

STANDARDS COMMITTEE 19 February 2019

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

TITLE OF REPORT: STANDARDS MATTERS & RECOMMENDATION ON BEST PRACTICE CHANGES

REPORT OF: SERVICE DIRECTOR: LEGAL & COMMUNITY / MONITORING OFFICER
COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1 The report updates Members of the Committee on standards issues generally, including the Government's response to the consultation on updating disqualification criteria for local authority members; and the Committee on Standards in Public Life (CSPL) report on ethical standards, with recommendations on changes.

2. RECOMMENDATIONS

That the Committee:

2.1. notes the Government's response to the disqualification criteria recommendations;

2.2. notes the content of the CSPL report and recommendations; and

2.2 instructs the Monitoring Officer to review best practice recommendations with the Chairman and Independent Persons with a view to making appropriate changes in line with the CSPL's best practice recommendations (6, 8 and 9).

3. REASONS FOR RECOMMENDATIONS

3.1 To ensure good governance within the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 The issue of greater clarity of roles has been raised in any event, in advance of the CSPL report, by the Reserve Independent Person. The CSPL report outcomes were circulated to the Chairman and the Independent and Reserve Independent Person in advance of this report.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 Within its terms of reference the Standards Committee has a function "to promote and maintain high standards of conduct by Members and Co-Opted Members of the authority". The Committee will therefore receive update reports from the Monitoring Officer on matters that relate to, or assist to govern, Member conduct.

8. RELEVANT CONSIDERATIONS

Department for Communities and Local Government (DCLG) consultation on disqualification criteria:

- 8.1. The Committee will be aware that it responded to the (then) DCLG consultation on changes to Councillor disqualification criteria at its meeting in November 2017. The government consulted on proposals to update the disqualification criteria for Councillors and Mayors to bring these into line with modern sentencing practice. The outcome was reported in October 2018, and the Government confirmed that they would be seeking to legislate to ensure that individuals are disqualified from standing for office as local authority Members or Mayors where behaviour has led to a conviction or enforcement action resulting in an individual being subject to one or more of the following:
- the notification requirements in the Sexual Offences Act 2003;
 - a Sexual Risk Order;
 - a civil injunction;
 - a Criminal Behaviour Order.
- 8.2. The timescales for implementation are unclear at this stage.

Committee on Standards in Public Life review of ethical standards in local government report 30 January 2019:

- 8.3. The CSPL published its 111 page report and 26 recommendations on ethical standards in local government, following a year-long review and wide consultation (see background document links). Key issues and recommendations include:
- **New non-mandatory Model Code:** the CSPL found considerable variation in length and quality of Codes, which creates confusion amongst Councillors and the public. An updated Model Code produced by the LGA should be available, although the CSPL found that there were benefits in local authorities being able to amend and have ownership of their Codes. The new Model Code should be wider and include a presumption that a Councillor was acting in an official capacity in their public conduct – including statements on publicly available social media.
 - **Declaring and managing interests:** the CSPL felt the arrangements were unclear and the definition of interests too narrow. The current interests should be replaced with an objective test such as with Codes in Scotland, Wales and Northern Ireland.

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. The Regulations should be amended to include unpaid directorships/ trusteeships etc.

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 and this should be in the Model Code.

- **Investigations and safeguards:** Local authorities should maintain a Standards Committee. This should include Independent members with voting rights.
- **Independent Persons:** The Independent Person is an important safeguard in the current system. However, the Localism Act should be amended to require the appointment to be for a fixed term of two years, renewable once. 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.

- **Sanctions:** The current sanctions available to local authorities are insufficient. The current lack of robust sanctions damages public confidence and leaves local authorities with no means of enforcing lower level sanctions, nor addressing serious or repeated misconduct. Recommendation that suspension be reintroduced as a sanction for up to 6 months. Need clarification on whether Councillors may be barred from Council premises or have facilities withdrawn. Should only be able to suspend a Councillor where the Independent Person agrees both that there has been a breach and that suspension is a proportionate sanction. Councillors, including Parish Councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding. The current criminal offences relating to DPIs are disproportionate in principle and ineffective in practice, and should be abolished.
- **Town and Parish Councils:** principal authorities such as District Councils should continue to have responsibility for formal investigations – but this can be a disproportionate burden for principal authorities. Parish Councils should be required to adopt the Code of their principal authority (or the new Model Code), and a principal authority's decision on sanctions for a Parish Councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to Parish Councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their Parish Council, such as those provided by the Society of Local Council Clerks.
- **Supporting officers:** The role of the Monitoring Officer is challenging and broad, with a number of practical tensions and the potential for conflicts of interests. Local authorities should put in place arrangements to manage any potential conflicts. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.
- **Councils' corporate arrangements:** Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if Councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.
- **Leadership and culture:** Political groups have an important role to play in maintaining an ethical culture, and there should be better ties between party political disciplinary measures and the Councillor Code of conduct issues. Political groups should require their Members to attend Code of conduct training provided by a local authority, and this should also be written into national party model group rules.
- **Annual reports:** 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.

