

STANDARDS COMMITTEE

DATE OF MEETING: 3 NOVEMBER 2020

TITLE OF REPORT: MEMBERS' CODE OF CONDUCT – UPDATE

Report of: Monitoring Officer

1 PURPOSE OF REPORT

- 1.1 To present for consideration an update to the Hart District Council Members Code of Conduct (update with tracked changes attached as Appendix 1).

2 RECOMMENDATION

Standards Committee recommends to Full Council that the HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT be adjusted in the form as set out in Appendix 1.

3 BACKGROUND

- 3.1 Codes of conduct play an important role in upholding ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave .

4 WHEN DOES THE CODE APPLY?

- 4.1 The current Hart Code of Conduct states:

The rules of good conduct apply to you whenever you act in your official [my emphasis] capacity. This includes whenever you conduct business of the Council or act, claim to act, or give the impression or reasonable perception that you are acting in your official [my emphasis] capacity as representative of the Council which includes when using social media.

5 THE ISSUE

- 5.1 The term “official” is a hangover from the pre-Localism Act arrangements and experience has confirmed that it creates an unnecessary and artificial tension in determining exactly when the Code applies. In the Courts have held that with the inclusion of “official” there must be something about the conduct more than simply acting, claiming to act or giving the impression that one is acting as a member.
- 5.2 The evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use. The Parliamentary Committee on

Standards in Public Life has confirmed that codes of conduct should apply to local councillors when they are acting in any capacity as a councillor and not be confined simply to “official” Council business¹. The Local Government Association in its recent consultation on a possible Model Code of Conduct² has recognised this distinction too.

- 5.3 In Scotland, the code of conduct applies to councillors where a member of the public would reasonably consider the member was acting as a councillor³. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be considered in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.
- 5.4 In Wales, the code of conduct applies both when a councillor is acting in their official capacity and when they behave in a way that could “[...] *reasonably be regarded as bringing [their] office or [their] authority into disrepute*”⁴. This includes any time a councillor tries to use their position to gain advantages (or to avoid disadvantages) for themselves or others or misuses their local authority’s resources.
- 5.5 The Welsh Ombudsman has also issued guidance on the application of the code of conduct to social media use.
- 5.6 Public Service Ombudsman for Wales social media guidance:
- “If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there.”*⁵
- 5.7 The widespread use of social media presents a particular challenge to deciding whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, the Parliamentary Committee on Standards in Public Life considers it clear that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This

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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

² <https://www.local.gov.uk/local-government-association-model-member-code-conduct-consultation#application-of-the-code>

³ file:///C:/Users/daryl/Downloads/00538135.pdf

⁴ The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

⁵ Public Service Ombudsman for Wales (2016), The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CCCBC-NPA-August-2016.pdf>

would be the case even if the individual posts a 'disclaimer' to suggest the account is a personal one. This is because it is reasonable to regard a Member's use of the term "Councillor" as being for no other purpose other than to identify themselves as a councillor.

6 THE PROPOSAL

- 6.1 The proposal is to adjust the current wording of the Hart Code of Conduct and to follow the Scottish example:

"The rules of good conduct must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media".

- 6.2 In addition, and for the avoidance of doubt, it is proposed in line with the Public Service Ombudsman for Wales social media guidance to add the following footnote:

"If you refer to yourself as councillor, or you use a social media account in a way that identifies you as a councillor or you make comments relating to your role as a councillor, then the Code of Conduct applies. This would be the case even if you post a 'disclaimer' to suggest that the account is a personal one."

- 6.3 This is because even with adding a 'disclaimer' the underlying intention is still to use the account in the context of the capacity as acting as a councillor. Adding a disclaimer should not therefore be used to distance the action from the Code of Conduct.

- 6.4 The purpose of this adjustment to the Code of Conduct is solely to bring clarity to when the Code of Conduct applies. It does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression⁶ must be respected by councils when adjudicating on potential misconduct, considering the increased protection given to political expression.

- 6.5 The only other change suggested is for completeness to include reference to "harassment" in the context of bullying and intimidation. Harassment is repeated behaviour which upsets or annoys people.

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Appendix 1 – draft updated Hart Members Code of Conduct 2020

⁶ https://www.echr.coe.int/documents/convention_eng.pdf