

Hearing Review Panel



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Friday, 17 January 2025 at 10.00 am
Witham Room - South Kesteven House,
St. Peter's Hill, Grantham. NG31 6PZ

Panel Members: Councillor Pam Byrd
Councillor Chris Noon
Councillor Peter Stephens
Councillor Sarah Trotter

Agenda

1. **Introductions**
2. **Election of Chairman**
The Panel to elect a Chairman for the Hearing.
3. **Declarations of Interests**
4. **To consider any requests for the exclusion of the Press and Public**
5. **Councillor Code of Conduct Hearing – Councillor Graham Jeal v Councillor Steven Cunnington** (Pages 3 - 92)

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**SOUTH
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Friday, 17 January 2025

Report of Graham Watts, Monitoring
Officer

Councillor Code of Conduct Hearing Councillor Graham Jeal v Councillor Steven Cunnington

Report Author

Graham Watts, Assistant Director (Governance and Public Protection) and Monitoring Officer

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Purpose of Report

This report provides the Hearing Review Panel with information relating to three complaints by Councillor Graham Jeal against Councillor Steven Cunnington which are the subject of a Hearing, in accordance with the Council's procedure for dealing with complaints against Councillors.

Information within the report has been redacted because of the likelihood information that is exempt under paragraph 1 of Schedule 12A of the Local Government Act 1972 (as amended) will be disclosed and is considered not to have passed the public interest test. This is due to contents including personal information not relevant to the case under consideration or personal information relating to other third parties. The press and public may be excluded from the meeting should any of this redacted information be referenced or relied upon as part of proceedings.

Recommendations

That the Hearing Review Panel:

- 1. Determines whether or not a breach of the Councillor Code of Conduct has occurred.**

2. Determines what sanctions to impose, if any, should a breach of the Councillor Code of Conduct have occurred.

Decision Information

Does the report contain any exempt or confidential information not for publication?	Yes
What are the relevant corporate priorities?	Effective council
Which wards are impacted?	Not applicable

1. Background to the Report

- 1.1 The Council has a procedure in place for dealing with complaints against Councillors, which is included as part of the Council's Constitution at Part 5 (Codes and Protocols).
- 1.2 Any complaint received by the Council regarding the conduct of its Councillors will be dealt with in accordance with this procedure.
- 1.3 The complaints scheduled for consideration at this Hearing were submitted by Councillor Graham Jeal against Councillor Steven Cunningham.
- 1.4 In accordance with the Council's procedure, the complaints were referred for formal investigation.
- 1.5 Wilkin Chapman LLP were appointed by the Monitoring Officer to conduct the formal investigation relating to these complaints. Given the similarities between the three complaints, they were amalgamated into one investigation.
- 1.6 The Investigating Officer has found that Councillor Steven Cunningham acted in breach of the Councillor Code of Conduct in terms of treating others with respect and failing to co-operate with a Code of Conduct investigation.
- 1.7 The Monitoring Officer determined, in consultation with the Council's Independent Persons, that this finding be referred to a Hearing and that this would be heard by a Hearing Review Panel.

2. Key Considerations

- 2.1 The final report from the Investigating Officer at Wilkin Chapman LLP is attached to this covering report for the Hearing Review Panel's consideration at **Appendix A**. This is supported by a schedule of evidence document which is attached at **Appendix B**.

- 2.2 As stated under the 'purpose of report' section of this covering report, there are a number of redactions in the Investigating Officer's report and schedule of evidence. This is due to the fact that these do not relate to the specific matter that has been referred to the Hearing Review Panel or contain personal information relating to other third parties.
- 2.3 In addition to the Investigating Officer's report, the Hearing Review Panel is requested to give due consideration to further evidence attached at **Appendix C** regarding Councillor Cunningham's conduct, which has been brought to the attention of the Monitoring Officer since submission of the final Investigation Officer's report. This relates to a number of comments and posts published on social media during this investigation and other Code of Conduct complaint investigations currently ongoing, the details of which at the time were confidential.
- 2.4 The procedure to be followed for this Hearing is outlined in the Council's procedure for dealing with complaints against Councillors. This is set out in **Appendix D** of this report.

3. Appendices

Appendix A – Investigating Officer's report

Appendix B – Schedule of evidence

Appendix C – Additional evidence from the Monitoring Officer

Appendix D – Procedure for Hearing

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Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for South Kesteven District Council, into allegations concerning Councillor Steven Cunnington.

5 November 2024

VOLUME 1 REPORT

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Appendix A Schedule of evidence taken into account and list of unused material

1. Executive Summary

- 1.1 The Subject Member, Councillor Steven Cunnington, is a member of South Kesteven District Council ("the Council"). He is a member of the Grantham Independent group representing Earlesfield ward. He is a member of the alliance of independent members and groups which is the Administration of the Council.
- 1.2 The Complainant, Councillor Graham Jeal, is also a member of the Council. He is a member of the Conservative group which forms part of the South Kesteven Coalition which is in opposition.
- 1.3 Councillor Jeal submitted three different complaints against Councillor Cunnington alleging that he had not adhered to the Nolan principles of public life, had been disrespectful towards Councillor Ben Green, had added to the bullying and intimidatory atmosphere and had brought the Council and his office into disrepute.
- 1.4 In August 2023, the Committee for Standards in Public Life (CSPL) responded to a Freedom of Information (FOI) request. The request asked for the process by which someone could raise a complaint that a government department or other public body had breached the Nolan Principles.
- 1.5 In response to the FOI, the CSPL stated that they held no information in the scope of the request because:

"the Seven Principles of Public Life are intended to be high level statements and there is no formal mechanism for holding people to account under those principles. The Principles are not a rulebook. They are a guide to institutional administration and personal conduct. It is organisations' codes of conduct against which complaints may be made so if you wish to hold an individual to account or make a complaint about an individual's behaviour, this would be done against the relevant organisation's code of conduct."
- 1.6 This statement from the CSPL means that, although the Nolan Principles underpin the Code of Conduct, a claim cannot be made that a councillor is in breach of the Nolan Principles. A claim of breach must be related to the behaviours listed in the Code of Conduct. Therefore, we have considered the issues of disrespect, bullying and disrepute.
- 1.7 Following investigation, we have concluded that Councillor Cunnington:
 - (a) did fail to treat others with respect;
 - (b) did not bully another person;
 - (c) did not bring his office and/or the Council into disrepute;
 - (d) did fail to cooperate with a Code of Conduct investigation.

2. Councillor Cunnington's Official Details

2.1 Councillor Cunnington was first elected to the Council on 9 May 2023. He is a member of the Grantham Independent group representing Earlesfield ward. He is a member of the alliance of independent members and groups which is the Administration of the Council.

2.2 At the time of alleged conduct, Councillor Cunnington sat on the following committees:

- Alcohol, Entertainment & Late Night Refreshment Licensing;
- Budget – Joint Overview and Scrutiny;
- Community Governance Review Working Group;
- Environment Overview and Scrutiny;
- Licensing; and
- Rural and Communities Overview and Scrutiny (Vice-Chairman).

2.3 At the time of preparing this report, Councillor Cunnington has not attended Code of Conduct training in either 2023 or 2024. In 2024, he has completed the following training:

- 17/06/2024 – Equalities, Diversity & Inclusion;
- 10/06/2024 – Safeguarding;
- 20/05/2024 – Licensing Committee Annual Refresh Training.

3. Relevant Legislation and Protocols

- 3.1 Section 27 of the Localism Act 2011 (“the Act”) provides that a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.
- 3.2 Under section 28(6) of the Act, principal authorities (which includes district councils) must have in place (a) arrangements under which allegations can be investigated; and (b) arrangements under which decisions on allegations can be made.
- 3.3 Under section 28(7), arrangements put in place under section 28(6)(b) must include provision for the appointment by the authority of at least one Independent Person (“IP”) 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.
- 3.4 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.
- 3.5 The Council has adopted a Code of Conduct (attached at WC 1) which includes the following:

“General Conduct

1. Respect

As a Councillor:

1.1 I treat other Councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas and opinions and policies in a robust but civil manner.

You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public’s expectations and confidence in Councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider, or the Police. This also applies to fellow Councillors, where action could then be taken under the Members’ Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority’s councillor officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

.....

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

5. Disrepute

As a Councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

8. Complying with the Code of Conduct

As a Councillor:

...

8.2 I cooperate with any Code of Conduct investigation and/or determination

...

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer."

- 3.6 We have also considered other relevant legislation as follows:
- 3.7 Freedom of Expression and Article 10 of the European Convention on Human Rights 1998
- 3.8 Article 10 of the European Convention on Human Rights (Article 10 ECHR) states:
- Art 10(1) *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority...”*
 - Art 10(2) *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society...”*
- 3.9 Article 10 ECHR has been enshrined in UK domestic law by Section 1 of the Human Rights Act 1998 (HRA 1998) and Section 3 of the HRA 1998 states that the Act must be interpreted as far as possible so that it is in line with Article 10 ECHR.

4. Background and Evidence

Our appointment

- 4.1 The Council's arrangements for dealing with code of conduct complaints provide that Monitoring Officer ("MO"), in consultation with the appointed Independent Person (IP), shall decide whether or not to investigate a complaint.
- 4.2 Councillor Jeal submitted three complaints against Councillor Cunningham.
- 4.3 In respect of the first complaint (attached at WC 2), on 2 April 2024, having consulted with two IPs, the MO issued his Decision Notice (attached at WC 3). The Decision Notice confirmed the MO's decision to refer the complaint for investigation.
- 4.4 In respect of the second complaint (attached at WC 4), on 20 May 2024, having consulted with two IPs, the MO issued his Decision Notices (attached at WC 5). The Decision Notice confirmed the MO's decision to refer the complaints for investigation.
- 4.5 In respect of the third complaint (attached at WC 6), on 20 May 2024, having consulted with two IPs, the MO issued his Decision Notice (attached at WC 7). The Decision Notice confirmed the MO's decision to refer the complaints for investigation.
- 4.6 On 28 May 2024, the MO instructed Wilkin Chapman LLP to conduct an investigation into the complaint.
- 4.7 Wilkin Chapman LLP is a solicitors' firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Estelle Culligan, Gill Thompson, and Emily Briggs.

The investigation

- 4.8 During the investigation we undertook formal interviews with:
 - Councillor Jeal (the Complainant); and
 - Councillor Green; and
- 4.9 We obtained signed statements from Councillor Jeal (attached at WC 8) and Councillor Green (attached at WC 9).
- 4.10 We emailed Councillor Cunningham on 18 June, 3 July and 17 July to request an interview with us. However, he has not responded to our correspondence. Copies of our correspondence are attached at WC 10.
- 4.11 The MO wrote to Councillor Cunningham on 1 August 2024 asking that he contact the investigators and reminding him that a lack of co-operation with the investigation could also be a breach of the Code of Conduct. This email is attached at WC 11. The MO has confirmed that Councillor Cunningham did not reply.
- 4.12 Copies of the above, together with other relevant documents are annexed to this report.

- 4.13 We wish to record our thanks for the co-operation and courtesy shown to us by Councillor Jeal and Councillor Green. We regret that Councillor Cunningham did not assist us in the investigation.

Complaint 1 – Liking the comment referring to ‘self-promoting Pratt’

- 4.14 On 2 March 2024 Councillor Green put a post on Facebook containing a video clip of a bird surrounded by litter with the words:

*“Sad to see South Kesteven Greens refusing to support wildlife near the A1.
🐣🌿*

Despite this setback, I’m proud to have seconded a successful amendment to the Budget, securing £60,000 to clean up the A1 and protect our environment. The new reserve will be called the ‘Clean the A1’ reserve. 🌍💚

Local Greens, along with Labour, Liberals, and most Independents, either abstained or voted against this. Shameful. 😞👉

- 4.15 The clip is a video prepared by National Highways with the title, “Let’s Talk About Litter”. It is about the harm caused to wildlife by dropped and discarded litter. It includes shots of animals harmed by or trapped in litter and refers to statistics about the numbers of animals harmed, including by wandering onto roads to eat litter and being run over and killed. The link to the post and video is at <https://fb.watch/sPP8MBG0qs/>.

- 4.16 Councillor Baxter commented on the post, saying:

“Ben, Could you please explain why you voted AGAINST the overall budget which included the employment of a Tree Officer post, £700,000 for void repairs, financial support for our play parks and leisure centres and the creation of a reserve for litter-picking on the A1?”

