

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 issues 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.