



Notice of a meeting of Standards Committee

**Monday, 16 April 2018
2.00 pm
Pittville Room - Municipal Offices**

Membership	
Borough Councillors:	Max Wilkinson (Chair), Tim Harman (Vice-Chair), Bernard Fisher, Colin Hay, Helena McCloskey, Suzanne Williams and John Payne
Independent Members:	Mr Martin Jauch, Mr Duncan Chittenden

Agenda

- 1. APOLOGIES**
Councillor Hay
- 2. DECLARATIONS OF INTEREST**
- 3. MINUTES OF THE LAST MEETING** (Pages 3 - 6)
20 October 2016
- 4. REVIEW OF PROTOCOL OF MEMBER / OFFICER RELATIONS** (Pages 7 - 18)
Report of the Monitoring Officer
- 5. REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS** (Pages 19 - 32)
Report of the Monitoring Officer
- 6. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION**
The Committee is recommended to approve the following resolution:

“That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in

paragraph(s) 1 and 2, Part 1, Schedule 12A (as amended)
Local Government Act 1972, namely:

Paragraph 1; Information relating to any individual

Paragraph 2; Information which is likely to reveal the identity
of an individual

- 7. REPORT OF DECISIONS TAKEN BY MONITORING OFFICER** (Pages 33 - 34)
Report of the Monitoring Officer
- 8. EXEMPT MINUTES OF THE LAST MEETING(S)** (Pages 35 - 42)
20 October 2016 and 12 July 2017 (working group meeting)
- 9. ANY OTHER BUSINESS**
- 10. DATE OF NEXT MEETING**
10 July 2018

Contact Officer: Saira Malin, Democracy Officer, 01242 774937
Email: democratic.services@cheltenham.gov.uk

Standards Committee

Thursday, 20th October, 2016
9.00 - 9.45 am

Attendees	
Borough Councillors:	Max Wilkinson (Chair), Tim Harman (Vice-Chair), Bernard Fisher, Helena McCloskey, Suzanne Williams and John Payne
Independent Members:	Mr Martin Jauch
Also in attendance:	Sara Freckleton and Vikki Fennell

Minutes

1. APOLOGIES

Apologies were received from Mr Duncan Chittenden

2. DECLARATIONS OF INTEREST

None declared.

3. MINUTES OF THE LAST MEETING

The minutes of the meeting held on 27 June 2016 were approved and signed as a correct record subject to the removal of the words "and thus does not know the exact nature of the work" relating to Councillor Wilkinson's dispensation in agenda item 4.

4. PROBITY IN LICENSING

The Borough Solicitor and Monitoring Officer introduced the report setting out a revised Licensing code of conduct. The revised document had been reviewed at the Licensing Committee on 12 October and the solicitor supporting that committee, talked members through four changes which the committee had recommended as follows:-

3. (Committee Procedure)

1. c) currently reads "This must be done in a maximum of 5-10 minutes..."
This should probably read "This must be done in a maximum of 10 minutes", need to remove the 5-. This also applies to 3d) and e).
2. h) "The committee members...In cases involving disciplinary and/or confidential matters the Members will retire to another room (usually the Members' Room)..." suggested that this be amended to read "confidential matters one party"... (removing (usually the Members' Room) to reflect the fact that on some occasions it is the parties, not the committee that leave the room.
3. D.2. states "However decision making requires assessment and judgment of the weight to be attached to policies and guidance issues which, no matter how current, will never provide an answer for all, or

even most applications” and the Licensing Committee questioned whether “or even most”, should be deleted?

Members agreed that these three changes should be made as good housekeeping.

The Licensing Committee had also suggested a revision to Part two C (The Committee Hearing) to allow the applicant/licensee (or their representative) to be given a final right of reply in (g). The Borough Solicitor advised that she would not recommend this addition as it could be grounds for a subsequent challenge to the committee's decision and no other participants had a right of further reply. A member suggested that the wording should be changed to ‘a’ final right of reply rather than ‘the’ which the Committee agreed.

Referring to Part 1 section B (Gifts and Hospitality), a Member suggested that it should not be acceptable for members of the committee to receive any gifts or hospitality regardless of their value. The Borough Solicitor suggested to the committee that the sentence beginning "notwithstanding the council's protocol" could be removed" so there was no suggestion of any different rules applying to Licensing Committee members. Members agreed.

In Part two section 3C – (Committee Procedure) a Member asked for clarification in h) on who should make the decision that members of the committee should retire. The Borough Solicitor replied that the normal democratic process should be followed.