- 4.17 A member of public replied to Councillor Baxter’s post by saying:

“Ashley Baxter the answer is simple, he is a self-promoting Pratt and very selective with the truth. Had he ever achieved anything as a councillor.”

- 4.18 Councillor Cunningham liked the comment, resulting in Councillor Jeal submitting a complaint against Councillor Cunningham on 6 March 2024.

- 4.19 In his complaint, Councillor Jeal stated:

“I would like to place a code of conduct complaint against [REDACTED] and cllr Cunningham for liking the comment describing cllr Green as a “self-promoting pratt and very selective with the truth” in the attached social media post.

In accepting the role of councillor we all agree to follow the South Kesteven District Council Code of Conduct which incorporates the Nolan Principles. I believe that this post is in breach of 5 of the 7 Nolan Principles. Namely:

- **Selflessness:** Holders of public office should act solely in terms of the public interest.

It is not in the public interest to stoke hate speech in the general public. Describing a legitimately elected councillor as a “Self promoting pratt” is a slur

against the character of a fellow councillor. By liking this comment, [REDACTED] and cllr Cunnington have promoted and given authority to this level of discourse in the public.

- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

There is no evidence for the comment “selective truth” comment and the aim of liking such a social media post shows a lack of integrity and decency.

- **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

By liking this post which includes clear hate speech “self-promoting pratt” directed toward an individual councillor, [REDACTED] and cllr Cunnington have deliberately promoted bias and discrimination against a fellow councillor.

- **Honesty:** Holders of public office should be truthful.

By liking this comment without supplying any evidence for the substance of what is being claimed, [REDACTED] and cllr Cunnington have been deliberately dishonest in an attempt to slur the reputation of a fellow councillor.

- **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

[REDACTED]

I know you will attend this this [sic] urgently, I reserve the right to present a copy of this complaint to the press – but I am sure that you will understand that I consider this behaviour unbecoming of a councillor and should be attended to immediately.”

4.20 Councillor Cunnington sent an initial response to the MO. He stated:

“Given recent events regarding this post and the second complaint I’ve yet to send you.....I think it speaks for itself. Is the Resident right? Has Cllr Green behaved like a “Pratt” ? Was the post “Self Serving” ? I would suggest he and it was! I did ask for the post to be removed before it could cause any Reputational damage to other councillors which it now unfortunately has!. I would consider myself a “ Self serving Pratt” if I had posted something which would and could cause Reputational damage to other councillors ? Yes! I would. Also the complaint holds no ground and I do not recognise it, as it is based on the “Code of conduct” Something we have had confirmed as not being worth the paper it is written on given Cllr Jeal can Publicly insult a Female Councillor in the chamber and not be held to account. The code and insults are clearly subjective. I reserve the right to “like” anything and everything on facebook.”

4.21 Councillor Green’s post of 2 March 2024 is attached at page 19 of the Schedule of Evidence. Councillor Baxter’s and the member of public’s comments are attached at page 18 of the Schedule of Evidence.

4.22 This incident was referred for investigation by the MO.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

4.23 On 1 May 2024 Councillor Green posted, on Facebook, a link to a Lincsonline article which contained a picture of Councillor Patsy Ellis. Councillor Green wrote:

"Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Green Party. Did she jump before she was binned? 😊"

4.24 Councillor Cunningham commented on Councillor Green's post. He stated:

"What a vile disrespectful piece of garbage you really are Ben !! What do you know about Cllr Ellis and her person[al] life or me[n]tal health ?? Have you given any consideration to this ? ...I think not !! Given your obvious low intellect !! and FYI if you don't report my commentI'll be very disappointed !!! You vile disrespectful fool !!!"

4.25 Councillor Jeal submitted his complaint on 8 May 2024. In his complaint, Councillor Jeal stated:

"I would like to make a code of conduct complaint against cllr Steve Cunningham because of the attached social media post where her [sic] refers to cllr Green as a "vile disrespectful piece of garbage" and "you vile disrespectful fool". In my view this is a breach of the code of conduct and the Nolan principles in general which advises members to act with respect in their communications with other members.

The attached social media post was made in response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The communication came through at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Greens question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public."

4.26 Councillor Green's post of 1 May 2024 is attached at page 26 of the Schedule of Evidence. Councillor Cunningham's comment is attached at page 25 of the Schedule of Evidence.

4.27 This incident was referred for investigation by the MO.

Complaint 3 - Responding to member of public comment 'You disgusting little turd'

4.28 Complaint 3 also relates to Councillor Green's Facebook post of 1 May 2024 about a Lincsonline article which contained a picture of Councillor Patsy Ellis. (attached at page 26 of the Schedule of Evidence).

4.29 A member of public commented on the post to say:

"You disgusting little turd.

No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!!

Vile man."

4.30 Councillor Cunnington responded to the above comment to say:

"Well said [REDACTED] 👍"

4.31 Councillor Jeal submitted his complaint on 8 May 2024. He stated:

"I would like ot[sic] make a complaint as I believe that the council code of conduct complaint was breached by the attached social media post by cllr Cunnington. In the attached social media post a member of the public describes cllr Green as a "Disgusting little turd" to which cllr Cunnington response "Well said". This in my view is a breach of treating fellow councillors with respect and a breach of several of the Nolan principles. [REDACTED]

The attached social media post was a response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The new of Cllr Ellis removal from this post was emailed at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Greens question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public."

4.32 Councillor Cunnington submitted an initial response to the MO. He stated:

"I totally understand Your only doing your job, but I don't recognise the complaints as I don't recognise Ben Green as a Councillor until he takes action to correct his vile behaviour on social media. Ben Green must remove all posts from his social media which have without doubt caused reputational damage and distress. For Graham Jeal to suggest Ben Greens post was a harmless question is outrageous!, he was quite obviously mocking a Person and Cllr whilst they were at a low point. The post is disrespectful and shows a complete lack of compassion for Cllr Ellis and until removed I remain resolute in my stance that I don't recognise Ben Green, therefore I can't recognise any complaints."

4.33 This incident was referred for investigation by the MO.

Councillor Cunnington

4.34 We initially wrote to Councillor Cunnington on 18 June 2024 seeking his availability to speak with us. Councillor Cunnington did not respond.

4.35 We then wrote to him again on 3 July and 17 July 2024. Again, Councillor Cunnington did not respond to us.

- 4.36 The MO wrote to Councillor Cunningham on 1 August 2024 asking him to contact investigators. However, at the time of preparing this report, we have not been contacted by Councillor Cunningham.

5. Councillor Jeal and Councillor Cunningham's Additional Submissions

5.1 No comments were received from Councillor Jeal on the draft version of this report.

5.2 No comments were received from Councillor Cunningham on the draft version of this report.

6. Reasoning as to whether there have been failures to comply with the Code of Conduct

- 6.1 The relevant sections of the Code and of the relevant protocols which fall to be considered are set out in Section 4 above.

Capacity

- 6.2 Section 27(2) of the Localism Act 2011 requires the Authority to adopt a Code of Conduct dealing with the conduct that is expected of members of the Council “when they are acting in that capacity”.
- 6.3 The Council’s Code of Conduct reflects the requirement of Section 27(2) of the Localism Act.
- 6.4 The Council’s Code is expressed to apply whenever a member is acting in their capacity as a Councillor. We therefore first have to consider whether Councillor Cunningham was acting in an official capacity at the time of the alleged incidents.
- 6.5 The Local Government Association Guidance on the Model Code of Conduct (“the LGA Guidance”) states that:

“The Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *You misuse your position as a councillor*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.*

This means it applies when you are carrying out your official duties, for example when you are considering or discussing local authority business, either as a councillor or representing the local authority on an outside body.

...

The code does not, therefore, apply solely when you are in local authority meetings or on local authority premises.

The code applies to all forms of communication and interaction, including:

- *At face-to-face meetings*
- *At online or telephone meetings*
- *In written communication*
- *In verbal communication*
- *In non-verbal communications*
- *In electronic and social media communication, posts, statements, and comments.*

The includes interactions with the public as well as with fellow councillors and local authority officers.”

- 6.6 Councillor Cunningham’s Facebook page is under the name “Cllr Steven Cunningham Earlesfield”. The introduction reads “SKDC Councillor.”

- 6.7 It is clear from the LGA Guidance that this alone does not mean that Councillor Cunningham was acting in his capacity when posting on Facebook:

“Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to local authority business.”

- 6.8 However, Councillor Cunningham is responding to posts/comments which relate to Council business. Councillor Cunningham’s comments also relate to a fellow councillor.
- 6.9 We have therefore concluded that Councillor Cunningham was acting in his official capacity and is therefore subject to the Code of Conduct.

Respect

- 6.10 The definition of Respect in the Code is set out above in paragraph 3.5. We have considered the Local Government Association Guidance (LGA Guidance) and relevant case law below.
- 6.11 When describing ‘Disrespectful Behaviour’ the LGA Guidance states:

“Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.

Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

Disrespectful behaviour can be harmful to both you and to others. It can lower the public’s expectations and confidence in you and your local authority and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a local authority, and ultimately create a toxic culture and has been associated with instances of governance failure.”

- 6.12 The requirement to treat others with respect must be viewed objectively. Account should be taken of the member’s intent and how their behaviour would reasonably be perceived.
- 6.13 In *Boughton, Dartmouth Town Council* (2009) APE 0419 at paragraph 3.3.6, the Tribunal described a failure to treat with respect as follows:

“A failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour including the place, who observed it, the character and relationship of the people involved will all be relevant in assessing whether the behaviour was disrespectful.”

- 6.14 In *Buchanan, Somerset County Council* (2009) APE 0409, in relation to a complaint made by a chief executive, the Tribunal said at paragraph 51:

“In the Tribunal’s view it was desirable that the threshold for a failure to treat another with respect be set at a level that allowed for the minor annoyances and on occasions bad manners which are part of life. During the course of their work people often show a lack of consideration or bad manners but it is not desirable that every such slight should be considered a breach of the Code. To set too low a level might lead to complaints that were about little other than a difference of opinion over the wording of a letter or what amounts to rudeness and for this reason the Tribunal thinks that not every instance of bad manners or insensitive comment should amount to a failure to treat another with respect.”

- 6.15 The key elements of finding a failure to treat others with respect are that the conduct is unreasonable or demeaning and directed by one person against another.

- 6.16 The LGA Guidance states that disrespectful behaviour is *“when unreasonable or demeaning behaviour is directed by one person against or about another.”*

- 6.17 The Oxford dictionary definition of ‘unreasonable’ is:

“beyond the limits of acceptability or fairness”

- 6.18 The Oxford dictionary meaning of ‘demeaning’ is:

“causing someone to lose their dignity and the respect of others.”

Freedom of Speech and the right to enhanced protection in freedom of speech within political comment - Article 10 European Convention on Human Rights

- 6.19 It is important to have regard to the right to freedom of speech as set out in Article 10 of the European Convention on Human Rights (Article 10 ECHR) above.

- 6.20 A number of European court cases have established not only the right to free speech but also an enhanced level afforded to freedom of speech in a political context, and that any interference with that freedom should be carefully scrutinised.

- 6.21 The case of *Jerusalem v Austria* (2003) 37 EHHR 25 held that:

“In this respect the court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to its pre-occupations and defends its interests. Accordingly, interference with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the court.”

- 6.22 The case of *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504, held that:

- *“Article 10 of ECHR protects not only the substance of political comment but the form in which it is conveyed;*
- *a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non-rational and aggressive is to be tolerated;*
- *political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;”*

6.23 In *Sanders v Kingston (No.1) [2005] EWHC 1145 (Admin)* the original tribunal held that, in the Leader of Peterborough Council’s responses to a letter circulated by Carrickfergus Council to other councils in the UK asking for support on a particular issue relating to the personal tragedy of soldiers’ suicides, his comments and other comments made publicly, amounted to personal abuse.

6.24 In summary, the facts were that the leader wrote a response on a letter passed to him by the Chief Executive, in response to a request made by Carrickfergus Council.

6.25 Councillor Sanders wrote a handwritten note on a copy of the letter and returned it to the Carrickfergus Chief Executive as follows:

“Members of the Armed Forces DO get killed be it accident or design — THAT is what they are paid for.”

