

# Cheltenham Borough Council

## Standards Committee

10<sup>th</sup> July 2019

### Committee for Standards in Public Life

#### Review of Local Government Ethical Standards

<b>Accountable member</b>	<b>Cabinet Member, Corporate Services, Councillor Alex Hegenbarth</b>
<b>Accountable officer</b>	<b>Borough Solicitor</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	This report informs the Committee of the outcome of the Review by the Committee on Standards in Public Life into Local Government Ethical Standards.
<b>Recommendations</b>	To note the report and consider its response to the best practice recommendations of the Committee on Standards in Public Life

<b>Financial implications</b>	<p>There are no financial implications from this report.</p> <p><b>Contact officer: Paul Jones, Executive Director</b></p> <p><b>Email:</b> <a href="mailto:paul.jones@cheltenham.gcsx.gov.uk">paul.jones@cheltenham.gcsx.gov.uk</a>, Tel No: 01242 775154</p>
<b>Legal implications</b>	<p>Any legal implications are set out in the report.</p> <p><b>Contact officer: Sara Freckleton, Borough Solicitor and Monitoring Officer</b></p> <p><b>Email:</b> <a href="mailto:sara.freckleton@tewkesbury.gov.uk">sara.freckleton@tewkesbury.gov.uk</a>, Tel No: 01684 272011</p>
<b>HR implications (including learning and organisational development)</b>	<p>No HR implications arising from the content of this report.</p> <p><b>Contact officer: Julie McCarthy, HR Manager, Publica Group Ltd</b></p> <p><b>Email:</b> <a href="mailto:julie.mcarthy@cheltenham.gov.uk">julie.mcarthy@cheltenham.gov.uk</a>, Tel No: 07917534487</p>

## 1. Background

- 1.1 The current conduct regime arose from the Localism Act 2011 which introduced significant changes to the way in which the conduct of elected members was handled. The national Code of Conduct, Standards Board and sanctions to suspend or disqualify Councillors from office were removed. The post 2011 regime placed a duty on Councils to adopt their own Code of Members' Conduct, to put in place procedures to investigate complaints about breaches of the Code by Councillors (including Parish Councils) and to appoint at least one Independent Person whose views have to be taken into account when considering an investigation.
- 1.2 In 2018, the Committee on Standards in Public Life (CSPL), which advises the Government on ethical standards across the whole of public life in England, undertook a review of local government ethical standards. The CSPL considers that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct and to protect ethical practice in local government. The consultation period ran from 29th January to 18th May 2018.
- 1.3 The terms of reference of the review were to:-
  - i. 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 imposing sanctions for misconduct
    - declaring interests and managing conflicts of interest
    - whistleblowing
  - ii. assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
  - iii. make any recommendations for how they can be improved
  - iv. 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
- 1.4 The Standards Committee considered the consultation document at its meeting on the 16th April 2018 and formulated the basis of its response. The Committee then delegated authority to the Borough Solicitor / Monitoring Officer, in consultation with the Chair of Standards Committee to finalise a response to CSPL. The letter was sent on the 15 May 2018 and is attached at Appendix 1
- 1.5 On the 30<sup>th</sup> January 2019, the CSPL published its 20<sup>th</sup> report called "*Local Government Ethical Standards*". The full report is available online at the following link.  
  
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- 1.6 Overall, CSPL appears to be satisfied that the current arrangements are working and that, on the whole, standards of conduct are high. It was found that there was no appetite to return to a centrally regulated regime and it accepted that the benefits of devolved arrangements should remain but that this required strengthening to deal with the minority of councillors who do not adhere to the required standards of conduct 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 considered to be inadequate.
- 1.7 The CSPL has made a number of recommendations - which are set out in Appendix 2 - and which are intended to 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:

- LGA to produce an updated model code of conduct
- There should be the same Code across a geographical area with parishes being under a requirement to adopt the principal authority code
- A rebuttable presumption that Councillors public behaviour is in their Official Capacity
- Revised rules on declaring interests, gifts and hospitality
- A new power for local authorities to suspend councillors without allowances for up to six months
- A right of appeal to the Local Government Ombudsman for suspended councillors
- Strengthened role for the Independent Person with fixed term (2 year) appointment
- Greater transparency about the number and nature of Code of Conduct complaints.

