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Queen Victoria Road  
High Wycombe  
Bucks HP11 1BB

## Standards Committee

Date: 9 October 2018  
Time: 6.15 pm  
Venue: Committee Room 1  
District Council Offices, Queen Victoria Road, High Wycombe Bucks

### Membership

Chairman Councillor C Etholen  
Vice Chairman Councillor M Clarke  
  
Councillors: K Ahmed, D J Carroll, A R Green, R Newman, S Saddique and J A Savage  
  
Independent Persons (Observers): G Houalla and Mr C Morley  
  
Parish Council Observers: Parish Councillor Mr A Cobden, Mr T Nolan and Mrs H Stearn

### Standing Deputies

Councillors: A D Collingwood, H L McCarthy, R Raja and R J Scott

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## Agenda

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2 <b>Minutes of Previous Meeting</b>	
	To confirm the minutes of the previous meeting held on 5 June 2018 (previously circulated)
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**For further information, please contact Iram Malik 01494 421204,  
committeeservices@wycombe.gov.uk**

# Agenda Item 4

## Standards committee 9 October 2018

### Committee on Standards in Public Life – Government Consultation on Intimidation in Public Life

Officer contact: Julie Openshaw 01494 421252 [julie.openshaw@wycombe.gov.uk](mailto:julie.openshaw@wycombe.gov.uk)

Wards affected: All

#### PROPOSED DECISION

- (i) To note the report;
- (ii) To note that members may respond to the consultation, either individually or through their Groups;
- (iii) To note that the Returning Officer has responded separately to the consultation.

#### Reason for Decision

To report the latest position on this issue and consultation which continues to be undertaken around it, and to remind Members of the Government's invitation to make responses by 22 October 2018.

#### Corporate Implications

1. The Committee on Standards in Public Life (CSPL) is an advisory non-departmental public body which was set up in 1994 by the (then) Prime Minister, and is sponsored by the Cabinet Office, with appointments made by the Prime Minister. It is a standing committee and its terms of reference include examining areas of concern about standards in public life, advising the Prime Minister, and revisiting areas and monitoring whether and how well its recommendations have been put into effect. Its original chair was Lord Nolan (who was instrumental in embedding "the Nolan Principles" into the culture of standards in public life). Its current chair is Lord Paul Bew. Aspects of its work are periodically reported to Standards Committee for information and response.

#### Executive Summary

2. As outlined in the report, and the Standards Committee report of 20 March 2018, the CSPL and Government have been considering how to address the issue of intimidation in public life, and have been undertaking consultation work; this consultation is the latest piece of work being undertaken and proposes changes to electoral law and practice as part of a package of measures to address the issue. The issue is important for local democracy, and Government has invited submissions by the deadline of 22 October 2018.

#### Sustainable Community Strategy/Council Priorities – Implications

3. This report helps support the "Strong Communities" strand of the Council's Corporate Plan, by supporting community resilience and supporting work to promote integration and cohesion. It also supports the "Efficient and Effective" strand of continuing to develop and value our elected members and staff, and behaving in accordance with our values.