6.26 He then signed the comment and identified himself as Leader.

6.27 There were further exchanges between the Leader of Carrickfergus Council and Councillor Sanders, the matter was leaked to the press and Councillor Sanders continued to make highly offensive comments. Councillor Sanders also used aggressive and rude language in various conversations with journalists covering the story.

6.28 During the investigation into the subsequent Standards complaint against Councillor Sanders, he claimed that Article 10 was engaged and that he was exercising his right to free speech.

6.29 The Standards Board for England found that Councillor Sanders had breached the Code of Conduct both in his written comments and in his conversations with journalists.

6.30 In Councillor Sanders’ appeal, the judge stated that, on the issue of freedom of speech, there were three questions to answer:

- “1. *Was the Case Tribunal entitled as a matter of fact to conclude that Councillor Sanders’ conduct was in breach of the Code of Conduct ?*
2. *If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10 ?*
3. *If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2) ?”*

- 6.31 The appeal held that, on the first point, the Standards Board were entitled to conclude that Councillor Sanders was in breach. The tone and disrespectful nature of his comments on the letter and subsequently and in interviews with journalists was not what would be expected of a council leader. The court held also that, on the second point, Article 10 was engaged because of the issues of free speech, but Councillor Sanders' comments were not expressions of political opinions that attracted the higher protection afforded by article 10. They were simply expressions of personal anger and abuse.
- 6.32 On the final point, the court considered whether the restrictions imposed on Councillor Sanders were justified under Article 10 (2) – i.e. *necessary in a democratic society for the protection of the rights of others*. The court held that the adoption of a Code of Conduct was required by law and ensured a minimum set of standards in councillors' conduct. Councillor Sanders had signed up to the council's Code of Conduct and, as his actions and words were not held to be expressions of political opinion, the interference in his right to freedom of speech, by the finding of the Standards Board that he was in breach, was justified under Article 10(2).
- 6.33 The three part test was applied in the case of (*Calver*) v *Adjudication Panel for Wales* (2013). This was a judicial review case in which a councillor sought judicial review of the decision of a county council's standards committee which found that comments he made about the community council and its members on the internet failed to comply with paragraphs 2(b) and 4 of the Code of Conduct by, respectively, not treating others with respect, and bringing the community council into disrepute.
- 6.34 The court adopted the three questions identified in *Sanders v Kingston* and found that the committee and the panel were entitled to conclude that the councillor's comments breached the Code of Conduct.
- 6.35 In answering the second and third questions, the court concluded that the panel's decision that the councillor's comments were in breach of the Code of Conduct was a disproportionate interference with his rights under Article 10.
- 6.36 The approach was also adopted in the recent case of *R (on the application of Clive Robinson) v Buckinghamshire Council* (2021), when the court held that a finding by a local authority monitoring officer that a parish councillor had breached a code of conduct by making statements about the motivations, intentions and integrity of the other councillors at a public meeting to discuss green belt development had been an interference with his right to freedom of expression under ECHR Art.10. His statements attracted the enhanced protection afforded to political speech and debate, and the interference was not proportionate to the aim of protecting the reputation of the other councillors.
- 6.37 As each matter is relatively small – i.e. three comments/actions on three individual social media posts, we have set out the respective comments from Councillor Jeal and Councillor Green on the three complaints below and have then set out our reasoning as to whether we find any or all of them to have breached the Code of Conduct. As stated above, except for his initial comments on the complaint, Councillor Cunningham has not spoken to us nor commented further.

Complaint 1 – Liking the comment referring to 'Self-promoting Pratt'

- 6.38 In his statement, Councillor Jeal states:

“To ‘like’ a comment is an endorsement of that comment. It is agreeing with it. When Jeremy Corbyn was Leader of the Labour Party a post went out saying he was a supporter of terrorism. He commissioned a legal firm to go after as many people as possible that liked that post. The case law as I understand it is that liking is endorsement.”

6.39 In his statement, Councillor Green states:

“Since late May, I have been Deputy Leader of the Conservative Group. There is an aspect to which we think about being in opposition and getting our distinctive message out. Being in opposition is inherently tough, you’re not the administration so don’t have responsibility and your quotes aren’t going in official Council press releases. To try and compensate for that disadvantage I have used Facebook to communicate quickly and directly to residents to get our message across.

First and foremost, it is about putting across a counter narrative. There is an expectation from the public that we hold the administration to account. It is important for democracy for rival opinions to be put across. It is something I feel my residents would expect me to do, I don’t believe they would feel I was doing a good job if I did not hold the administration to account.

...

I believe a lot of the people who have commented on my social media posts are supports of many of the Alliance councillors.... By liking comments made by members of the public, I consider Councillor Cunningham endorsed that point of view. Liking a comment is almost equivalent to Councillor Cunningham saying it himself.”

6.40 We have seen two versions of what it means to ‘like’ something on Facebook. One version states:

“What’s the difference between like and love on Facebook?

“Liking” content on Facebook means that you acknowledged what someone said without feeling strongly about the subject...”

6.41 In his Decision Notice, the MO states:

“According to www.facebook.com/help in asking the question “what does it mean to ‘like’ something on Facebook?”, it states: Clicking Like below a post on Facebook is a way to let people know that you enjoy it without leaving a comment... I am aware that there are other interpretations of definitions associated with ‘liking’ comments on social media. My interpretation, from the perspective of a reasonable member of the public, is that ‘liking’ something on Facebook is endorsing or supporting it.”

Complaint 2 – Councillor Cunningham’s comments “What a vile disrespectful piece of garbage you really are Ben !!” and “You vile disrespectful fool !!!”

6.42 In his statement, Councillor Jeal states:

“Councillor Cunningham’s comment has been edited. The original posting was ‘vile disrespectful, odious turd’ which was then toned down. In what world is

that acceptable language? I have just not entered the world where that is acceptable discourse. If it had been said in a corridor it would have been bad enough, but to broadcast it on the internet? I have never yet worked in a world where that is acceptable kind of language. It is as clear a breach of several of the Nolan principles about standards in public office as you will find. There does seem to be a pattern here, Councillor Cunningham generally follows [REDACTED] lead."

6.43 In his statement, Councillor Green states:

"Councillor Cunningham's comment is a personal attack on me, it is not an example of robust political debate. Nor are the comments made by members of the public."

Complaint 3 – Responding to the member of the public's comment 'You disgusting little turd'

6.44 In his statement, Councillor Jeal states:

"That comment [by the member of public] is describing Councillor Green as 'disgusting little turd' and 'vile man'. In responding to the member of public's comment, Councillor Cunningham clearly endorses the comment and agrees with the member of public's view of Councillor Green."

6.45 In his statement, Councillor Green states:

"I believe a lot of the people who have commented on my social media posts are supporters of many of the Alliance councillors. There has been a pile on effect when the councillors have incited their followers to view my Facebook page. The comments being made were very persistent and repetitively negative and, I believe, crossed a line in terms of basic decorum."

6.46 We have considered the three social media posts/comments under the three part test in *Sanders v Kingston*, as follows:

1 Is the conduct a breach of the Code of Conduct?

Complaint 1 – Liking the comment referring to 'self-promoting Pratt'

6.47 We have considered two issues in relation to this complaint: firstly, that Councillor Cunningham did not make the comment himself; secondly that he only 'liked' the comment. The comment accusing Councillor Green of being a "self-promoting pratt" is clearly disrespectful towards Councillor Green by a member of the public, although it is quite a mild insult, and most people use the word 'pratt' in a humorously insulting way.

6.48 In considering the two interpretations of 'liking' a post, we find that it is not relevant whether the meaning is simply to acknowledge, or to show support for, the comment. Most ordinary members of the public would associate a thumbs up 'like' as a positive symbol and so most people would assume that Councillor Cunningham was at least, in favour of the comment. Although a mild insult, it is an insult nevertheless and, in that respect, is disrespectful towards Councillor Green and therefore we find that Councillor Cunningham's 'like' is also disrespectful.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

6.49 As can be seen in *Heesom*, a degree of the *"immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non-rational and aggressive is to be tolerated"*.

6.50 However, *Heesom* goes on to state:

"political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;"

6.51 Applying the guidance set out in *Sanders v Kingston*, it is evident that Councillor Cunningham's comments could be a breach of the Code of Conduct. His comments are directed at Councillor Green. Councillor Cunningham's language is offensive, demeaning and unreasonable.

Complaint 3 – Responding to member of public comment 'You disgusting little turd'

6.52 We note that Councillor Cunningham only 'likes' this comment and comments briefly *"Well said [REDACTED]"*. We also note that the comment was wider than simply this phrase. The rest of the comment states:

"No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!! Vile man."

6.53 Similarly to complaint 1, we have considered two issues in relation to this complaint: firstly, that Councillor Cunningham did not make the comment himself; secondly that he only 'liked' the comment and made a very brief – albeit supportive - response. The member of the public's comment is clearly disrespectful towards Councillor Green, although most of the comment is directly commenting on Councillor Green's opinion of Councillor Ellis, therefore it is a comment about a political issue. The comment is also from a member of the public, not from Councillor Cunningham himself. Clearly, however, the phrases "disgusting little turd" and "vile man" are disrespectful towards Councillor Green. Whatever the meaning of a 'like', it is also clear that Councillor Cunningham's comment *"Well said [REDACTED]"* is a clear endorsement of the whole comment.

2 Are the findings in themselves or the imposition of a sanction prima facie a breach of Article 10 ?

6.54 Article 10 is clearly engaged, as these matters involve issues of freedom of expression. We have considered whether the posts are political and conclude, for the following reasons, that they are.

Complaint 1 – Liking the comment referring to 'self-promoting Pratt'

6.55 We have stated that the comment, "self-promoting pratt" is mild. We have taken into account the judgement in the case of "Calver", in which Judge Beatson stated:

"it is important to keep in mind their particular facts. Notwithstanding the high importance of freedom of expression and its relative incommensurability with the interests that are invoked in justifying a restriction, the more egregious the conduct, the easier it is likely to be for the Panel, and for the court, to undertake

the balancing that is required and justifiably to conclude that what was said or done falls within one of the exceptions to freedom of expression under common law, statute or the Convention. If the conduct is less egregious, it is likely to be more difficult to do this. This is because the interests – freedom of expression and, in the present context, proper standards of conduct by members of local authorities, are not easily commensurable.”

- 6.56 We take this to mean that, the milder the conduct, the less likely it is that there should be a restriction on freedom of speech. In this case, the comment is mildly offensive, and Councillor Cunningham has ‘liked’ it. It is evident that Councillor Cunningham and Councillor Green, in the Administration and Opposition respectively, will have opposing views and may – as in this case – not like each other.

- 6.57 Councillor Green states, in his statement on this issue:

“I believe a lot of the people who have commented on my social media posts are supporters of many of the Alliance councillors. There has been a pile on effect when the councillors have incited their followers to view my Facebook page. The comments being made were very persistent and repetitively negative and, I believe, crossed a line in terms of basic decorum.

By ‘liking’ that comment I consider Councillor Cunningham endorsed that point of view. Liking a comment is almost equivalent to Councillor Cunningham saying it himself.”

- 6.58 However, Councillor Green also states that he uses Facebook as an effective form of publicity as an opposition member, to challenge the Administration:

“Since late May, I have been Deputy Leader of the Conservative Group. There is an aspect to which we think about being in opposition and getting our distinctive message out. Being in opposition is inherently tough, you’re not the administration so don’t have responsibility and your quotes aren’t going in official Council press releases. To try and compensate for that disadvantage I have used Facebook to communicate quickly and directly to residents to get our message across.

First and foremost, it is about putting across a counter narrative. There is an expectation from the public that we hold the administration to account. It is important for democracy for rival opinions to be put across. It is something I feel my residents would expect me to do, I don’t believe they would feel I was doing a good job if I did not hold the administration to account.”

- 6.59 It is clear that Councillor Green understands well the power of social media to challenge the Administration, and we have seen ourselves that he uses sarcastic, amusing and ironic posts to do so. We cannot see that Councillor Green would actually be offended by this post.

- 6.60 Although one might consider this post to be disrespectful, it is so mild as to be hardly offensive and the fact that Councillor Cunningham liked it might be considered a little childish, but we find that it is either not of sufficient weight to breach the Code of Conduct or, even if it is, is well within the realm of protected freedom of expression.

