equality Act 2010 is: Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Bullying may be characterised as Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. (Definition of ACAS)

Examples of bullying/harassing behaviour include: ● spreading malicious rumours, or insulting someone by word or behaviour (copying memos that are critical about someone to others who do not need to know, ridiculing or demeaning someone – picking on them or setting them up to fail) ● exclusion or victimisation ● unfair treatment ● overbearing supervision or other misuse of power or position ● unwelcome sexual advances – touching, standing too close, the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected ● making threats or comments about job security without foundation ● deliberately undermining a competent worker by overloading and constant criticism ● preventing individuals progressing by intentionally blocking promotion or training opportunities.

It is suggested that this definition of bullying and harassment is entered in as a footnote to the Code to assist interpretation

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

3.4 and 3.5 of the Code state;

“You must comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers”

“You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the Authority.”

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

The Code was last revised in 2016. The Monitoring Officer can include an item on the committee agenda annually to review the Code and ask the Maldons Citizens Advice Bureau if they have comments to make on the Code

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

There is a link to the Code on the Council's website home page under the section for councillors. Prominence in the Council's offices would mean placing it in reception. There are more topical and pressing issue that should occupy the more prominent positions and in any event this has not been open to the general public since March.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

The Register held by Freshservice and is updated by the MO as soon as a matter is declared; in effect this becomes a daily update. It is not considered appropriate that the Register should be public because it provides personal information of the donor and they have not consented to such disclosure

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

The Council does not have a published public interest test although when the MO and IP decide what is the next step with a complaint public interest considerations are considered. In other words, a trivial complaint will not be investigated.

It would be helpful to have a published public interest test. The Ombudsman for Wales when deciding whether to investigate complaints against members has the following comment and criteria that could be added as a footnote to the complaints procedure:

"There is no widely accepted definition of public interest, but it has been described as "something which is of serious concern and benefit to the public". The public interest therefore relates to something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

The public interest factors to be taken into account are:

- *the seriousness of the breach*
- *whether the member deliberately sought personal gain for themselves or another person at the public expense*
- *whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another*
- *whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity*

Best practice 7: Local authorities should have access to at least two Independent Persons.

The Council has three experienced Independent Persons Mr Hodson, Mr Anthony and Ms Gosling.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

The IP is always consulted, as required by the complaints proposal, on what direction to take on all complaints that are considered by the MO to potentially be within the scope of the Code, including those that might be seen as without merit, vexatious or trivial

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

This is done for breaches and it is not considered proper that decisions of non-breach should be included on the website due to adverse criticism a member may receive on the grounds of the commonly held view "that there is no smoke without fire". At the moment decision of non breach are not included on the website

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

A link is provided that gives this information on the home page under the section for councillors.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

This is a matter for the Parishes themselves and it is not for the District Council to dictate how complaints should be made in these circumstances

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

The MO provides advice and support on Code of Conduct issues and receives complaints about parish councillors as part of his normal contractual duties. Two non-voting nominees of the Parish Councils sit in advisory capacity on the committee.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Each case is assessed to see if there is a conflict. This was found to be the case in a complaint recently. The Council engaged the MO from Castlepoint BC.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

The MO is not aware of any body that the Council has established that would fall into this best practice rule.

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

No such arrangement exists. It is not appropriate to discuss individual cases. There is little benefit in regular meetings. Ad hoc conversations are held as issues arise. There is a danger that regular meetings become artificial when there are no issues of substance to discuss.

By virtue of paragraph(s) 1, 6b of Part 1 of Schedule 12A of the Local Government Act 1972.

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