



Standards Committee

Date: 19 February 2019
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

Item		Page
1	APOLOGIES FOR ABSENCE To receive any apologies for absence	
2	MINUTES OF PREVIOUS MEETING To confirm the minutes of the last meeting held on 9 October 2018 (previously circulated)	
3	DECLARATIONS OF INTEREST	

To receive any disclosure of any pecuniary interests by Members relating to items on the agenda. If any Member is uncertain as to whether an interest should be disclosed, he or she is asked if possible, he or she is asked if possible to contact the District Solicitor prior to the meeting.

Members are reminded that if they are declaring an interest, they should state the nature of that interest whether or not they are required to withdraw from the meeting.

4	COMMITTEE ON STANDARDS IN PUBLIC LIFE- LOCAL GOVERNMENT ETHICAL STANDARDS STAKEHOLDER CONSULTATION & REPORT	1 - 12
5	QUARTERLY UPDATE ON STANDARDS COMPLAINTS	13 - 15
6	SUPPLEMENTARY ITEMS (IF ANY)	
7	URGENT ITEMS (IF ANY)	

For further information, please contact Iram Malik 01494 421204, committeeservices@wycombe.gov.uk

Agenda Item 4



Report For:	Standards Committee
Meeting Date:	19 February 2018
Part:	Part 1 - Open
If Part 2, reason:	N/A

SUMMARY

Title of Report:	COMMITTEE ON STANDARDS IN PUBLIC LIFE – LOCAL GOVERNMENT ETHICAL STANDARDS STAKEHOLDER CONSULTATION AND REPORT
Officer Contact: Direct Dial: Email:	Julie Openshaw 01494 421252 julie.openshaw@wycombe.gov.uk
Ward(s) affected:	All
Reason for the Decision:	To note the latest position in the consultation process, and the report of the CSPL published on 30 January 2019.
Proposed Decision:	That the report of the CSPL published on 30 January 2019 be noted.
Sustainable Community Strategy/Council Priorities - Implications	Risk: None. Equalities: None Health & Safety: None
Monitoring Officer/ S.151 Officer Comments	Monitoring Officer: This is the Monitoring Officer's report. S.151 Officer: No direct financial implications.

Consultees:	Responses to the review process were submitted by the Monitoring Officer to the CSPL in May 2018, in consultation with the Chairman of Standards Committee.
Options:	The report is for noting only.
Next Steps:	Government will consider what if any action to take in light of the CSPL's recommendations, best practice points and conclusions. Individual local authorities should also note these and determine whether to act. The CSPL will monitor the update of best practice during 2020.
Background Papers:	Standards Committee report of 20 March 2018. Report of the CSPL published on 30 January 2018. Held in Democratic Services.
Abbreviations:	CSPL – Committee on Standards in Public Life

Appendices to this report are as follows:

Appendix 1 – Representations made by WDC in May 2018.

Detailed Report

1.1 On 20 March 2018 the Standards Committee considered a report outlining the latest position at that time. The role and membership of the CSPL were outlined, and it was noted that on 20 January 2018 the CSPL had published a stakeholder consultation on local government ethical standards, with a response deadline date of 18 May 2018.

1.2 The CSPL had observed that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The terms of reference for its review were set out as:

- To examine the structures processes and practices in local government in England for:
 - Maintaining codes of conduct for local councillors;
 - Investigating alleged breaches fairly and with due process;
 - Enforcing codes and impose sanctions for misconduct;
 - Declaring interests and managing conflicts of interest;
 - Whistleblowing.
- To assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
- To make any recommendations for how they can be improved;
- To note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

1.3 The review has considered all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority including the Mayor of London.

1.4 Responses were invited from local authorities, their Standards Committees, Monitoring Officers, think tanks or academics with an interest or expertise in local government, and representative bodies or groups related to local government.

1.5 A range of questions were posed, and in accordance with authority from the Standards Committee, detailed representations were submitted by Wycombe District Council's Monitoring Officer in consultation with the Chairman of Standards Committee. These are attached at Appendix 1.

1.6 On 30 January 2019 the CSPL published its report, addressed to the Prime Minister. The report is at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772900/Local_Government_Ethical_Standards_Web_.PDF . The report proposes a range of measures, which it recommends, mainly to Government though also to the Local Government Association and Parish Councils in some cases.

1.7 Recommendations in the CSPL's report are set out throughout the report, and also collated as a separate list within the report. There are 26 recommendations, plus a list of 15 Best Practice points.

