



WOKINGHAM BOROUGH COUNCIL

A Meeting of the **STANDARDS COMMITTEE** will be held at the Civic Offices, Shute End, Wokingham Civic Offices, Shute End, Wokingham RG40 1BN on **TUESDAY 13 OCTOBER 2015 AT 7.00 PM**

A handwritten signature in black ink, appearing to read 'Andy Couldrick'.

Andy Couldrick
Chief Executive
Published on 7 October 2015

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Our Vision

A great place to live, an even better place to do business

Our Priorities

Improve educational attainment and focus on every child achieving their potential

Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth

Ensure strong sustainable communities that are vibrant and supported by well designed development

Tackle traffic congestion in specific areas of the Borough

Improve the customer experience when accessing Council services

The Underpinning Principles

Offer excellent value for your Council Tax

Provide affordable homes

Look after the vulnerable

Improve health, wellbeing and quality of life

Maintain and improve the waste collection, recycling and fuel efficiency

Deliver quality in all that we do

MEMBERSHIP OF THE STANDARDS COMMITTEE

Councillors

Rob Stanton (Chairman)

Pauline Helliard-Symons
(Vice-Chairman)

Chris Bowring

Ken Miall

Malcolm Richards

Beth Rowland

Parish/Town Council Representatives

Roger Loader

Roy Mantel

ITEM NO.	WARD	SUBJECT	PAGE NO.
11.		APOLOGIES To receive any apologies for absence.	
12.		MINUTES OF PREVIOUS MEETING To confirm the Minutes of the Meeting held on 29 July 2015.	5 - 8
13.		DECLARATION OF INTEREST To receive any declarations of interest.	
14.		PUBLIC QUESTION TIME To answer any public questions. A period of 30 minutes will be allowed for members of the public to ask questions submitted under notice. The Council welcomes questions from members of the public about the work of this committee. Subject to meeting certain timescales, questions can relate to general issues concerned with the work of the Committee or an item which is on the Agenda for this meeting. For full details of the procedure for submitting questions please contact the Democratic Services Section on the numbers given below or go to www.wokingham.gov.uk/publicquestions	
15.		MEMBER QUESTION TIME To answer any member questions.	
16.		PARISH / TOWN COUNCIL QUESTION TIME To answer any questions from Parish / Town Councillors.	
17.	None Specific	UPDATE ON COMPLAINTS To consider a report setting out a summary of complaints received.	9 - 12

18. None Specific

CODE OF CONDUCT - ADDITIONAL GUIDANCE

13 - 20

To receive a report containing guidance on bullying and intimidation, blogging, social networking and use of social media.

19.

ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT

A Supplementary Agenda will be issued by the Chief Executive if there are any other items to consider under this heading.

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**MINUTES OF A MEETING OF THE
STANDARDS COMMITTEE
HELD ON 29 JULY 2015 FROM 8.00 PM TO 9.15 PM**

Committee Members Present

Councillors: Rob Stanton (Chairman), Chris Bowring, Roger Loader, Roy Mantel, Ken Miall, Malcolm Richards and Beth Rowland

Officers Present

Kevin Jacob, Principal Democratic Services Officer
Andrew Moulton, Monitoring Officer
Mary Severin, Deputy Monitoring Officer

1. APOLOGIES

An apology for absence was submitted from Councillor Pauline Helliard-Symons.

2. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Committee held on 2 April 2015 were confirmed as a correct record and signed by the Chairman.

3. DECLARATION OF INTEREST

There were no declarations of interest.

4. PUBLIC QUESTION TIME

There were no public questions.

5. MEMBER QUESTION TIME

There were no Member questions.

6. PARISH / TOWN COUNCIL QUESTION TIME

There were no Parish/Town questions.

7. UPDATE ON COMPLAINTS AND FEEDBACK

The Committee consider a report set out on Agenda pages 9 to 11 which gave an outline of the activity and results of the Councillor Complaints process since the last meeting.

Andrew Moulton, Monitoring Officer highlighted that in accordance with the agreed procedure he had taken a decision of no further action in respect of four complaints and one parish complaint had been determined at a full Standards Committee Hearings Sub-Committee. In the case determined at a hearing, the finding had been that the Councillor had breached the Code of Conduct of their parish council in three areas.