## **Background and Issues**

4. On 13 December 2017, the CSPL published its seventeenth report, titled “Intimidation in Public Life: A review by the CSPL”. This work was begun in July 2017, at the invitation of the Prime Minister. The full publication can be found at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666927/6.3637\\_CO\\_v6\\_061217\\_Web3.1\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666927/6.3637_CO_v6_061217_Web3.1_2.pdf)
5. In the CSPL’s view: *“Intimidation In public life presents a threat to the very nature of representative democracy in the UK. Addressing this intimidatory, bullying and abusive culture matters. It matters for the diversity of our public life it matters for the way in which the public can engage with representative democracy, and it matters for the freedom to discuss and debate issues and interests”.*
6. The work to support the CSPL’s report involved a public consultation and receipt of 88 submissions, as well as inviting every Peer and MP to contribute, a round table discussion with former candidates, academics, think tanks and stakeholders, a public hearing with political parties, a private hearing with police and security services, published interviews with social media companies, 18 meetings with stakeholder organisations and 11 meetings with parliamentarians and former parliamentary candidates across the political spectrum.
7. A total of 33 recommendations were made by the CSPL to Government, social media companies, political parties, press organisations, MPs, candidates and other public office holders. (One of the recommendations was that Monitoring Officers should remind members, in relation to their duty to declare and have published certain pecuniary interests, that there are provisions in the Localism Act 2011 which can be relied upon to exempt members from the need to publish the details of such interests where they are “sensitive” and publication could result in the member or someone connected with them being subjected to violence or intimidation, and this was actioned earlier this year by an article in Members’ Update).
8. The Government published its response to the CSPL’s report in March 2018. It committed to action on most of the recommendations to Government, including electoral law review. On 20 March 2018 WDC’s Standards Committee received an update report on the position at that time. It was noted amongst other points that Government was recommended by the CSPL to consult on a potential new electoral offence of intimidating candidates, legislation to remove the requirement for local candidates to have their addresses published on ballot papers, and for Returning Officers not to have to disclose the home addresses of those attending election counts.
9. On 29 July 2018 the Government launched a public consultation with a closing date of 22 October. The link to the document is below, and the list of 34 consultation questions is found at pages 9 – 11.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730209/CSPL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730209/CSPL.pdf)
10. The consultation is divided into three main sections. First, it seeks views on a proposal for a new electoral offence which would be aimed at tackling threats and abuse towards those standing for election. Secondly, it seeks views on clarifying the electoral offence of undue influence of voters. It notes that currently, a person is guilty of undue influence if they threaten electors to vote a

certain way, or stop them from voting. The new law, if introduced, could result in people being stripped of their right to stand for or hold public office, if convicted of threatening or abusive behaviour, in person or online. Extreme cases of sustained, pressurising behaviour intended to cause distress and impact would be a serious criminal offence, punishable with a custodial sentence.

11. Thirdly, the consultation also explores whether the requirement to have imprints, which is added to election material to show who is responsible for producing it, should be extended to digital communications. Government considers that this would also have the benefit of increasing transparency, in digital campaigning, in light of recent concerns about the potential risks of “fake news” and foreign interference in future ballots.
12. Minister for the Constitution, Chloe Smith said, in launching the consultation:  
*“This government recognises that rising intimidation in public life is stopping talented people from standing for election and putting voters off politics and we want to tackle this extremely serious issue. We are consulting on three new measures that will protect voters, candidates and campaigners so they can make their choice at the ballot box or stand for public service without fear of being victims of misinformation or abuse. We can’t let intimidation of our candidates, campaigners, the public and those that serve us continue unchecked and I would encourage everyone to take part in this consultation.”*
13. Lord Bew, CSPL Chair, has commented on the Government proposal:  
*“Intimidation presents a real threat to the integrity, diversity, and vibrancy of our public life. People of all backgrounds should not be put off from standing for public office as a result of intimidatory behaviour. We warmly welcome that the government are implementing our recommendation to consult on a new electoral offence of intimidating Parliamentary candidates and introducing digital imprints. The Electoral Commission identified these gaps in electoral law in evidence to our review, and these measures would play an important part in protecting candidates and voters at election time.”*
14. A general reminder to Members on the opportunity to respond has been included in Members’ Update. The Returning Officer has also sent a separate response to the consultation.

## **Options**

The report is for noting only; members may choose to respond to the Government or not to do so. Responses can be made individually or via Groups.

## **Conclusions**

Government will collate and consider responses after 22 October, determine future policy and potential legislative changes, and publicise these intentions at the appropriate time.

## **Next Steps**

A further report will be presented to Standards Committee at an appropriate time when the Government has considered responses and determined the way forward.

## **Background Papers**

None which are not already in the public domain.



# Agenda Item 5

**Standards Committee 9 October 2018**

## **Case law update – Harvey v Ledbury Town Council (2018)**

Officer contact: Julie Openshaw 01494 421252 [julie.openshaw@wycombe.gov.uk](mailto:julie.openshaw@wycombe.gov.uk)

Wards affected: All

### **PROPOSED DECISION**

To note the report.