- 6.61 For this reason, we think that Councillor Cunningham’s conduct in ‘liking’ the post is protected by freedom of political expression and a finding of a breach of the relevant

paragraphs of the Code of Conduct (Respect, Bullying and Disrepute), would interfere with that right.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

- 6.62 We have considered that these comments from Councillor Cunningham are personally abusive. We have considered whether they attract the enhanced protection of political commentary. Although it is a fine balance – because the comment is in the context of Councillor Ellis' departure - we consider that Councillor Cunningham could have expressed his dislike at Councillor Green's Facebook post without using such offensive and belittling language, which reads as simply personally abusive. It is clear that Councillor Cunningham is commenting on a post relating to Council business – Councillor Ellis' departure from her Cabinet role. Councillor Cunningham, like others in his group, is upset by Councillor Green's clear mocking and sarcastic comment about the reasons for Councillor Ellis leaving her role. This is evident from the rest of Councillor Cunningham's comment:

"What do you know about Cllr Ellis and her person[al] or me[n]tal health ?? Have you given any consideration to this? ...I think not !!"

- 6.63 We consider that the remainder of Councillor Cunningham's comment is acceptable political commentary, however we find that the phrase "vile disrespectful piece of garbage" and "vile disrespectful fool" are simply gratuitous abuse. We have again considered further the judgement in *Calver*, in which the judge states:

"freedom of expression includes the right to say things which "right thinking people" consider dangerous or irresponsible or which shock or disturb..... in the context of political speech..... the exclusion of all emotive, non-rational expression from the coverage of the principle would be a mistake. It would often be hard to disentangle such expression from rational discourse because the most opprobrious insult may form part of an otherwise serious criticism of government or of a political figure.....even if it were possible to separate the emotive content from the other parts of a particular publication, it would be wrong to allow its proscription because if speakers could be punished each time they included a colourful, non-rational epithet in their publication or address, much valuable speech would be inhibited....some margin should be allowed for invective and exaggeration, even if that means some apparently worthless comments are as fully protected as a carefully balanced argument."

- 6.64 We have balanced this against the case of *Heesom*, in which, the judge, commenting on various cases about freedom of political expression, states:

"The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others. The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it."

- 6.65 It is a difficult balance in this case, and we understand the strong emotions on both sides caused by the issue of Councillor Ellis leaving her Cabinet role, the link between her role as Cabinet member for Waste and Environment and the issues over recycling in the district. We have also taken into account the fact that the comments are made not in a post itself but in commentary underneath Councillor Green's post. However,

we see no connection between valid criticism of Councillor Green by Councillor Cunningham in the rest of the comment and the use of these two gratuitously personally offensive phrases.

- 6.66 We have therefore concluded that – following the reasoning in *Heesom* and *Calver* – the two specific phrases, “vile disrespectful piece of garbage” and “vile disrespectful fool” are a breach of paragraph 1 (Respect) of the Code of Conduct.

Complaint 3 – Responding to member of public comment ‘You disgusting little turd’

- 6.67 We have considered here that Councillor Cunningham did not make the comment himself but was responding to a comment from a member of the public in saying, “Well said [REDACTED]” and in liking the post. We have also taken into account the fact again that the issue of Councillor Ellis’ departure was clearly emotive for both sides and that Councillor Green’s mocking and sarcastic comment on the press report (which he was entitled to make), prompted quite an emotional backlash from members of her group and her supporters from the public. Councillor Cunningham was clearly very upset about Councillor Green’s post – as stated above.
- 6.68 We have also considered the guidance in the judgement in *Calver*, above, and the fact that the offensive comment was part of a larger comment by the member of the public, on which Councillor Cunningham only commented “Well said..” and liked.
- 6.69 For these reasons – and again following the reasoning in *Heesom* and *Calver* - we find that Councillor Cunningham’s actions in relation to Complaint 3 did not cause him to breach the relevant paragraphs (Respect, bullying and disrepute) of the Council’s Code of Conduct.

3 Is the restriction involved one which was justified by reason of the requirements of Article 10(2)?

Complaint 2 - Councillor Cunningham’s comments “What a vile disrespectful piece of garbage you really are Ben !!” and “You vile disrespectful fool !!!”

- 6.70 As we have found the phrases “vile disrespectful piece of garbage” and “vile disrespectful fool” are simply gratuitous abuse we have considered the third test.
- 6.71 The restriction in this case would be a finding of breach under the Code of Conduct. As we have found that Councillor Cunningham’s comments are simply gratuitous abuse, it does not benefit from the enhanced protection of political freedom of expression. This follows the finding in *Sanders v Kingston* in which the judge held that Councillor Sanders’ comments were not expressions of political opinions that attracted the higher protection afforded by article 10. They were simply expressions of personal anger and abuse. We find similarly in the case of Councillor Cunningham’s comments. His comments are disrespectful under the Code of Conduct. The Code of Conduct is a lawful restriction under the Localism Act 2011 and Councillor Cunningham signed up to abide by that Code of Conduct when he was elected as Councillor. Therefore, our finding of a breach of paragraph 1 (Respect) of the Code of Conduct is justified in the circumstances.

Bullying

6.72 In respect of the finding of breach in relation to Complaint 2, we have also considered whether Councillor Cunningham's comments amount to bullying under the Code of Conduct. We find that this is not the case.

6.73 The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as:

"... offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others."

6.74 The LGA Guidance about bullying states:

"Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complaint and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated."

Examples of bullying include but are not limited to:

- *Verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language*
- *physical or psychological threats or actions towards an individual or their personal property*
- *practical jokes*
- *overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures*
- *inappropriate comments about someone's performance*
- *abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations*
- *ostracising or excluding someone from meetings, communications, work events or socials*
- *sending, distributing, or posting detrimental material about other people, including images, in any medium*
- *smear campaigns*

6.75 We have found that, in respect of the two phrases quoted in Complaint 2, Councillor Cunningham treated Councillor Green with disrespect. However, it is also the case, that, as a councillor, Councillor Green is expected to be more robust in terms of political "rough and tumble" than ordinary members of the public. The case of Heesom is again relevant. Although it is a case discussing freedom of speech in the political context, the commentary on the expectation of politicians is relevant:

"politicians are subject to "wider limits of acceptable criticism" They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens."

- 6.76 As politicians on opposing groups, Councillor Cunnington and Councillor Green are also “equals”. Neither is in a position of control or authority over the other, which is often a situation where bullying arises. It is also the case that, as a member of the Administration, Councillor Cunnington is in a more powerful position than Councillor Green in respect of the running of the Council, setting of policy, relationship with officers etc. As an opposition member, it is Councillor Green’s role to challenge Councillor Cunnington and the Administration. On this occasion, we found that Councillor Cunnington’s two comments were gratuitously offensive and therefore a breach of respect under the Code of Conduct, but that is not the same as bullying.
- 6.77 We find, therefore, that Councillor Cunnington’s use of the phrases, “vile disrespectful piece of garbage” and “vile disrespectful fool” although disrespectful for the reasons stated, do not amount to incidents of bullying under the Code of Conduct.

Disrepute

- 6.78 We have also considered whether, in respect of Complaint 2, Councillor Cunnington’s comments amount to bringing his office or the Council into disrepute.
- 6.79 The definition of Disrepute in the Code is set out above in paragraph 3.5. The LGA Guidance states:

“As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public’s confidence in your ability to discharge your functions as a councillor or your local authority’s ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor’s behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

1. *reducing the public’s confidence in them being able to fulfil their role; or*
2. *adversely affecting the reputation of your authority’s councillors, in being able to fulfil their role.*

Conduct by a councillor which could reasonably be regarded as reducing the public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

- 6.80 In applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member’s actions to have actually diminished the public confidence or harmed the reputation of the authority. The test is whether or not the conduct could ‘reasonably be regarded’ as having these effects. However, the conduct must be sufficient to damage the reputation of the member’s office of the Council, not just the reputation of Councillor Cunnington as an individual.
- 6.81 We must consider an objective view, i.e. whether these two comments by Councillor Cunnington are such that a member of the public, knowing all the relevant facts, would

reasonably think that his actions were so significant that it would impact on the Council's ability to properly carry out its functions.

- 6.82 Since we have only found a breach in relation to Complaint 2 and in relation to the phrases, "vile disrespectful piece of garbage" and "vile disrespectful fool" we have considered whether Councillor Cunningham's use of these phrases bring either his office or that of the Council into disrepute.
- 6.83 As discussed above, the issue relates to one post by Councillor Green commenting on a press report about Councillor Ellis' departure. It is an emotive subject, both for Councillor Green, who is critical of her role as Cabinet member, and for Councillor Cunningham and his colleagues, who are aware of other, more personal reasons for Councillor Ellis' departure. We have not found that the remainder of Councillor Cunningham's comment is in breach of the Code and, although we have found these parts of his comments to be personally abusive, the rest of his comment is justifiable political comment. He is critical of Councillor Green.
- 6.84 In addition, although the phrases are personally abusive and not how the public would expect members to address each other, they are not the most egregious of terms to use. Many readers may be supportive of Councillor Cunningham's strong support for Councillor Ellis.
- 6.85 We therefore do not consider Councillor Cunningham's conduct would adversely affect the reputation of the Council in being able to fulfil its functions and duties. Neither do we consider that Councillor Cunningham's conduct was sufficient to damage his role as a councillor.
- 6.86 We have therefore concluded that Councillor Cunningham's conduct did not cause him to breach paragraph 5 (Disrepute) of the Council's Code of Conduct.

Failure to comply with a Code of Conduct investigation

- 6.87 As Councillor Cunningham has not responded to our correspondence or that of the MO, we have considered whether Councillor Cunningham's conduct is a breach of paragraph 8.2 of the Council's Code of Conduct.
- 6.88 The importance of complying with a Code of Conduct investigation is set out above in paragraph 3.5.
- 6.89 The LGA Guidance states:
- "While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code."*
- 6.90 As can be seen at 4.34 and 4.35, we wrote to Councillor Cunningham on 18 June, 3 July and 17 July 2024 but received no response.
- 6.91 The MO then wrote to Councillor Cunningham on 1 August 2024 asking that he contact us and explaining that failure to co-operate with a Code of Conduct investigation could also be considered a breach of the Code of Conduct.

- 6.92 At the time of writing this report we have had no contact from Councillor Cunningham. We do note that Councillor Cunningham made some initial comments to the MO about these complaints. However, the fact that we have not been able to discuss these issues further with Councillor Cunningham has made it difficult for us to understand his real motivations in making and liking these comments. We have only heard Councillor Jeal's and Councillor Green's detailed comments on the issue and have had to make findings on the complaint based on their comments only.
- 6.93 We have concluded that Councillor Cunningham's lack of co-operation in the investigation is a breach of paragraph 8.2 of the Council's Code of Conduct.

7. Conclusion

- 7.1 Our conclusion is that there has been a failure by Councillor Cunningham to comply with paragraph 1 (Respect) of the Council's Code of Conduct in respect of Complaint 2.
- 7.2 Our conclusion is that there has not been a failure by Councillor Cunningham to comply with paragraphs, 2.1 (Bullying) and 5 (Disrepute) of the Council's Code of Conduct.
- 7.3 We have also concluded that there has been a failure by Councillor Cunningham to comply with paragraph 8.2 of the Council's Code of Conduct in that he has failed to co-operate with the investigation.

5 November 2024

Wilkin Chapman LLP
Investigating Solicitors

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Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for South Kesteven District Council, into allegations concerning Councillor Steve Cunningham.

Dated: 5 November 2024

VOLUME 2 SCHEDULE OF EVIDENCE

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority

Appendix A

Schedule of evidence taken into account and list of unused material

Page	Number	Description
3	WC 1	Code of Conduct
16	WC 2	Complaint of Councillor Jeal 06.03.24 (self promoting pratt)
20	WC 3	Decision Notice (self promoting pratt)
24	WC 4	Complaint of Councillor Jeal 08.05.24 (vile disrespectful piece of garbage/vile disrespectful fool)
27	WC 5	Decision Notice (vile disrespectful piece of garbage/vile disrespectful fool)
30	WC 6	Complaint of Councillor Jeal ('well said')
32	WC 7	Decision Notice ('well said')
35	WC 8	Statement of Councillor Jeal
40	WC 9	Statement of Councillor Green
44	WC 10	Investigators' correspondence to Councillor Cunningham 18.06.24, 03.07.24 and 17.07.24
48	WC 11	Email MO to Councillor Cunningham 01.08.24

List of unused material

Investigator's notes, file correspondence and drafts
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SOUTH KESTEVEN DISTRICT COUNCIL COUNCILLOR CODE OF CONDUCT

(Adopted by South Kesteven District Council at Council on 25 November 2021)

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a Councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow Councillors, Local Authority Officers, and the reputation of local government. It sets out general principles of conduct expected of all Councillors and your specific obligations in relation to standards of conduct. The Local Government Association encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of Councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, Councillors, and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of Councillor:

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect
- I lead by example and act in a way that secures public confidence in the role of Councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence
- I ensure that public resources are used prudently in accordance with my Local Authority's requirements and in the public interest

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a Councillor.