1.8 Some key recommendations, observations and conclusions include:

- No return to a centralised body to oversee and adjudicate on standards;
- Councils to retain responsibility for applying the Seven Principles of Public Life in local government;
- An updated Voluntary Model Code of Conduct to be created by the Local Government Association;
- A rebuttable presumption that Councillors' public behaviour is in their official capacity;
- Register of Interests to include categories of non-pecuniary interests;
- Current rules on declaring and managing interests should be repealed and replaced with an objective test (in line with the devolved standards bodies in Scotland, Wales and Northern Ireland);
- Local Authorities should maintain a standards committee with voting independent members;
- Independent persons to have fixed terms of two years with one opportunity to extend for a further two years, and protection by legal indemnity to be put in place;
- Councils to be given the power to suspend councillors for up to six months, to include parish councillors, if an Independent Member agrees to the suspension. A right of appeal to be given to the Local Government Ombudsman;
- The criminal offences relating to Disclosable Pecuniary Interests should be abolished;
- Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding;
- Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils. Clerks should also hold an appropriate qualification;
- Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance;
- Standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture;
- Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups;
- Political groups should require their members to attend code of conduct training provided by a local authority and write this into national party model group rules.

1.9 Many of the recommendations reflect the views which were expressed by WDC in the representations, and/or WDC current practice, which appears overall to compare favourably to good practice demonstrated elsewhere in the country, within the confines of the current legislation. Notably, the WDC Code was strengthened in 2015 to include the need to declare an interest and leave a meeting even where the interest was a non-DPI as well as if it was one of the interests in the statutory list of DPis. Some of the recommendations however go further than the WDC representations suggested. Some of the recommendations are capable of being taken on board by Councils now, if they choose to, whilst others would need a change in the law to take effect.

1.10 The advent of Unitary Local Government in Buckinghamshire means that the Shadow Council and the eventual Buckinghamshire Council will have decisions to make around the development of its Code of Conduct and general standards regime, and it will need to have regard to the recommendations and best practice points in developing a Code and procedure as part of its Constitution.

Agenda Item 4

Appendix A

RESPONSES TO COMMITTEE ON STANDARDS IN PUBLIC LIFE

ETHICAL STANDARDS STAKEHOLDER CONSULTATION

1. Are the existing structures process and practices in place working to ensure high standards of conduct by local councillors? If not please say why.
2. What if any are the most significant gaps in the current ethical standards regime for local government?

These two questions are answered together. Since 2012, Wycombe District Council itself has, fortunately not encountered any cases which have been viewed as meriting formal investigation. It has voluntarily maintained its freestanding Standards Committee.

However, this does not in itself indicate that the current regime overall is entirely satisfactory. We are aware for example that the Chair of the Sandwell MBC standards committee has recently expressed concerns about the limits on actions which can be taken against members within the Localism Act framework, and the “extremely high threshold” police forces must apply with considering Misconduct in Public Office offences.

Anecdotally, there has been much concern expressed about the limitation on sanctions available under the current regime, and doubtless this will be expressed by other respondents with more urgent and pressing local need for a more stringent system. For serious breaches of the Code of Conduct, the absence of disqualification or suspension sanctions significantly reduces the effectiveness of the regime, and in cases of serious misconduct could significantly reduce public faith in the arrangements.

The change in the standards regime enacted by the Localism Act 2011 was profound, with a number of key relaxations compared to previously. Notably, combined with the abolition of Standards for England and the extension of the practice of all member conduct complaints being handled locally with no central national structure in place, sanctions were also greatly curtailed by the removal of suspension and disqualification. The removal of the need to abide by a Model Code gave rise to local differences, which though all based on the Nolan Principles, has allowed the danger of different interpretations of the same behaviour.

Locally, our Code has appeared to be adequate so far, but if a serious case arose, it could prove to have severe limitations in providing an effective sanction.

Some checks and balances apply, notably the requirement to consult the Independent Person’s view when deciding if a complaint merits formal investigation or not, but this in itself not sufficient. In cases where really serious misconduct

happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue. Accordingly we believe that strong consideration should be given to reintroducing the sanctions of suspension and disqualification in some way.

Codes of conduct

3. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
4. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Wycombe District Councillors undergo standards training as part of their induction, and Standards Committee and the Monitoring Officer support periodic refresher training. Parish and Town Council representatives are invited to some sessions.

