

Hoey Ainscough Associates Ltd

Supporting Local Governance

REVIEW OF ALLERDALE BOROUGH COUNCIL'S PROCEDURES FOR HANDLING COMPLAINTS THAT MEMBERS MAY HAVE BREACHED THE CODE OF CONDUCT

Introduction

1. The Localism Act 2011 introduced new arrangements from July 2012 for handling complaints that members of a local authority may have breached the local Code of Conduct. This moved away from a central statutory framework but allowed councils to develop their own framework within certain statutory parameters.
2. Allerdale Borough Council decided to review their processes after some six years of operation in light of local experiences of handling cases in practice. In carrying out the review, they wanted to benchmark their arrangements against best local practice elsewhere to ensure that they were the best possible arrangements achievable under the legislation, bearing in mind local context. They also wished us to consider any recommendations made by the Committee on Standards in Public Life's (CSPL) review of the Localism Act arrangements published in January 2019.
3. Hoey Ainscough Associates Ltd was therefore commissioned to carry out the review as independent national experts. Hoey Ainscough Associates Ltd was set up in April 2012 to support local authorities in managing their arrangements for handling councillor conduct issues. The company was co-founded by Paul Hoey, who had been director of strategy at Standards for England from 2001 until its closure in 2012, and Natalie Ainscough who had worked as his deputy. We have now worked with over 350 authorities in one form or another through provision of training, investigative support and wider governance advice and were therefore uniquely placed to bring that national perspective.
4. In carrying out our review, we laid down four criteria for a successful standards process:
 - a) it should enhance the reputation of the council through demonstrating that there is a culture of high standards and that any lapse from high standards in individual cases will be dealt with fairly, effectively and efficiently;
 - b) it should ensure that the process is transparent and accountable, so that the public can see that misconduct has been dealt with, and members are

- able to demonstrate, where appropriate, that their name has been fairly cleared;
- c) it should have independent rigour and be free from party political interference; and
 - d) it should comply with any legal requirements and ensure that members have the right to a fair hearing
5. During the course of the review, we spoke to a number of individuals to understand their perceptions of the current arrangements, how the council dealt with complaints in practice and where they felt the key areas for improvement could be. These were selected members and officers of the Council, together with a sample of parish clerks within the Allerdale district. A full list of those interviewed is attached at Appendix A.
 6. While all those interviewed had different perspectives, common themes emerged from these discussions. With regard to the process for case handling, these were in particular concerns about the time taken to deal with complaints; a perceived lack of transparency and failure to communicate what was happening or had happened; and concerns that the process could be used (or be perceived to be used) politically and therefore needed to be seen as more independent from the Council.
 7. With regard to the Allerdale Code of Conduct, concerns were raised about the scope and clarity of provisions relating to registration and declaration of interests. More widely, concerns were raised that there seemed to have been a recent deterioration in standards in the Council, in particular around the level of debate in meetings and the use of social media.
 8. While some of these concerns cannot be fully addressed because of constraints in the legislation – for example it is no longer possible to have independent lay members of a standards committee with voting rights – we have concentrated on making recommendations on matters which Allerdale is able to address in reviewing the process, as well as dealing with some more minor ‘technical’ angles and pointing out some of the legislative constraints.
 9. There was also a recognition that a balance needs to be struck so that any process can handle more minor cases expediently and proportionately whilst ensuring that cases of differing severity, complexity or sensitivity could all be handled appropriately, proportionately and transparently.
 10. In the time allowed for the review, we have not attempted a detailed re-write of the process or Code but are making a number of recommendations of areas where improvements could be made for consideration by the Council. The process itself is of course only one aspect of effective arrangements. It also relies on effective implementation and support of the process. We have therefore also made a series of recommendations on wider local cultural issues.

11. The review concluded that it should be stressed that the 'high-level' process is broadly in line with processes we see elsewhere, so most of our comments relate to guidance on implementation and communication of the process rather than on the process itself. We also wish to say that our overall impression was that all we spoke to were fully committed to the review and we would like to add that the officers we spoke to were a very experienced set of officers with wide experience, at Allerdale and elsewhere, of dealing with standards issues so we are confident that they will be able to take our recommendations forward.

Recommendations

12. We recommend that Allerdale Borough Council consider, and where appropriate, approve the recommendations attached as **Appendix B** to this paper. These recommendations are explained in further detail in the following sections of the paper.

Key issues – case-handling process

13. There are three key stages to the case-handling process. These are:
- a) upon receipt of a complaint, deciding whether or not any further action is appropriate;
 - b) where further action is appropriate, carrying out an investigation or some other form of resolution; and
 - c) where an investigation has been carried out, reaching a finding and taking any appropriate action.
14. We will deal with each of those three stages in turn, followed by comments on more general themes.

Initial assessment of a complaint

15. Under Allerdale's current arrangements, when a complaint about member misconduct is received the decision is delegated to the Monitoring Officer (MO) to decide what action to take. The MO will reach one of three conclusions – that the matter should be further investigated, that the matter does not need any further action taken, or some form of resolution short of an investigation – for example, seeking an apology – be attempted. In reaching a decision on how the allegation should be dealt with the MO will consult with the Council's Independent Person (IP) as appointed under s28 of the Localism Act and the chair of the standards committee. However, it is the MO's decision as to how, if at all, the complaint should be further pursued.
16. This is broadly in line with practice in nearly all authorities we have worked with, where this initial decision is delegated to the MO. It is designed to allow for swift decision-making and is particularly appropriate for ensuring that more

'minor' matters are dealt with proportionately and effectively. Most councils, as Allerdale does, will seek the IP's views at this stage of the process, although it is not a statutory requirement. CSPL have indeed recommended to Government that it be made mandatory to seek the IP's views at this initial assessment stage.

