

STROUD DISTRICT COUNCIL
AUDIT AND STANDARDS COMMITTEE

**AGENDA
ITEM NO**

7 MAY 2019

7

Report Title	COMMITTEE ON STANDARDS IN PUBLIC LIFE RECOMMENDATIONS
Purpose of Report	To inform the Committee of the outcome of a Review by the Committee on Standards in Public Life into Local Government Ethical Standards.
Decision(s)	The Committee RESOLVES to: (1) Note the review into Local Government Ethical Standards (2) Recommend to Council that it adopts the best practice recommendations
Consultation and Feedback	None, this Committee is the appropriate consultee for ethical standards
Financial Implications and Risk Assessment	There are no financial implications from this report. Andrew Cummings – Head of Finance & S151 Officer Tel: 01453 754115 Email: andrew.cummings@stroud.gov.uk
Legal Implications	Any legal implications are set out in the report.
Report Author	Patrick Arran – Interim Head of Legal Services and Monitoring Officer Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk
Options	The options are that the Committee can accept the list of best practice promoted by the Committee on Standards in Public Life in full, in part or not at all.
Performance Management Follow Up	If adopted, the Monitoring Officer would be responsible for ensuring application and compliance.

1. INTRODUCTION / BACKGROUND

- 1.1 On the 30th January 2019, the Committee on Standards in Public Life (CSPL) published its 20th report called “*Local Government Ethical Standards*”. The purpose of the study and subsequent report was to provide assurance that the current framework following the implementation of the Localism Act 2011 was achieving its aim of ensuring that the standards expected by the public were being maintained and promoted. The full report is available online at the following link:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

- 1.2 Members will recall that the Localism Act abolished the Standards Board for England with the intention that ethical standards would be maintained by Councils at a local level.
- 1.3 Overall, CSPL appears to be satisfied that the current arrangements are working and whilst it accepted that the benefits of devolved arrangements should remain, this required strengthening to deal with the minority of councillors who do not adhere to the Nolan Principles and engage in disruptive or abusive behaviour. The Committee also discovered some perceived risks in relation to the rules around conflicts of interest and gifts and hospitality which they are considered to be inadequate.
- 1.4 The CSPL have made a number of recommendations - which are set out in Appendix 1 for information only - and which they believe strike the balance between allowing ethical standards to be dealt with locally whilst providing a system which can hold to account those who commit the most serious or persistent breaches. The key recommendations include:
- A rebuttable presumption that Councillors public behaviour is in their Official Capacity
 - The criminal offences relating to Disclosable Pecuniary Interests should be abolished
 - A new power for local authorities to suspend councillors without allowances for up to six months
 - A right of appeal for suspended councillors to the Local Government Ombudsman
 - Revised rules on declaring interests, gifts and hospitality
 - Local authorities will retain ownership of their own Codes of Conduct
 - Strengthened role for the Independent Person
 - Greater transparency about the number and nature of Code complaints.
- 1.5 The report is to the Government and it is acknowledged that a number of the recommendations will need legislative change, as it stands any legislative intervention will inevitably be delayed by Brexit. Officers will provide further updates to the Committee as appropriate.

2. ISSUES FOR CONSIDERATION

- 2.1 In addition to the recommendations mentioned above, CSPL also provided best practice recommendations which are directed at local authorities. It is their view, and indeed expectation, that any local authority can and should implement them voluntarily. CSPL intends to review the implementation of its suggested best practice in 2020.
- 2.2 The report author is therefore placing the best practice recommendations before the Committee for it to consider. The best practice recommendations, together with commentary from the Monitoring Officer, are set out below. It is the firm recommendation of the Monitoring Officer that the Committee considers recommending to the best practice to Council for adoption. It is not suggested

that there are any particular issues within this Council, it is merely to adopt best practice as identified by the CSPL.

- 2.3 The Monitoring Officer is of the view that the Committee should make recommendations to Council to adopt the proposed best practice. This will also enable Stroud District Council to overtly demonstrate that it has considered and adopted all or some of the best practice recommendations should a review be carried out by CSPL. It must be noted however, that this is not compulsory and they are recommendations, not stipulations.

2.4 Best Practice Recommendations

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Comment - The majority of the cases reviewed by CSPL related to bullying or harassment, or other disruptive behaviour. The Council's Code of Conduct does have a prohibition on bullying and harassment at Para 3.1(d) so the recommendation is partially met. It would not be onerous to include a definition of bullying and harassment within the Code and the SDC Bullying and Harassment HR Policy definitions could be utilised for consistency across the organisation. It would also add some clarity for members to this section of the Code.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Comment – There is no legal compulsion for members to comply with formal standards investigations and the sanctions for breaches of the Code are not sufficient to enforce non compliance. However, CSPL believe that it is an important aspect of ethical conduct by members in itself. If this were included in the Code of Conduct, there would be no uncertainty about what is expected and, depending on the circumstances; a failure to comply may then be a further breach of the Code, i.e. Paragraph 3.1 (c), bringing the office of Councillor into disrepute.