1.8 The CSPL report is to the Government and it is acknowledged that a number of the recommendations will need legislative change and there is currently no indication of a timetable for this to be considered. Further updates to the Committee will be provided as appropriate.

## **2. Matters 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 the CSPL 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 best practice recommendations, together with comments from the Monitoring Officer, are set out below to enable the Committee to consider and determine its response.

### **2.3 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 at Para 7(2) and consequently the recommendation is partially met. It would not be onerous to amend the Code to include harassment along with a definition of bullying and harassment.

**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** – This recommendation is also partially met within the Council's current Code of Conduct at clause 11, although the current code does not include any provision which prohibits trivial or malicious allegations by councillors. Such allegations have not been an issue at all at this Council or any of its Parishes, although there would be no difficulty in including such a clause in accordance with the recommended best practice.

**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** – The current Code of Conduct has been in place since July 2012 and there has been no formal review by the Council. The Standards Committee has periodically considered informally whether a review was necessary and concluded that, in view of the low numbers of complaints and even fewer breaches of the Code by Councillors, it remains effective. Complaints are continually monitored with the objective of identifying any amendments of the Code which may be desirable. Referring to recommendation 1 from the CSPL, it is likely that a new model code will be produced by the LGA. It would therefore be appropriate to consider what review mechanism may be introduced when that work has been completed and the Committee has had an opportunity to consider the new model code.

**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's Code of Conduct is readily accessible on the website which is accessed via the Council Information area. It is also available at the Council Offices via the Democratic Services unit.

**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 maintains a gifts and hospitality register (although not as CSV) which is constantly updated. Members are regularly reminded by email of the requirement to make any declarations of gifts/hospitality and to update their Register of Interests. Currently, the Register is available for inspection but is not published on the website. It is recommended that consideration be given to including this within the Council information section of the website referred to above.

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

**Comment** – A public interest assessment takes place between the Monitoring Officer and Independent Persons in respect of all complaints which are considered and determined. However, there is no published test to reflect this consideration. It is recommended that the Monitoring Officer reviews the complaints procedure to include appropriate wording to reflect the public interest test.

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

**Comment** – The Council has access to two Independent Persons and is therefore 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 Council's current process delegates complaints to the Monitoring Officer in consultation with the Independent Persons. Every formal complaint together with the proposed response is referred to the Independent Persons for review and comment. The Council therefore complies with this recommendation.

**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 complaints procedure. Publication/Censure is a potential sanction in itself. However, in the light of the CSPL recommendations, the Monitoring Officer will review the procedure with a view to complying with the best practice.

**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** – An information leaflet and complaint form is easily available on the Council's website. However, the leaflet does not, apart from the initial response, include likely timescales. This will be reviewed by the Monitoring Officer

**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** – Parish Councils should take corporate responsibility when allegations of a councillor's conduct towards a Clerk are made. This is not a controversial proposal and is, in 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 Parish 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 does not 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 the latter.

**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 Monitoring Officer has appointed a deputy who would act in the unlikely event of a conflict for the Monitoring Officer. If neither were able to act for any reason, and there was not a suitably qualified person available within the shared legal service, it would be in order for a Monitoring Officer from another authority to be asked to assist.

**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 already in existence but should be reviewed to ensure that there is full compliance.

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

**Comment** – As stated previously, the incidents of complaints against Borough Councillors is very low. Nevertheless, any that have arisen, have been discussed as appropriate with political group

leaders. In the current circumstances, it would be appropriate for such ad hoc meetings to continue to take place rather than to schedule regular meetings.

### **3. Conclusions and Recommendations**

- 3.1 The Committee is requested to consider the best practice recommendations and the comments.
- 3.2 The Monitoring Officer will also, as part of ongoing training, advise Parish Councils of the outcomes from the CSPL report and the proposals.

### **4. Consultation and feedback**

- 4.1 None

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<b>Appendices</b>	Appendix 1 – CBC Consultation Response to Committee on Standards in Public Life  Appendix 2 – Recommendations from the Committee on Standards in Public Life
<b>Background information</b>	Localism Act 2011  Cheltenham Borough Council Code of Members' Conduct  Report to and Minutes of Cheltenham Borough Council dated 25 <sup>th</sup> June 2012