- 8.4. The CSPL indicated that it had considered whether there was a need for a centralised body to govern and adjudicate on standards. It concluded that whilst the consistency and independence of the system could be enhanced, there was no need to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.
- 8.5. The CSPL has recommended a number of changes to primary legislation, which would be subject to Parliamentary timetabling, but also to secondary legislation and the Local Government Transparency Code. The best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which the CSPL expect that all local authorities can and should implement. These (*together whether these are in place at NHDC/ actions proposed*) are as follows:

What CSPL say is best practice	What NHDC does and any action proposed in bold
<p>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.</p>	<p>✓ NHDC's Code includes this at para 3.2 and the NHDC Guide on the Code gives examples of behaviour. Will however, keep under review.</p>
<p>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.</p>	<p>✓ NHDC's Code includes this at para 3.4.</p>
<p>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.</p>	<p>The current Code was reviewed in October/ November 2017 and adopted for May 2018. It is suggested that NHDC await the Government's response to the recommendation on new model Code – and review post that by Committee at its October 2019 meeting.</p>
<p>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.</p>	<p>✓ NHDC's Code is part of the Constitution, on the website with links to this from the complaints page and available to the public.</p>
<p>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.</p>	<p>There is an obligation on Councillors to review these and declare them on their Register of interests form. Reminders were sent to Councillors before Christmas by email and MIS. They are part of the Register and this is not a CSV format. It is suggested that as this is already included in the Councillor's Registers of Interests which are available on the website, that this should remain unchanged.</p>
<p>Best practice 6: Councils should publish a clear</p>	<p>NHDC's Complaints Handling</p>

and straightforward public interest test against which allegations are filtered.	Procedure includes Standards Complaints assessment criteria. It does not include a public interest test <i>The Monitoring Officer to review this with the Chairman and IPs, and make any appropriate amendments.</i>
Best practice 7: Local authorities should have access to at least two Independent Persons.	✓ This is NHDC current arrangement; however, it is envisaged that this may become more problematic if appointments are limited to 2 years with only one renewal.
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.	✓ This is current NHDC practice, although <i>the Complaints Handling Procedure and the role should be amended following discussions with the Chairman and IPs.</i>
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.	✓ NHDC has only had one formal investigation and hearing in recent years and this was published. Will consider doing so for those investigated and not upheld (i.e. where no hearing). <i>The Complaints Handling Procedure be amended following discussions with the Chairman and IPs.</i>
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.	✓ NHDC has this in the form of the website page, with the Complaints Handling Procedure at the bottom. Timescales are included.
Best practice 11: Formal standards complaints about the conduct of a parish Councillors 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.	<i>This will be highlighted to Parish, Town and Community Councils.</i>
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.	✓ These are included. Monitoring Officer and Deputies are expected to attend some form of external training/ annual conference on Monitoring Officer/ standards.
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.	✓ Included in Complaints Handling Procedure. Also have two Deputies in post.
Best practice 14: Councils should report on	<i>To raise as part of the Annual</i>

<p>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.</p>	<p>Governance Review procedure.</p>
<p>Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</p>	<p>✓ Service Director: Legal & Community (Monitoring Officer) does have monthly briefings with Group Leaders where relevant standards issues are raised. The Chief Executive has weekly meetings with the Leader and regular group meetings with Group Leaders. Other Senior Officers discuss issues with their portfolio holders on a monthly basis. Issues are likely to be raised with the Monitoring Officer who would do so with relevant Group Leaders as required.</p>

Timescale for the report response:

- 8.6. In terms of the report outcome – this will/ has been reported to the Prime Minister and the Government will have 3 months to respond. As indicated many of the suggested changes will require amendments to primary or secondary legislation, so timescale is unknown at this stage.
- 8.7. In terms of best practice, however, the CSLP and professional bodies recommend that where possible necessary action is taken to comply with these. The report has, however, only been available on the CSLP website since 31 January and there has been little time to consider it with relevant parties to suggest amendments. Further consideration should be given to these, and as the next meeting is not until October 2019, it is recommended that this is completed in consultation with the Chairman and Independent Persons. Note that where changes are made to the Complaints Handling Procedure, these will be shown as part of a delegated decision which will be circulated to Members, on the Council's website and available to the public.

