

**Audit and Standards Member Working Group**  
**21<sup>st</sup> and 27<sup>th</sup> November 2019**  
**Review of the Best Practice Recommendations [the Report on Local Government Ethical Standards](#)**  
**by the Committee on Standards in Public Life**

References are to the Members' [Code of Conduct](#), the [Practice Note on the Use of Council Facilities](#), the [Procedure](#)

<b>Best Practice Recommendation</b>	<b>Commentary</b>	<b>Proposal for consideration</b>	<b>Steer provided by WG members</b>

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.

The CSPL have acknowledged that whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: "Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient."

The CSPL note Newcastle City Council's Code :

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct. (Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating or

BHCC's Code of Conduct includes a prohibition on **bullying** at para 1.3: 'Members must not act in a way which a reasonable person would regard as bullying or intimidatory'.

BHCC's Code also includes express reference to the requirements of the Equality Act 2010, which prohibit **harassment** based on any of the protected characteristics only. So no express prohibition on harassment not based on a protected characteristic.

Whether a) specific reference to harassment not based on protected characteristics should be added to the Code of Conduct, and b) whether 'bullying' and/or 'harassment' might be defined or examples given in BHCC's Code.

**Unanimous agreement that a) harassment not based on the protected characteristics should also be prohibited by the Code while b) Newcastle CC definitions of both bullying and harassment be inserted as examples (wording: 'including but not limited to').**

**The key importance of ensuring that the Code make explicit reference to the Council's Whistleblowing Policy (at p2 of the current Code) was noted.**

<p>2</p>	<p><u>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.</u></p>	<p>The CSPLs recommendation aims to avoid councillors seeking to disrupt standards investigations; or misusing the process to make allegations against another councillor for the purposes of political gain.</p> <p>BHCC’s Code of Conduct requires compliance with standards investigations:</p> <ul style="list-style-type: none"> <li>• 1.8. Members must not refuse or fail to – (i) co-operate with council investigations of any description, including those into alleged breaches of this Code; and/or (ii) provide full access to all material that, in the view of the investigating officer, may be relevant to such an investigation.</li> </ul> <p>BHCC’s Code does not however prohibit councilors from making trivial or malicious allegations against each other. Provision could be made if members wish it. A steer on whether to leave the interpretation of what is trivial and/or malicious to the discretion of the MO in consultation with the IP would be helpful.</p>	<p>Members to consider whether existing provisions are satisfactory or whether amends should be made to the Code of Conduct</p>	<p><b>The Working Group did not consider there was a need for specific provisions prohibiting trivial or malicious allegations</b></p>
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3	<p><u>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.</u></p>	<p>The CSPL took into account evidence that ‘many’ authorities hadn’t revisited their Codes of Conduct since the legislation changed; they preferred Codes which were in plain English and not those which were minimal and ‘Nolan-only’ codes.</p> <p>BHCC’s Code does not fall into any of the above categories. It goes above the minimum legislative requirement by amongst other things making provision for ‘Other Interests’ to catch some key interests which are not DPs. It is regularly updated, most recently in March 2019, although there is no formal expectation that this will be done annually or be the subject of external consultation.</p>	<p>Members to consider whether existing arrangements are satisfactory. If there is a desire to review the Code annually and/or to consult externally then a steer is invited re the degree of resource that members want to invest</p>	<p><b>Noted that BHCC’s Code has been the subject of regular review. Creating an expectation of a compulsory annual review was considered to be disproportionate. Decision instead to provide that the Code will be reviewed when necessary, and in any event at least once a term.</b></p> <p><b>Consideration is also being given to reporting on Standards as part of the annual AGS report.</b></p>
4	<p><u>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.</u></p>	<p>This is provided to councillors as part of their induction process at the start of their term of office. It is then maintained in the Council’s Constitution.</p> <p>Insofar as accessibility to the public is concerned, the Code is published in the Council’s website plus there is a dedicated “Complaints against Councillors” webpage which is readily accessible from a google search and provides a description of the</p>	<p>Members are invited to agree that no further action is necessary</p>	<p><b>Agreed – no action necessary</b></p>