### **Reason for Decision**

To ensure the Committee is aware of case law relating to standards issues and procedures and in particular to provide the Committee with information about a recent High Court judgement concerning the lawfulness of sanctions imposed by a Town Council against a Town Councillor, following a complaint about her conduct.

### **Corporate Implications**

1. The Localism Act 2011 sets out the framework for member conduct and complaint handling for District and Town/Parish Councils; case law, as it emerges, is persuasive and provides guidance as to the interpretation of legislation, and informs behaviours in the future.

### **Executive Summary**

2. This report outlines the background to the case of Harvey v Ledbury Town Council, a case which was heard in the High Court on 15 May 2018, and dealt with the issue of what sanctions can legally be imposed against a town councillor in respect of perceived misconduct, and through what process.

### **Sustainable Community Strategy/Council Priorities – Implications**

3. This report helps support the “Efficient and Effective” strand of the Council’s Corporate Plan, by supporting the aim of continuing to develop and value our elected members and staff, and behaving in accordance with our values.

### **Background and Issues**

4. Complaints were made in relation to the alleged behaviour of Councillor Harvey, a member of Ledbury Town Council, by the Town Clerk. The Town Clerk lodged a grievance alleging that Councillor Harvey had bullied, intimidated and harassed staff. The grievance was heard by a panel of senior Town Councillors. Councillor Harvey did not attend, indicating that she did not recognise the authority of the Panel, and she requested that the matter be properly investigated under the Standards procedure. The Town Council’s Panel went on to consider the grievance, and upheld it in Cllr Harvey’s absence, proceeding to resolve to impose a number of restrictions on Councillor Harvey, for a year, including that she should not sit on any committees, sub-committees, panels or working groups, nor represent the council on any outside body, and that all communications between her and its clerk and deputy clerk should go through the mayor. No reasons were provided, and an appeal was rejected. After a year, the restrictions were

reviewed, when again Cllr Harvey was absent, and evidence relied upon was not provided to her, with the restrictions being maintained and further expanded to prevent Cllr Harvey from communicating with all staff.

5. Councillor Harvey “self-referred” the complaints about her behaviour to the Monitoring Officer of Herefordshire Council to be dealt with as a Code of Conduct complaint. Herefordshire Council advised the Town Council that the complaint was sufficiently serious to require further investigation, and that it was making arrangements for the complaint to be investigated by an external investigator. The Monitoring Officer advised the Town Council that although the allegations had been made under the grievance procedure, they were in fact allegations that a member had failed to comply with the authority's Code of Conduct and therefore should be dealt with in accordance with the standards regime (for English authorities this regime is made under Section 28(6) of the Localism Act 2011).
6. The external Code of Conduct investigation was concluded and Herefordshire Council notified the parties that the investigator had found no breach by Councillor Harvey of the Town Council's Code of Conduct and so it would be taking no further action on the standards complaint.
7. Councillor Harvey then challenged, by way of a judicial review application, the Town Council's decision to impose sanctions on her under its grievance procedures on the basis that:
  - a. the restrictions were ‘ultra vires’ (i.e. beyond the powers of the Town Council and therefore unlawful) because they constituted sanctions which could only be imposed as a result of a standards process; and
  - b. the decision making process had been unfair, both substantively and procedurally.
8. The Town Council argued that its decision was not ultra vires, because it believed that the standards regime set under the Localism Act 2011 did not prohibit it from instigating proceedings under its grievance procedure where the matter at issue involved internal relations concerning its staff. It also rejected the complaints that its decision making process was substantively and procedurally unfair.
9. The High Court judge decided in favour of Councillor Harvey on both grounds of her challenge, and quashed (overturned) the decision to impose the sanctions.
10. The full judgement is accessible at:  
<http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>
11. Key points from the case are:
  - a. The Town Council had no power to sanction Councillor Harvey other than going through the procedural safeguards of a Code of Conduct