This Code of Conduct applies to you when you are acting in your capacity as a Councillor which may include when:

- You misuse your position as a Councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a Councillor

The Code applies to all forms of communication and interaction, including:

- At face-to-face meetings
- At online or telephone meetings
- In written communication
- In verbal communication
- In non-verbal communication
- In electronic and social media communication, posts, statements, and comments

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a Councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a Councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

- 1.1 I treat other councillors and members of the public with respect.**
- 1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word.

Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions, and policies in a robust but civil manner.

You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in Councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider, or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a) **given to me in confidence by anyone**
- b) **acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:**
 - i. **I have received the consent of a person authorised to give it.**
 - ii. **I am required by law to do so.**
 - iii. **The disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - iv. **the disclosure is:**
 - 1. **reasonable and in the public interest; and**
 - 2. **made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - 3. **I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a Councillor for the advancement of myself, my friends, my family members, my employer, or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents, and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others.

However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a) act in accordance with the local authority's requirements; and**
- b) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- Office support
- Stationery
- Equipment such as phones, and computers
- Transport
- Access and use of local authority buildings and rooms

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest.

The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality

As a councillor:

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence, or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B – Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“Disclosable Pecuniary Interest” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of Disclosable Pecuniary Interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion, or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a Disclosable Pecuniary Interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet Member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
- a) Your own financial interest or well-being.
 - b) A financial interest or well-being of a relative or close associate; or
 - c) a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**

You must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied:

9. Where a matter (referred to in paragraph 8 above) **affects** the financial interest or well-being:
- a) To a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet

member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	Any beneficial interest in land which is

	<p>within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge):</p> <ul style="list-style-type: none"> (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of
Securities	<p>Any beneficial interest in securities* of a body where:</p> <ul style="list-style-type: none"> (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either: <ul style="list-style-type: none"> (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were

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* 'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registrable Interests

You must register as an Other Registerable Interest:

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body:
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
 of which you are a member or in a position of general control or management

From: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Sent: 06 March 2024 11:38
To: [REDACTED]
Subject: FW: Code of Conduct Complaint against [REDACTED] and cllr Cunnington
Attachments: IMG-20240305-WA0020.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Please could you acknowledge and treat as two separate complaints?

Thanks
 Graham

From: Cllr Graham Jeal <graham.jeal@southkesteven.gov.uk>
Sent: Wednesday, March 6, 2024 11:26 AM
To: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Cc: Cllr Ben Green <Ben.Green@southkesteven.gov.uk>; [REDACTED]
Subject: Code of Conduct Complaint against [REDACTED] and cllr Cunnington

Graham,

I would like to place a code of conduct complaint against [REDACTED] and cllr Cunnington for liking the comment describing cllr Green as a "self-promoting pratt and very selective with the truth" in the attached social media post.

In accepting the role of councillor we all agree to follow the South Kesteven District Council Code of Conduct which incorporates the Nolan Principles. I believe that this post is in breach of 5 of the 7 Nolan principles. Namely:

- **Selflessness:** Holders of public office should act solely in terms of the public interest. It is not in the public interest to stoke hate speech in the general public. Describing a legitimately elected councillor as a "Self promoting pratt" is a slur against the character of a fellow councillor. By liking this comment, cllr [REDACTED] and cllr Cunnington have promoted and given authority to this level of discourse in the public.
- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

There is no evidence for the comment "selective truth" comment and the aim of liking such a social media post shows a lack of integrity and decency.

- **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- By liking this post which includes clear hate speech "self-promoting pratt" directed towards an individual councillor, [REDACTED] and cllr Cunnington have deliberately promoted bias and discrimination against a fellow councillor.

- **Honesty:** Holders of public office should be truthful.
- By liking this comment without supplying any evidence for the substance of what is being claimed, [REDACTED] and cllr Cunnington have been deliberately dishonest in an attempt to slur the reputation of a fellow councillor.

- **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



I know you will attend this this urgently, I reserve the right to present a copy of this complaint to the press – but I am sure that you will understand that I consider this behavior unbecoming of a councillor and should be attended to immediately.

Yours faithfully

Graham Jeal
Leader of South Kesteven Coalition Group



Ashley Baxter

Ben, Could you please explain why you voted AGAINST the overall budget which included the employment of a Tree Officer post, £700,000 for void repairs, financial support for our play parks and leisure centres and the creation of a reserve for litter-picking on the A1?



3 d

[Redacted] replied · 2 replies 5 h

[Redacted]

Ashley Baxter the answer is simple, he is a self-promoting Pratt and very selective with the truth. Had he ever achieved anything as a councillor.



3 d



[Redacted]



Cllr Steven Cunningham Earlesfield

1 d

[Redacted]



Cllr Ben Green

2 March · 🌐

...

Sad to see South Kesteven Greens refusing to support wildlife near the A1. 🐾🐾

Despite this setback, I'm proud to have seconded a successful amendment to the Budget, securing £60,000 to clean up the A1 and protect our environment. The new reserve will be called the 'Clean the A1' reserve. 🌍💚

Local Greens, along with Labour, Liberals, and most Independents, either abstained or voted against this. Shameful. 😞👎



Click to expand

0:16 / 1:34 venture onto busy roads looking for an easy meal

 3

10 comments 6 shares

 Like

 Comment

 Share

View more comments



Ashley Baxter · [Follow](#)

Ben, Could you please explain why you voted AGAINST the overall budget which included the employment of a Tree Officer post, £700,000 for void repairs, financial support for our play parks and leisure centres and the creation of a reserve for litter-picking on the A1?

15 w Like Reply

4 

SOUTH KESTIVEN DISTRICT COUNCIL
COMPLAINT AGAINST A DISTRICT COUNCILLOR
MONITORING OFFICER ASSESSMENT DECISION NOTICE

Subject Member: Councillor Steven Cunnington

Complainant: Councillor Graham Jeal

Date of Assessment: 2 April 2024

Summary of complaint:

The complaint relates to a comment published on social media which has been 'liked' by Councillor Steven Cunnington whereby a Councillor has been referred to as a "self-promoting pratt".

Alleged breach of the Councillor Code of Conduct:

The Subject Councillor is alleged to have breached the following aspects of the Nolan Principles contained within the Councillor Code of Conduct:

- Selflessness
- Integrity
- Objectivity
- Honesty
- Leadership

Summary of response from the Subject Councillor:

The Subject Councillor's view is that he would consider himself a 'self-serving pratt' if he had have posted something which would and could cause reputational damage to other Councillors. He does not believe the complaint holds any ground and claims that it is subjective. Councillor Cunnington also reserved the right to 'like' anything and everything on Facebook. In seeking an apology to the Councillor named in the post and removal of the 'like' by way of informal resolution, the Subject Councillor has refused to undertake such action and maintains his original view in relation to this complaint.

Information considered:

I have reviewed the content of the complaint submitted by the complainant, including a screenshot of a social media post.

I have reviewed the content of the Subject Councillor's response to the allegations made against him, including a screenshot of Facebook guidance relating to the definition of 'liking' a comment or post.

Assessment:

Councillor Cunnington was elected to the Council in May 2023. He is a member of Grantham Independent Group and has attended Councillor Code of Conduct training since the commencement of this municipal year.

The comment to which the complaint relates follows preceding comments whereby Councillor Ben Green has been asked to explain his vote against the administration's budget proposals at the meeting of South Kesteven District Council held on 29 February 2024. This demonstrates that the Subject Councillor is acting in an official capacity, with a clear link to the business of South Kesteven District Council. The Councillor Code of Conduct was therefore engaged.

The first assessment stage in the procedure for dealing with complaints against Councillors consists of a jurisdictional test. The complaint, taking the above information into account, complied with the principles of the jurisdictional test which meant it passed through to the second assessment stage.

As part of the second assessment stage the following assessment was undertaken against the following criteria included in the procedure for dealing with complaints against Councillors:

Sufficient evidence

I am satisfied that there is sufficient evidence to demonstrate whether or not a potential breach of the Code of Conduct occurred in respect of this complaint.

Alternative action

I have given due consideration to alternative, more appropriate, remedies that should be explored first, including the possibility of informal resolution between the two parties and whether any offer from the Subject Councillor to settle the complaint informally is reasonable.

The Subject Councillor refutes that a breach of Code of Conduct has occurred and that there is no grounds to the complaint made. The Subject Councillor has been given the opportunity to apologise to Councillor Green, given he was the target of the comment, and removal of the 'like' from the related comment. The Subject Councillor has refused to undertake such action. Any attempt to obtain an informal resolution, I believe, has therefore been exhausted.

Robust political debate

Where a complaint is made by a Councillor against another Councillor, a greater allowance for robust political debate may be given, bearing in mind the right to freedom of speech.

I do not believe that this has any bearing over this particular complaint.

Seriousness

I have given due consideration as to whether the complaint is malicious, vexatious, politically motivated or 'tit-for-tat'.

I do not believe the complaint has been submitted in a malicious or vexatious manner and do not consider it to be politically motivated or tit-for-tat.

Public interest

I have given due consideration as to whether it would be in the public interest to refer the complaint for investigation or other action and whether it is serious enough to warrant any available sanctions.

Given that the 'like' still remains in place on social media and the Subject Councillor refuses to remove this, refuses to apologise and does not agree that a breach of the Code of Conduct has occurred as a result of his actions, I believe it is in the public interest to refer this complaint for formal investigation.

In assessing the complaint, I did not feel it necessary to request further information from the complainant, Subject Councillor or any other witnesses.

Conclusion

According to www.facebook.com/help in asking the question "what does it mean to 'like' something on Facebook?", it states:

"Clicking **Like** below a post on Facebook is a way to let people know that you enjoy it without leaving a comment."

I am aware that there are other interpretations of definitions associated with 'liking' comments on social media.

My interpretation, from the perspective of a reasonable member of the public, is that 'liking' something on Facebook is endorsing or supporting it.

I do not believe a reasonable member of the public would expect someone in public office to 'like' the comment that the Subject Councillor did in this case. I therefore believe such an action to be contrary to the following aspect of the Councillor Code of Conduct:

1. *Respect*

As a councillor:

1.1 *I treat other councillors and members of the public with respect.*

I believe that the Council would benefit from the introduction of a Councillor Social Media Policy, providing Members with clarity as to how social media should be used, expectations of Members in use of their respective accounts and applying definitions of certain actions within respective social media platforms to ensure that all Members are aware of what they mean from the perspective of the Councillor Code of Conduct.

Independent Person considerations:

The first Independent Person believes that this could represent a breach of the Code of Conduct due to the interpretation of 'like'. When searching for the meaning of 'like', the majority of views indicate an agreement with or endorsement of the view being expressed. He also considers that an ordinary person with some awareness of social media would consider a 'like' to be agreeing with the view or comment made in the post. Taking into account the failure to reach an informal resolution, he agrees that this case should be referred for formal investigation.

The second Independent Person feels that a Facebook 'like' would strongly give the impression that the person who likes the post would be in agreement with the sentiment in the post. He therefore agrees that a breach of the Code of Conduct could have occurred and agrees that this case should be referred for formal investigation.

Monitoring Officer Decision:

That this Code of Conduct complaint against Councillor Steven Cunningham be referred for formal investigation.

Graham Watts
Monitoring Officer
South Kesteven District Council

From: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Sent: 08 May 2024 15:01
To: [REDACTED]
Subject: Fw: Code of conduct Complaint
Attachments: IMG-20240502-WA0001.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Hi [REDACTED] - please could you acknowledge.