In looking at the complaints received and any trends or areas of further development for Councillors he referred to the growing use of social media by Councillors to engage with the public. Whilst social media represented a useful tool and an opportunity to Councillors there were also potential dangers and issues that Councillors needed to be aware of.

In addition it was proposed to undertake some further work on the issue of Councillor bullying with the objective of providing some local guidance to Councillors on the issue. Andrew Moulton commented that there were different genuinely held views around bullying

and what constituted bullying and an agreed local view or understanding would be helpful in the consideration of future complaints.

Finally, the Committee was informed that the Council's adopted processes for the consideration of complaints had recently been considered by the Local Government Ombudsman, (LGO) following a complaint from a member of the public who had been dissatisfied with the Council's response with regard to a complaint they had lodged. The LGO had found that the Council had followed its adopted processes correctly and it was useful to know that processes were considered to be adequate.

In discussing the item, the Chairman and various members of the Committee strongly supported the development of guidance on the use of social media by Councillors as it was felt that this was area where the immediacy of social media to a large potential audience was of particular impact. It was also felt that further guidance around bullying and what constituted bullying in practical terms would be welcome.

In respect of the complaints considered since April, Roy Mantel commented that as the Chairman of Twyford Parish Council he had some concern over the length of time it had taken to determine the complaint that had required a full hearing. Andrew Moulton and Kevin Jacob acknowledged this and explained why it had not been possible to determine it in a shorter period. It was recognised that all parties involved in any complaint wished to know the outcome as soon as possible.

RESOLVED:

- 1) That the report be noted;
- 2) That Officers be requested to draw up guidance to Members on the use of social media and bullying.

8. REVISED PROCESS FOR THE CONSIDERATION OF CODE OF CONDUCT COMPLAINTS

The Committee considered a report on Agenda pages 13 to 23 which set out a suggested revised process for the consideration of Code of Conduct complaints by the Borough Council in respect of complaints against Borough and Town/Parish Councillors.

Mary Severin, Deputy Monitoring Officer explained the key proposed changes to the process which had been developed in light of the experience gained in handling Code of Conduct complaints since 2012 and changes in best practice generally. The Committee was reminded that it had previously considered the proposed changes at its meeting in April. The proposed changes had been broadly endorsed at that time, but Members of the Committee had asked Officers to investigate the potential of including within the process an appeals mechanism for Councillors unhappy with the findings of a hearing.

The Committee was informed after looking into the issue of an appeals mechanism more closely the advice from Officers was that one not be included within the complaints process for the reasons set out on pages 14 and 15 of the report. In particular, it was felt that that the provision of an appeals mechanism would be contrary to the Government's intent of a 'light touch' in reforming the Code of Conduct regime, that the possible sanctions which could be imposed by a Hearings Sub-Committee were not of such severity to justify an appeal, that the majority of local authorities and unitary authorities did not operate such a provision and that it was felt that an appeals process would unnecessarily elongate the complaints process to the detriment of all parties.

The Chairman commented that the issue of whether an appeals mechanism should be put in place had in part arisen from a local case where the Councillor concerned had been unhappy with the outcome. However, he was satisfied with the advice that it should not be incorporated into the process. This was supported by the other members of the Committee.

The Committee then discussed the detail of each page of the proposed revised process. A number of points were discussed and it was decided to amend Paragraph 9.1.15.3 m) on Agenda page 21 to read *'The Panel will then determine the complaint on the balance of probabilities ~~test~~. If the Panel determine that there has been a failure to follow the Code the ~~Chairman~~ Panel shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.'*

RESOLVED: That the revised Councillor Code of Conduct complaints process at para 9.1.13 to 9.1.16 of the Constitution be recommended to the Constitution Review Working Group for adoption by the Council subject to the amendment of paragraph 9.1.15 m).

9. UPDATE TO THE MEMBER OFFICER PROTOCOL

The Committee considered a revised Member/Officer Protocol as set out on Agenda pages 25 to 42.

Andrew Moulton introduced the covering report and revised Protocol to the Committee and reminded members that the majority of the proposed document had been endorsed by the Committee in October 2014. Following that meeting further feedback had been received from the Council's Officer Corporate Leadership Team and incorporated within the document in Appendices 5 and 6.