A Member sought clarification as to Part two Section 3 (Committee Procedures) d) and the position of spokespersons. The solicitor clarified that if there were a number of objectors they could appoint a spokesperson for the group and other groups could similarly be represented by a spokesperson. Officers agreed to adjust the wording to make this clear.

A Member suggested that substitute members of Licensing Committee should have to demonstrate that they observe a meeting at least once every three months as part of their ongoing training and development, which is a requirement for substitutes on Planning Committee. The Borough Solicitor suggested that there could be an aspirational statement in the document regarding Members keeping their skills and knowledge up to date but the difficulty with making any specific rules would be enforcing the condition as had been found to be the case previously with the Planning Code of Conduct.

The Borough Solicitor thanked members for their comments.

Resolved that the revised Licensing Code of Conduct, be approved as amended to include the Standards Committee comments referred to above and recommended to Council for adoption.

5. PROTOCOL FOR MEMBER/OFFICER RELATIONS

The Borough Solicitor introduced her report which suggested that the Protocol for Member/Officer Relations should be reviewed which was last revised in 2010. She said it was a valuable document upon which she had advised in several instances over the past four years. She recommended that a working

group of members of this committee was established which could meet informally and hear the views of Members and Officers on their experiences with the use of the protocol and any amendments which they may like to see. There was also a need to update the protocol to reflect changes in the Members Code of Conduct.

The committee agreed that there should be an open invitation to all Members and Executive Board for they or their representatives to put forward their views to the working group either in person or in writing and HR and Unison should also be invited to give their views. The Democratic Services Manager agreed to draft and send the invitation.

Resolved that a working group comprising members of the Standards Committee be established to review the Protocol for Member/Officer Relations and to prepare a revised version for consideration by the committee.

6. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

Upon a vote it was unanimously

RESOLVED that in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraphs 1 of Part 1, Schedule 12A (as amended) Local Government Act 1972, namely: Information relating to an individual.

7. REVIEW OF COMPLAINTS

The Monitoring Officer advised that there had been no formal complaints made to her since the last report to this committee on 7 July 2015 however she had dealt with a number of matters which had been referred to her where a satisfactory conclusion has been reached in every case.

8. ANY OTHER BUSINESS

There was no other business.

9. DATE OF NEXT MEETING

The date of the next meeting is 22 February 2017.

Chairman

Standards Committee – 16th April 2018

Review of Protocol of Member / Officer Relations

Accountable member	Cabinet Member, Corporate Services, Councillor Roger Whyborn
Accountable officer	Borough Solicitor and Monitoring Officer
Key Decision	No
Executive summary	The Protocol for Member / Officer Relations which was adopted by the Council in 2010 has been reviewed and amended by the Standards Committee Working Group having consulted with all Members and relevant Officers. The Working Group has suggested changes to the Protocol to reflect changes to the Code of Members' conduct and to respond to points raised by Members and Officers as a result of the consultation. The draft amended Protocol for Member / Officer Relations is attached at Appendix 1 for approval by the Committee and recommendation to the Council.
Recommendations	That the Committee considers the revised Protocol for Member / Officer Relations attached at Appendix 1 and approves the amended Protocol for adoption by the Council.

Financial implications	There are no direct financial implications arising from the review Contact officer: Paul Jones, Executive Director Email: paul.jones@cheltenham.qcsx.gov.uk Tel No: 01242 775154
Legal implications	None arising from the review. Contact officer: Sara Freckleton, Borough Solicitor and Monitoring Officer Email: sara.freckleton@tewkesbury.gov.uk, Tel No: 01684 272011
HR implications (including learning and organisational development)	Employees of the Council and employees from Publica Group working on behalf of the Council will need to be made aware of the revised Protocol and adhere to it. Contact officer: Julie McCarthy, HR Manager, Publica Group Ltd Email: julie.mccarthy@cheltenham.gov.uk Tel No: 07917534487

1. Background

- 1.1 The Protocol for Member / Officer Relations was adopted by the Council on 2010 and requires updating. The Standards Committee, sitting as a Working Group has undertaken a review of the Protocol.
- 1.2 All Members and the Council's Senior Leadership Team of Officers were invited to comment on the current Protocol and suggest changes to the Working Group either by written submissions or by attending a meeting of the Working Group to give their views.

- 1.3 There have been changes to the Code of Members' Conduct since 2010 and the Protocol required revision to bring it up to date in that respect.

