

Joint Audit and Governance Committee



Report of Patrick Arran, Monitoring Officer
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Arrangements for Investigating Allegations Under the Member Code of Conduct

Recommendation

It is recommended that Joint Audit and Governance Committee:

- a) Notes the requirement that the Committee for Standards in Public Life Best Practice recommendations should be adopted by all councils and that the draft Arrangements implement all but two of the Best Practice recommendations
- b) Considers the draft Arrangements for investigating complaints appended to this report and, subject to any changes it wishes to make, recommend them to the next appropriate meeting of Council for adoption.
- c) Requests the Monitoring Officer ensures that the register of members gifts and hospitality is updated and published quarterly

Purpose of Report

1. To provide the committee with information regarding the best practice recommendations from the Committee for Standards in Public Life and to ask the committee to approve the draft arrangements appended to this report and, subject to any comments or amendments it wishes to make, recommend them to Council for adoption.

Corporate Objectives

2. High standards of conduct underpin all of the councils' work and the achievement of both councils' corporate objectives and assist with ensuring effective governance.

Background

3. This report will inform the committee of the best practice recommendations set

out in the Committee on Standards in Public Life (CSPL) report called “Local Government Ethical Standards” dated 30 January 2019. It will also provide a draft document which will set out a process for investigating complaints under the code of conduct (the Arrangements). The full report is available online [here](#)

4. The CSPL undertook a review of the ethical framework for members. The purpose of the study and subsequent report was to provide assurance that the current framework following the implementation of the Localism Act 2011 was achieving its aim of ensuring that the standards expected by the public were being maintained and promoted. Councillors will recall that the Localism Act abolished the Standards Board for England with the intention that ethical standards would be maintained by councils at a local level and that member conduct and behaviour would be judged at the ballot box.
5. The CSPL review concluded that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The terms of reference for the review were to examine the structures, processes, and practices in local government in England for:
 - maintaining codes of conduct for local councillors
 - investigating breaches fairly and with due process
 - enforcing codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest
 - whistle blowing
6. The CSPL also assessed whether the existing structures, processes and practices are conducive to high standards of conduct in local government and were to make any recommendations for how they can be improved.
7. As part of its review, the CSPL made 15 best practice recommendations which are contained in the report. The expectation was that the best practice recommendations should simply be adopted by all councils. The CSPL wrote to all local authority Chief Executives in July 2020 to follow up the recommendations and again at the end of last year to ask for progress against the recommendations. A response was sent on behalf of the councils, but there were some matters which would be considered when the Local Government Association published its Model Code.
8. Overall, CSPL appears to be satisfied that the current arrangements in England are working and, whilst it accepted that the benefits of devolved arrangements should remain, this required strengthening to deal with the minority of councillors who do not adhere to the Nolan Principles 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.
9. The CSPL have made a number of recommendations, which are set out in its report, and which they believed 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:

- A rebuttable presumption that councillors public behaviour is in their official capacity
- The criminal offences relating to Disclosable Pecuniary Interests should be abolished
- A new power for local authorities to suspend for up to six months without allowances
- A right of appeal for suspended councillors to the Local Government Ombudsman
- Revised rules on declaring interests, gifts and hospitality
- Local authorities will retain ownership of their own codes of conduct
- Strengthened role for the Independent Person
- Greater transparency about the number and nature of code complaints.

10. The report was prepared for the Government and it is acknowledged that a number of the recommendations will need legislative change. As it stands any legislative intervention has inevitably been delayed by the pandemic, but the CPSL has been pressing the government to provide a response to the recommendations. The Monitoring Officer will provide further updates to the committee as appropriate.

11. The Monitoring Officer has set out below the best practice recommendations together with his commentary as to the situation at South Oxfordshire and Vale of White Horse. He advises the committee to make a recommendation to both councils to adopt the proposed draft Arrangements. Coupled with some changes to be made to the code in the new year and the other recommendations in this report, the best practice recommendations will have been adopted. This will also enable the councils to overtly demonstrate that they have considered and adopted all or some of the best practice recommendations should a review be carried out by CSPL. It must be noted however, that this is not compulsory and they are recommendations, not stipulations.

12. **Best Practice Recommendations**

The previous Monitoring Officer responded to the CSPL previously and any comments on progress will be outlined below.

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. Whilst there is a prohibition on bullying in the current code, there is no prohibition on harassment. Neither are there definitions of bullying and harassment in the current code of conduct and

this will need to be remedied.

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 – There are no such provisions in the current code and this will need to be amended to include this provision. These provisions are included in the Local Government Association Model Code and a report will be brought to the committee in the new year to seek councillors views in whether they would like to consider adopting this.

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 – This recommendation results from experiences where Councils have not set out a code of conduct in the traditional sense but have merely stated that they expect compliance with the Nolan Principles. This requirement has been built into the Arrangements. There is a report before the committee at this meeting which provides details of the complaints received in the preceding year and whilst this is an opportunity to reflect on whether the code and arrangements are working well, it would be good practice for the committee to carry out a formal review annually.