17. It is less usual to consult the chair of the standards committee at this stage as well as the IP although a handful of councils do follow this practice in our experience, as Allerdale does.
18. A few councils still have a process in which all complaints are referred to a panel of members, but in our experience this, if done as routine, slows down the process unnecessarily and seldom in any case leads to different decisions being taken than occur elsewhere for similar matters.
19. **We therefore believe it is appropriate and in line with existing good practice that delegation of decision-making at this stage continues to rest with the MO.**
20. However, concerns were consistently raised with us that this part of the process was in practice too slow and lacked transparency. The Allerdale process says that initial decisions on a complaint would be taken within ten working days. However we found no evidence that this target was even routinely met.
21. In Allerdale the usual practice has been to convene a meeting between the MO, IP and standards committee chair to consider complaints. In most other authorities, views tend to be sought by email or over the phone and recorded later. The Allerdale practice of convening a meeting, given inevitable diary management issues, has led to them routinely missing their target.
22. We therefore do have several recommendations about this stage of the process which we would suggest Allerdale take up, which are in line with good practice elsewhere.
23. Firstly, while we did not look at how individual decisions had been taken at this stage nor if those decisions had been taken consistently, most councils will have published criteria which set out factors the MO will consider when considering the best way of dealing with an allegation. This is both to assist the complainant when it comes to formulating a complaint and also the subject member in responding to a complaint. While we are sure in practice that the MO does assess against consistent criteria, we are not aware that these are written down or published anywhere so we recommend that the Council adopt some criteria and publish these on their website so that people are clear what has been considered in reaching a particular decision.
24. Generally, a two-stage set of criteria is used. The first stage, which is often called a legal or jurisdictional test, simply assesses whether the complaint is covered by the statutory framework – for example, is it a complaint about a

member rather than, say, an officer and does it relate to matters covered by the Code of Conduct? This should be done quickly by the MO and if a complaint does not meet that test – the ‘can we investigate this matter’ test – then there is no need to take the complaint any further.

25. The second stage would then seek to balance a range of factors to consider whether the matter should be investigated or dealt with in some other way – the ‘should we investigate this matter’ test. These would clearly consider the seriousness of the alleged conduct but may also include for example whether the matter highlighted a pattern of behaviour either by a particular individual or among members generally, whether the matter had been resolved in some different way already or was being handled in parallel by another organisation etc. It is at this second stage of the test that the MO may seek other views.
26. Having such criteria helps the MO to demonstrate why a particular decision was reached and also allows a more general assessment to be made, for example by a standards committee when reviewing the operation of the framework, as to whether matters are being dealt with consistently or the line is being drawn in the right place.
27. Our next recommendation relates to who the MO consults in carrying out this initial assessment and how that consultation is done.
28. As stated above, it is both common and CSPL recommended good practice that the views of the IP are sought at this stage. However, we see little merit in continuing also to seek the views of the committee chair as a matter of routine, and indeed this risks the chair being open to accusations of having prejudged a matter should a case later come to a hearing as well as risking slowing down the process. We note that the Allerdale process allows the MO a reserve power to refer matters to a committee of members to take the decision if the allegation meets a particular threshold – for example, if the case involves a very senior member of the Authority either as complainant or subject member or the complaint is made by the MO herself or the Council’s Chief Executive. This does allow for some member involvement at an early stage where needed though again these criteria should be spelt out explicitly
29. However, we believe that consultation with the IP should be done via email in the first instance rather than convening a meeting as this will allow for swifter resolution of matters. If there were differences of views a face-to-face or telephone meeting could of course be convened by either side if needed. This will ensure the process is speeded up and better enable officers to meet the ten-day target which we believe is entirely appropriate.
30. We also believe that, when issuing a decision at this stage of the process the IP’s views should be recorded formally to aid transparency and offer reassurance that there has been some independent oversight of the process. This could simply be a line in a decision letter which says along the lines of ‘I have consulted with the IP who shares my view on this matter’ or where the IP has expressed a counter view, ‘I have consulted with the IP who expressed

the following view which I have considered. However, as the person formally delegated to take the decision I have concluded that I do not share this view because....'. Transparency of IP views is again in line with good practice recommended by CSPL.

31. **We recommend that Allerdale specify that the MO need seek the views only of the IP rather than the committee chair on an initial assessment; that these views do not need to be sought through a formal meeting; and that the IP's views be recorded as part of a decision letter.**
32. **We recommend that the initial decision on whether to take any action should be made against agreed published criteria and there should be a reserve power for the MO to recuse herself from taking decisions in certain agreed matters.**
33. We will comment below in a separate section about how such decisions are communicated.

Investigation

34. Where the MO concludes that a formal investigation is needed, the Allerdale process, in line with usual practice elsewhere, allows the MO to conduct the investigation herself or else delegate it to another officer or to an outside appointment.
35. This is wholly reasonable and we would expect the bulk of cases to be handled 'in house'. However, there will inevitably be times when, because of the sensitivities or complexities of the issues involved or because of other calls on officer time, it would be more appropriate for an investigation to be outsourced. We should declare that our company carries out outsourced investigations for a number of authorities. We should stress therefore that our comments reflect our experience of best practice elsewhere and we are not making any presumption that investigations should be outsourced as a matter of course.
36. We were unable to find any detail as to how decisions whether or not to outsource were made nor how cases were managed by the Council as the 'commissioning client' so our recommendations relate specifically to outsourced investigations but, where appropriate, apply equally to any in-house investigations.
37. **Firstly, in line with our recommendations above, there should be agreed criteria as to when a case is to be outsourced.** These would be along the lines of those where the MO may delegate the assessment decision but other factors may include the complexity or breadth of the investigation (for example if there are a large number of allegations or a large number of members involved) or the need for a particular skillset not available in-house. The decision whether or not to outsource and who should be contracted to do the

work is generally taken in other authorities by the MO in consultation with the IP against such criteria.