2. Proposed Review of Protocol for Member / Officer Relations

- 2.1 The Working Group carefully considered all of the representations made by Members and Officers. Most of the feedback was that the Protocol was still, in the main, relevant and fit for purpose. There were a few points of detail which, it was considered, required amending. For example:-
- there is a paragraph (4.2) on Political Assistants and yet the Council had never employed Political Assistants. Consequently, it was recommended that this should be removed and reinstated if needed in future.
 - the section on Complaints (13) did not give an indication as to how the outcome of any referred complaints would be communicated. This has been re-worded in the draft attached at Appendix 1 to make the position clear.
- 2.2 In addition to the examples set out above, there have been a number of other wording changes to bring the document up to date but these do not substantially change or alter the substance of the Protocol.
- 2.3 In accordance with the wishes of the Working Group, the Trade Unions have been consulted on the revised document but have not submitted any comments.

3. Reasons for Recommendations

- 3.1 To ensure that the Protocol for Member / Officer Relations is up to date and fit for purpose.

4. Consultation and Feedback

- 4.1 Consultation has taken place with all Members, the Officer Senior Leadership Team and with the Trade Unions as set out in the report.

Report author	Contact officer: sara.freckleton@teWKesbury.gov.uk 01684 272011
Appendices	Appendix 1 - Draft revised Protocol for Member/ Officer Relations
Background information	Cheltenham Borough Council Code of Members' Conduct Cheltenham Borough Council Protocol for Member / Officer Relations

Part 5C – Protocol for Member/Officer Relations

1. Introduction - Respective Roles of Members and Officers

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another.
- 1.2 This Protocol reflects the principles underlying the Code of Members' Conduct and the Code of Conduct for Employees. The object of those Codes is to enhance and maintain the integrity (real and perceived) of local government and demand high standards of personal conduct.
- 1.3 The Code of Members' Conduct (Constitution Part 5A) provides, inter alia, at Part IV – Rules of Conduct that:
 6. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.
 7. Members shall observe the following rules:-

General Requirements

- (1) Do treat others with respect.
- (2) Do not bully any person.
- (3) Do not do anything which may cause your Authority to breach any of the equality enactments.
- (4) Do not use your position improperly, to confer on or secure for yourself or any other person, an advantage or disadvantage.
- (5) Do not do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your Authority.
- (6) Do not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are 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 –
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the Authority.

- (v) before making any disclosure under the provision and (iv) above, the written advice of the Borough Solicitor must be sought and considered.
- (7) Do not prevent another person from gaining access to information to which that person is entitled by law.
- (8) Do promote and support high standards of conduct when serving in your public post by leadership and example.

When using the resources of the Authority, or authorising the use of those resources by others:

- (9) Do act in accordance with the Authority's reasonable requirements including the requirements of the Authority's IT Policy;
- (10) Do make sure that such resources are not used improperly for political purposes (including party political purposes); and
- (11) Do have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986;
- (12) Do not improperly use knowledge gained solely as a result of your role as a Member for the advancement of your own interests.

When making decisions on behalf of, or as part of, the Authority:

- (13) Do ensure that decisions are made on merit, particularly when making public appointments, awarding contracts, or recommending individuals for rewards or benefits.
- (14) Do have regard to any relevant advice provided to you by the Council's Chief Financial Officer and Monitoring Officer where such advice is offered pursuant to his or her statutory duties.
- (15) Do be as open as possible about your own decisions and actions and those of your authority and be prepared to give reasons for those decisions and actions.
- (16) Do ensure that you are accountable for your decisions and co-operate fully with whatever scrutiny is appropriate to your office.

1.4 In line with the Code's reference to "*respect*" it is important that in any communications/dealings between Members and Officers the parties should be courteous and that neither party should seek to take unfair advantage of their position.

1.5 The fundamental principles essential for ensuring proper relationships between Members and Officers are:

- (i) the political neutrality of Officers; and
- (ii) a clear understanding of, and respect for, their distinct roles.

2. **Political Neutrality**

- 2.1 The primary responsibility of any Officer is to serve the Council as a corporate body. Where this duty conflicts with any duty to individual Members of the authority then the duty to the Council shall prevail.
- 2.2 Officers must act apolitically, whether or not they hold politically restricted posts, and Members must try to avoid putting Officers, whether intentionally or otherwise, in situations where their political neutrality might be compromised or appear to be compromised. This would include actions such as applying pressure on an Officer to alter the presentation or substance of their advice in reports.

