

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

12 October 2020

Report of the Monitoring Officer

Part 1- Public

For decision

COMMITTEE ON STANDARDS IN PUBLIC LIFE – BEST PRACTICE RECOMMENDATIONS

Summary: This report updates Members on progress in implementing best practice recommendations set out in the report of the Committee on Standards in Public Life following its review of local government standards

1.1 Introduction

1.1.1 Members of the Joint Committee may recall that I previously reported to this Committee on a consultation paper published by the Committee on Standards in Public Life (CSPL) calling for evidence about how local councils are supporting good ethical standards in local government in light of changes over the past ten years.

1.1.2 The consultation paper was reported to this Committee on 18 March 2018, together with a proposed response to be made by the Monitoring Officer on behalf of the Joint Committee. The Committee considered that the lack of effective sanctions, such as the ability to suspend a member of the Council, should be identified as a fundamental weakness and should be reinstated. The Committee also felt that the costs burden on the Council of dealing with standards complaints should be set out in the response.

1.1.3 Early in 2019 the CSPL published its report, which was considered by this Committee in July 2019.

1.2 The CSPL Review – terms of reference

1.2.1 The CSPL commenced the review in 2018 with the following terms of reference:-

- 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.

1.2.2 The review considered 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).

1.2.3 The CSPL is an independent advisory non-departmental public body that 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.

1.2.4 The CSPL has an independent Chair. Its membership is comprised of four independent members and a representative from each of the Labour, Conservative, and Liberal Democratic parties.

1.3 The CSPL Review - recommendations

1.3.1 The report, which ran to over 100 pages, made 26 recommendations. The recommendations are set out below.

| No. | Recommendations | Responsible Body |
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| 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 |
| 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 |

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| 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 |
| 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 |
| 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 |
| 6 | Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct. | Government |
| 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 |
| 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 |
| 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 |
| 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 | Government |

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| | proportionate sanction | |
| 11 | Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed. | Government/All local authorities |
| 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 |
| 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 |
| 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 |
| 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 |
| 16 | Local authorities should be given the power to suspend councillors, without allowances, for up to six months. | Government |
| 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 |
| 18 | The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished. | Government |
| 19 | Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks. | Parish Councils |

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| 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 |
| 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 |
| 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 |
| 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 |
| 24 | Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998. | Government |
| 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 |
| 26 | Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards. | Local Government Association |

1.3.2 To date the Government has not responded to the report of the CSPL.

1.4 Best practice recommendations

1.4.1 In addition to the recommendations set out at paragraph 1.3 above, the CSPL also identified a number of best practice recommendations for local authorities to consider in order to improve ethical standards. These are set out below, together with commentary on the current position in respect of each at Tonbridge & Malling Borough Council. This has been updated since the last report on this subject to the Joint Standards Committee.

| No. | Recommendation | TMBC Position |
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| 1 | Local authorities should include prohibitions on bullying and harassment in codes of conduct. | The Kent Code adopted by TMBC and a number of |

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| | These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour concerned by such a definition | the Parish Councils includes specific provisions on bullying & intimidation. Similar provisions are contained in the NALC Code. |
| 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. | The Local Assessment Criteria within the adopted arrangements includes provisions to allow trivial and malicious allegations to be rejected by the Monitoring Officer. |
| 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. | <p>The Kent Code is reviewed by the Kent Secretaries on a regular basis.</p> <p>The Local Government Association has recently prepared a draft model code of conduct. It is expected that a final draft of that code will be presented to the next meeting of the LGA General Assembly. A report on the final draft will be submitted to the Joint Standards Committee in due course.</p> |
| 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. | The TMBC Code is available on the Council's website, and can be inspected in the offices on request. |
| 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. | The gifts and hospitality register is updated as and when any notifications are made to the Monitoring Officer. It will be possible |

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| | | to publish this in the suggested format. |
| 6 | Councils should publish a clear and straightforward public interest test against which allegations are filtered. | The existing arrangements do not include a specific public interest test. However, the local assessment criteria are broad in nature and include the same considerations that would be taken into account as part of any public interest test. |
| 7 | Local authorities should have access to at least two Independent Persons. | This is our current practice. TMBC have appointed 2 Independent Persons, although 1 position is currently vacant. It is proposed to advertise this vacancy shortly. |
| 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. | This is our current practice. Independent Persons are consulted on all allegations as part of the initial assessment process. Our involvement of Independent Persons is much more extensive than that required under legislation. |
| 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. | This is our current practice. Decision Notices are published on the Council's website. The Committee also receives regular updates on all other complaints considered by the Monitoring Officer. |

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| 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. | This is our current 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. | There are practical difficulties in implementing this recommendation. For example, it is conceivable, that the Clerk may wish to complain about the behaviour of a Chairman of a Parish Council. In those circumstances it is also possible that the Parish Council as a whole would not wish to make the formal complaint. |
| 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. | This is our current 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. | The Monitoring Officer at TMBC has 2 appointed deputies. In the event of a conflict for the Monitoring Officer, one of the Deputies would be asked to undertake an investigation, or alternatively an external investigator would be used. Indeed, external investigators have been used for all previous cases under the Localism Act 2011 when a complaint has proceeded to investigation. |

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| 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 in an accessible place. | N/A |
| 15 | Senior officers should meet regularly with political group leaders or group whips to discuss standards issues. | To date this has not been necessary, as all allegations are considered by the Monitoring Officer in consultation with the Chairman and Vice-Chairman of the Joint Standards Committee, and the Independent Persons. The outcomes of all complaints are subsequently reported to the Joint Committee – it is not a statutory requirement to have a Standards Committee. |

1.4.2 The CSPL indicated that it would review the implementation of the best practice recommendations in 2020.

1.4.3 In July 2020 the CSPL wrote to the Council to advise that it would be in touch in the autumn to ask for progress against the above recommendations. Whilst we are yet to receive that request, it is considered timely to bring these to the attention of the Joint Committee so that Members are able to consider the progress we have made.

1.5 Equality Impact Assessment

1.5.1 The issues detailed in this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.6 Legal Implications

1.6.1 As set out above.

1.7 Financial and Value for Money Implications

1.7.1 None arising from this report.

1.8 Recommendations

1.8.1 Members are asked to note the contents of the report and **APPROVE** the proposed update it is intended to provide to the CSPL on the best practice recommendations.

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