Thanks
Graham

From: Cllr Graham Jeal <graham.jeal@southkesteven.gov.uk>
Sent: Wednesday, May 8, 2024 12:56 PM
To: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Subject: Code of conduct Complaint

Graham,

I would like to make a code of conduct complaint against cllr Steve Cunnington because of the attached social media post where he refers to cllr Green as a "vile disrespectful piece of garbage" and "you vile disrespectful fool". In my view this is a breach of the code of conduct and the Nolan principles in general which advises members to act with respect in their communications with other members.

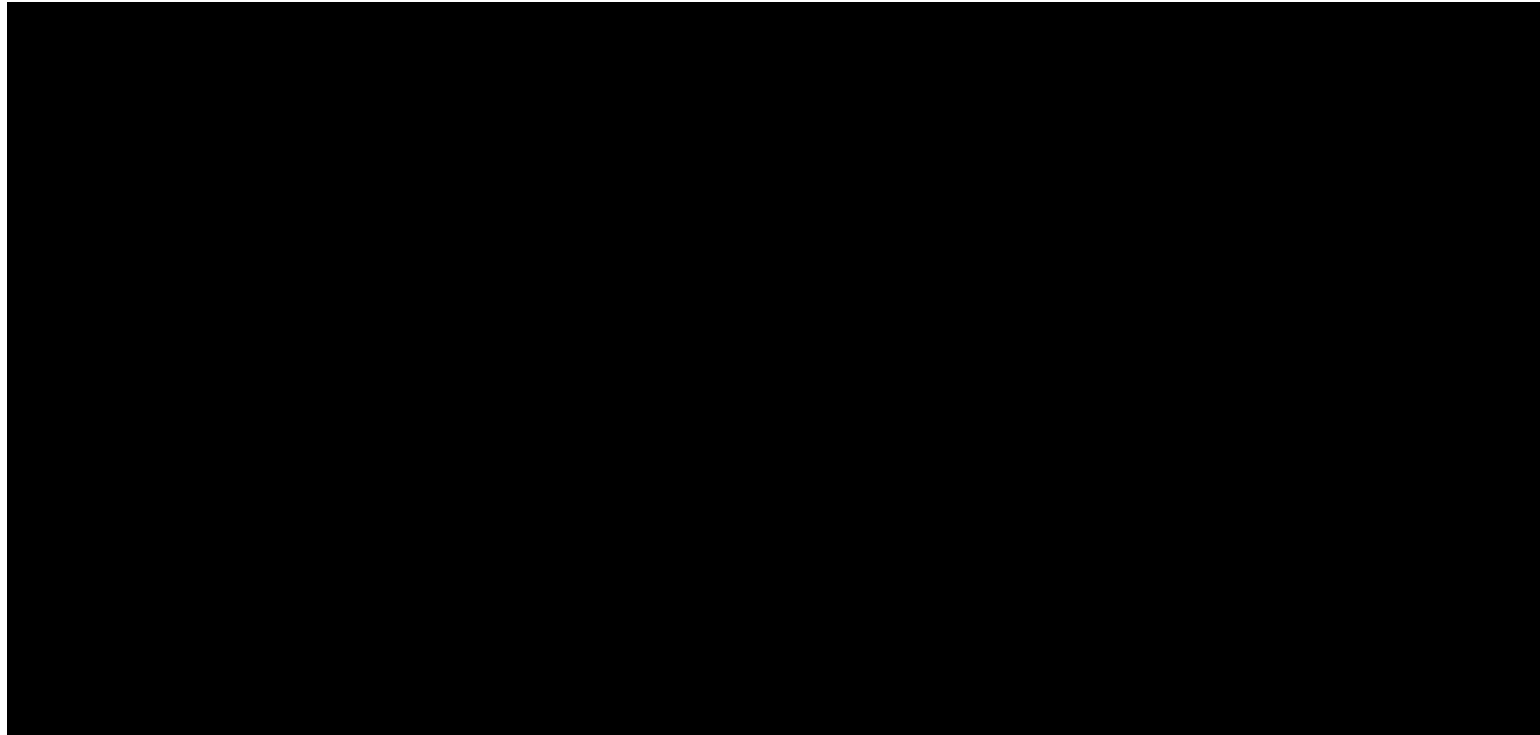
The attached social media post was made in response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The communication came through at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Greens question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public.

Thanks

Graham Jeal
Leader of the South Kesteven Coalition

H

relevant ▾



Cllr Steven Cunningham Earlesfield

What a vile disrespectful piece of garbage you really are Ben !! What do you know about Cllr Ellis and her person life or metal health ?? Have you given any consideration to this ? ...I think not !! Given your obvious low intellect !! And FYIif you don't report my commentI'll be very disappointed !!! You vile disrespectful fool !!!

Write a comment...






Cllr Ben Green
1 May · 🌐

...

Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Green Party. Did she jump before she was binned? 😏






LINCSONLINE.CO.UK

Green Party loses first-ever representative as councillor resigns
Lincolnshire's 'first-ever' Green councillor has left the party and resigned her position on South...

 4

16 comments 1 share

 Like

 Comment

 Share

SOUTH KESTIVEN DISTRICT COUNCIL
COMPLAINT AGAINST A DISTRICT COUNCILLOR
MONITORING OFFICER ASSESSMENT DECISION NOTICE

Subject Member: Councillor Steven Cunnington

Complainant: Councillor Graham Jeal

Date of Assessment: 20 May 2024

Summary of complaint:

Councillor Steven Cunnington is alleged to have published comments on social media whereby he described a fellow Councillor as a “vile disrespectful piece of garbage” and also used the words “you vile disrespectful fool”.

Alleged breach of the Councillor Code of Conduct:

The Subject Councillor is alleged to have breached the following aspects of the Councillor Code of Conduct:

1. *Respect*

As a councillor:

1.1 *I treat other councillors and members of the public with respect.*

Summary of response from the Subject Councillor:

“I totally understand Your only doing your job, but I don't recognise the complaints as I don't recognise Ben Green as a Councillor until he takes action to correct his vile behaviour on social media. Ben Green must remove all posts from his social media which have without doubt caused reputational damage and distress. For Graham Jeal to suggest Ben Greens post was a harmless question is outrageous!, he was quite obviously Mocking a Person and Cllr whilst they were at a low point. The post is disrespectful and shows a complete lack of compassion for Cllr Ellis and until removed I remain resolute in my stance that I don't recognise Ben Green, therefore I can't recognise any complaints.”

Information considered:

I have reviewed the content of the complaint submitted by the Complainant, including a screenshot of the social media post referenced.

I have reviewed the content of response of the Subject Councillor to the allegations made against him.

Assessment:

Councillor Cunnington was elected to the Council in May 2023. He is a Member of the Council's Grantham Independent Group and has attended Councillor Code of Conduct training since the commencement of this municipal year.

The comments, which are the subject of the complaint, are in response to a post published on Facebook which provides a clear link to the business of South Kesteven District Council. This demonstrates that the Subject Councillor is acting in an official capacity. The Councillor Code of Conduct was therefore engaged.

The first assessment stage in the procedure for dealing with complaints against Councillors consists of a jurisdictional test. The complaint, taking the above information into account, complied with the principles of the jurisdictional test which meant it passed through to the second assessment stage.

As part of the second assessment stage the following assessment was undertaken against the following criteria included in the procedure for dealing with complaints against Councillors:

Sufficient evidence

I am satisfied that there is sufficient evidence to demonstrate whether or not a potential breach of the Code of Conduct occurred in respect of this complaint.

Alternative action

I have given due consideration to alternative, more appropriate, remedies that should be explored first, including the possibility of informal resolution between the two parties and whether any offer from the Subject Councillor to settle the complaint informally is reasonable.

Based upon the response of the Subject Councillor, it is clear that an informal resolution will not be possible in relation to this complaint.

Robust political debate

Where a complaint is made by a Councillor against another Councillor, a greater allowance for robust political debate may be given, bearing in mind the right to freedom of speech.

Taking into account the language used, I believe that further investigation of this complaint should be undertaken. This will take into account whether the greater tolerance for robust political debate applies, together with rights associated with freedom of expression set out in Article 10 of the Human Rights Act, in the context of the breach of the Councillor Code of Conduct that has been alleged.

Seriousness

I have given due consideration as to whether the complaint is malicious, vexatious, politically motivated or 'tit-for-tat'.

I do not believe the complaint has been submitted maliciously, vexatiously or on the basis of political motivation or 'tit-for-tat'.

Public interest

I have given due consideration as to whether it would be in the public interest to refer the complaint for investigation or other action and whether it is serious enough to warrant any available sanctions.

I believe the language used and the fact that the comment is still publicly available via social media provides sufficient justification for referring this matter for formal investigation.

In assessing the complaint, I did not feel it necessary to request further information from the complainants, Subject Councillor or any other witnesses.

Conclusion

Taking into account the above assessment, I believe there are sufficient grounds to refer this complaint for formal investigation.

Independent Person considerations:

The First Independent Persons concurs with the outcome of the assessment undertaken in terms of referral for formal investigation given the nature of the words used and their use on social media, therefore being in a public arena.

The second Independent Person agrees that this case should be referred for formal investigation.

Monitoring Officer Decision:

That the complaint submitted by Councillor Steven Cunnington, as outlined above, be referred for formal investigation.

Graham Watts
Monitoring Officer
South Kesteven District Council

From: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Sent: 08 May 2024 15:03
To: [REDACTED]
Subject: Fw: Code of Conduct Complaint
Attachments: IMG-20240503-WA0007.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Hi [REDACTED],

Please acknowledge.

Thanks
 Graham

From: Cllr Graham Jeal <graham.jeal@southkesteven.gov.uk>
Sent: Wednesday, May 8, 2024 1:00 PM
To: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Subject: Code of Conduct Complaint

Graham,

I would like to make a complaint as I believe that the council code of conduct complaint was breached by the attached social media post by cllr Cunnington. In the attached social media post a member of the public describes cllr Green as a "Disgusting little turd" to which cllr Cunnington responds "Well said". This in my view is a breach of treating fellow councillors with respect and a breach of several of the Nolan principles. [REDACTED]

[REDACTED]

The attached social media post was a response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The news of Cllr Ellis removal from this post was emailed at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Green's question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public.

Thanks

Graham Jeal
 Leader of the South Kesteven Coalition

6 h Like Reply Hide Edited

You disgusting little turd.

No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!!

Vile man.

6 h Like Reply Hide



Cllr Steven Cunningham Earlesfield

Well said



6 h Like Reply Hide

SOUTH KESTEVEN DISTRICT COUNCIL
COMPLAINT AGAINST A DISTRICT COUNCILLOR
MONITORING OFFICER ASSESSMENT DECISION NOTICE

Subject Member: Councillor Steven Cunnington

Complainant: Councillor Graham Jeal

Date of Assessment: 20 May 2024

Summary of complaint:

Councillor Steven Cunnington is alleged to have failed to treat a fellow Councillor with respect in relation to a social media post whereby a member of the public described Councillor Ben Green as a “disgusting little turd”, further to which Councillor Cunnington replied “well said”.

It is alleged that this behaviour constitutes disrespect and bullying.

Alleged breach of the Councillor Code of Conduct:

The Subject Councillor is alleged to have breached the following aspects of the Councillor Code of Conduct:

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

Summary of response from the Subject Councillor:

The Subject Councillor provided the following response to this complaint:

“I totally understand Your only doing your job, but I don't recognise the complaints as I don't recognise Ben Green as a Councillor until he takes action to correct his vile behaviour on social media. Ben Green must remove all posts from his social media which have without doubt caused reputational damage and distress. For Graham Jeal to suggest Ben Greens post was a harmless question is outrageous!, he was quite obviously Mocking a Person and Cllr whilst they were at a low point. The post is disrespectful and shows a complete lack of compassion for Cllr Ellis and until

removed I remain resolute in my stance that I don't recognise Ben Green, therefore I can't recognise any complaints."

Information considered:

I have reviewed the content of the complaint submitted by the Complainant, including a screenshot of the social media post referenced.

I have reviewed the content of response of the Subject Councillor to the allegations made against him.

Assessment:

Councillor Cunningham was elected to the Council in May 2023. He is a Member of the Council's Grantham Independent Group and has attended Councillor Code of Conduct training since the commencement of this municipal year.