3. **Officers as Employees**

- 3.1 Officers are employed by the Council as a corporate body.
- 3.2 The Employment Rules (Part 4F of the Constitution) deal with the appointment, disciplining and dismissal of officers. In general terms Members shall not be involved in such matters other than in respect of Chief Officers, Deputy Chief Officers, Statutory Officers and Political Assistants.
- 3.3 Members can expect Officers to:
 - Maintain confidentiality where necessary and lawful
 - Perform their duties effectively, efficiently and with political neutrality
 - Behave in a professional and courteous manner
 - Be helpful to Members and respect their role
 - Avoid close personal familiarity with Members and not use their relationship with Members to advance their personal interests or to influence decisions improperly
 - Report to the relevant Director any time a Member asks or pressurises the Officer to deal with a matter outside of Council procedure or policy
 - Demonstrate an understanding of and support for respective roles, workloads and pressures
 - Comply with any relevant Code of Conduct
- 3.4 Officers can expect from Members:
 - Leadership within the political sphere and direction
 - Respect, dignity and courtesy
 - An understanding of and support for respective roles, workload and pressures
 - Not to be subjected to bullying or undue pressure, including through written and verbal communications

- Not to use their position or relationship with Officers to advance their personal interests or those of others to improperly influence decisions
- Compliance with the relevant code of conduct

4. Relationship between the Leader and Officers

- 4.1 The Leader will be at the centre of the Cabinet and will need the close working support of a number of Officers. The relationship between the Leader and those Officers must never be, or give the appearance of being, so close as to bring into question the Officers' ability to deal impartially with other Members, especially those belonging to other party political groups.

5. Relationships between Members of the Cabinet and Chairmen and Officers

- 5.1 It is clearly important that there should be a close working relationship between Members of the Cabinet (whether or not they exercise personal executive powers), Chairs of Overview and Scrutiny and other Committees and the Senior Officers who support them in their respective roles.

However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party political groups.

- 5.2 Whilst Officers should always seek to assist Cabinet Members, a Committee Chair or, indeed, any Member, they must not in so doing go beyond the limits of the authority they have been given by their Manager.

6. Partnerships et cetera

- 6.1 The increasing involvement of the Council in various forms of partnerships with other bodies, creates situations where Members and Officers are drawn into new non-traditional working relationships. These could pose difficulties if Members and Officers lose sight of the fundamental principles which define their different roles.

7. Officer Advice to Party Political Groups (Political Groups)

- 7.1 Political Groups are a recognised part of the local government structure and their role is recognised and facilitated by statute.

Officers may properly be called upon to support and contribute to deliberations by political groups on matters likely to come before the Council, the Cabinet or Committees. They must do so in ways which do not compromise their political neutrality.

- 7.2 The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member or a Committee Chair to a presentation to a full political group meeting.

Whilst in practice such Officer support is likely to be most in demand from whichever political group forms the administration of the Council, such support is available to all political groups.

- 7.3 Any request for an Officer to attend a political group meeting should be made through the Chief Executive or the appropriate Director.

- 7.4 The following matters must be understood by all those participating in political group meetings, Members and Officers alike -

- (a) Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of political party business; the observance of this distinction will be assisted if Officers are not expected to be present at meetings, or parts of meetings, when matters of political party business are to be discussed;
- (b) where Officers provide information to a political group meeting in relation to a matter of Council business, this cannot act as a substitute for the obligation to provide all necessary information and advice to the Council, Cabinet or a Committee when the matter in question is considered;
- (c) any strategy or policy which may emerge from the meeting is that of the political group alone;
- (d) special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council;

If, at a meeting of a Political Group attended by an Officer, there are other persons who are in attendance who are not Officers or Members of Cheltenham Borough Council and therefore not bound by the relevant Code of Conduct (including the declaration of interests and confidentiality) Officers may not be able to provide the same level of information and advice as they would to a Member only meeting.

- 7.5 Officers must respect the confidentiality of any political group meetings at which they are present in the sense that they should not relay the content of any such discussion to another political group. Officers

should not be requested, by the Overview & Scrutiny Committee to answer questions on such matters.

8. Support Services to Members and Party Political Groups

- 8.1 The only basis on which the Council can provide support services (e.g. stationery, typing, printing, photo-copying, I.T., transport, etc.) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

9. Members' Access to Information and to Council Documents

- 9.1 Members are free to approach the Chief Executive or any other Director to provide them with such information, explanation and advice, especially about the functions of the Directorate concerned, as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Directorate's activities to a request for specific information on behalf of a constituent. Such approaches should be made only to the relevant Director, unless the relevant Director has agreed otherwise.
- 9.2 As regards the legal rights of Members to inspect Council documents, these are covered by statute and common law.
- 9.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet or Committee meeting. These rights are summarised in the Access to Information Rules (Part 4E) and extend not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not however apply to documents relating to certain items which may appear as exempt items on the agenda (pink papers), or to documents which are in evolution and have not been finalised.
- 9.4 The common law right of Members is broader; it is based on the principle that any Member has a prima facie right to inspect Council documents so far as his or her access to the documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.
- 9.5 The exercise of this common law right depends therefore upon the Member's ability to demonstrate that he/she has the necessary "need to know".

