Reference: STD005848

Complaint

The complaint was made about Councillor Darren Maltby, a Gedling Borough Councillor by Councillor Alison Hunt, also a Gedling Borough Council Councillor.

A general summary of the complaint is set out below:

The complainant states Councillor Darren Maltby commented on social media posts which are false and misleading. The comment in question was following an article in the Gedling Eye from 26th June 2026 regarding the proposed introduction of an Article 4 Direction in Netherfield. The complainant states these posts are false and misleading because the complainant has incorrectly stated publicly that Councillor Hunt voted against an Article 4 Direction.

The Complainant provided screenshots of those related posts along with the original article for context.

Decision

In accordance with Sections 28 (6) and (7) of the Localism Act 2011, having carefully considered the allegation and the additional potential breach of the code identified through considering the allegation in accordance with the Council's Arrangements for Dealing with Complaints about breach of the Code of Conduct, and taking into account:

- the complaint as submitted by the complainant;
- Facebook screenshots provided by both the complainant and Councillor Maltby;
- the response to the complaint submitted by Councillor Maltby;
- the views of the Independent Person; and
- the Council's Code of Conduct.

I am satisfied that Councillor Maltby was acting in capacity as a councillor at Gedling Borough Council, the reasons for this assessment are below.

I have determined that on balance Councillor Maltby has breached the code of conduct by posting that Councillor Hunt had previously voted against an Article 4 Direction relating to HMO's, it is noted that Councillor Maltby acknowledged the error and swifty rectified this, I consider that there is potentially a technical breach of the Code of Conduct in this regard.

Whilst reviewing the screenshots provided by the complainant and Councillor Maltby as part of the complaint, screenshots of a conversation on a social media thread which openly discussed the outcome of a Code of Conduct complaint were discussed. In considering if the Code has been breached relating to publicly announcing the existence of a Code of Conduct Complaint and the outcome of such a complaint from Councillor Meads, I again find on the facts there to be a technical breach of the code.

Reasons for Decision

<u>Acting in capacity as a Councillor</u>

Section 27(2) of the Localism Act 2011 requires all relevant authorities to "adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity."

Gedling Borough Council has adopted such a Code of Conduct which reflects this and states:

"*5.2 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.

5.3 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.

Councillor Maltby has stated that he was using his personal Facebook page to post the comments on social media. I can see from the name of the posting it does not reference 'Councillor' and is in the name of Darren Maltby. There isn't anything readily accessible on the home page of Darren Maltby's Facebook page which states he is a councillor of Gedling Borough Council. That said, this is not the only consideration when assessing whether a councillor is acting in capacity.

The Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) case confirms that a councillor is not a councillor 24 hours a day and is entitled to have a private life. A sufficient connection must exist between the conduct complained of and the councillor's role as a member, with each case determined on the facts. Councillors cannot use personal Facebook accounts as a means of providing cover whilst actions would amount to acting as a Councillor. The important consideration is 5.2 of the Code of Conduct which states "*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 is explained further in the LGA guidance where consideration should be given to whether a reasonable observer would think they were acting as a councillor. Important factors for consideration are,

- Who was the audience
- The subject matter
- Whether council business was discussed
- Whether the members role was discussed/emphasised
- Whether they appeared to be speaking on behalf of the council or ward residents

Although Councillor Maltby was using a private Facebook page, in considering the post subject to the complaint and chain of posts, the responses are predominantly borough councillors of Gedling Borough Council engaged in the discussion, the subject matter is one of Council business and within the chain of posts Councillor Maltby implies he is a borough councillor including through making reference to a complaint being made against him. I am therefore more than satisfied that a reasonable member of the public would consider that Councillor Maltby was acting as a councillor.

Complained of Social Media post

It is not a point of dispute that Councillor Maltby posted an inaccurate statement about Councillor Hunt publicly onto Facebook. Councillor Maltby accepts he did this, and once corrected on the point, amended the post and made an apology to Councillor Hunt. Councillor Hunt did not go back onto Facebook following the exchange between her and Councillor Maltby as she was upset by the comments. It is because of this she did not see the apology and rectification of the post by Councillor Maltby.

A false statement does not automatically amount to a Code breach. Political debate frequently involves disagreement, exaggeration and opinion. An assessment of the Human Rights Act 1998 must be considered, Article 10 ECHR (Freedom of Expression). The courts have consistently held that elected politicians enjoy a particularly high level of protection when engaging in political speech and debate. Therefore, when considering if a breach has occurred, I have carefully considered whether the misinformation was done deliberately, done with the intention to damage Councillors Hunts reputation, was done knowingly, was done with reckless disregard for truth, was made to gain an advantage or whether it undermines public confidence. In those cases, a false statement is more likely to engage the Code and the conduct amount to a failure to treat other councillors with respect.

