

LONDON BOROUGH OF CAMDEN	WARDS: All
REPORT TITLE Update on Standards Matters - June 2023	
REPORT OF Borough Solicitor	
FOR SUBMISSION TO Standards Committee	DATE 26 June 2023
<p>SUMMARY OF REPORT</p> <p>This report brings to Members' attention recent standards news items for information and updates on actions from the previous Standards Committee meeting.</p> <p>Local Government Act 1972 – Access to Information</p> <p>No documents that require listing have been used in the preparation of this report.</p> <p>Contact Officer: Cheryl Hardman Principal Committee Officer Camden Town Hall Judd Street London WC1H 9JE 020 7974 1619 cheryl.hardman@camden.gov.uk</p>	
<p>RECOMMENDATIONS</p> <p>That Standards Committee notes and comment on the contents of the report.</p>	

Signed:



Borough Solicitor

Date:

7 June 2023

1. Purpose of Report

- 1.1. This report highlights recent matters concerning standards, which will be of interest to the Committee.

2. Updates since the previous meeting

- 2.1. At the Standards Committee meeting on 6 February 2023, it was agreed that the Chair should send an email to all councillors with guidance on the use of personal email accounts for Council business and that guidance also be sent to Whips. Both actions were completed, with the email to all councillors circulated on 20th February 2023 (Appendix A).

3. Committee on Standards in Public Life update

Leading in Practice

- 3.1. The Committee on Standards in Public Life (CSPL) published its report *Leading in Practice*¹ on 24 January 2023. The report looks at how a range of organisations have embedded ethical values into their culture and services. The report addresses:
 - How senior leaders can communicate expected behaviours and the need to role-model the organisation's values in practice;
 - The creation of a proactive 'speak up' culture, with routes to raise concerns and safeguarding for those employees;
 - Training and discussion on ethical issues, with decision-making frameworks to support fair, just and transparent decisions;
 - The crucial role of departmental boards in promoting ethical conduct and monitoring the culture in the organisation; and
 - The assessment of values during recruitment processes and as part of performance management.
- 3.2. The report encourages leaders in the public sector to reflect on their ethical leadership and consider what more they can do to embed the Principles of Public Life into their organisation's culture and services.

4. Standards investigations processes

Teignbridge District Council

- 4.1. The Local Government and Social Care Ombudsman has issued a report² about a Teignbridge District Council investigation into a councillor's conduct, finding a number of faults in the process including:

¹ <https://www.gov.uk/government/publications/leading-in-practice> (Accessed: 15 February 2023)

² <https://www.lgo.org.uk/information-centre/news/2023/jan/council-investigation-into-member-s-conduct-flawed-says-ombudsman> (Accessed: 16 February 2023)

- The investigation was not prompted by a formal written complaint – contrary to the law;
- Not giving the councillor enough information about his alleged breaches of the Code of Conduct;
- Not explaining to the councillor when new allegations were included in the investigation;
- Failing to reflect on whether due process had been followed after the councillor raised legitimate concerns;
- Failing to consider the councillor’s enhanced right to free speech as an elected representative when investigating comments made on social media.

4.2. In conclusion, the Ombudsman recommended that the Council apologise to the councillor and rescind the decision notice upholding the complaint that he had breached the Code of Conduct. The decision notice was to be replaced on the website with a statement saying that it had been withdrawn.

4.3. In February 2023, an extraordinary council meeting was called to discuss the Council’s response to the Ombudsman’s report³. During the meeting, a motion was passed to refer the former Monitoring Officer to the Solicitors Regulation Authority and a further decision made to lobby the Government and the Local Government Association for further clarity over process requirements and the role of the Ombudsman. Following a review of legal advice, the Council has now referred the former Monitoring Officer, Karen Tricky, to the SRA⁴.

Borough Solicitor’s Comment

4.4. The role of the Local Government and Social Care Ombudsman is to investigate injustice due to faults in the way organisations make decisions. Councillors can make complaints to the Ombudsman in their personal capacity about actions taken by a body (including individual officers acting under a delegation) within the Ombudsman’s jurisdiction where they allege an injustice has been committed⁵. This mechanism is highlighted in the procedure *Dealing with Misconduct Complaints Against Councillors* and, in the event of a finding that a councillor had breached the Code of Conduct, advice would be provided to that councillor. When, in consultation with an Independent Person, the Borough Solicitor declines to investigate a complaint, complainants are reminded that they can refer the matter to the Ombudsman.