5	<p><u>Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as pdf.</u></p>	<p>The CSPL have acknowledged that there is no legal requirement for Councils to maintain a gifts and hospitality register; and that not all Councils make reference to this within their Code.</p> <p>BHCC's Code requires members to register:</p> <ul style="list-style-type: none"> <li>• Any gift or hospitality worth more than an estimated value of £50, which the Member has accepted by virtue of his or her office</li> </ul> <p>The £50 threshold has been retained when the Code has been reviewed in the past on the basis that it encourages transparency. However one possible change could be to make provision for <u>gifts/ hospitality totalling £100 pa from any individual source</u> also be caught, in accordance with the recommendation 6 in the CPSL report.</p>	<p>Members are invited to consider whether any changes (including the 'totalling £100') are necessary</p>	<p><b>Proposal to change threshold to include gifts/ hospitality from a single source which exceed £100 in any year will be put to Committee</b></p>
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<p>6</p>	<p><u>Councils should publish a clear and straightforward public interest test against which allegations are filtered.</u></p> <p>The CSPL have taken account of the practice of the standards bodies in Scotland, Wales and Northern Ireland in making the recommendation to publish a public interest test. They offer the Northern Ireland Local Government Commissioner for Standards public interest test as a best practice example.</p> <p>Northern Ireland Local Government Commissioner for Standards public interest test          1 'CAN' we investigate your complaint? •          Is the person you are complaining about a councillor? • Did the conduct occur within</p>	<p>BHCC Procedure provides at preliminary assessment stage that the MO may decide not to progress the complaint having consulted with the IP amongst other things where it would not be in the public interest to do so. Similarly, resolving matters informally during the process remains an option for the MO if proceeding is not considered to meet the public interest.</p> <p>There is no explicit reference to proportionality however and this could potentially be included.</p> <p>BHCC's Procedure:</p> <ul style="list-style-type: none"> <li>the Monitoring Officer may decide not to progress the complaint where – (i) the complaint is vexatious or frivolous in nature; (ii) if proven, the complaint would not amount to a breach of the code of conduct for members; or (iii) it would not be in the public interest to do so.</li> </ul>	<p>Members to consider whether existing arrangements are satisfactory, or whether to make explicit reference to proportionality/ other changes</p>	<p><b>Existing provisions considered to be satisfactory</b></p>
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7	<p><u>Local authorities should have access to at least two Independent Persons.</u></p> <p>In their recommendations to Government, the CSPL have also recommended that the requirement for Independent Persons to be appointed should be for a fixed term of two years, renewable once, and that the role be given additional protections. They have included a further recommendation to formalise the Independent Person's role in statute.</p> <p>The basis for their recommendations is ensuring that the Independent Person remains as an impartial advisor and their views are clearly taken into account.</p>	<p>BHCC has two IPs, which is considered to be the minimum number to enable to the process work effectively.</p> <p>It is considered that terms of four years plus have allowed the Independent Persons to develop considerable experience and knowledge to support the Council, Members and the Monitoring Officer in standards matters. The requirement that any IP be neither a member nor officer can mean that any appointee needs to acquire familiarity with all aspects of the brief from scratch.</p> <p>BHCC's longest serving IP will reach the end of his second 4 year term in October 2020, and a second IP will need to be recruited before then. BHCC's other IP was <a href="#">appointed</a> in March 2019 on a four year term, potentially renewable by the MO for a further two years.</p>	No further action is suggested.	<b>No action necessary</b>
8	<p><u>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</u></p>	<p>The IP is very much embedded in BHCC's arrangements, which provide that they be consulted before the MO makes key decisions at all stages, even on request to appeal a Standards Panel decision.</p>	No further action is suggested	<b>No action necessary</b>