38. Where we have been asked to do an external investigation, we are invariably asked to tender for the case so that the methodology and likely costs and time can be agreed up front and the council is happy it is achieving value for money. We recognise that, in any investigation, time is of the essence as it can be a stressful time for all concerned and 'justice delayed is justice denied', so we would not expect an elaborate tender process. But, for example, we are usually called about availability and then asked to submit a quote, as one of a number of firms, within say 3 working days. **We recommend that Allerdale adopt such an approach to tender for external investigations.**
39. There may be an agreement that, should the bid prove successful and the work be carried out to a high quality that company may be 'preferred provider' for future cases so as to avoid time delays in future and the need to re-familiarise a company with the local Code and arrangements but again we would expect this to be reflected in the tender process.
40. We should stress that we did not look at investigation files as part of our review nor have we carried out investigations for Allerdale so our comments are based on good practice and may or may not reflect current Allerdale practice.
41. Any investigation needs to balance three things – thoroughness so that a robust conclusion is reached, timeliness so that it is not unnecessarily dragged out, and proportionality – public money is being spent so the time and resources committed must be commensurate with the relative seriousness and/or complexity of the allegation. These three aims will inevitably at times be in conflict so the key to a successful investigation is the way it is managed to ensure an appropriate balance.
42. When commissioning an investigation, whether internally or externally, **the parameters and methodology of that investigation should therefore be clearly defined and agreed in advance** – for example what is the actual allegation to be investigated, will any interviews be conducted face-to-face or over the telephone, what process is to be followed if further matters come to light or a potential criminal offence is uncovered etc. – and an indicative timeline agreed.
43. We would generally expect most investigations to work to a rigorous timeframe which we would expect to be set at, say, three months from referral for investigation to satisfactory completion. While not all cases will be completed in that timescale - for example further more serious issues may emerge which may need additional investigation or key players may be unavoidably absent - it is our experience both from our time at Standards for England and through our current work with local authorities that the vast majority of cases can be completed within this timescale if the process is rigorously managed. It should therefore only be an exception, and with appropriate agreement, that cases extend beyond this.

44. A three month investigation means broadly that the investigator has a month to six weeks to gather relevant facts and evidence, up to the end of the second month to produce a draft report and a final month to take on board any comments and finish the report. Where investigations are contracted out, there will need to be clear expectations set out in the contract as a 'Service Level Agreement' about how the case will be managed. In particular, we believe these timelines need to be written into any investigations contract. Where an investigation is being outsourced, estimated completion times should be required to be included in any tender made for the work.
45. One of the key factors in causing delay has often been difficulty in arranging interviews with key individuals, and it has been our experience in many places that there can sometimes be deliberate attempts to avoid being interviewed. While reasonable attempts should be made to interview key people, if these reasonable attempts are rebuffed – through refusal to agree dates, respond to emails etc. – this should be reflected in the report and drawn, where appropriate, to the hearing panel's attention. In line with good practice, there should be a clear emphasis in Allerdale that investigations should be taken seriously and that timeliness is a key factor. We note in passing that CSPL have recommended that failure to cooperate with an investigation should of itself be considered a breach of the Code and Allerdale may wish to reflect that in any rewriting of the Code, as outlined in our section on the Code below.
46. On a technical point Allerdale may also want to write into their process a power for the MO to cease an investigation before its conclusion, though only in exceptional circumstances – for example the death or serious long-term illness of a member or where a member loses his or her seat following an election and it is deemed no longer in the public interest to pursue the matter further. This is usual practice elsewhere but again should be done against a set of clear, agreed criteria.

Hearing

47. Where cases are referred to a hearing, under the Allerdale process the matter would either be referred to the full Standards Committee or to a Sub-Committee of the Standards Committee. It is usual practice elsewhere to refer matters to a sub-committee rather than to the full committee as this allows a panel to be convened more quickly in practice and also makes the hearing more focussed and proportionate as it involves a smaller number of people. **We recommend that hearings should always be held by a sub-committee rather than the main committee.**
48. However, there was no clarity as to who would be asked to sit on any sub-committee nor what the political composition of such a sub-committee should be. In the absence of any decision to the contrary the sub-committee must reflect the political balance of the main committee, but the main committee can vote to waive proportionality from a sub-committee. Given that matters which come to a hearing will invariably be serious matters and are likely to

attract considerable interest, the Council needs to set out clearer arrangements as to who will sit on the Sub-Committee and how any conflicts of interest would be managed. **We recommend in the first instance that the Group Leaders on the Council be asked to agree a process for selecting membership for any future sub-committee.**

Role of the Standards Committee

49. Under the Localism Act, councils are placed under a duty 'to promote and maintain high standards of conduct'. There is no longer a legal requirement as there was in the past to have a stand-alone standards committee. However, in practice all councils have given responsibility for standards issues either to a dedicated committee as previously, or else as part of the remit of another committee, such as combined with its audit committee. Allerdale has maintained a dedicated committee.
50. We believe either approach is acceptable good practice, although our experience tends to be that, where there is a 'combined' committee, inevitably less time is dedicated to standards issues. This is not a particular problem but often these combined committees have a heavy workload and greater attention must in such instances be paid to ensure the council does not lose sight of proactive work on promoting high standards.
51. However, in practice the Allerdale Standards Committee appears to be a purely reactive committee, meeting only when there is the need to hold a hearing. The Localism Act places councils under a duty to promote and maintain high standards of conduct and for strategic purposes we believe this duty at Allerdale should be vested partly in the Cabinet Lead for Governance but also in the Standards Committee which should become more proactive in overseeing standards at Allerdale and its parishes.
52. **We therefore think that the Standards Committee should put in place an appropriate work programme to ensure promotion of high standards is at the core of the Council's values and work.** This might include a regular review – say on a six-monthly basis – of allegations received, whether investigated or not. These could be suitably anonymised as the review would not be about looking at specific judgements in cases but to review the pattern of complaints overall – are matters being dealt with appropriately, or are there any patterns which may mean specific areas of behaviour need to be looked at, for example? **We would also expect the Committee to be consulted on member training programmes to ensure that the importance of the Principles of Public Life (the 'Nolan principles') is at the heart of the Council's work and good practice usually means that there is an annual report, whether from the chair of the Committee or the Independent Person or jointly, to the Council on 'the state of standards in the Council'.**