³ <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/53292-council-puts-brakes-on-decision-to-refer-former-monitoring-officer-to-sra-as-it-mulls-legal-advice#:~:text=defer%20further%20consideration-.Council%20puts%20brakes%20on%20decision%20to%20refer%20former%20monitoring%20officer,as%20it%20mulls%20legal%20advice&text=A%20council%20that%20passed%20a,advice%20before%20making%20any%20referral.> (Accessed: 16 May 2023)

⁴ <https://localgovernmentlawyer.co.uk/governance/396-governance-news/53483-council-refers-former-monitoring-officer-to-solicitors-regulation-authority> (Accessed: 16 May 2023)

⁵ <https://www.lgo.org.uk/information-centre/news/2023/jan/council-investigation-into-member-s-conduct-flawed-says-ombudsman> (Accessed: 16 February 2023)

- 4.5. The Council's written procedure addresses requirements such as the need for complaints to be made in writing and for the councillor to be informed of allegations once a decision has been made as to whether it merits investigation, unless the Borough Solicitor considers that to do so would inhibit the investigation.
- 4.6. The Councillor Code of Conduct applies to all forms of communication and interaction, including social media. The standards to be upheld must be considered within the context of the Human Rights Act 1998. Article 10 sets out the right to freedom of expression. Any restriction on that right must be shown to be proportionate⁶ and not inappropriately prevent criticism of public bodies.

Cheshire East Council

- 4.7. A report⁷ by the auditors Grant Thornton on Cheshire East Council, the behaviour of its former leader Councillor Michael Jones, and the procurement of a contract with his physiotherapist's firm, has called for debate on the effectiveness of the standards regime in local government. An inquiry into the period of Mr Jones' leadership from 2014 to 2015 found that bullying and inappropriate behaviour led to governance weaknesses. It noted that Mr Jones' dominance over councillors and officers was not checked by local mechanisms and highlighted the lack of any national system to intervene in governance issues other than the Government commissioning a best value inspection and/or appointing independent commissioners. The "dysfunctional" culture enabled the former leader to directly and indirectly set out to advantage a company (Core Fit) whose director was a "trusted friend". Following a failed procurement of physical exercise services for children, the service was piloted with Core Fit which had ranked fifth of five bidders during the procurement. It later secured work worth £188,000. Officers including the Head of Internal Audit and the Monitoring Officer at the time of the contract were commended for their efforts despite the organisational culture.

Borough Solicitor's Comment

- 4.8. The Standards Board for England was abolished in 2012 with the aim of devolving responsibility for standards to local authorities⁸. The Localism Act 2011 required that Councils adopt a Code of Conduct and ensure that an independent check be taken into account in deciding on alleged breaches.

⁶ <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression#:~:text=Article%2010%20of%20the%20Human,authority%20and%20regardless%20of%20frontiers.> (Accessed: 16 February 2023)

⁷ <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/52956-auditors-call-for-further-debate-on-effectiveness-of-standards-regime-in-report-on-former-council-leader-and-contract-award> (Accessed: 16 February 2023)

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF (Accessed: 16 February 2023)

- 4.9. There are three statutory officers in Local Government with disciplinary protections that support them in the event of political pressures: the Chief Executive, Chief Finance Officer (Section 151 Officer) and the Monitoring Officer. While the Monitoring Officer has a key role in upholding standards in a local authority, the three officers need to work together to prevent the development of a dysfunctional culture as identified in Cheshire East Council. As highlighted by Grant Thornton, there are particular issues if a complaint is made against a senior councillor and effective governance would ensure that the Monitoring Officer is supported by the Chief Executive. The procedures for dealing with misconduct complaints allow for an external, independent investigator to be appointed.
- 4.10. As noted by the CSPL report *Leading in Practice*, discussed above, ethical leadership includes the need to create a 'speak-up' culture, a decision-making framework that supports fair, just and transparent decisions, and the promotion of an ethical conduct through public organisations. This should be an ongoing process.