In this respect a Member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient.

The crucial question is the determination of the "need to know". This question must initially be determined by the relevant Director holding the document in question, with advice, if necessary, from the Borough Solicitor/One Legal.

- 9.6 In some circumstances (e.g. a Committee member wishing to inspect documents relating to the functions of that Committee or a member of Overview and Scrutiny Committee wanting to be informed about a matter within the remit of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms. It is unlikely that a Member will ever have a "need to know" in respect of personal details about individual Officers.
- 9.7 Whilst the term "Council document" is broad and includes for example, any document produced with Council resources, it is accepted by convention that a member of one party political group will not have a "need to know", and therefore a right to inspect, a document which forms part of the internal workings of another party political group.
- 9.8 A Member is not entitled to inspect any document, or have access to any information, about a matter in which
- (1) he/she has, in accordance with the Code of Members' Conduct, a disclosable interest which would restrict participation or
 - (2) he/she is acting in a professional capacity, for example, on behalf of a client negotiating with the Council or involved in litigation against the Council.
- 9.9 A Director may refuse a Member access to a document for the above or other good reasons such as the request being frivolous, vexatious or where a reasonable amount of information has already been provided. The Director must inform the Member in writing of the actual reason.
- 9.10 If a Member is not satisfied with a decision by a Director he/she may refer the matter to the Chief Executive, who having sought such advice as he/she considers appropriate, shall determine finally whether or not the Member should be given the access requested.
- If the original request had been made to the Chief Executive and a Member is not satisfied with the Chief Executive's decision, the matter shall be referred to the Monitoring Officer for determination.
- 9.11 Members have the same rights as any member of the public to access to information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

- 9.12 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Borough Solicitor/One Legal.

10. Involvement with Ward Councillors

- 10.1 Wherever a public meeting is organised by the Council to consider a local issue, all the Members representing the ward or wards affected must as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward Members must be notified at the outset of the exercise.

11. Public Meetings called by Individual Councillors or Party Political Group

- 11.1 If an individual Member or a party political group convenes a public meeting, publicity for the meeting must clearly state the basis on which it is being held and should not state or imply that it is a Council meeting.
- 11.2 Any request for an Officer to attend such a meeting must be made through the Chief Executive or the relevant Director.

It must be made clear to those attending such a meeting that any Officer is there in his or her official capacity, is politically neutral and that his or her presence does not signify support for a particular political proposal or initiative. This is essential because of the need for Officers to act, and to be seen to act, impartially and to comply with any political restrictions under which they operate.

12. Member/Officer Dealings and Correspondence

- 12.1 It is permissible and practical for Members to seek straightforward factual information from any Officer and to enquire as to technical or professional matters of appropriately qualified Officers whose duties include advising Members. In this respect it is important that Members should not take advantage of an Officer less senior in order to make demands which are inappropriate to that level of post. Members should also appreciate that less senior Officers may need to discuss with their line managers any requests made, or information (confidential or otherwise) provided, by the Member. Anything which is contentious, or which requires a complex opinion, or judgment should be directed to the relevant Director.
- 12.2 Correspondence between an individual Member and an Officer should not normally be copied by the Officer to any other Member, unless the Member has himself or herself sent copies to other Members; in this case copies will normally also be sent to those Members as well.

Where, exceptionally, it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.

- 12.3 Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. in respect of executive matters or representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm.

Letters which create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

13. **Complaints**

- 13.1 Should a Member have cause to complain about the actions or behaviour of any Officer of the Council he/she should lodge their complaint, preferably in writing with the Director with Management responsibility for that Officer. If the complaint is against a Director, the complaint must be made to the Chief Executive. If the complaint is against the Chief Executive personally the complaint must be made to the Monitoring Officer. The Officer to whom the complaint is made will take appropriate action to resolve it and will notify the Member of the Council who made the complaint of the action which has been, or is intended to be, taken to resolve it.
- 13.2 Should an Officer have cause to complain about the actions or behaviour of any Member of the Council, the Officer should draw his/her concern to the attention of his/her Manager who will consider the matter and, acting through the appropriate Director / Chief Executive, will seek to resolve the issue with the Member concerned or, if this is not possible, with the Member's Political Group Leader. If the complaint is against a Political Group Leader then it should be drawn to the attention of the Deputy Group Leader. The Member to whom the complaint has been referred, will deal with it and will notify the Officer making the referral of the action which has been, or is intended to be, taken to resolve the complaint.