Independent Persons

53. The Localism Act removed the powers for independent representatives to have a vote on the standards committee because the Government wished to move to self-regulation and therefore pass decisions about member misconduct back to elected members themselves to be the arbiters. Instead a new category of 'Independent Person' was introduced by the legislation. They are there not to take decisions on standards matters but to 'give views' and act as a guarantor that a case has been handled fairly and without political interference. They are different from any lay members which a council may appoint to a standards committee as it is not a statutory requirement to have lay members.
54. Under the Localism Act, councils must appoint at least one Independent Person—
- a) *whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and*
 - b) *whose views may be sought—*
 1. *by the authority in relation to an allegation in circumstances not within paragraph (a),*
 2. *by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and*
 3. *by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.*
55. This sets out the minimum duty of IPs. Some councils have kept the role of the IP at this minimum (giving views to the council on a case under investigation and being consulted by the subject member). Many more, however, have extended the role to other parts of the process. This has been the case in Allerdale and is also reflected in our proposals.
56. Above all, an IP is there to give those involved in a case a reassurance that the matter is being handled fairly and appropriately. We therefore believe it is important that checks from the IP are built into the process at various stages – for example, the MO consulting the IP before reaching an initial decision.
57. The key role of the IP is to ensure that the case has been handled fairly throughout. The council must take account of their views and the IP must be of sufficient standing that they can legitimately raise concerns and be listened to if there are issues that need addressing.
58. Councils must appoint at least one IP. The post must be externally advertised and the appointment must be ratified by the full council. Allerdale has appointed one IP. Most councils have typically appointed two or more, partly to manage should conflicts of interest arise but also to cover periods of absence or to share the workload. We note that CSPL recommend councils should appoint a minimum of two. We also note that the current IP's period of

appointment is due for renewal. **We therefore recommend that Allerdale seek to appoint at least two IPs when it next recruits for the post.**

59. We think it is important, however, that for any particular case, the responsibility for discharging duties rests with one IP. Although there is a risk that the IP may be perceived as arbiter, which is not the role of the IP, this would allow the IP to take an over-arching view of the process for an individual case, and minimises the risk of IPs taking on the role of advocate for particular sides rather than having an holistic view.

60. **We therefore recommend that Allerdale seeks to have two IPs but is clear who is the designated IP for each case and communicates that to all parties in a case, together with an explanation of their role and what they can and cannot express views on.** A simple document explaining what an IP is and what they are expected to do should be produced. **Allerdale should also consider putting in place an IP protocol** which sets out what their role does and does not cover, how an IP's views are to be recorded and also addresses issues such as what access they have to council resources or officer time, how their views are to be made public etc. We have found in other places having such a protocol in place helps all concerned understand the nature of the role. Consideration should also be given as to whether the IP role should receive some small allowance as this may encourage applications from a wider pool.

Communication issues

61. Common themes to emerge from the review, as stated above, were transparency and communication. Some of these concerns arose because the MO was seen as being under a lot of pressure, and was understandably unable always to dedicate time to managing a case effectively because of other pressures. However, moves have been made by officers to increase the resources available to support the standards process which is very welcome and the Council now appears to have a very strong team supporting it on standards and governance issues.

62. All those we spoke to, however, felt more could be done to communicate how a case was progressing and give greater clarity as to what the outcomes of cases were or could potentially be.

63. **We recommend as part of its process, Allerdale sets out clear guidelines as to what communications will be made during any ongoing case.** These would cover both public statements to the media and communication with the relevant parties (subject member and complainant) which would inevitably be more frequent and comprehensive.

64. Turning to public communications firstly, the Council needs to be clear what can and cannot be said publicly at each stage of the process. We would suggest typical good practice as follows for consideration, though the key issue is that matters are treated consistently.

65. At the first stage of the process (when a complaint is being initially assessed) it is not usual proactively to make any public statement about a case. Inevitably, however, some matters may be in the public domain at an early stage. Where the council is asked to comment on an allegation at this stage which has not been assessed, it would be common practice simply to confirm (or where appropriate deny, as it is our experience that allegations are sometimes reported as having been made which never formally materialise) that an allegation has been received and is being assessed.
66. **Once a decision has been made whether or not to take any further action, the Council needs to agree a policy as to what is communicated.** As with the above, it is our experience that councils tend not proactively to communicate matters where no further action is being taken – either, for example, because there is no supporting evidence to the allegation or it does not fall within the statutory framework. Members often worry, on the ‘no smoke without fire’ principle, that drawing public attention to an allegation which is not being pursued can nevertheless lead to some unfair reputational damage. However, where public statements are made the reasons why no further action is being pursued should be made clear.
67. Where some further action is being taken, either that the matter is being investigated more formally or some other resolution has occurred, the Council should consider a more proactive strategy. For example, where a case is being investigated it is common practice to make a short statement available that an investigation is now underway, what the process is and that no further comments will be made until the conclusion of the case. Councillors should also be reminded not to make any comments one way or the other while an investigation is ongoing.
68. **Where some other resolution has been reached – for example, the member has accepted quickly that they acted wrongly and has made a full apology, the Council should consider whether this information is made public as well.** Ministers have made heavy emphasis that the ultimate arbiter for standards cases has to be the ballot box. If the public are therefore to make informed decisions as Ministers intend they need to have the facts presented to them where a member has been found to be in breach of the Code of Conduct or has voluntarily admitted that they may have acted inappropriately.
69. Once an investigation has been completed and either gone to a hearing or else has been found not to have amounted to a breach of the Code, good practice again says that the process should be transparent about the outcome. Some councillors, where an investigation has found them not to be in breach, may not wish the investigation to be disclosed, again on the ‘no smoke without fire’ principle. However, making the findings publicly available helps to bring resolution to matters and aids transparency.
70. **We therefore recommend that the Council as part of its process makes clear that the outcome of an investigation where a breach of the Code**

has been found will be made accessible to the public, for example through a case summary on the website and any relevant press statement, and considers how it wishes to deal with cases where the investigation has found there is no case to answer.