The comments, which are the subject of the complaint, are in response to a post published on Facebook which provides a clear link to the business of South Kesteven District Council. This demonstrates that the Subject Councillor is acting in an official capacity. The Councillor Code of Conduct was therefore engaged.

The first assessment stage in the procedure for dealing with complaints against Councillors consists of a jurisdictional test. The complaint, taking the above information into account, complied with the principles of the jurisdictional test which meant it passed through to the second assessment stage.

As part of the second assessment stage the following assessment was undertaken against the following criteria included in the procedure for dealing with complaints against Councillors:

Sufficient evidence

I am satisfied that there is sufficient evidence to demonstrate whether or not a potential breach of the Code of Conduct occurred in respect of this complaint.

Alternative action

I have given due consideration to alternative, more appropriate, remedies that should be explored first, including the possibility of informal resolution between the two parties and whether any offer from the Subject Councillor to settle the complaint informally is reasonable.

Based upon the response of the Subject Councillor, it is clear that an informal resolution cannot be reached in respect of this case.

Robust political debate

Where a complaint is made by a Councillor against another Councillor, a greater allowance for robust political debate may be given, bearing in mind the right to freedom of speech.

Taking into account the language used by the member of the public, which the Subject Councillor clearly agrees with and endorses in his comment, I believe that further investigation of this complaint should be undertaken. This will take into account whether the greater tolerance for robust political debate applies, together with rights associated with freedom of expression set out in Article 10 of the Human Rights Act, in the context of the breach of the Councillor Code of Conduct that has been alleged.

Seriousness

I have given due consideration as to whether the complaint is malicious, vexatious, politically motivated or 'tit-for-tat'.

I do not believe the complaint has been submitted maliciously, vexatiously or on the basis of political motivation or 'tit-for-tat'.

Public interest

I have given due consideration as to whether it would be in the public interest to refer the complaint for investigation or other action and whether it is serious enough to warrant any available sanctions.

I believe the language used by the member of the public, the clear endorsement of this from the Subject Councillor and the fact that the comment is still publicly available via social media provides sufficient justification for referring this matter for formal investigation.

In assessing the complaint, I did not feel it necessary to request further information from the complainants, Subject Councillor or any other witnesses.

Conclusion

Taking into account the above assessment, I believe there are sufficient grounds to refer this complaint for formal investigation.

Independent Person considerations:

The first Independent Person concurs with the outcome of the assessment undertaken in terms of referral for formal investigation given the nature of the words used and their use on social media, therefore being in a public arena.

The second Independent Person agrees that this case should be referred for formal investigation.

Monitoring Officer Decision:

That the complaint submitted against Councillor Steven Cunnington be referred for formal investigation.

Graham Watts
Monitoring Officer, South Kesteven District Council

STATEMENT FRONT COVER

Name:	Graham Jeal
Position Held	Councillor South Kesteven District Council

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

a limited liability partnership registered in England number OC343261
authorised and regulated by the Solicitors Regulation Authority.

STATEMENT of: Councillor Graham Jeal

1. I am a Conservative Councillor for South Kesteven District Council (the Council). I am Leader of the Conservative Group. I am not formally a member of any of the Council's Committees but, as Leader of the Conservative Group, I attend most Scrutiny Committee meetings. I represent Grantham St Vincents ward.
2. I understand that Wilkin Chapman LLP solicitors have been asked to investigate my complaints against Councillor Steve Cunnington in respect of his conduct on social media.
3. I don't really know Councillor Cunnington in great detail. I think I have only really spoken to him once, just after the election. There was a Mayoral event at which Councillor Cunnington and I manned the same stand for a charity event. I found him amicable, friendly and likeable. I understand Councillor Cunnington is a long term friend of [REDACTED]. He probably owes his position to [REDACTED] campaigning.
4. The relationship between the groups at the Council has been toxic and unprofessional for a long time, but it has gotten significantly worse since the last election. Swearing in the Chamber has become normalised over the last couple of years. Coming from a professional background I have always found that slightly difficult. Overnight, when Ashley Baxter was elected leader, you could see all of the sensible people in the Council sort of pushed to one side and louder more antagonistic councillors now in control.
5. The outcome of this behaviour deters people from the Council and is detrimental to getting officers to join the Council. There are good people on the Council and good officers but most of them now, frankly, are saying 'I've got better things to do with my time'. I find myself thinking, what on earth have I signed myself up for?
6. The small number of complaints being investigated are dwarfed; this is the absolute tip of the iceberg – there are dozens that have not made it to investigation. The Code of Conduct process is openly mocked now, and the fact that the behaviour is pushing good councillors away is a real threat to our local democracy and public services in general.

Councillor Cunnington's 'like' of a member of the public's comment "...self-promoting Pratt and very selective with the truth..."

7. Councillor Green posted on Facebook, on 2 March 2024:

"Sad to see South Kesteven Greens refusing to support wildlife near the A1.

Despite this setback, I'm proud to have seconded a successful amendment to the Budget, securing £60,000 to clean up the A1 and protect our environment. The new reserve will be called the 'Clean the A1' reserve.

Local Greens, along with Labour, Liberals and most Independents, either abstained or voted against this. Shameful."

8. Councillor Baxter posted a comment in response. A member of the public responded to Councillor Baxter by saying:

"Ashley Baxter the answer is simple, he is a self-promoting Pratt and very selective with the truth. Had he ever achieved anything as a councillor."

9. Councillor Cunnington 'liked' comment which described Councillor Green as a 'self-promoting pratt'.

10. To 'like' a comment is an endorsement of that comment. It is agreeing with it. When Jeremy Corbyn was Leader of the Labour Party a post went out saying he was a supporter of terrorism. He commissioned a legal firm to go after as many people as possible that liked that post. The case law as I understand it is that liking is endorsement.

Councillor Cunnington's comment on Councillor Green's Facebook post of 1 May 2024

11. On 1 May 2024, Councillor Green posted a link to a LincsOnline article regarding Councillor Patsy Ellis. Councillor Green stated:

"Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Green Party. Did she jump or was she binned?"

12. Councillor Cunnington commented:

“What a vile disrespectful piece of garbage you really are Ben !! ... You vile disrespectful fool !!!”

13. Councillor Cunningham’s comment has been edited. The original posting was ‘vile, disrespectful, odious turd’ which was then toned down.
14. In what world is that acceptable language? I have just not entered the world where that is acceptable discourse. If it had been said in a corridor it would have been bad enough, but to broadcast it on the internet? I have never yet worked in a world where that is acceptable kind of language. It is as clear a breach of several of the Nolan principles about standards in public office as you will find.
15. There does seem to be a pattern here, Councillor Cunningham generally follows [REDACTED] [REDACTED] lead.

Further comment by Councillor Cunningham in relation to Councillor Green’s Facebook post of 1 May 2024 relating to Councillor Ellis

16. Another member of the public commented:

“You disgusting little turd.

No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!!

Vile man.”

17. That comment is describing Councillor Green as ‘disgusting little turd’ and ‘vile man’. Councillor Cunningham responded to the above comment by saying:

“Well said [REDACTED]”

18. In responding to the member of public’s comment, Councillor Cunningham clearly endorses the comment and agrees with the member of public’s view of Councillor Green.

19. I was leant on quite heavily not to start this process and there is a clear disrespect for the process. I was told 'what's the point in spending the money with a third party?' and 'you're wasting your time'. That is victim shaming.
20. I have been under pressure to withdraw these complaints from the Leader and senior officers and former chair of standards. People, quite frankly, I would have expected better from. As leader of a political group, I have a welfare obligation and cannot stand aside and see the Council, it's members and officers brought into disrepute.
21. It has been widely said 'we've got control of the Standards Committee, we're definitely going to throw it out, you'll be the laughing stock for spending the money'. The Code of Conduct is openly mocked.
22. It is my opinion that these complaints should at least be documented and in the public domain. None of this is calming down.
23. If a chair were to be thrown in a Council meeting, something which has happened before, and it strikes an elderly member on the back of the head injuring them seriously, what will the Council have done to prevent that?
24. Given what has happened in the last 10 years, it is unacceptable. It is not a party-political point because attacks happen against all parties. I do concede that not enough councillors have had social media training and do not understand the dangers. Most think, 'I was only liking it, it's not the end of the world'. You take on an added responsibility for liking it. Under English law, ignorance is not a defence.

I, Councillor Graham Jeal, declare that this statement is true and accurate to the best of my knowledge and belief.

Signed by:

[Redacted Signature]

30 August 2024

Signed Date

STATEMENT FRONT COVER

Name:	Ben Green
Position Held	Councillor South Kesteven District Council

wilkin chapman llp
solicitors

Cartergate House,
26 Chantry Lane,
Grimsby
DN31 2LJ

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STATEMENT of: Councillor Ben Green

1. I am a Conservative Councillor on South Kesteven District Council (the Council). I was first elected on 24 February 2022. I was re-elected on 4 May 2023. I represent the Isaac Newton Ward, a large rural ward south of Grantham. I sit on the Finance Committee.
2. I understand that Wilkin Chapman LLP solicitors have been asked to investigate complaints made against Councillor Cunnington in respect of his conduct on social media.
3. The Conservative Group on the Council are the largest group but not large enough for a majority. We have formed a coalition with three South Kesteven Independent councillors. There are multiple other parties and independents. My position is that of a back bench councillor, a member of the opposition.
4. I am aware that other Councillors have made Code of Conduct complaints against Councillor Cunnington in relation to his conduct on social media.
5. I consider social media to be a vital mode of communication. From time to time, I will put out an occasional press release. Sometimes there is quite a time lag before a press release, and I have no editorial control. I think press releases are entered into a queue and it takes time to get your turn, so to speak. It can be a very long, convoluted and sometimes difficult process. So, for me, Facebook, the only social media platform I use, is a great way for me to communicate with my residents.
6. Since late May, I have been Deputy Leader of the Conservative Group. There is an aspect to which we think about being in opposition and getting our distinctive message out. Being in opposition is inherently tough, you're not the administration so don't have responsibility and your quotes aren't going in official Council press releases. To try and compensate for that disadvantage I have used Facebook to communicate quickly and directly to residents to get our message across.
7. First and foremost, it is about putting across a counter narrative. There is an expectation from the public that we hold the administration to account. It is important for democracy for rival

opinions to be put across. It is something I feel my residents would expect me to do, I don't believe they would feel I was doing a good job if I did not hold the administration to account.

8. On 2 March 2024 I posted on social media:

"Sad to see South Kesteven Greens refusing to support wildlife near the A1.

Despite this setback, I'm proud to have seconded a successful amendment to the Budget, securing £60,000 to clean up the A1 and protect our environment. The new reserve will be called the 'Clean the A1' reserve.

Local Greens, along with Labour, Liberals and most Independents, either abstained or voted against this. Shameful."

9. A member of the public commented:

"...the answer is simple, he is a self-promoting Pratt and very selective with the truth..."

10. On 1 May 2024 I posted on social media:

"Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Council. Did she jump before she was binned?"

11. A member of the public commented:

"You disgusting little turd.

No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these vile complaints I think!!!

Vile man."

12. Councillor Cunningham responded to the above comment by saying:

"Well said [REDACTED]"

13. I believe a lot of the people who have commented on my social media posts are supporters of many of the Alliance councillors.

14. There has been a pile on effect when the councillors have incited their followers to view my Facebook page. The comments being made were very persistent and repetitively negative and, I believe, crossed a line in terms of basic decorum.

15. By liking comments made by members of the public, I consider Councillor Cunningham endorsed that point of view. Liking a comment is almost equivalent to Councillor Cunningham saying it himself.
16. His response to the comment made by a member of the public is also a very clear endorsement by Councillor Cunningham of the comment.
17. Councillor Cunningham made a further comment on the post of 1 May:
- “What a vile disrespectful piece of garbage you really are Ben !! ... You vile disrespectful fool !!!”*
18. Councillor Cunningham's comment is a personal attack on me, it is not an example of robust political debate. Nor are the comments made by members of the public.
19. I believe the comments made border on incitement.

I, Councillor Ben Green, declare that this statement is true and accurate to the best of my knowledge and belief.

