

Agenda Item 16.

TITLE	Code of Conduct – Additional Guidance
FOR CONSIDERATION BY	Standards Committee on 19 January 2016
WARD	None Specific
DIRECTOR	Andrew Moulton, Head of Governance and Improvement Services

OUTCOME / BENEFITS TO THE COMMUNITY

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.

RECOMMENDATION

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

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 Social Media. The draft guidance is set out at Appendix 1 and Appendix 2 to this report.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 sought 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 Standards Committee members are asked for their view on the draft guidance attached, at Appendix 1 and Appendix 2.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

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 Councillors' 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., 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 complaints 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.

DRAFT: Guidance on Blogging, Social Networking and Use of Social 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, 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 Councillor 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 appeals tribunal rejected the finding of the Standards Committee and concluded there had been no breach of the Code.

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

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 failure 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.

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