Complaints/ issues update

- 8.8. The following complaints were considered since the last Committee meeting in February 2018 and in line with recommended practice these have summary of Parish/ District Councillor and complaint outcome:-

Complaint about: Parish/ Town or District Councillor	Summary of complaint	Action
Ashwell Parish Councillor / Parish Council	Complainant raised concerns about the place of a bin and how the Parish Council handled it, and how certain Councillors responded to these concerns.	No case to answer / no breach.
Sandon Parish Councillors (against 3 one complainant)	Alleged conflict of interest regarding premises licence application.	No case to answer/ no breach.
District Councillor* (*same alleged conduct)	Alleged conflict of interest regarding premises licence application and conduct.	No case to answer/ no breach.
District Councillor	Allegations that failure to declare a DPI	No DPI found to declare, no

	which had previously been considered by the Monitoring Officer and IP – no case in December 2017/ January 2018. Cllr self-referred to police when further repeat allegation made. Police found no DPIs that should have been disclosed or declared. Following repeat of allegations referred as per Protocol with Herts Police.	action proposed.
District Councillor*	Alleged conflict of interest regarding premises licence application and conduct of meeting.	No case to answer/ no breach.
District Councillor*	Alleged conflict of interest regarding premises licence application and conduct of meeting.	No case to answer/ no breach.
District Councillors	Conduct and alleged bullying.	No case to answer/ no breach.
District Councillor	Informal complaint by employee regarding alleged comments made.	Raised with Councillor and denied had made such comments. Cllr said would speak to the person.
District Councillor	Informally raised conduct potentially bringing authority into disrepute - comments on a website.	Raised with Councillor and denied had done so.
District Councillor	Alleged brought office into disrepute, use of position and acted unreasonably to prejudice a decision.	No case to answer/ no breach.
District Councillor	Alleged intimidation and bullying.	No case to answer/ no breach.
Royston Parish Councillor	Allegation of bullying and inappropriate behaviour in a meeting,	No case to answer/ no breach.
District Councillors (against 2)	Informally raised by 2 different employees regarding conduct of Councillors at a meeting.	Spoke to Group Leader.
Royston Town Councillor	Alleged that breach of data protection / sensitive information released. Failure to remove things from Facebook. Failure to show respect. Abuse of position.	No case to answer/ no breach.

Member training

- 8.8 Training was provided on the new Councillor Code of Conduct, Finance and Decision-making on 22 May 2018. As indicated it is felt that Code of Conduct training should be mandatory for all new District Councillors – and this is to be discussed and agreed with Group Leaders.

9. LEGAL IMPLICATIONS

- 9.1 The terms of reference of the Standards Committee include at paragraph 7.5.1 of the Constitution “to promote and maintain high standards of conduct by Members and Co-Opted Members of the authority”.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report.

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. There are no direct equalities implications from this report.

12.2 Good governance and high ethical standards of conduct ensure that local government decisions are taken in the public interest. The review of the best practice recommendations and appropriate changes will ensure that NHDC will continue demonstrate due regard to the objectives of the Public Sector Equality duty.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 None. The work outlined within the report is within the caseload of the Monitoring Officer and the legal team.

15. APPENDICES

15.1 None.

16. CONTACT OFFICERS

16.1 Jeanette Thompson Service Director: Legal and Community (& Monitoring Officer):
Jeanette.thompson@north-herts.gov.uk ext 4370

17. BACKGROUND PAPERS

17.1 Disqualification criteria for Councillors and Mayors:
<https://www.gov.uk/government/consultations/disqualification-criteria-for-Councillors-and-mayors>

17.2 Committee on Standards in Public Life website page:
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

17.3 Full CSPL Report: <https://www.gov.uk/government/publications/local-government-ethical-standards-report>