The Code does not include a provision which prohibits trivial or malicious allegations. There would be no difficulty in including such a clause and persistently making trivial or vexatious allegations could, in itself, be a breach of the Code.

The obvious point is that one would have to adopt an objective view of what was trivial or malicious because the person making the complaint may not view it in such terms. This should, in the Monitoring Officers view, be dealt with at the preliminary stages of a complaint in consultation with the Independent Person. Interpersonal complaints between members should routinely be referred to

mediation with Group Leaders involvement in the first instance as a matter of course.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Comment – This recommendation results from experiences where Councils have not set out a Code of Conduct in the traditional sense, but have merely stated that they expect compliance with the Nolan Principles.

This is not the case at Stroud. It is the Monitoring Officers view that the Council already complies with this requirement. Members may wish to consider whether a benchmarking exercise with neighbouring Councils would add value. Additionally, it would be a sensible step to encourage all Parish Councils to adopt the Council's Code, preferably without amendment.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Comment – The Council does make the Code of Conduct available online as part of the Constitution, but the CSPL requirement goes further and suggests that they should not be "*inaccessible on a local authority's website or as an annex to the authority's constitution*". Consideration could be given to a separate ethics / Code section on the website in which the Code could be set out separately.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Comment – The Council does publish any Gifts and Hospitality on the website under individual councillor names. Consideration will need to be given as to whether this should be subject to more formal arrangements even if it produces a nil return. In addition, members will need to be reminded to update their declarations of interest forms as some appear to be out of date.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Comment - The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach.

It is suggested that a public interest test is adopted in Stroud as this would add an element of certainty, consistency and manage expectations of both the public and members. This could be added to the Procedure for Assessing Allegations of Breaches of the Members Code of Conduct and used as part of a preliminary consideration by the Monitoring Officer, in consultation with the Independent Person upon receipt of a complaint.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Comment – The Council has access to three Independent Persons so it is already compliant with this standard.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Comment – The Councils current process does not require consultation with an independent person either until a decision has been made to investigate or as a form of ‘appeal’ against a decision not to investigate. It is recommended that the process is changed to accommodate this best practice recommendation. It will also allow a ‘one and done’ consideration of the complaint at the initial assessment phase with the Monitoring Officer being delegated authority to dismiss a complaint having consulted with the Independent Person.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Comment – The publication of findings is not routine within the Council’s Procedure for Assessing Allegations etc. Rather, it is a possible sanction in itself. There would be no difficulty in publishing the required information as a matter of course on the rare occasions that findings of misconduct are made following a formal investigation.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Comment – As mentioned previously, the Council does have guidance in Section 7 of the Constitution in the Members Code of Conduct and Investigation Procedure.

However, the guidance could be confusing to the lay reader and, in the view of the Monitoring Officer, needs to be re-written and re-focussed to take into account the best practice recommendations.

For example, there is no reason why attempts at informal resolution should not be a first consideration where there is a breach of the Code of Conduct, but which is not considered serious enough to investigate. Involving the Independent Person in the initial consideration of the complaint will provide adequate safeguards to the process.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Comment – The CSPL are of the view, with which the Monitoring Officer concurs, that Parish Councils should take corporate responsibility when allegations of a councillor bullying an employee – normally this is only the Clerk – are received. This is not a controversial proposal and is any event part of the employer’s duty of care to the employee. Clearly, if the Chair is alleged to be the person carrying out the conduct, other members of the Council should report.

Best practice 12: Monitoring Officers’ roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Comment – This is something that is already in place. However, the role cannot extend beyond providing advice in relation to ethical matters and would not include advising on governance issues. Parish Councils will need to take advice from their Associations on these matters.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Comment – The Authority has two Deputy Monitoring Officers who would act in the unlikely event of a conflict for the Monitoring Officer. If either of them were unable to act for any reason, it would be normal practice for a Monitoring Officer from another authority to be asked to assist, this would be on a reciprocal basis and should be cost neutral.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Comment – This is something that is already in existence but could be re-stated where appropriate.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues

Comment – There is nothing controversial in this recommendation and meetings can take place by exception.

3. CONCLUSIONS AND RECOMMENDATIONS

The Committee is requested to consider the best practice recommendations and the comments of the Monitoring Officer. If the Committee is minded to accept the best practice recommendations, the Monitoring Officer would take a report to Council to obtain authority to implement the recommendations and to make any necessary changes to the Constitution.

- 3.1 In the meantime, the Monitoring Officer would advise Parish Councils of the outcomes from the CSPL report and the proposals.

Appendix 1 - Recommendations from the Committee on Standards in Public Life

1. The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.
2. The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.
3. Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.
4. Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.
5. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.
6. Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.
7. Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".
8. The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.
9. The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.
10. A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.

11. Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.
12. Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.
13. Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.
14. The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.
15. The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.
16. Local authorities should be given the power to suspend councillors, without allowances, for up to six months.
17. The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.
18. The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.
19. Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.
20. Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.
21. Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.
22. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.

23. The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.
24. Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.
25. Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.
26. Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.