Councillor Maltby was incorrect in his Facebook post, he recited his opinion not based on the facts. I have concluded that this was not done dishonesty, or knowingly, but I do find that Councillor Maltby was reckless in posting the comment. A councillor who makes an allegation without checking obvious facts may still fall below expected standards of a councillor. I find that the issue of whether Councillor Hunt had voted against the Article 4 Direction for HMO's at Gedling Borough Council is easily accessible information accessed via the Councils records and recordings of Council meetings.

There is no evidence to support that Councillor Maltby posted the offending comment knowingly and deliberately or with any dishonesty, but I do find on balance it was done so recklessly without regard for facts which are easily accessible to Councillor Maltby, therefore amounting to a breach of the Code. Despite this conclusion I find that Councillor Maltby's swift apology and amendment of the post when challenged about the misinformation was an immediate rectification and mitigated.

I have considered, in line with the Council's arrangements for dealing with complaints, whether further investigation is merited given that there is a potential breach of the Code of Conduct found. I do not consider further investigation of this matter is necessary or proportionate. I do not consider there is any merit in engaging further resource in investigating this matter as Councillor Maltby has already provided a public apology on the Facebook post chain and amended the original offending post. I therefore do not consider any further action should follow. That said Councillor Hunt did not go back onto Facebook to see the apology or rectification so Councillor Maltby may wish to provide an apology directly to Councillor Hunt.
In line with the arrangements for dealing with complaints a summary of this matter will also be referred to the next Standards Committee meeting for information and will be in the public domain.

Secondary Social media post

The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct and has responsibility for upholding standards of member conduct. Application of the Code by the Monitoring Officer through complaint handling is confidential. All matters relating to complaints and breaches of the code are to remain confidential unless a breach is established, at which point they will be published by the Monitoring Officer through the Standards Committee.

The arrangements for dealing with code of conduct complaints states at Paragraph 8 states,

"*It is important, first, to preserve the integrity of the complaints process and, second, to minimise any negative impact of the complaint on all the people affected by it, that information relating to the complaint is treated as confidential. The assessment of complaints will therefore be conducted by the Monitoring Officer in private. The parties to a complaint are expected to maintain confidentiality as well. Parties are not prohibited from discussing the complaint to seek advice and support; however, it should not be discussed in the public domain. Details in relation to complaints will only become publicly available if there is a finding of a breach of the Code of Conduct either at the initial assessment stage or following full investigation."*

An opportunity was given to Councillor Maltby to provide representation about this post but did not supply any representations for consideration within the time frames of the complaint. An email was sent after he deadline stating further details have come to light but this information has never been produced.

The Facebook post made by Councillor Maltby expressly refers to another councillor having made a complaint against him, the post then goes further and details the outcome of that complaint. This complaint is one subject to confidentiality as there was no finding made. The requirement to maintain confidentiality as a councillor is contained within the code and a breach of confidentiality would amount to a breach of the Code of Conduct.

I have considered the context in which Councillor Maltby breaches confidentiality, relating to the previous messages of the other Councillor. That said, one wrong does not cancel out another. Each councillor is responsible for their own actions and compliance with the Code of Conduct. All councillors should be mindful and cautious about the use of social media. Whilst undertaking a role as a councillor, you are in a position of responsibility where you are required to uphold the principles of public life and abide by the Code of Conduct.

I find that Councillor Maltby has breached the Code of Conduct by failing to maintain confidentiality with the Standards regime. In this case I recommend that Councillor Maltby undergo refresher training on the Code of Conduct.

I have considered, in line with the Council's arrangements for dealing with complaints, whether further investigation is merited given that there is a potential breach of the Code of Conduct found. I do not consider further investigation of this matter is necessary or proportionate, whilst a potential breach of the code is demonstrated, I do not consider there is any merit in engaging further resource in investigating this matter and I conclude that the matter can be dealt with informally through the attendance at a training session on the Code of Conduct. It is my view that Councillor Maltby was under the mistaken view that as he was using his personal Facebook account, communications from account would not

have engaged the Code of Conduct, and this is something that could be impressed through attendance at training.

In line with the arrangements for dealing with complaints a summary of this matter will also be referred to the next Standards Committee meeting for information and will be in the public domain.