<div style="border: 1px solid black; border-radius: 50%; width: 150px; height: 30px; margin: 0 auto; position: relative;"><div style="position: absolute; top: -10px; left: 50%; transform: translate(-50%, -100%); font-size: 8px;">Signed by:</div></div> <div style="font-size: 8px; margin-top: 2px;">040F48D32AD094A3...</div>	12 July 2024
SignedDate	

EC/GT/97613/244
17 June 2024

wilkin chapman llp
solicitors

Cartergate House

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Private & Confidential
Councillor S Cunnington

By email
Steve.Cunnington@southkesteven.gov.uk

Dear Councillor Cunnington

INVESTIGATION OF COMPLAINTS ABOUT THE CODE OF CONDUCT OF SOUTH KESTEVEN DISTRICT COUNCIL

This letter explains how Councillor Jeal's complaints against you will be investigated.

1. The complaints

The Monitoring Officer (MO) of South Kesteven District Council deals with complaints of alleged breaches of codes of conduct applying to local government councillors in its area.

The MO has received complaints alleging that you have or may have failed to comply with the Council's Code of Conduct.

It is alleged that you have:

- 'liked' a comment on social media which described a fellow councillor as a 'self-promoting pratt and very selective with the truth';
- commented 'Well said [REDACTED] to a comment describing Councillor Green as, 'You disgusting little turd';
- described Councillor Green as, 'a vile disrespectful piece of garbage' and 'You vile disrespectful fool!!!'

2. How the complaint will be investigated

The MO has decided to refer the complaints for investigation and has appointed us to investigate the allegations made in the complaint.

The investigation will be undertaken having regard to the Council's investigation procedure which has been adopted by the Standards Committee.

When the investigation is finished, we will report to the MO. The MO will decide whether there has been a breach of the Code and what action should be taken.

My colleague's [REDACTED] will gather evidence in this case.

3. Interviewing you

I would like to arrange for [REDACTED] to conduct an interview with you via Microsoft Teams. I would therefore be grateful if you could provide your availability for the weeks commencing 24 June 2024 and 1 July 2024 to [REDACTED]. You can contact [REDACTED] by telephone: [REDACTED] or email: [REDACTED]

The interview will be conducted as part of the evidence gathering part of the investigation. You are entitled to be accompanied by a friend, relative or other representative during the interview. Anyone accompanying you must not be connected with the complaint. I would be grateful if you would let me know in advance if you wish to be accompanied.

We will record the interview. We prefer to record interviews because we have found from experience that this is the fairest, easiest and most accurate way for us and you of making sure we record what has been said by everyone present at the meeting.

Following the interview a transcript will be prepared and sent to you for comment. It is likely that your interview transcript will be included in our report which may be made public.

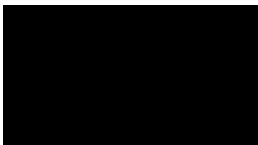
4. Information about the investigation

I must ask that you treat any information provided to you during the course of this investigation as confidential. It is important that you do not disclose information about the investigation to the press, a witness, other councillors, officers, or members of the public. This helps make sure that the investigation can be carried out in a fair way. It does not of course prevent you from providing information to any legal advisor you may decide to seek advice from. Anyone who accompanies you during your telephone interview should also be made aware of the restrictions on disclosure of information.

5. Questions and method of contact

You can contact us by telephone, email, or letter at any time to raise any issue relating to the investigation. I would prefer to exchange communications with you by email. Please reply by email if you agree to this.

Yours sincerely



Estelle Culligan
Partner

WILKIN CHAPMAN LLP

E-mail: estelle.culligan@wilkinchapman.co.uk

Direct Tel: 01472 262614

[REDACTED]

From: [REDACTED]
Sent: 03 July 2024 10:49
To: Steve.Cunnington@southkesteven.gov.uk
Subject: Code of Conduct Investigations

Good morning Councillor Cunnington

I am reviewing some files and we don't yet appear to have received your availability for interview. I would therefore be grateful if you could please provide your availability during the course of the next couple of weeks.

Many thanks
[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 17 July 2024 11:32
To: Steve.Cunnington@southkesteven.gov.uk
Subject: (97613/245) - CLLR MILNES V CLLR CUNNINGTON
Attachments: (97613/245) - CLLR MILNES V CLLR CUNNINGTON; Code of Conduct Investigations

Dear Councillor Cunnington

I am reviewing some files and it appears we have not yet received a response to the emails sent to you on 18 June (attaching a letter) and 3 July. I attach a copy of the emails for your ease of reference.

It is important that you are afforded the opportunity to respond to the complaint. If you prefer, we could send you some written questions. However, it may be that all you wish to say to us is that you have nothing to add to that which you have already said to the Monitoring Officer.

In any event, it would be good to hear from you with your views.

I look forward to hearing from you.

Kind regards

[REDACTED]

From: Graham Watts <Graham.Watts@southkesteven.gov.uk>
Sent: Thursday, August 1, 2024 9:30 AM
To: Cllr Steve Cunnington <Steve.Cunnington@southkesteven.gov.uk>

WC 11

Cc: [REDACTED]
Subject: [EXTERNAL] Code of Conduct investigation
Importance: High

This Message originated outside your organisation.

Good morning Councillor Cunnington,

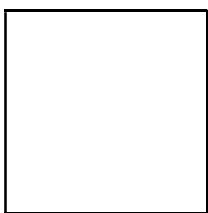
I understand from colleagues at Wilkin and Chapman, who are currently investigating a Code of Conduct complaint against you, that they have not received any response from you to their emails. I was wondering whether you had received these emails, from [REDACTED] (copied in), or whether they have gone into your junk folder. Please could you check and provide a response to [REDACTED]?

I would like to remind you that paragraph 8.2 of the Councillor Code of Conduct states:

“As a Councillor I will cooperate with any Code of Conduct investigation and/or determination.”

Many thanks
Graham

Graham Watts
Assistant Director (Governance and Public Protection) and Monitoring Officer
South Kesteven District Council,
Council Offices, The Picture House,
St Catherine’s Road, Grantham,
Lincolnshire, NG31 6TT
Tel: 07387 521840
Email: graham.watts@southkesteven.gov.uk
www.southkesteven.gov.uk



The information contained in this e-mail along with any attachments may be confidential, legally privileged or otherwise protected from disclosure. It is intended for the named individual(s) or entity who is/are the only authorised recipient(s). If this message has reached you in error please notify the sender immediately and delete it without review. Email is not secure and may contain viruses. We make every effort to ensure email is sent without viruses, but cannot guarantee this and recommends recipients take appropriate precautions. We may monitor email traffic data and content in accordance with our policies and English law.

IMPORTANT PLEASE READ:
CYBER CRIME ALERT:

You will be aware from recent press coverage email scams and cybercrime are becoming more prevalent and despite security measures being in

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Social media posts and comments published by Councillor Cunnington

Below are a number of posts or comments published on social media by Councillor Steven Cunnington during the ongoing investigation of this complaint and other Code of Conduct complaints relating to him and other District Councillors.

Cllr Steven Cunnington Earlesfield

I myself have complaints against me running into thousands! I've had genuine death threats sent to me because I refuse to stop helping vulnerable abused Residentsthat's all I can say on that !the fake nonsense [REDACTED] from last year [REDACTED] was a comment made by a resident who collects for charityhe's harmless and it wasn't [REDACTED]yet certain Councillors deliberately overreacted so as to cost YOU money on [REDACTED] [REDACTED] The same Councillors launched a flurry of complaints whilst myself and [REDACTED] were in [REDACTED] trying to promote our town.....all vexatious and designed to burn YOUR hard earned money!!! All will be made very public I promise you !!!! Even all the " strictly private and confidential " emails !!!! You all as council tax payers deserve to know everything regarding this absolute clown show !!!! I promise you all !!! I will publish everything regardless of how confidential it's claimed to be !!!!! This has been a deliberate act of money wasting!!! Your money!!!! All will be revealed I promise 🙌!!!!



Cllr Steven Cunnington Earlesfield

Fear not Ben !

As soon as all complaints, from both the current administration and the conservatives are concludedI'll be publishing everything for the public to see. Every complaint, who from and who regarding and what the complaint actual wasto highlight and remain very transparent regarding what in my opinion is a deliberate attempt to waste taxpayers money " Ow Dear" will become a common phrase on many lips when I do.



Cllr Steven Cunnington Earlesfield

Cllr Ben Green BenYou ooze disrespect.....It leaks constantly from every rotten orifice in your bitter angry " shouty schoolboy " body.....Get yourself a hurty wordy code of conduct complaint in.....Your group are good at wasting tax payers money on Boo Hoo hurty wordy complaintsIt almost seems a deliberate attempt at wasting as much money as possible



Cllr Steven Cunnington Earlesfield

Fear not Ben !

As soon as all complaints, from both the current administration and the conservatives are concludedI'll be publishing everything for the public to see. Every complaint, who from and who regarding and what the complaint actual wasto highlight and remain very transparent regarding what in my opinion is a deliberate attempt to waste taxpayers money " Ow Dear" will become a common phrase on many lips when I do.

Update 20.00 07-11-24 : I think we should collaborate for the good of Residents!

Between us (together) we can reveal all complaints ! Who made them ! Time scales ! What the conditions of each complaint was ! Even whether the person making the complaint about a Facebook commentis even on Facebook themselves ! Including whether we think said complainer was whipped by group leaders etcThis post Benis a breath of fresh air and I welcome it 🙏👍.....once all complaints are concluded I look forward to making every detail publicbecause as we knowcosts alone will not tell the full story. AgainCouncillors coming together forcing complete transparency for the betterment of the District .



Cllr Steven Cunnington Earlesfield

██████████ Don't worry ██████████

I promise youI'll publish all the nonsense trivial complaints raised by Ben and his group in a deliberate attempt to burn tax payers money! You'll see when everything is made public ! I'm so confident you'll be shocked at the deliberate attempt to waste your money by the conservatives that if you send me your email I'll send you everything personally 👍.....because I can

Procedure for dealing with complaints against Councillors who are alleged to have breached the Councillor Code of Conduct

Procedure to be followed at Formal Hearings

1. Preliminary Procedural Issues

- a) Introductions
- b) Election of Chairman (if Hearing Review Panel)
- c) Declarations of Interests
- d) To consider any requests for the exclusion of the Press and Public

2. Monitoring Officer, Investigating Officer or their representative

- a) Monitoring Officer, Investigating Officer or their representative to present the report and call such witnesses as they consider necessary, and make representations to substantiate their conclusions within the report.
- b) The Standards Committee/Hearing Review Panel to raise any issues or clarify any matters with the Monitoring Officer or Investigating Officer's report and to question and clarify matters with any of the witnesses called (if any).
- c) The Subject Councillor to raise any issues or clarify any matters with the Monitoring Officer or Investigating Officer's report and to question and clarify matters with any of the witnesses called (if any).

3. Subject Councillor or their representative

- a) The Subject Councillor to respond to the investigation report and call such witnesses as they consider necessary (if any) and make representations.
- b) The Monitoring Officer, Investigating Officer or their representative to raise any issues and to question or clarify any matters with the Subject Councillor and to question or clarify any matters with any of the witnesses called (if any).
- c) The Standards Committee/Hearing Review Panel to raise any issues, question or clarify any matters with the Subject Councillor.

4. Independent Person

- a) The Independent Person to provide their views.
- b) The subject Councillor to seek any points of clarification from the Independent Person or ask any questions.
- c) The Monitoring Officer, Investigating Officer or their representative to seek any points of clarification from the Independent Person or ask any questions.
- d) The Standards Committee/Hearing Review Panel to seek any points of clarification from the Independent Person or ask any questions.

5. Standards Committee/Hearing Review Panel Deliberations

- a) The Review Panel to retire, along with the representative from Democratic Services/designated Legal Advisor to the Panel to determine whether there has been a breach of the Code of Conduct.
- b) The Standards Committee/Review Panel to resume the Hearing to report the decision:
 - If further information or clarification is required, this will be reported and a decision taken as to whether an adjournment or postponement is necessary
 - If no breach of the Code of Conduct, the Hearing ends
 - If there has been a breach of the Code of Conduct, the Hearing will continue

6. Breach of the Code of Conduct

- a) Monitoring Officer, Investigating Officer or their representative to outline possible sanctions.
- b) The Subject Councillor to respond with any mitigation.
- c) The Independent Person to provide their views on appropriate sanctions.
- d) The Review Panel determines appropriate sanctions.

7. End of Hearing

A Decision Notice to be produced and published to all parties within 5 working days.