

Report to	-	Audit and Standards Committee
Date	-	26 March 2018
Report of the	-	Monitoring Officer
Subject	-	Review of Local Government Ethical Standards: Stakeholder Consultation

Recommendation: It be **RESOLVED**: That

- 1) the Audit and Standards Committee consider and contribute to the formulation of the Council's response to the Committee on Standards in Public Life's review of local government ethical standards stakeholder consultation; and
 - 2) the Monitoring Officer be authorised to finalise and submit this Council's response in consultation with the Chairman of the Committee.
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Service Manager: John Collins

Introduction

1. The Committee on Standards in Public Life (CSPL) is undertaking a review of local government ethical standards. As part of the review the CSPL is holding a public stakeholder consultation which launched on 29 January and runs until 18 May 2018.
2. Views are invited from all levels of local government and other stakeholders, including the public. All Parish and Town Council Clerks across the district were alerted to the consultation on 21 February and invited to respond direct, if they are so minded.
3. The Terms of Reference for the review are to:
 - a) 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; and
 - whistleblowing;
 - b) assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
 - c) make any recommendations for how they can be improved; and
 - d) 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.

4. A copy of the consultation questions are attached at Appendix A and officers' initial thoughts are contained therein. The Committee is invited to discuss each of the questions and provide feedback. It is suggested that the Monitoring Officer draft the consultation response based on the comments provided, and circulate a copy to the Committee Members for comment, before finalising it in consultation with the Chairman of the Committee. The deadline for submitting the response is 18 May 2018.

Conclusion

5. The CSPL is undertaking a review of local government ethical standards and the Committee is requested to contribute to the formulation of the Council's response which needs to be submitted by 18 May 2018. The Committee is invited to authorise the Monitoring Officer to finalise and submit this Council's response in consultation with the Chairman of the Committee.

John Collins
Monitoring Officer

Risk Assessment Statement

There are no direct risks to the authority. Failure to contribute to this consultation exercise leaves the Council unable to exert any influence over future national policy / initiatives in ethical standards matters which may result from this consultation.

Appendix A: Review of Local Government Ethical Standards: Stakeholder Consultation

**Committee on Standards in Public Life
Local Government Ethical Standards: Stakeholder Consultation**

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.**

Yes. Although the high profile that the Standards Committee previously enjoyed at Rother District Council under the former regime which required a stand-alone Standards Committee, chaired by an independent co-opted (non-councillor Member) is no longer present.

Whilst the concept of localism is welcome, allowing all councils (including town and parishes) to adopt their own codes (including the minimum requirements), has inevitably lead to inconsistencies of approach, particularly at parish council level. The majority of complaints that are handled by Rother District Council relate to parish councillors' conduct and it is considered that this is due, in part, to a lack of visibility, training and awareness of standards matters for both Parish Clerks and Parish Councillors.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?**

Whilst not an issue at Rother District Council to date, there is a lack of adequate sanctions for more serious breaches of the Code of Conduct. The Council is no longer able to suspend a Councillor, as under the previous regime, nor is there any mechanism to disqualify a Councillor during a sitting term or from standing for re-election in the future for poor conduct.

It is recognised that Councils can chose to operate their assessment of complaints as they see fit, and generally the streamlining of the bureaucracy around the previous process was welcome. However, it is possible that by allowing Monitoring Officers to undertake the initial assessment of all complaints, without any consultation with Standards Committee Members, removes the ownership and self-policing aspect from the Members themselves – they are no longer part of the process and could feel detached from it.

As mentioned at point a) above, the majority of complaints arise from the Town and Parishes across Rother District Council. There should be a mechanism by which Councils who are responsible for providing this service for town and parish councils are able to reclaim the actual costs of dealing with complaints in cases were a breach of the code was ultimately found following an investigation and subsequent hearing. This could help improve town and parish councillor conduct as poor conduct could have a financial implication and the parish council would have a vested interest in making sure that councillors abided by the code of conduct. If such provision was allowed, this would need careful consideration / handling so as not to be seen as the principle Council trying to discourage genuine complaints on financial grounds.

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?**

No. Rother District Council adopted the old national code, amended to include the provision for Disclosable Pecuniary Interests and also kept personal and prejudicial interests. Much of the terminology is difficult to understand and is written in the context of “you do not have” and giving examples rather than “you do have” which may be clearer to understand. Whilst it is in the gift of the Council to amend its Code of Conduct so that it is more easily understood, this has not been undertaken to date.

The Council’s current Code of Conduct does not address specifically the increased use of social media, although poor behaviour of this nature would tend to fall under the general obligations within the Code. The Council has however adopted a Staff Social Media Policy in 2015 which also applies to Councillors.