71. We also find in councils we work with a lack of clarity among members about what the arrangements actually are at present, regardless of whether they had attended training in the past, what was possible under the legislation, and what the role of the various players involved were. This is not surprising as it is only when one is involved in a case that inevitably the process gets one's attention, unless training happened coincidentally to have been attended very recently.
72. **While there is information on the Council website, and as we understand it further information is sent out to the parties involved once a complaint is being processed, we would recommend that this information is reviewed, including how easy it can be found in practice.** Clearly, if any new procedures are adopted, the basic documentation would anyway need to change so I think that the opportunity should be taken to look at how it can be most effectively communicated. In particular, while a process consists of a 'set of rules' to be followed it will also need to be translated into a more digestible form such as a simple flowchart explaining the decision-making process, in particular to assist the public. This seems particularly necessary for any 'induction pack' provided to parties at the start of the process as there is generally lack of clarity about the process and expectations from those who are involved in a case. However, I stress we did not formally review this material.
73. **With regard to the parties to a case (complainant or subject member) any review of communication should have particular emphasis on how they are communicated to.** For example, if a time limit has been set for an investigation all parties should be aware of this. If that timetable slips for whatever reason people should be told and given a reason why, and where an investigation is long and complex some form of regular updating should be considered. It is our experience that the parties involved, even if they may disagree with an outcome at the end of the process, tend to have higher satisfaction ratings that the matter has been dealt with fairly if they have been kept informed through the process.

Private capacity

74. We felt it important to make some comment on the issue of 'private capacity' and how cases which relate to private capacity should be handled in the process, as we find throughout the country confusion about the law and handling of cases on this issue. This issue is exacerbated by social media cases where the line between private and public utterances can be particularly blurred.

75. Following the case of *Livingstone v Adjudication Panel for England* [2006] the Courts and the law held that the Code of Conduct could only apply to a member when they were carrying out their role as a councillor or purporting to be a councillor. The Localism Act narrowed this definition still further by dropping the reference to 'purporting'. So Code of Conduct matters can only now be dealt with when the allegation is about something that a Councillor did in their role as a Councillor, and the Localism Act similarly applies the 'Nolan Principles' only to a Councillor when acting in official capacity.
76. Nevertheless, there are clearly times when a councillor does something in their private life which may be perceived as damaging the reputation of their office or council. Examples we have come across recently which have caused disquiet, for example, have been councillors convicted of benefit fraud or racially-aggravated assault.
77. **Councils need to have clear within their process how such matters are to be dealt with and how the Council will act in response to such matters.** There are two approaches – one is simply to have a blanket policy that all private matters, no matter how serious, are not a matter for the Council; the other is to say that, regardless of whether the matter legally falls within the Code of Conduct, the council will take steps to protect its reputation and remind councillors of the expectations that high standards should be maintained at all times. Whichever approach is adopted, the Council needs to apply it consistently. It is our experience that councils best protect their reputation and promote high standards by being seen to make clear their disapproval of any proven lapse from expected norms of behaviour.
78. This is inevitably a complex area. There may be cases where a matter is clearly a private issue and therefore falls outside the framework so will not be investigated and hence no facts can be established one way or the other. A typical example may be a dispute between two neighbours, one of whom is a councillor. A complaint is made that the councillor swore at their neighbour, but there is no third party verification and nothing has been reported to the police. In such a case, this would be outside the scope of the Code so would not be able to be investigated by the council. In such a case the council could not find one way or the other as to whether the incident happened as alleged and therefore it would be improper to comment on the matter (although general consideration may be given to remind all councillors of the importance of high standards at all times).
79. In other cases, while a 'private' matter, it may have a more clear outcome. For example, in the example cited above where a councillor has admitted benefit fraud there has been a clear finding of fault. **We would expect in such circumstances that the Council be quite clear that, while it has no power to take any further action (except through political groups) it is behaviour which quite clearly affects the reputation of the council and falls far below the standards the public would expect from its elected officials.** Similarly, there may be cases which have been investigated because the capacity issue was in some doubt. On balance the investigation

has concluded that the incident did occur but was not on official duty – for example, there are cases where there has been an altercation between a councillor and another individual immediately following a council meeting. Again, **where there has been a finding on the balance of probabilities that the councillor acted inappropriately, even though the Code was not technically engaged, councils best protect their reputation by making clear such behaviour is not what is expected.** In such cases we have seen public statements made by, for example, the Leader, the Chief Executive or the Chair of the Standards Committee reiterating the importance of maintaining high standards at all times as a public servant. **We would recommend Allerdale consider adopting a similar approach – it is our experience that it is better to have an agreed process in place which is clear and accepted by all rather than having to react to events, as these cases can often be high-profile, emerge from nowhere and attract intense media scrutiny and the Council needs to have a policy in place as to how it would react.**

80. Particular concerns were raised with us about the role of social media. While it is a grey area as to whether any particular post by a councillor is or is not done ‘in their role as a councillor’ there is a need for the Council to agree consistent guidelines and approach. While the approach outlined above to private capacity issues should equally be applied to inappropriate social media postings, **we recommend in addition that the Council specifically adopts a social media protocol which lays down clearly the standards it would expect from members when they are posting on social media.**

Overlapping jurisdictions

81. A related point to the ‘private capacity’ issue arises where a complaint may be made, or relate to the work of, more than one body. This most usually occurs where a complaint is made to a council which alleges criminal activity, but it can also relate to a complaint which would also be a breach of the rules of another regulator or professional body.
82. There is a need for clarity as to how such cases should be dealt with. Where a matter has also been referred to the police in parallel by the complainant, or comes to the attention of the council because the police have received a complaint, the general presumption is that any police investigation will take precedence. There may, however, be allegations made to the council which could be of a criminal nature but which have not been referred in parallel to the police – for example, a failure to declare a Disclosable Pecuniary Interest at a meeting.
83. The Allerdale procedure currently says that, when an initial allegation is made which identifies criminal conduct the MO may refer it to the police. However, it cannot always be straightforward to identify criminal behaviour and in certain cases we are aware of the police are content for the matter to be dealt with more appropriately by the council as, in policing terms, it would be a relatively minor matter.