The basic working assumption had been to produce a steamed lined basic protocol with a number of supporting appendices attached.

Members of the Committee endorsed the draft protocol with the following minor amendments:

- Paragraph 9.3.8 1st paragraph, third line on Agenda page 29 – *'More serious complaints may involve alleged breaches of the Member Code of Conduct and the process for the consideration of Member Code of Conduct complaints **is** as set out in Chapter 9.1.13 of the Constitution ~~initiated~~.*
- Paragraph 9.3.8 2nd paragraph, fifth line on Agenda page 29 – *'Nothing in this process negates the right of Officers to make a Code of Conduct complaint directly **to the Monitoring Officer** if they wish'*
- Minor typographical and grammar corrections.

RESOLVED: That subject to the minor amendments made at the meeting the revised Member/Officer Protocol be endorsed by the Committee for onwards submission to the Constitution Review Working Group and Council for final approval.

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Agenda Item 17.

TITLE	Update on Complaints and Feedback
FOR CONSIDERATION BY	Standards Committee on 13 October 2015
WARD	None Specific
DIRECTOR	Andrew Moulton, Head of Governance and Improvement Services

OUTCOME/BENEFIT TO THE COMMUNITY

To inform and feedback results of the Member Complaints process.
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RECOMMENDATION

To note the report..

SUMMARY OF REPORT

Since the last meeting of the Committee on 29 July there have been no new complaints received. All cases previously reported have been concluded.

In its analysis of earlier complaints, the Committee agreed to consider further guidance on bullying and the use of social media. The proposed guidance is presented elsewhere on this evening's agenda.
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Background

Under Section 9.1.13.5 of the Council's constitution, the Monitoring Officer provides a report to the Standards Committee, on a quarterly basis, which contains the following: the number and nature of complaints received; progress on any investigations and associated costs; and identify areas where training or other action might avoid further complaints. However the name(s) of the Member(s) will not be disclosed.

Since the last meeting of the Committee on 29 July 2015, there have been no new Code of Conduct complaints received.

Under the Council's adopted policy for the consideration of Code of Conduct Complaints, the Monitoring has delegated authority to decide whether the complaint:

- a) can be resolved informally i.e. by mediation with the two parties before making a decision on whether the complaint merits formal investigation;
- b) requires investigation;
- c) should be referred to the Standards Committee;
- d) no further action should be taken.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	0	0	0
Next Financial Year (Year 2)	0	0	0
Following Financial Year (Year 3)	0	0	0

Other financial information relevant to the Recommendation/Decision

None

List of Background Papers
None.

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Date 2 October 2015	Version No. 1

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Agenda Item 18.

TITLE	Code of Conduct – Additional Guidance
FOR CONSIDERATION BY	Standards Committee on 13 October 2015
WARD	None specific
DIRECTOR	Andrew Moulton, Head of Governance and Improvement Services

OUTCOME / BENEFITS TO THE COMMUNITY
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To provide guidance for Councillors and Members of the public on certain behaviours in Para. 9.2.8 of the Code of Conduct: Bullying and Intimidation, and Blogging, Social Networking and use of Social Media.
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RECOMMENDATION

To approve the Guidance on “Bullying and Intimidation” and Guidance on “Blogging, Social Networking and use of Social Media.
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SUMMARY OF REPORT

To review the guidance and make amendments where the Committee consider it appropriate.

Background

1. At the last Committee meeting, Members asked the Monitoring Officer to arrange for guidance to be written for 'Bullying and Intimidation' and also on 'Blogging, Social Networking and use of the Media'. The draft guidance is shown at Appendix 1 and Appendix 2 to this Report..
2. Guidance is based on guidance from Standards for England, which was disbanded when the Localism Act 2011 came into force. In addition, input has been asked from Paul Hoey on the guidance for Bullying, which has shown to be controversial when making a code of conduct complaint decision. Paul Hoey was a case officer with Standards for England and is an expert on Members Code of conduct matters.