Where the complaint appears to involve an allegation of a breach of the Code of Members' Conduct, the appropriate Director/Chief Executive will consult the Monitoring Officer.

- 13.3 Complaints should not be raised or referred to during Council, Cabinet or Committee meetings, except for those meetings expressly called for that purpose.

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Cheltenham Borough Council

Standards Committee

16th April 2018

Committee for Standards in Public Life

Review of Local Government Ethical Standards

Accountable member	Cabinet Member, Corporate Services, Councillor Roger Whyborn
Accountable officer	Borough Solicitor
Key Decision	No
Executive summary	The Committee on Standards in Public Life is undertaking a review of Local Government ethical standards to ensure that these are robust enough to safeguard local democracy. The review will consider whether the current structures, processes and practices in place in Local Government in England are conducive to high standards of conduct. The Committee will consider a number of elements including codes of conduct, declarations of interest and available sanctions in cases where a code of conduct is breached. The Committee has invited views from stakeholders including local authorities as the bodies responsible for maintaining codes of conduct for their Councillors (and, in the case of District Councils for the Parish Councils in their areas) and responding to complaints of any breach. This report invites the Committee to consider submitting a response to the consultation.
Recommendations	The Committee is asked to consider whether to make a response to the consultation and, if so, to delegate authority to the Borough Solicitor / Monitoring Officer, in consultation with the Chair of Standards Committee, to finalise the response.

Financial implications	No financial implications arising from the content of this report. Contact officer: Paul Jones, Executive Director Email: paul.jones@cheltenham.qcsx.gov.uk, Tel No: 01242 775154
Legal implications	None arising from the report. Contact officer: Sara Freckleton, Borough Solicitor and Monitoring Officer Email: sara.freckleton@tewkesbury.gov.uk, Tel No: 01684 272011
HR implications (including learning and organisational development)	No HR implications arising from the content of this report. Contact officer: Julie McCarthy, HR Manager, Publica Group Ltd Email: julie.mcarthy@cheltenham.gov.uk, Tel No: 07917534487

1. Background

- 1.1** On the 29th January 2018, the Committee on Standards in Public Life announced a review of ethical standards in Local Government.
- 1.2** The current Standards regime was introduced by the Localism Act 2011. Changes at that time included the abolition of the Standards for England, which had previously dealt with serious allegations of Councillor misconduct and Local Authorities were given the freedom to adopt their own local Code of Conduct (to include statutory requirements in respect of Disclosable Pecuniary Interests). Local Authorities were also required to make and maintain their own arrangements for dealing with any allegations of breaches of the Code of Conduct by their Councillors (and in the case of District Councils, Parish Councillors). The previous sanctions of disqualification and suspension of Councillors in respect of serious breaches were removed although new criminal sanctions were introduced for breaches of the statutory requirements on Disclosable Pecuniary Interests.
- 1.3** The Localism Act 2011 also introduced the role of the Independent Person and a requirement for Local Authorities to appoint at least one, whose views must be taken into account before the authority takes a decision in relation to any complaints made against Councillors. The current review also examines the role of the Independent Person.

2. Consultation by Committee for Standards in Public Life

- 2.1** The Committee for Standards in Public Life has been tasked with reviewing the current regime and is holding a public stakeholder consultation which is open for responses until 18th May 2018. The Committee is seeking concise submissions from a wide range of stakeholders including all tiers of Local Government and is interested in current arrangements and also in views as to what changes could be made to improve Local Authority ethical standards.
- 2.2** The Stakeholder consultation document is attached at Appendix 1. The terms of reference of the review are to:
 - 1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local Councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
 - 2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
 - 3. Make any recommendations for how they can be improved; and 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.
- 2.3** Responses are being sought to 11 questions as set out (a – k) in Appendix 1 and stakeholders are invited to respond to as many or few of those questions as they consider appropriate.
- 2.4** The questions are set out in full in Appendix 2 to this report, together with some initial brief comments which will be expanded upon for discussion at the meeting and may be useful to the Committee in considering what response it may wish to make.

3. Reasons for Recommendations

- 3.1** To provide the Committee with the opportunity to respond to the consultation.

4. Consultation and feedback

- 4.1** All Borough Councillors, Parish Councils within the Borough and Executive Board Officers have been provided with a copy of the Consultation Document and invited to make comments for consideration of the Standards Committee or, if preferred, directly to the Committee for Standards on Public Life. No responses had been received prior to the preparation of this report; the Committee will be updated at the meeting.