- process. The council's restrictions on Councillor Harvey (continued even after she was found not to have been in breach of the code) were an unlawful sanction; and
- b. The conduct of the grievance process through which the restrictions were imposed was unfair.
12. This case makes clear that a council cannot pursue a grievance procedure against a councillor alongside, or as an alternative to, a standards regime procedure, and that complaints regarding a councillor's conduct must be dealt with under the authority's standards arrangements under the Localism Act. It also provides a reminder that any process must be fair and in accordance with the principles of "natural justice"; the right to a fair hearing by an unbiased and impartial body, requires that individuals should have been given prior notice of the allegations made against them, a fair opportunity to answer them, and the opportunity to present their own side of the story. The right to a fair hearing is also guaranteed by Article 6(1) European Convention on Human Rights, which complements the common law rather than replaces it.
13. It should be noted that the issue of Councillor Harvey's conduct was not the point which was in dispute in this case; rather, it was the process used to consider it that was challenged. It remains the case that councils must continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since it is possible for a council to be liable for the actions of its councillors, a principle which was established in the case of *Moores v Bude-Stratton Town Council*, a case determined in 2000. However, the key point in the *Harvey v Ledbury Town Council* case is that the proper course for the investigation of behaviour of councillors and the imposition of any sanctions if a breach is found to have occurred is under the Code of Conduct and the statutory standards framework; councils must also ensure that any hearing is fair and any informal action is proportionate in all the circumstances of the case.

## **Options**

The report is for noting only.

## **Conclusions**

The case provides clarification of the law and guidance for future reference and will be taken into consideration in providing advice where relevant.

## **Next Steps**

Case law will be monitored, and reported to Standards Committee as appropriate.

## **Background Papers**

None which are not already in the public domain.

# Agenda Item 6

**Standards Committee 9 October 2018**

## **QUARTERLY UPDATE ON STANDARDS COMPLAINTS**

Officer contact: Julie Openshaw District Solicitor and Monitoring Officer  
01494 421252 [julie.openshaw@wycombe.gov.uk](mailto:julie.openshaw@wycombe.gov.uk)

Wards affected: All

### **PROPOSED DECISION**

To note the report.

#### ***Reason for Decision***

To provide the Committee with an overview of complaints about member conduct since 5 June 2018.

#### **Corporate Implications**

1. The Localism Act 2011, Sections 26-37 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the current legislative framework relating to standards of conduct for elected members and arrangements for handling standards complaints. The Member Code of Conduct and complaints procedure are included in Part 5 of the Council's published Constitution.
2. In order to enable Standards Committee to maintain an over view of complaints and any trends emerging, reports will be presented quarterly.

#### **Executive Summary**

3. This report provides Standards Committee with an overview of recent Member conduct complaint cases.

#### **Sustainable Community Strategy/Council Priorities - Implications**

4. None.

#### **Background and Issues**

5. Standards Committee is presented with quarterly updates on member conduct complaints.
6. Since the report to Committee on 5 June 2018, one complaint has been dealt with as set out in Appendix 1. There are no current complaints outstanding.

#### **Options**

7. None, this report is for noting only.

#### **Conclusions**

8. As with recent reports, there continues to be overall a relatively small number of complaints, and so far none have been referred for investigation. The involvement of the view of an Independent Person in each decision, as required

by the legal framework, continues to provide a valuable check and balance to the Monitoring Officer to ensure decisions made at Stage 2, i.e. whether or not a formal investigation should be carried out into a complaint, are proportionate and reasonable. The recently appointed second Independent Person will begin to participate in some future complaints which proceed to Stage 2. The Annual Report of Standards Committee to full Council will also continue to provide an additional composite overview of complaints recently handled.

### **Next Steps**

9. Further quarterly updates will be provided.

### **Background Papers**

None.

Standards Complaints						
Complaints submitted under Localism Act procedure:						
Ref No	Date Recd	Complainant	Against Councillor:	Council	Outcome	Date completed
SC45	24/05/2018	Mr C Leadbeater	Cllr M Detsiny	Lane End PC	Complaint not referred for investigation. Public benefit not served by further investigation.	13/07/18