Analysis of Issues

Providing Guidance for Members to reduce, as far as possible, complaints being upheld against them. It also serves to advise members of the public who are unsure about whether to complain. Finally, guidance will help with the decision making process for the Monitoring Officer and Hearings Panels who make decisions on Code of Conduct matters.

Guidance must however be in a form which is easy to work with, and the challenge is to provide guidance which is neither over-legalistic, nor over-simplified so that the important issues are missed. Standards Committee members are asked for their view on the draft guidance attached, at Appendix 1 and Appendix 2.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	0	0	0
Next Financial Year (Year 2)	0	0	0
Following Financial Year (Year 3)	0	0	0

Other financial information relevant to the Recommendation/Decision
None

Cross-Council Implications
None

List of Background Papers
Standards for England (archived) papers entitled: "Blogging – Quick Guide" and "Bullying and the Code of Conduct" http://webarchive.nationalarchives.gov.uk/20120202153716/http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/Guidance/Onlineguides/

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Date 13 th October 2015	Version No. 1

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DRAFT: Guidance on Blogging, Social Networking and use of Media

Introduction

Everyone has a right under the Human Rights Act 1998 to freedom of expression.¹ This right includes the right to hold opinions and to receive and impart information and ideas without interference by any public authority. However this right also carries with it duties and responsibilities in the interests of the protection of the reputation or rights of others. This Guidance is designed to advise Members of when to be aware of certain legal issues when making public statements.

It is important to note that the Code of Conduct will only apply when a Councillor is acting in his or her official capacity as Member of the authority. Official capacity is defined as conducting the business of the authority, or claiming to act, or giving the impression that he or she is acting as a Councillor. The parts of the Code of Conduct which may apply are listed in Paragraph 9.8; disrespect, bullying/intimidation and disclosure of confidential information.

Practical Advice

If you use online media to promote your work as a Councillor, or through Council media pages or websites, you will generally be regarded as conducting the business of the authority. If a complaint is made against you, the decision as to whether you are acting in your official capacity will depend upon the particular facts of each case, and the circumstances surrounding use of a blog or social media.

If you do so as an individual, you are not, on the face of it, to be deemed to be acting as a Councillor. However, if you refer to Council business, or officers, you will not escape the Code of Conduct merely by saying you were acting as an individual. Here are some examples.

Councillor S: Cllr. S had a private Facebook page which he used to discuss current news topics, as part of promoting himself as a politician. However, he repeatedly made persistent and offensive remarks about a Council officer, referring to that officer in relation to Council business. His insistence that he did so in his private capacity was rejected, and a complaint against him for bullying and harassment was upheld.

Councillor SH : This member was a journalist who published a small journal. He neither claimed nor gave the impression of acting as a representative of the council. The magazine was 'published for fun', and a member of the public would be in no doubt that the journal was not a matter that was the business of the council. The Standards Committee counter argued that Cllr SH used the magazine to conduct public discourse on the council and party issues, and that his activities on the council, the magazine and the party were seamlessly connected.

However, the First-tier Tribunal disagreed. It said the decision in Livingstone (Livingstone v APE (2006) EWHC 2533) referring to 'activities which are apparently within the performance of a member's functions' should be narrowly construed. The

¹ For more on this see: R(Calver) v Adjudication Panel for Wales (2003)

appeals tribunal rejected the finding of the standards committee and concluded there had been no breach of the Code.

Other issues to consider

There are also considerations apart from the Code that should be taken into account when using online media. The following is a brief guide to some of the legal pitfalls which might occur when establishing personal blogs. Almost all of these can be avoided if your online content is objective, balanced, informative and accurate. In the main, you have the same legal duties online as anyone else, but failures to comply with the law may have more serious consequences for you.

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 do not take prompt action to remove it. A successful libel claim will result in an award of damages against you.

Bias and Predetermination: If you are involved in determining planning or licensing applications, you should avoid publishing anything on your blog that might suggest you have definitively made up your mind about a matter that you will be involved in determining.

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

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

Conclusion

Blogging and social networking are excellent ways to engage a wider audience. In order to blog successfully, you should ensure that you comply with the Code and any other legal requirements. It is also important to note that, the ethical use of online social media is not limited to what is covered in the Code. While you may not be investigated or censured for using online media in certain ways, your conduct might still be viewed as less than exemplary and attract adverse publicity for your office and authority.