Report author	Contact officer: sara.freckleton@teWKesbury.gov.uk 01684 272011
Appendices	Appendix 1 – Review of Local Government Ethical Standards- Stakeholder Consultation Document. Appendix 2 – Comments on the Stakeholder Consultation questions.
Background information	Localism Act 2011 Cheltenham Borough Council Code of Members' Conduct Report to and Minutes of Cheltenham Borough Council dated 25 th June 2012

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Review of Local Government Ethical Standards: Stakeholder Consultation

The Committee on Standards in Public Life is undertaking a review of local government ethical standards.

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

As part of this review, the Committee is holding a public stakeholder consultation. The consultation is open from 12:00 on Monday 29 January 2018 and closes at 17:00 on Friday 18 May 2018.

Terms of reference

The terms of reference for the review are to:

1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
3. Make any recommendations for how they can be improved; and
4. 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.

The review will consider 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).

Local government ethical standards are a devolved issue. The Committee's remit does not enable it to consider ethical standards issues in devolved nations in the UK except with the agreement of the relevant devolved administrations. However, we welcome any evidence relating to local government ethical standards in the devolved nations of the UK, particularly examples of best practice, for comparative purposes.

Submissions will be published online alongside our final report, with any contact information (for example, email addresses) removed.

The Committee will publish anonymised submissions (where the name of the respondent and any references to named individuals or local authorities are removed) where a respondent makes a reasonable request to do so.

Consultation questions

The Committee invites responses to the following consultation questions.

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Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to give evidence about only one local authority, several local authorities, or local government in England as a whole. Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

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

Codes of conduct

- c. 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?
- d. 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.

Investigations and decisions on allegations

- e. 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?

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?

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- 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?

Declaring interests and conflicts of interest

- g. 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.

Whistleblowing

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

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

Intimidation of local councillors

- k. 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?

Who can respond?

Anyone with an interest may make a submission. The Committee welcomes submissions from members of the public.

However, the consultation is aimed particularly at the following stakeholders, both individually and corporately:

- Local authorities and standards committees;
- Local authority members (for example, Parish Councillors, District Councillors);
- Local authority officials (for example, Monitoring Officers);

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- Think tanks with an interest or expertise in local government;
- Academics with interest or expertise in local government; and
- Representative bodies or groups related to local government.

How to make a submission

Submissions can be sent either in electronic format or in hard copy.

Submissions must:

- State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;
- Include a brief introduction about yourself/your organisation and your reason for submitting evidence;
- Be in doc, docx, rtf, txt, ooxml or odt format, not PDF;
- Be concise – we recommend no more than 2,000 words in length; and
- Contain a contact email address if you are submitting by email.

Submissions should:

- Have numbered paragraphs; and
- Comprise a single document. If there are any annexes or appendices, these should be included in the same document.

It would be helpful if your submission included any factual information you have to offer from which the Committee might be able to draw conclusions, and any recommendations for action which you would like the Committee to consider.

The Committee may choose not to accept a submission as evidence, or not to publish a submission even if it is accepted as evidence. This may occur where a submission is very long or contains material which is inappropriate.

Submissions sent to the Committee after the deadline of 17:00 on Friday 18 May 2018 may not be considered.

Submissions can be sent:

1. Via email to: public@public-standards.gov.uk
2. Via post to:
Review of Local Government Ethical Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

If you have any questions, please contact the Committee's Secretariat by email (public@public-standards.gov.uk) or phone (0207 271 2948).

Initial Comments on Consultation Questions

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

Comment

The Code of Council adopted by the Borough Council exceeds the minimum required provisions and is based upon the pre- Localism Act statutory version of the Code. A suitably adapted version of that Code has also, upon the recommendation of the Borough Council Standards Committee, been adopted by the 5 Parish Councils operating within the Borough. Experience of the operation of the Code of Conduct over the past 6 years has resulted in very few complaints about Borough (or Parish) Councillor conduct and even fewer instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct.

One of the advantages of the current regime (as compared to the pre- 2012 position) is that there is discretion to resolve complaints informally. This is helpful as, for less serious complaints, there can be a quicker resolution to the matter without the bureaucracy that existed previously.

The most significant gap, however, is the lack of sanctions to address any serious breaches of the Code of Conduct which is further referenced below (f).

Codes of conduct

- c. 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?

Comment

The CBC Code of Conduct is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended comprehensive training on the Code of Conduct, This training is compulsory as part of the Induction process carried out within a few days of election to office. Members are encouraged to seek advice from the Monitoring Officer / Deputy and frequently do so if at all unsure as to the implications of the Code of Conduct. The most frequent queries arise on the matter of interest declaration. The same training and advice opportunity is offered to all Parish Councillors (and Clerks) within the Council area and has been relatively well taken up with individual bespoke sessions / refresher sessions carried out for Parish Councils on request.

