

Rother District Council

Report to	-	Audit and Standards Committee
Date	-	24 June 2019
Report of the	-	Executive Directors
Subject	-	The Committee on Standards in Public Life's Review of Local Government Ethical Standards

Recommendation to COUNCIL: That the proposed amendments to the Council's Code of Conduct be approved and adopted, as detailed within the report.

AND

It be **RESOLVED:** That:

- 1) the outcome and recommendations of the Review be noted and welcomed by the Committee;
 - 2) the proposed resulting changes to legislation be considered if and when enacted by Government; and
 - 3) an assessment of the Council's current practice against the best practice guidelines outlined in the report be made and presented to the Committee at the December 2019 meeting.
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Monitoring Officer: Lisa Cooper

Introduction

1. In May 2018, this Committee responded to the Committee on Standards in Public Life's (CSPL) Review of Local Government Ethical Standards. The independent CSPL advises the Prime Minister on ethical standards across the whole of public life in the UK; it monitors and reports on issues relating to the standards of conduct of all public office holders.
2. It was anticipated that the outcome of the review would be published in time for consideration at this Committee's December 2018 meeting; however the publication was delayed until January 2019 and an update report to this effect was made to this Committee in December 2018.
3. The CSPL's report was published in January 2019 and Audit and Standards Committee Members at that time were sent the link to the report ahead of this meeting. A brief report for all Members was also made within the March edition of the Members' Bulletin. The full report and recommendations can be found at the following link:

<https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>

4. All Parish Clerks were also sent the link as there are a number of recommendations directed at parish and town councils. These are considered at Chapter 5 of the report and Clerks were encouraged to consider these with their parish and town councils.

Recommendations

5. The CSPL has made a total of 26 recommendations, the majority of which are for the Government, together with 15 best practice guidelines which are directed at local authorities. The recommendations are made to the Government and to specific groups of public officeholders; some of the recommendations will require a change to primary legislation, which is subject to Parliamentary timetabling and some to secondary legislation and the Local Government Transparency Code, which could be implemented more swiftly.
6. The recommendations are reproduced at Appendix 1 in their entirety, along with officer commentary. It is pleasing to note that a number of the recommended changes to legislation are to incorporate requirements that were previously mandatory under the old prescribed national Code of Conduct – all of which were retained in 2012 when this Council was free to adopt a new local code based on the seven principles of public life.
7. Those of particular note, some of which were raised by this Council as part of our consultation response, are as follows:
 - that an updated model code of conduct be created;
 - Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media;
 - local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Best Practice Recommendations

8. With regard to the best practice recommendations for local authorities (Appendix 2 to this report), the CSPL consider these to be a benchmark of good ethical practice and expect that all local authorities can and should implement these. It is proposed that officers undertake an assessment of our current practice against the best practice guidelines and report back to this Committee at the December 2019 meeting.

Code of Conduct

9. The Council's current Code of Conduct was formulated and adopted by all the East Sussex District, Borough and County Councils in order to maintain a level of consistency across the geographical area, particularly in relation to twin-hatted Members.
10. Ahead of this Council's consideration of the best practice recommendations (and any revised model Code of Conduct that may emerge in the future), East Sussex County Council (ESCC) has undertaken a review and has recommended two amendments to the current Code of Conduct as a result of

best practice recommendations 1 and 2. The amendments are in respect of ensuring Councillor co-operation with any formal standards investigations and providing a definition of bullying. All the District and Borough Councils across East Sussex have been requested by ESCC to make these amendments.

11. To ensure that the Codes of Conduct across East Sussex remain consistent it is recommended that the following is inserted into this Council's current Code of Conduct as follows, with the additional text in italics:

Under the General Provisions, Introduction and Interpretation:

(6) Councillors are required to comply with any request regarding the provision of information in relation to a complaint alleging a breach of the Code of Conduct and must comply with any formal standards investigation.