DRAFT: Guidance on Bullying and Intimidation (Para 9.2.8.2 Code of Conduct)

Paragraph 9.2.8.2 of the Code of Conduct says: Councillors must not act in a way which a reasonable person would regard as bullying, or in any way which is intimidating to others.

The following is based on Standards for England Guidance, now archived after it was abolished by the Localism Act 2011. This guidance was key in dealing with complaints about councillor's bullying behaviour by Standards for England from 2007 to 2012. We believe therefore that it is reasonable to use the same guidance when assessing similar complaints against Members under the current Code of Conduct.

It is important to remember that such behaviour will only be caught by the Code of Conduct if a Member is acting or holding out as acting as a Member of the Authority, and not in his or her private capacity.

What is 'bullying' and 'intimidation'?

Bullying has been described as 'offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual'. It can have a damaging effect on a victim's confidence, capability and health. The now disbanded Adjudication Panel which dealt with Councillor complaints used a test for whether or not bullying had occurred, which was: 'Bullying occurs when it is likely that a neutral third party, a 'reasonable member of the public' would regard conduct as bullying if they had all of the relevant facts'.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a Member will be found guilty of bullying when both parties have contributed to a breakdown in relations..

Bullying should be contrasted with the legitimate challenges which a Member can make in challenging policy or scrutinising performance. Contributing to debates in Council meetings about policy and asking officers to explain the rationale for their professional opinions are to be encouraged. All Members should feel free to challenge fellow councillors and professional officers as to why their views are held. However, Members need to be careful about criticism which becomes offensive in nature which will cross the line of what a reasonable person would find acceptable.

Intimidating officers, and pressurising them to make a particular decision is also unacceptable. Officers should make decisions which are unbiased, and attempts to coerce them or persuade them to act in a particular way to a point where to do so would prejudice their professional integrity is not acceptable.

Criticism of officers

Criticism of officers will not in itself constitute bullying. Members are allowed to express disagreement with officers, and question officer performance, so long as it is

done in an appropriate and private way. A personal attack, or criticism that is offensive, is likely to cross the line of what is acceptable behaviour.

What are the consequences of bullying?

The consequences of bullying and intimidating behaviour may also be looked at when a decision is made about whether bullying has occurred. When officers are bullied, it can affect the authority's ability to provide services. This is because bullying can create a working environment with an atmosphere of mistrust, insecurity and fear. In some cases, bullied officers require long periods of leave because of ill-health or stress which can damage the running of an authority. This can particularly be the case in parish and town councils, where there may only be a small team of employees. An indication that an officer has been bullied is when they feel unable to return to their role because of fear of their poor treatment by a Member. Similarly, bullying of members of the public can result in poor health, particularly if they are vulnerable.

Examples of intimidation and bullying from the archived Standards for England website:

Councillor W. was a Member of a town council in the East of England conducted a relentless campaign of destructive criticism against the clerk, councillors and the council. This campaign included making unsubstantiated and inappropriate complains about the clerk in website postings, newsletters and numerous letters. The councillor's behaviour placed a significant drain on both council resources and members' time, caused staff great stress and ill health, and disrupted the normal running of the council. The Adjudication Panel disqualified the councillor for three years after noting the serious consequences of the misconduct in terms of the health and welfare of a number of individuals, the good governance, use of resources, effectiveness and the reputation of the council.

Councillor S was a member of a metropolitan authority in the North West of England. He verbally abused a woman who worked as a cleaner for the Council, after a minor traffic accident. Councillor S told her that he was going to report her to her employer and get her sacked. The tribunal was left in no doubt that a reasonable person with knowledge of the circumstances would consider that the Councillor had bullied and threatened the cleaner. This incident, as well as other intimidating behaviour towards others resulted in him being disqualified for three years.

Councillor P was a member of a district council in the East Midlands. He was abusive and aggressive towards an officer, shouting at her and publicly threatened to sack another officer. He also improperly put pressure on staff involved in discussions with their trade union and in doing so compromised their impartiality. The tribunal found his disrespectful behaviour had caused others unnecessary fear and ill health. He was disqualified for three years.