The Nolan principles have been in place since 1994 and generally have stood the test of time as a benchmark to underpin descriptions by which conduct in public office should be judged. However, whilst Codes must abide in general by these principles, there is considerable scope for different content of Codes, not only between different tiers of local government, but within those tiers.

For example, anecdotally, we are aware of at least one Code which does not include a prohibition against bringing the authority into disrepute, which appears to omit a significant requirement covered in many other codes.

The difference between Disclosable Pecuniary Interests and their implications and "other interests" and their implications is also a complex area, and can easily be misunderstood by lay people.

Any consideration given to ways in which Codes of Conduct can be clarified should focus on these areas. We also believe there is a strong case for reintroducing a mandatory Model Code to promote consistency across the country and reduce scope for differing requirements and interpretations of what behaviour is and is not judged acceptable.

Investigations and decisions on allegations

5. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Wycombe District Council, in common with many other District Councils, following an initial sifting process to ensure the matter genuinely falls within the Code ambit, operates a 3-stage system where if after response at Stage 1 from the subject member a complainant remains dissatisfied, Stage 2 involves the Monitoring Officer in consultation with an Independent Person determining whether a matter should be formally investigated, and Standards Committee would become involved at Stage 3 if an investigation is carried out.

Given the current framework, and since the abolition of an external independent body to handle conduct complaints, the risk of appearance of partiality in respect of internal complaints handling is unavoidably raised.

Monitoring Officers undertake a complex role, and have employment rules and in many cases professional conduct rules by which they must abide. However, the internalisation of the standards complaints process would make it difficult to effectively refute a vigorous accusation of partiality, no matter how impartial the parties involved may genuinely be.

The existence of the Independent Person role provides some safeguards to the role of the Monitoring Officer in complaints sifting. However, inclusion into role of Independent Person by the Local Authorities

(Standing Orders) (England) (Amendment) Regulations 2015 of the role of belonging to the panel considering dismissal of one of the Council's Statutory Officers including potentially its Monitoring Officer actively undermined their perceived independence because they could find themselves in the difficult and potentially conflicting position of contributing to a decision affecting the employment of the very person by whom, in the main aspect of their role, they are likely to be consulted, and therefore be perceived to work with, in relation to member conduct complaints. So far this eventuality will have been rare (if indeed it has happened at all) but the extension of the role in this way has risked potentially compromising an Independent Person's impartiality in this way with a consequent negative impact on the perception of their role, for those who understand the nature of the role properly.

Representations were made at the time arguing against this addition to the Independent Person's role.

Any consideration of these questions should seriously consider removal of this 2015 aspect of the Independent Person's role.

Sanctions

6. Are existing sanctions for councillor misconduct sufficient?

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

As noted above these comments are theoretical rather than based on local experience over the past four years, as there have been no instances of breach being found after investigation.

However, we have commented on the inadequacy of current sanctions above. Wycombe DC's sanctions are limited to, but include all of those available in law, which centre around various types of adverse publicity for members who have been found to breach the Code. These sanctions might cause some subject members to consider their position, but for members who have no intention of resigning even if a serious breach was found, and examples have arisen (though not in Wycombe) the system is ineffective.

The reintroduction of suspension or disqualification as an ultimate sanction should be seriously considered.

Declaring interests and conflicts of interest

7. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

As required by legislation, the list of Disclosable Pecuniary Interests is set out within Wycombe DC's Code of Conduct, and the definition of "other interests" matches those within many similar authorities.

A key weakness in the current regime is that for "other interests" councillors are not under a duty to withdraw, having declared such an interest. This could mean, for example, that a member could participate in the planning application of a friend or family member other than their spouse and not breach their Code. Wycombe District Council's Code has been strengthened to make withdrawal obligatory for both DPIs and "other interests". However, this distinction and the very rationale for doing so is not straightforward. Any review of the framework should include careful scrutiny of this area, debate on exactly what interests are and are not considered to require a member to absent themselves from the decision making process, and how clarity could be improved and simplified.

Whistleblowing

8. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Like many authorities, Wycombe District Council has a Whistleblowing Policy which its employees and contractors can make use of, which is regularly reviewed, compliant with legislation, and publicly available, allowing issues to be raised where necessary. Use of this process is rare. There is no reason so presume that it is in any way unsatisfactory.

In relation to the public, again like other authorities, the Council has a general complaints system which can be used to deal with all other aspects excluding member conduct, and ultimately the Local Government Ombudsman has legal powers to make recommendations on complaints and the Monitoring Officer has a duty to report to Cabinet under S5A of the Local Government and Housing Act 1989 in maladministration cases.