AND the following under the General obligations:

(2) (b) bully or harass any person; Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

(c) intimidate or improperly influence or attempt to intimidate or improperly influence any person who is or is likely to be....

Conclusion

12. The outcome of the CSPL's review and resulting recommendations are welcome; further reports will be made to the Committee if and when the Government brings forward any changes to legislation as a result.
13. A further report will be made to the Committee in December 2019 on an assessment of the Council's current practice against the best practice guidelines and any resulting recommendations.
14. In accordance with the initial review undertaken by ESCC, two amendments are recommended to be made to our current Code of Conduct as outlined above. As the duty to adopt a Code of Conduct rests with full Council, this will need to be a recommendation to Council.

Malcolm Johnston
Executive Director

Dr Anthony Leonard
Executive Director

Risk Assessment Statement

Failure to adopt the suggested amendments to the Code of Conduct recommended by East Sussex County Council will result in an inconsistency of approach by the East Sussex Councils.

	Recommendation	Responsible body	Officer Comment
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association	This is welcome and would provide a common benchmark for all authorities to amend, according to local circumstances.
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government	<p>The Government has already enacted this in relation to candidates standing for election. Candidates were able to request that their home address did not appear on the statement of persons nominated nor the ballot papers in the May 2019 elections.</p> <p>This has not been an issue within the Rother District in respect of intimidation. Councillors have been advised of the sensitive interest provisions.</p>
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government	This is welcome and further training for Councillors on the Code in relation to these matters, particularly social media posts, will be required as a result.
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government	Our current Code of Conduct retained this provision from the previous national model code.
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government	Our current Code of Conduct retained these "other interests".
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a	Government	Our current Code of Conduct retained the provision to record any gifts or hospitality received over the value of

	single source. This requirement should be included in an updated model code of conduct.		£50; the single source of £100 would be an addition to our current Code.
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".	Government	Our current Code of Conduct retained this provision from the previous national model code.
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government	This proposal will lead to recruitment administration every two years – which can be onerous. The current four year term does provide for less administration, but the rationale for the proposal is equally accepted. Two of our current three IPs are serving their second term of office and will not be able to re-apply in any event.
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government	Rother IPs are very much part of the Member complaints procedure; complainants are advised that the IPs have been consulted in the initial assessment procedure. An IP would be in attendance at any Hearing Sub-Committees and their input documented and minuted appropriately.
10	A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government	This seems a fair proposal.
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities	This seems a fair proposal.

12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government	This seems a fair proposal and provides local choice.
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government	This seems a fair proposal for this most stringent sanction; however, see commentary at following point (14).
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government	This seems a fair proposal for this most stringent sanction. However, it potentially undermines the local determination of complaints, if the Council's decision can be overruled by the Ombudsman in these cases.
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government	This Council already publishes this information on a six-monthly rolling basis via the reports to this Committee; its inclusion as part of the Local Government Transparency Code would not be onerous.
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government	This is welcome as a meaningful sanction.
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government	This is welcome as a meaningful and legal sanction, as currently it is not clear whether this is lawful under the current legislation.
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government	This is welcome, provided that other meaningful sanctions are available.
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils	This would seem a fair recommendation.
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government	Whilst this is a matter for the Parish and Town Councils, it would assist the initial assessment of complaints against parish councillors, if councillors were all bound by the same code.

21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government	This is welcome; currently, should RDC carry out an investigation and impose a sanction on a parish councillor, the parish council is not bound to implement the sanction. This change would require the parish / town council to abide by the sanction.
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government	This would provide enhanced protection for these officers.
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government	This is welcome as it would provide whistleblowers with an alternative route to raise their concerns should they feel unable to approach the Council directly.
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government	This seems a fair proposal.
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups / National Political Parties	It would be helpful if the local political groups required their councillors to attend all relevant training and development activities.
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association	This seems a sensible inclusion.

Best Practice Guidelines for local authorities

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.

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.

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.

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.

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.

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

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

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.

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.

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.

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.

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.

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.

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.

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