



Dorset
Council

Standards in Public Life

Update from Jonathan Mair

Ground to cover

- Disclosable pecuniary interests and the e-form
- The Local Government Association Model Code of Conduct
- Arrangements for assessing, investigating and hearing conduct complaints
- Numbers and types of complaints

Disclosable pecuniary interests and the e-form

- Recording and transparency of disclosable pecuniary interests - a core requirement of the Localism Act
- But our arrangements resulted in:
 - 1,500 paper forms all to be scanned and uploaded as PDFs
 - time consuming and cumbersome processes
 - unclear guidance/complex language
 - alterations requiring a complete new paper form
 - PDFs that did not meet accessibility requirements

The benefits of an e-form

- improves accessibility
- makes the process easier and paperless
- better version control
- cultural change
- dual-hatters – same system (stops inconsistencies between forms)
- record of gifts and hospitality
- addresses other registrable interests (for those who have adopted the LGA Model)
- section 32 Localism Act

The e-form – what next?

- Launched for town and parish councils launch on 24th September 2021
- Taken up by 58% of councillors – this is improving
- If your councillors have signed up to the e-form - Thank you
- If they have not – please follow up with them – we need an accessible legally compliant register
- Include a link to the register of interests on your website

The Local Government Association Model Code of Conduct

- A Localism Act requirement – to adopt a code of conduct consistent with the seven principles of conduct in public life.
- Provided your code is consistent with the principles it need not be the same as any other council's code
- No requirement to adopt the LGA Model Code but...

Advantages of the LGA Model Code of Conduct:

- Purpose designed to protect councillors' democratic roles, encourage good conduct and safeguard public trust in local government
- Developed in association with NALC and after consultation with the sector
- Avoids the confusion of a multiplicity of different codes
- Avoids dual hatted councillors being subject to different codes
- Designed to address advances in technology, social media and changes in legislation
- Is reviewed annually to ensure that it continues to represent best practice
- Can be adopted in whole or in part
- Is accompanied by guidance to support councillors, their clerks, the MO and independent people in understanding how to apply the code in practice.

The Model Code of Conduct – what next?

- Launched in December 2020 and adopted by Dorset Council on 15 April 2021
- Taken up by 64% of councils
- If your council has adopted the Model Code – thank you
- If your council has made a conscious decision not to adopt the Model Code please keep that under review
- If your council has not got round to considering then Model Code yet then please try to persuade councillors to find the time.

Arrangements for assessing, investigating and hearing conduct complaints

Complaints Team conduct an initial check on behalf of the Monitoring Officer in consultation with the Independent Person and ask these questions:

1. Is the complaint about a current, individual Councillor or Co-opted Member?
2. Is the conduct complained of covered by the council's Code of Conduct (councillor acting in official capacity)?
3. Did the conduct complained of occur during the Councillor or Co-opted Members time in office?
4. Did the conduct complained of happened in the last 20 working days (one-off incident or the last incident in a series of connected events even if some of them are older than 20 working days) and/or whether there are any exceptional circumstances for considering a complaint received outside this timeframe?
5. Is the complaint about criminal conduct?

If "yes" to 1-4 proceed to assessment. Councillor will be informed and invited to respond with information and witness details.

If "no" to any of 1-4 then complaint is invalid.

If yes to 5 refer to Dorset Police.

Assessment

Complaints Team conduct the assessment on behalf of the Monitoring Officer in consultation with the Independent Person

Options

1. no further action and the complaint is dismissed.

Outcome is confidential to parties, final and no appeal

2. Refer the complaint for local resolution (e.g. apology, training, mediation)

If Councillor agrees and carries out resolution this outcome may remain confidential, final and no appeal

If Councillor does not agree or carry out resolution Monitoring Officer will refer the complaint for investigation.

3. Refer the complaint for investigation

Assessment stage - no further action

Examples:

- complaint is the same or substantially the same as previous complaint;
- complaint is trivial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue;
- complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and not considered so serious to merit further consideration;
- The councillor has provided a satisfactory remedy to the complaint;

Assessment stage – local resolution

Examples:

- Less serious complaints where the Councillor wishes to put their actions right;
- A general breakdown in relationships at the Council where action e.g. mediation might help;
- The public interest in conducting an investigation does not justify the costs;
- Lack of experience or the Councillor or Co-opted Member may benefit from training or mentoring;
- The issue appears to be political and appropriate for referral to a leader(s) of a political group to deal with;
- The town or parish council would be best placed to resolve the issue;
- The same alleged breach of the Code by many of the council's Councillors or Co-opted Members, indicates a poor understanding of the Code and authority's procedures;

Assessment stage – refer for investigation

Monitoring officer will appoint an investigator for complaints which:

- cannot be resolved by local settlement and/or;
- are serious enough to warrant investigation and/or,
- a Councillor or Co-opted Member has failed to agree or carry out local resolution.

Investigation and Investigation Report

- The investigator will review papers, contact the complainant and councillor and draft a report.
- Report will set out:
 - the agreed facts;
 - any facts which are not agreed and the conflicting evidence; and
 - conclusion on whether or not there has been a breach of the Code of Conduct.
- Draft report will be circulated to the complainant, the councillor and the Independent Person before being finalised.
- Final report is submitted to the Monitoring Officer to arrange a hearing (Audit and Governance (Hearing) Sub-Committee)

Hearing (Audit and Governance (Hearing) Sub-Committee)

- Public meeting unless the Committee agrees a request for the hearing to be in confidential session.
- Investigating Officer will present their report.
- Committee will hear from Councillor (or their representative), complainant, any witnesses and Independent Person.
- The Committee will decide whether there has been a breach and if so any sanction, taking account of the view of the Independent Person.
- The decisions may be given during the hearing, or reserved and given in writing.
- Decisions will be published, are final and there is no right of appeal.

Complaint numbers

- In 2020/21, we received 54 Code of Conduct complaints and of these, just 8 were investigated and 3 upheld.
- In 2021/22, we received 60 code of conduct complaints.
- So far in 2022-23 we have received 28 Code of Conduct complaints. 4 are currently under investigation.
- Numbers are low compared to the number of active Councillors but complaints are time consuming, even if they do not proceed beyond assessment with an independent person to an investigation and hearing.

Themes

- Almost all complaints focus on a perceived failure to “treat all persons fairly and with respect”
- If there is a common theme and word of caution to councillors, it is around the use of Social Media.
- We have seen repeated examples in which how councillors express themselves during online conversations is being seen as a failure to treat people with respect
- Some comments may be in haste or ill advised.
- In other examples councillors have used obviously racist or other offensive language.
- Even if (technically) not acting in their capacity as a councillor people will still associate them with their official role
- Many of the complaints we see are entirely avoidable if people think first.

Final remarks

- A fair process in which complaints are checked, assessed (and if warranted) investigated and referred for a hearing is time and resource hungry
- We are reserving full investigations and hearings for the more serious complaints
- We are still waiting for Government to address the recommendations of the Committee on Standards in Public Life
- The introduction of meaningful sanctions would be welcome for the most serious cases but a code of conduct complaint will often not solve the underlying problem.
- Thank you to those Councils that have adopted the LGA Model Code of Conduct
- Please make sure that your councillors do use the e-form to declare their interests because to meet accessibility legislation Dorset Council can no longer accept paper-based submissions or scanned documents.