84. **We therefore recommend that Allerdale discuss this issue with its local police force with a view to drawing up a protocol between the police and the Council as to when the MO should refer matters on to the police and when the police would wish the Council to proceed with dealing with a matter in the first instance.**

85. Where an allegation relates to issues which could fall within the remit of another regulatory or professional body, it would be impractical to draw up protocols with each potential body but **we recommend that the Council adopts as part of its procedure that the MO should discuss the matter on a case-by-case basis with any relevant body how an allegation could be best proceeded with and which body should take the lead if necessary in carrying out a further investigation.**

Training

86. Another question which was raised with us through the course of our work was whether the existing training provided was adequate and covered the right areas and what steps could be taken to ensure members underwent training on conduct and governance issues. We have recommended that the Standards Committee take a greater role in looking at training provision, particularly where issues emerge from cases.

87. However, there are four issues which are common to most authorities we work with, some of which were raised with us at Allerdale, which the Council as a whole should consider:

- a) Attendance at training. It is our experience that not all members attend standards training. While training cannot be mandated we have worked with some authorities where group leaders make specific efforts to 'require' their members to attend, and the training will be re-run to ensure everybody does, and people's appointments to relevant roles will be dependent on them having undergone training on the Code and Principles of Public Life. **The political groups at Allerdale should consider taking a more proactive approach politically to ensuring councillors attend training and understand the system as part of their ensuring that the Council as a whole promotes and maintains high standards;**
- b) Training for parish councillors. While Allerdale can ensure that its own members receive adequate training, it is more difficult to ensure parishes have access to adequate training, because of cost, time and geographical considerations. However, training can help prevent problems down the line so investment in parish training by the district can in the long run prove cost-effective. CSPL have recommended that MOs are better resourced to support their parishes and **we suggest that the Council and the Cumbria Association of Local Councils review the availability and accessibility of parish training to see if they can improve its coverage;**
- c) Case involvement. Even where a councillor has attended training, there is still a feeling that, once they are party to a case, they need to be refreshed about how the arrangements work. While information is provided, there

- may be better scope for somebody to sit down with a member at the start of a case and talk the steps and likely timescale through; and
- d) The public as complainants. Inevitably members of the public who make a complaint will not have received training in understanding the Code or process. Again, while they are given information once a case has been submitted, there may be greater scope as at b) above for an officer to explain the steps and likely timescale face-to-face.

Code of Conduct

88. We also reviewed the Allerdale Code of Conduct. Broadly we find the Code clear and comprehensive though we do have some specific recommendations.
89. Codes of conduct can broadly be categorised as either 'principles-based' or 'rules-based'. Principles-based codes tend to be high-level and aspirational with very broad statements of modelled behaviour. A rules-based code tends to be more detailed with a set of 'do's' and 'don'ts'. The model codes produced in 2012 by the LGA and (the then) DCLG are broadly principles-based whereas the old national code, and Allerdale's own Code, are broadly rules-based.
90. Proponents of a principles-based approach argue that it is robust and flexible because it:
 - a) provides guidance that can be applied to the infinite variations in circumstances that arise in practice
 - b) can cope with rapid changes of the modern environment
 - c) prevents the development of a mechanistic, "box-ticking" approach to decision-making and the use of legalistic loopholes to avoid compliance with guidance
 - d) focuses on the spirit of the guidance and encourages responsibility and the exercise of professional judgement, which are key elements of professions
91. On the other hand, supporters of a rules-based approach argue that compliance with such a code is easier since the requirements are more prescriptive, less open to interpretation and leave little room for misunderstanding. Furthermore, rules-based approaches are easier to enforce as they set more measurable standards.
92. In practice of course, most codes blend a rules-based and principles-based approach. It is our experience that rules-based codes provide greater certainty and are easier against which to judge individual cases and we would therefore recommend that Allerdale continue with a rules-based approach.
93. In reviewing a code in detail, it should be considered in two parts: the first part sets out the behaviours expected in carrying out your role and interacting with

other people; and the second part sets out specific rules with regard to registration and declaration of interests when considering specific business.

94. Looking at the first part of the Code – the section on behaviour – the message we received was that the rules should continue to be short, simple statements where possible and that any further explanation needed should be contained in supporting guidance. We would endorse this approach and therefore believe that the ‘behaviour’ part of the Code should remain the same, with two exceptions as set out below.
95. Firstly, as referenced at para 45 above, CSPL has recommended that non-cooperation with an investigation should of itself be a breach of the Code. Given concerns that were raised with us about the length of time some cases take, coupled with the need for the Council to be seen to be taking standards seriously we would endorse that and therefore **recommend that failure to cooperate with a standards investigation should be added as a potential breach of the Code.**
96. We also heard specific concerns about the tone of some social media debate. While such matters are often outside the scope of the Code because they are not said in an official capacity, we have recommended at para 80 above that the Council should adopt a social media policy. **We also recommend that the Council consider whether the Code should say that members must have regard to the social media policy.** This would we think reinforce the message that the Council expects its members to conduct themselves respectfully at all times and does not condone the use of social media for bullying, abusive or threatening behaviour. This would be in line with recommendations made by CSPL that Government should legislate so that Councils could in future better regulate social media postings by members.
97. The second part of the Code relates to registration and declaration of interests. Here we think the Allerdale Code has a significant gap.
98. By law, all local codes have to contain provisions on Disclosable Pecuniary Interests (DPIs). These are a specific category of interests set out in regulation which have to be registered and where they crop up in a meeting, declared and the member barred from participating. These are a given and have therefore been directly reproduced in the Allerdale Code.
99. Those interests only relate to the member’s (and his/her partner’s) interests. Although the law is rather clumsily drafted it is also widely taken to mean that, for a declarable DPI to occur at a meeting the subject matter must be directly about that interest rather than something merely affecting it. A classic example of this would be your planning application is about your property and hence is a DPI but next door’s planning application is not directly about your property (though it may have some effect on it) and hence is not a DPI.
100. The current Code does not go beyond these narrow interests to cover other circumstances where a councillor would have a conflict of interest

(except for a category called 'other registerable interests' – see below). Classic examples of such an interest which are not captured by the DPI test are, as above an application next door, or an application made by one of your children. Under the Allerdale Code these interests are not captured and there is therefore no need for the member to declare any interest in matters which affect their family or close associates.