Councillors have access to senior officers to raise any issues which are of concern to them, and the Council has a Member/Officer Protocol as part of its Constitution.

No other “whistleblowing” requirements or improvements are obvious at this time.

Improving standards

9. What steps could *local authorities* take to improve local government ethical standards?
10. What steps could *central government* take to improve local government ethical standards?

Local authorities in general already take steps to support ethical standards, and are obliged to have arrangements in place for doing so in accordance with prevailing legislation. These must be compliant with statute and cannot exceed that or they would be ultra vires. Generally, the number of really high profile examples of member misconduct are relatively few, but when they do arise, public faith can be damaged.

Some councils have chosen to merge the functions of their Standards Committees into other committees, such as Audit or Governance Committees, with or without the “Standards” title still included. Though this may have some justification in terms of efficiency of workload, it could result in a perception that ethical standards has a lower priority than it should. Having freestanding Standards Committees, or at least including this function in the committee title, can help raise the profile of this work.

Central Government should continue and where necessary improve its engagement with the CSPL to engage in the debate on how the current system is working, and establish how the best aspects of the current regime, and the previous pre-2012 regime could be selected and combined to avoid both the perceived over-bureaucracy of the previous system, and fragmentation and lack of sanctions of the current one, to forge an improved future system.

Intimidation of local councillors

11. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

This is a very broad question and perceptions will be specific to individual members.

Wycombe District Councillors have been made aware of this consultation through a report to Standards Committee and the minutes being noted by full Council. The separate work and recent report of the CSPL on Intimidation in Public Life, including its various and detailed proposed measures to address potential intimidation has also been highlighted and noted, and actioned in terms of the recommendation to the Monitoring Officer.

Individual members may wish to provide more information about their perceptions and measures to address intimidation.

Agenda Item 5

SUMMARY



Report For:	Standards Committee
Meeting Date:	19 February 2019
Part:	Part 1 - Open
If Part 2, reason:	N/A

Title of Report:	QUARTERLY UPDATE ON STANDARDS COMPLAINTS
Officer Contact: Direct Dial: Email:	Julie Openshaw 01494 421421252 julie.openshaw@wycombe.gov.uk
Ward(s) affected:	All
Reason for the Decision:	To provide the Committee with an overview of complaints about member conduct since 9 October 2018.
Proposed Decision/Recommendation:	That the report be noted.
Sustainable Community Strategy/Council Priorities - Implications	Risk: Monitoring complaints helps to mitigate the risk of major issues with member conduct complaints arising, by allowing recurrent themes which may arise to be identified and addressed if necessary. Equalities: None. Health & Safety: None.
Monitoring Officer/ S.151 Officer Comments	Monitoring Officer: This is the Monitoring Officer's report. S.151 Officer: No direct financial implications.
Consultees:	Any complaints which reach Stage 2 are subject to consultation by the Monitoring Officer with one of the duly appointed Independent Persons.
Options:	None; the report is for noting only.
Next Steps:	Further quarterly updates will be provided.
Background Papers:	None.
Abbreviations:	None.

Appendices to this report are as follows:

Appendix 1; list of complaints since 9 October 2018.

Detailed Report

1. Standards Committee is presented with quarterly updates on member conduct complaints.
2. On 9 October 2018, there were no current complaints outstanding.
3. Since 9 October and the time of compilation of this report, three new complaints have been made, each of which have now been completed, at Stage 2. None of the complaints have proceeded to investigation. As well as these complaints, and before they were lodged, two other potential complaints (from different complainants and against different subject members) were received, but in due course, after having been advised of the remit of the member standards complaints process, how the “sifting” stage operates, and the available sanctions, the complainants did not pursue them to the first stage.
4. Successive quarterly reports continue to evidence a continuing relatively small number of complaints, of which none so far 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 Annual Report of Standards Committee to full Council will also continue to provide an additional composite overview of complaints recently handled.

Complaints submitted under Localism Act procedure:						
Ref No	Date Recd	Complainant	Against Councillor:	Council	Outcome	Date completed
SC46	11.12.18	Mr P Crotty	Tony Green	Wycombe District Council	Not referred for investigation.	01/02/19
SC47	11.12.18	Cllr K Ahmed	Tony Green	Wycombe District Council	Not referred for investigation.	01/02/19
SC48	11.12.18	Mr J Bajina	Tony Green	Wycombe District Council	Not referred for investigation.	01/02/19