5. Standards Cases

Liverpool City Council

- 5.1. An investigation by the Liverpool Echo⁹ found that 14 councillors at Liverpool City Council had 51 Penalty Charge Notices (PCNs) cancelled by council officers between 1 April 2015 and 31 December 2020 without using formal processes. The vast majority of the PCNs were overturned on the 'discretion' of officers due to poor practices at the time. The Council's Interim Chief Executive, Theresa Grant, said that the information reflected an unacceptable culture that existed in the past but that many changes had been made since that time.

Borough Solicitor's Comment

- 5.2. While this Freedom of Information investigation has not been pursued as a complaint of misconduct against the councillors involved, Standards Committee is advised to note the necessity of going through all formal Council processes properly and not seeking to circumvent policies or procedures, or putting pressure on officers. Councillors are obliged by the Code of Conduct not to use, or attempt to use, their position improperly to the advantage or disadvantage of themselves or anyone else.

Birmingham City Council

- 5.3. A former councillor for Birmingham City Council, Muhammed Afzal¹⁰, has withdrawn an election petition after doorbell video footage was submitted to the Election Court showing him giving packets of dates to electors with Labour Party

⁹ <https://www.liverpoolecho.co.uk/news/liverpool-news/14-liverpool-politicians-parking-fines-26176621>
(Accessed: 16 February 2023)

¹⁰ <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/53131-former-mayor-accused-of-bribing-voters-withdraws-election-petition-after-footage-shows-him-handing-out-party-branded-dates> (Accessed: 16 May 2023)

stickers on them, as well as further evidence that this was a widespread practice in the ward during the May 2022 election campaign. The petition had initially argued that the election was void due to false accusations of bribery.

Borough Solicitor's Comment

5.4. Treating is an offence under the Representation of the People Act 1983 which states that:

- “(1) A person shall be guilty of a corrupt practice if he is guilty of treating.
- (2) A person shall be guilty of treating if he corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—
 - (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
 - (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.
- (3) Every elector or his proxy who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.”

5.5. The archaic language and reference to meat and drink arises from the legislation being influenced by old common law. The essence of the offence is the attempt to corruptly influence through the provision of gifts or hospitality. In 2016, Standards Committee recommended to Council that a new provision be included in the Code to make ‘treating’ a breach. This was not in response to any examples of treating in Camden but as best practice. When adopting the new Model Code of Conduct in 2022, Council again added the concept of ‘treating’ on the advice of Standards Committee.

London Borough of Newham

5.6. Mayor Rokhsana Fiaz and Colin Ansell, interim Chief Executive of Newham Council have issued a statement¹¹ apologising for a number of councillors not using Councillor Danny Keeling’s preferred pronouns of they/them during a full Council meeting on 27 February 2023.

Borough Solicitor's Comment

¹¹ <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/53200-council-issues-statement-after-councillor-was-misgendered-during-meeting-and-received-online-abuse#:~:text=Council%20issues%20statement%20after%20councillor%20was%20misgendered%20during%20meeting%20and%20received%20online%20abuse,-Tuesday%2C%2007%20March&text=The%20Mayor%20and%20Chief%20Executive,misgendered%20during%20a%20council%20meeting>. (Accessed: 16 May 2023)

- 5.7. Where a councillor identifying as non-binary has been misgendered at a council meeting, the obligations in the Councillor Code of Conduct related to respect, and to bullying and harassment may be considered. Respect relates to the need to treat other councillors (and members of the public) with politeness and courtesy. Bullying is characterised as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”. Harassment is defined in the Protection from Harassment Act 1997 as “conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions”. During the incident in Newham, it does not appear (on the facts we can ascertain from the media) that the councillors were deliberately or maliciously misgendering Councillor Keeling and apologies were offered during the meeting. Therefore, on the basis of the known facts and in a similar situation in Camden, this would be unlikely to be considered a breach of the Code of Conduct by the councillors involved. A breach may be found where a councillor deliberately seeks to cause distress. However, this does not mean the apologies were not warranted in the circumstances.

6. Finance Comments of the Executive Director Corporate Services

- 6.1. There are no financial impacts resulting from this report.

7. Legal Comments of the Borough Solicitor

- 7.1. This is a report of the Borough Solicitor and there are no other legal comments.

8. Environmental Implications

- 8.1. There are no environmental implications.

9. Appendices

Appendix A: Email to councillors on the use of personal email accounts for Council business, dated 20 February 2023

REPORT ENDS