101. I should say that it is our experience from having done member training in Allerdale that in practice members do declare these interests (often referring to them as 'prejudicial interests' as they were called under the old national Code). However, it is important that there are clear rules so that all members know where they stand and the rules can be applied equitably. It is also our experience, from Allerdale and elsewhere, that in the absence of clear rules conscientious members can in fact often over-declare and take themselves away from matters where they or their close associates in fact have no financial stake but merely where they have some knowledge of the subject and they want to be 'whiter than white'.

102. Unlike the 'behaviour' rules it can be difficult to summarise interests provisions into just a handful of words. We have therefore not suggested specific drafting. However, essentially what we are saying is that where a matter directly relates to you (or somebody associated with you) you should not participate in the discussion; where the matter more indirectly affects somebody you would apply a test as to how far they are affected. That test is in effect the test used by the courts to determine actual or perceived bias. That is would a reasonable member of the public in full possession of the facts think that they are more affected than the majority and if so would that cloud your judgment of the public interest (or be perceived to do so)

103. There has always been a balance to be struck for councillors when declaring interests. On the one hand they recognise that they are in a privileged and influential position when considering local matters so should not misuse that position and should not be at a greater advantage than a member of the public when dealing with matters which affect them or their loved ones. However, at times they can feel disadvantaged. They may be unable to put forward a case at a meeting for something that affects them, whereas a member of the public could; and they may even be unable to advocate on behalf of their constituents' concerns because they happen to be affected personally as well. While the rules set out in the Localism Act on DPIs are absolute (without a dispensation) the Council should therefore seek to strike a balance for other interests by setting out when a member can speak on a matter before withdrawing – in a sense giving them the same but no more rights than a member of the public who might attend the open part of a meeting – and when they should absent themselves totally. Guidance could be used to explain in greater detail with some examples which rule would apply when but essentially the aim should be to ensure that public decisions are seen to be made in the public interest and where there are conflicting private interests a member's participation is restricted accordingly.

104. The other types of interests covered in the Allerdale Code are 'other registerable interests' – these go beyond the statutory minimum but reflect the practice in most councils and we believe they should be kept in the Code.

105. **We therefore recommend that the interests provisions in the Allerdale Code be expanded to make it clear that members should not make decisions where matters relate to or clearly affect their family members or close associates.**

106. Most of the parish councils within Allerdale have adopted the Allerdale model code. We agree that this is good practice as it allows a consistency of approach and guidance and ensures that members who sit at both district and parish level are covered by the same rules at all times. Indeed, CSPL have recommended to Government that it be made mandatory to have the same code applying across a district. **We therefore recommend that any changes made to the Allerdale Code would need to be effectively communicated and explained to the parish council sector.**

Culture and the role of political parties

107. The final area we have considered related to the wider duty on Councils to promote and maintain high standards. A council can have the clearest Code and most effective case handling process but it still needs to have a culture where standards are taken seriously, rules are followed and officers and members supported in enforcing those rules.

108. A common concern expressed was that standards appeared to be slipping in Allerdale and a more confrontational and disrespectful culture was developing. This can only be reversed with the support and cooperation of members, particularly leading members, to take standards seriously and promote a 'zero tolerance' culture towards poor behaviour.

109. We have made reference above to the political groups taking more responsibility for ensuring training is attended. We believe political groups also need to work with the officers to deal with misconduct. There seemed to be confusion between how group and party discipline and formal Council standards procedures connected and there was a concern from senior members that they did not receive enough information about their own members nor did they feel they had sufficient opportunity for cross-group discussions to address concerns about standards matters.

110. **We therefore recommend that group leaders and senior managers conduct a review of how their roles can support each other and what more could be done to promote high standards.** This could include reviewing whether there needed to be say a quarterly meeting between the Chief Executive and MO with group leaders to discuss matters of concern and how matters could be improved; greater informal sharing of case information so that group discipline could support the formal processes; and the

Standards Committee being better empowered to work proactively to address common concerns across the Council.

Conclusions

111. We believe the process Allerdale currently has in place is typical of the Localism Act arrangements we see and already contains some elements of good practice whilst reflecting some of the constraints imposed by the legislation. We therefore do not believe major overhaul in the mechanical steps of the process are needed, though we have made some significant recommendations. We do however believe that more detail is needed to support the top-line process to ensure it is sufficiently transparent, operated to a timely fashion and applied consistently. This should not mean that all cases, no matter their significance, have to go through long and bureaucratic processes before being concluded but rather that, whenever a decision-making point is reached in the process there is a clear timeline to be met and people are clear of the basis on which that decision has been made and there are clear guidelines as to how it will be communicated, with the Standards Committee taking a proactive overarching view of how the arrangements are working in practice and what lessons can be learnt.
112. The concerns expressed about the system at Allerdale from all we spoke to are in line with concerns we hear elsewhere about timeliness, independence and transparency/communication. In some ways, these concerns will always be around to a greater or lesser extent in any complaints-handling system as people will always want matters resolved more quickly than can sometimes be the case and will always have concerns about whether any in-house arrangement can be truly independent. However, there are ways in which these concerns can be mitigated. Effective and rigorous case management, coupled with a proactive approach to keeping the parties informed, is vital to help all sides feel they have had a fair hearing and that their case has been dealt with effectively and efficiently.
113. Many of the recommendations we have made, therefore, are less about the mechanics of the process and more about how the process can be managed more efficiently and the culture of the Council shaped to promote high standards. Allerdale's stated aim was to have an independent benchmark to help them have arrangements which reflect best national practice. We believe the package we propose will help Allerdale achieve that.