- d. 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.

Comment

The requirement for a Code of Conduct to reflect the Seven Principles is appropriate; however, a consistent Code of Conduct across Local Government would be of benefit to facilitate public awareness of the standards of conduct which are expected across Local Government. This would also assist Members who are elected to more than one Local Authority, each of which could have different conduct requirements, albeit all containing the statutory provisions and being based on the Seven Principles.

Investigations and decisions on allegations

- e. 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?

Comment

The Council has made arrangements for allegations of misconduct to be investigated and decided fairly. These arrangements include a delegation to the Monitoring Officer to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and to arrange for investigation. The delegation also enables the Monitoring Officer to seek local resolution of complaints without investigation where it is possible to do so. Where an investigation is undertaken, this is done by a suitably qualified officer (normally from One Legal) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It has to be recognised that there is a significant cost to the authority in resourcing an investigation and consequently these are likely only to occur where it is considered to be in the public interest to do so.

The role of the Independent Person is critical to the objectivity and fairness of the process. At CBC, the Independent Persons are also non-voting co-opted members of the Standards Committee. The review may consider whether it would be appropriate for Independent Persons to be full voting members of Standards Committees.

As stated above, investigations are dealt with independently of the Monitoring Officer and there is an appointed Deputy Monitoring Officer which should reduce the risk of there being conflicts of interest. Whilst there is no experience at CBC of undue pressure being applied, the review could consider whether it may be appropriate for Independent Persons to have a role in supporting Monitoring Officers should such circumstances occur. There is also a Protocol for Member / Officer Relations which assists in forming and maintaining good Member / Officer working.

Sanctions

- f. 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?

Comment

The sanctions available are restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body. These sanctions are not sufficient to deter serious breaches and neither are there additional sanctions available in the event that a Councillor who has been found to be in breach of the Code of Conduct, refuses to accept the sanction (e.g. apology).

It is appreciated that the basis for removal of sanctions such as suspension and disqualification was that a Councillor's tenure should be determined by the electorate. However, the sanctions available currently would appear to be insufficient in cases where there have been serious and potentially repeated breaches of the Code. Members of the public who have occasion to raise concerns about conduct have been surprised at the limited sanctions available.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
- (i) 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.

Comment

The Standards Committee will be aware of the serious concerns which have been raised with the Government and the Information Commissioner about the potential conflict of the current DPI registration and publication requirements with Data Protection and Human Rights legislation, particularly as these relate to third parties (spouses and partners etc.) who have not been elected to any office. These are not repeated in these initial comments but the Monitoring Officer would intend to write separately in some detail on this point which is of increasing concern given the requirements of the General Data Protection Regulations which take effect in May.

The Borough Council interest registration and declaration requirements exceed the statutory minimum and requires disclosure of “other interests” including bodies in which the Member holds a position of management or control whether or not appointed by the Council and to charitable bodies, lobby groups and other public bodies. Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £50 or more.

Where Members have an “other interest” and a decision on a matter affects, for example, the financial position of that other interest, Members are required, by the Code of Conduct to declare the interest and not to speak or vote unless dispensation has been received.

The Council has also amended its Standing Orders to reflect the requirement to leave the meeting when Members are precluded from participation.

These arrangements have proved satisfactory.

Whistleblowing

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

Comment

The Council has a Whistleblowing Policy which is available for use by the public, Councillors and officials and this appears, to date, to have been satisfactory.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?

Comment

Local Authorities should, as CBC, ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also ensure that it is clear that the Monitoring Officer (or Deputy / representative) and Independent Persons are available to provide advice /guidance to individual Members on all aspects of the Code of Conduct. The Code of Conduct should be regularly reviewed to ensure that the Council considers it fit for purpose and complaints that Councillors have failed to comply with the Code of Conduct should also be reviewed by Members (in CBC's case the Standards Committee) to identify any action which may be necessary e.g. training.

- j. What steps could *central government* take to improve local government ethical standards?

Comment

The review provides the opportunity to resolve the tension between the statutory requirement to have in place arrangements to deal with complaints and the sanctions available to respond to breaches of the Code of Conduct. If there are not to be meaningful sanctions which act as a deterrent then the requirement for the formality of investigating complaints should be reconsidered. The current regime of requiring a formal process which is fair with “due process” is costly to the Council's resources

and creates expectation on the part of complainants that serious breaches will be dealt with proportionately which is not always possible given the constraint on sanctions.

Intimidation of local councillors

- k. 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?

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