All Councillors receive training on the Code of Conduct as part of the Induction Process and again during the term of office of the Council; some Councillors proactively seek advice on Code matters prior to committee meetings and advice is also provided to Councillors prior to meetings when officers are aware of potential conflicts, for example at Planning Committee.

- 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.**

It is considered that these are appropriate; the seven principles are an appendix to the Council’s Code of Conduct.

Councillors are reminded annually following the Annual Council Meeting to review their register of interests and advised on any additions / deletions not already picked up throughout the year. Members also receive regular training on the Code of Conduct and the registration of interests.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?**

Yes.

- 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?**

Rother District Council appoints an investigating officer to undertake any potential breaches of the code of conduct that warrants an investigation.

- 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?**

At Rother District Council the IPs are consulted on every case to ensure that the MO's initial assessment and proposed action is objective and fair.

- 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?**

As confirmed above, the MO at Rother District Council does not undertake investigations into potential code breaches. Whilst initial investigations will be made to enable the MO to make an initial assessment of each case, these initial investigations have not given rise to conflicts of interest or undue pressure to date.

Sanctions

- f. **Are existing sanctions for councillor misconduct sufficient?**

No. See b. above.

- 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?**

No breaches have been found since the introduction of the new regime.

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

See b. above. In serious cases it is considered that the sanction of suspension or disqualification should be an option. There could also be an argument for financial sanctions such as withholding allowances, including basic and any SRA and/or reclaiming allowances paid.

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?**

Yes.

- 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.

At Rother District Council, there is a specific agenda item on each formal meeting agenda where Councillors are required to declare any interests that they have at the meeting and to which Agenda Item it relates. Councillors also have to re-declare at the commencement of that item and leave the room, if necessary. Members are required to complete a Declaration of Interest form and this is filed and comprises the register of members' interests. All declaration of interests made at meetings are minuted. Having retained the "old" Code of Conduct, modified to incorporate DPIs, the conflicts that go beyond the statutory requirements are captured under the "old" personal and prejudicial interests, for example a planning application that relates to a relative, as prescribed under the old Code.

Whistleblowing

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

The Council has a Whistleblowing Policy (last updated December 2015) designed for use by all employees of the Council (including agency staff, trainees and volunteers), independent consultants, contractors, suppliers, Councillors and members of the public.

Links to this policy are provided on the Council website along with information on how to raise a concern. Options include contacting a designated officer, phoning a confidential fraud hotline, emailing audit@rother.gov.uk or completing an online Whistleblowing Form. All calls (and voicemail messages) received on the Fraud Hotline, fraud emails and whistleblowing forms are monitored by the Audit Manager and handled in the strictest confidence.

The [East Sussex Counter Fraud Hub](#) also includes links to the whistleblowing information on the Council's Report a Fraud [webpage](#).

The Audit Manager periodically emails all staff and Members to raise awareness of the whistleblowing arrangements but more could probably be done to inform the general public.

Improving standards

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

Continued training for Members and officers on the Code of Conduct (clearly defined national examples of the types of breaches would assist with this). The same goes for Declarations of Interest – examples so that Members can understand the reasons for declaring.

Monitoring Officer attendance at parish and town council meetings to disseminate training and advice on standards matters and/or provision of an annual training session for Clerks/Parish Councillors at the local authority.

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

The re-introduction of a national code – so that every elected Councillor is following the same rule book; the abolition of the Standards Board for England has left a void and no central point of contact for advice / guidance / sample case studies etc. to see what sanctions are appropriate for what breaches. Current arrangements are not clear enough.

Intimidation of local councillors

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

Whilst it is not considered a significant problem in Rother District Council, Councillors have complained about feeling intimidated at Council meetings and when attending public meetings, particularly when controversial items are being discussed. Social Media has also contributed to this problem. Offensive letters have also been printed in the local paper and some Councillors have experienced harassment by local residents. Members who serve on the Council's Planning Committee have also experienced lobbying which has bordered on intimidation from residents in respect of the determination of planning applications.

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

At RDC a review of the seating arrangements was undertaken to ensure that the public were not sitting directly behind the Councillors and where possible so no councillors are sitting with their back to the public gallery. The local police are alerted if there is to be a large public presence, which potentially may be hostile.

Further issues could include keeping councillor contact information confidential and only providing the Town Hall address for correspondence; making sure that procedures are in place to support Councillors who are intimidated; and ensuring that measures are taken against members of the public who continue to intimidate Councillors, for example barring them from Council meetings or contacting the local Councillor (this may have to involve the local police).