PAUL HOEY

NATALIE AINSCOUGH

Co-Directors

HOEY AINSCOUGH ASSOCIATES LTD

4 April 2019

LIST OF PEOPLE INTERVIEWED

Councillors

Cllr Tony Annison

Cllr Peter Bales

Cllr Nicky Cockburn

Cllr Joan Ellis

Cllr Marion Fitzgerald

Cllr Malcolm Grainger

Cllr Angela Kendall

Cllr Billy Miskelly

Cllr David Wilson

Cllr Janice Wood

Officers

Brendan Carlin

Lee Jardine

Gayle Roach

Sharon Sewell

Emma Thompson

Lindsey Tomlinson

Parish clerks

Chris Bagshaw

Sheila Brown

Jeff Downham

Angela Meek

Lynda Walker

Independent Person

Paul Burns

APPENDIX B

LIST OF RECOMMENDATIONS

Initial assessment of complaints

- 1. Delegation of initial decision-making on a complaint should continue to rest with the Monitoring Officer. (Para 19)**
- 2. Allerdale should specify that the MO need seek the views only of the Independent Person rather than the standards committee chair on an initial assessment; that these views do not need to be sought through a formal meeting; and that the IP's views be recorded as part of a decision letter. (Para 31)**
- 3. The initial decision on whether to take any action should be made against agreed published criteria and there should be a reserve power for the MO to recuse herself from taking decisions in certain agreed matters. (Para 32)**

Investigation of complaints

- 4. There should be agreed criteria as to when a case is to be outsourced.(para 37)**
- 5. Allerdale should adopt an agreed approach to tender for external investigations. (Para 38)**
- 6. The parameters and methodology of an investigation should therefore be clearly defined and agreed in advance (Para 42)**

Holding a hearing

- 7. Hearings should always be held by a sub-committee rather than the main committee (para 47)**
- 8. Group Leaders on the Council should agree a process for selecting membership for any future sub-committee. (para 48)**

Role of the standards committee

- 9. The Standards Committee should put in place an appropriate work programme to ensure promotion of high standards is at the core of the Council's values and work. (Para 52)**
- 10. The Committee should be consulted on member training programmes to ensure that the importance of the Principles of Public Life (the 'Nolan principles') is at the heart of the Council's work and the Council should produce an annual report, whether from the chair of the Committee or**

the Independent Person or jointly, to the Council on ‘the state of standards in the Council’. (Para 52)

The Independent Person

- 11. Allerdale should seek to appoint at least two IPs when it next recruits for the post. (Para 58)**
- 12. Where there are two IPs the Council should make clear who is the designated IP for each case and communicate that to all parties in a case, together with an explanation of their role and what they can and cannot express views on. (Para 60)**
- 13. Allerdale should put in place an IP protocol (Para 60)**

Communication issues

- 14. Allerdale should set out clear guidelines as to what communications will be made during any ongoing case. (Para 63)**
- 15. Once a decision has been made whether or not to take any further action, the Council needs to agree a policy as to what is communicated (Para 66)**
- 16. Where some other resolution has been reached without an investigation – for example, the member has accepted quickly that they acted wrongly and has made a full apology, the Council should consider whether this information is made public as well. (Para 68)**
- 17. The Council should make clear that the outcome of an investigation where a breach of the Code has been found will be made accessible to the public, for example through a case summary on the website and any relevant press statement, and consider how it wishes to deal with cases where the investigation has found there is no case to answer. (Para 70)**
- 18. While there is information on the Council website, and as we understand it further information is sent out to the parties involved once a complaint is being processed, we would recommend that this information is reviewed, including how easy it can be found in practice. (Para 72)**
- 19. With regard to the parties to a case (complainant or subject member) any review of communication should have particular emphasis on how they are communicated to. (Para 73)**

Councillors acting in a private capacity

20. The Council needs to be clear how 'private' matters are to be dealt with and how the Council will act in response to such matters. (Para 77)
21. The Council should be quite clear that, while it has no power to take any further action (except through political groups) where there has been a finding that behaviour has occurred which quite clearly affects the reputation of the council and falls far below the standards the public would expect from its elected officials, the Council disapproves of such behaviour. (Para 79)
22. The Council should adopt a social media protocol which lays down clearly the standards it would expect from members when they are posting on social media. (Para 80)

Overlapping jurisdictions

23. Allerdale should discuss with its local police force the drawing up of a protocol between the police and the Council as to when the MO should refer matters on to the police and when the police would wish the Council to proceed with dealing with a matter in the first instance. (Para 84)
24. The Council should adopt as part of its procedure that the MO should discuss on a case-by-case basis with any relevant body how an allegation could be best proceeded with and which body should take the lead if necessary in carrying out a further investigation. (Para 85)

Training

25. The political groups at Allerdale should consider taking a more proactive approach politically to ensuring councillors attend training and understand the system as part of their ensuring that the Council as a whole promotes and maintains high standards (Para 87)
26. The Council and the Cumbria Association of Local Councils should review the availability and accessibility of parish training to see if they can improve its coverage (Para 87)

Code of Conduct

27. Failure to cooperate with a standards investigation should be added as a potential breach of the Code. (Para 95)
28. The Council should consider whether the Code should say that members must have regard to the social media policy (Para 96)

29. The interests provisions in the Allerdale Code should be expanded to make it clear that members should not make decisions where matters relate to or clearly affect their family members or close associates. (Para 106)

30. Any changes made to the Allerdale Code should be effectively communicated and explained to the parish council sector. (Para 107)

Culture and the role of political parties

31. Group leaders and senior managers should conduct a review of how their roles can support each other and what more could be done to promote high standards. (para 111)