9	<p><u>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.</u></p>	<p>Currently a brief formal decision notice is published: a practice which is reflected in the Procedure.</p> <p>The IPs view is not however provided in the decision or otherwise recorded. The IP does not have a vote and the proposal to expose them in this way is considered to have the potential to impact on their profile with the parties to the complaint and with the wider public - plus possibly for relations with Panel members in the future.</p>	<p>If members are satisfied with current arrangements, no further action is required.</p>	<p><b>No action necessary</b></p>
10	<p><u>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.</u></p>	<p>This best practice point is considered to be met by the information published externally:  <a href="https://www.brighton-hove.gov.uk/content/council-and-democracy/feedback-about-council-services/complaints-about-councillors">https://www.brighton-hove.gov.uk/content/council-and-democracy/feedback-about-council-services/complaints-about-councillors</a></p>	<p>If satisfied with current arrangements, no further action is required.</p>	<p><b>No action necessary</b></p>
11	<p><u>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.</u></p>	<p>The CSPLs recommendation is based on Parish Councils taking corporate responsibility when there are allegations about a councillor, particularly involving an employee.</p>	<p>Members could direct the MO to bring this recommendation to the direct attention of Rottingdean Parish Council's clerk</p>	<p><b>the MO to action</b></p>



12	<p><u>Monitoring Officers' roles should include providing advice, support 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.</u></p>	<p>The role of the Monitoring Officer is set by statute and confirmed within BHCC's (and RPC's) Constitution.</p>	<p>If satisfied with current arrangements, no further action is required</p>	<p><b>No action necessary</b></p>
13	<p><u>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.</u></p>	<p>Current practices are based on informal arrangements whereby members of the Legal Services team assume different, separate, roles and maintain confidentiality by not discussing matters. This practice is relatively common in legal professional practice where conflict or the potential for it has been identified. In an appropriate situation, it would be an option for the Monitoring Officer to seek support from a neighbouring council, or an external party, where necessary. Some/ any of the above could be formalized in arrangements if members wish.</p>	<p>Members to consider whether existing arrangements are satisfactory, or whether there is a need to formalise existing practice.</p>	<p><b>Consensus that current approach is fit for purpose, and that it would be appropriate to make explicit reference to the existence of arrangements for dealing with potential or perceived conflicts.</b></p>

<p>14</p>	<p><u>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</u></p>	<p>The CSPLs have recognised that issues may arise within the partnership arrangements that authorities have and that separate bodies may not be fully transparent. The key principles are clear however the complexity of this and other councils' partnership arrangements is also noted. The council's current AGS is provided via the link below. <a href="https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Annual%20Governance%20Statement%202018-19.pdf">https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Annual%20Governance%20Statement%202018-19.pdf</a></p>	<p>Members to consider whether existing arrangements are satisfactory or whether they wish to propose any changes.</p>	<p><b>The degree of the challenge – which is an ongoing one - was noted by all WG members, who felt the importance of achieving transparency.</b></p> <p><b>The Constitution Review Group recently considered the matter of reports to Full Council on outside body activity and decided to invite annual reports from East Sussex Fire and Rescue Service and the Police and Crime Commissioner only at this stage. The CWG could be asked to consider extending the scope of this, if members wish it.</b></p> <p><b>Consideration also to be given to providing additional information on this topic alongside the Annual Governance Report.</b></p>
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15	<u>Senior officers should meet regularly with political group leaders or group whips to discuss standards issues</u>	This is covered as part of regular briefings to Group Leaders	No further action is considered necessary.	<b>No action needed.</b>
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### **SOCIAL MEDIA PROTOCOL REVIEW: UPDATE**

16 The current Social Media Protocol for Members was also briefly reviewed by the Working Group. Group members considered that a practical resource with guidance specific to different available social media platforms would be helpful to assist those members who choose to use social media to carry out their business as councillors.

Work on that resource has been planned and it is proposed that it exist alongside a publicly-available Guidance document which will replace the current Social Media Protocol. The proposal is that indicates how the Code of Conduct for Members applies to communications made via social media. That Guidance will provide members with some tools to assist them in managing some commonplace expectations (for instance of a rapid response and ongoing communication chain) which those communicating with elected members may have.

The above Guidance will be circulated to Working Group members in draft form before being brought to the Audit & Standards Committee in due course for it to review and consider formally approving.