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 does make the code of conduct easily available online.

The code of conduct forms part of the council's constitution which is on the council's website. There is also a code of conduct area on the website which includes the code, complaints procedures, complaints flowchart, a complaints form and register and register amendment forms.

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 Councils publish any gifts and hospitality on the website under individual councillor names. Consideration will need to be given as to whether this should be subject to more formal arrangements even if it produces a nil return. In addition, councillors will need to be reminded to check whether they need to update their declarations of interest at least once per year and in any event if their circumstances change. The question of gifts and hospitality will be referred to the committee as part of the report in relation to the Model Code.

Best practice 6: Councils should publish a clear and straightforward public

interest test against which allegations are filtered.

Comment - The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. A public interest test has been included in the draft Arrangements which will be considered below.

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

Comment – Each council has access to 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.

Comment – This is included in the draft Arrangements as part of the process.

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 contained in the draft Arrangements appended to this report.

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 – As mentioned previously, the Councils have guidance on their websites, but the draft Arrangements are intended to provide a more detailed description of the process with clear guidance to comply with the recommendation. It is good practice to include informal resolution of complaints as a first consideration where there is a breach of the code of conduct, but which is not considered serious enough to investigate. Involving the Independent Person in the initial consideration of the complaint provides adequate safeguards to the process.

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 – The CSPL are of the view, with which the Monitoring Officer concurs, that parish councils should take corporate responsibility when

allegations of a councillor bullying an employee – normally only the clerk is employed in smaller councils – are received. This is not a controversial proposal and is 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 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 which is included in the draft Arrangements. However, the role cannot 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 association on these matters.

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 Authority has two Deputy Monitoring Officers, namely Pat Connell and Steven Corrigan who would act in the unlikely event of a conflict for the Monitoring Officer. If they were unable to act for any reason, it would be normal practice for a Monitoring Officer from another authority to be asked to assist, this would be on a reciprocal basis and should be cost neutral. This has been included in the draft Arrangements.

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 not something which applies to South Oxfordshire and Vale of White Horse.

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

Comment – There is nothing controversial in this recommendation and meetings can take place by exception, there are regular statutory officers meetings where issues can be discussed. Again, this is referred to in the draft Arrangements.

13. If the councils make some changes to the current Code and the draft Arrangements are acceptable then the best practice recommendations will have been adopted by the councils.

14. Arrangements for dealing with complaints under the code of conduct

Section 28 (6) of the Localism Act 2011 provides that a relevant authority other than a parish council must have in place —

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made

15 In order to implement the CSPL best practice recommendations, the Monitoring Officer has provided draft Arrangements for the committee to consider recommending to the Councils for adoption. The draft Arrangements are intended to replace the current arrangements in their entirety. The draft Arrangements contain references to guide members to the corresponding best practice recommendations

16. It is the role of the district councils to provide the process under which complaints against town and parish councillors can be investigated. The councils have responsibility to make findings and recommend sanctions.

17. The Monitoring Officer has consulted with all of the parish councils and has considered any comments received in the preparation of this report and the draft Arrangements. It is not intended to provide a commentary on the proposed arrangements, suffice to say that they are intended to be a guide to complainants and members and set out the process in a logical way. They incorporate the CSPL best practice recommendations which are referenced in footnotes in the document.

18 Consultation Responses and Points for Consideration

As part of the consultation process, the draft arrangements were sent to the Independent Persons, the chairs of this committee and all town and parish clerks, the latter with a request for a response by 12 November. A number of responses were received and the issues raised, together with the Monitoring Officers comments, are set out below.

18.1 Concerns about the ability of the clerk to raise complaints – bullying by Chair

Feedback was received that, on occasion, the unacceptable behaviour is by the Chair of the parish council. A response was provided that the Arrangements do allow a clerk to make a complaint, but that the purpose of the provision is to ensure that the parish council takes corporate responsibility for any unacceptable behaviour by parish councillors.

18.2 Arrangements for the Complaints Panel

Comments were made about the constitution of the Complaints Panel and whether there will be a clerk to the panel. This is on the basis of independence. This role will be undertaken by the Monitoring Officer, as such there is no necessity to appoint a separate clerk.

18.3 Form of the Arrangements Document

Some helpful comments were made about the form of the document in terms of subject headings / index which have been taken on board.

18.4 Publication of Decisions

Comment has been made by district councillors as to whether publication of complaints should be considered where informal resolution has been reached or where there has been no breach of the code. Additionally, it has been suggested that any notices should be published on the respective district council website.

Publication of the outcome where there is a finding of breach is intended to make the public aware, given that the intention is that the councillor's behaviour will be judged at the ballot box. Whilst there is no objection in principle to publishing the outcome of cases which have been resolved informally (this does not include complaints which have not been accepted) or those where a councillor has been exonerated, the issue that arises is that of confidentiality / GDPR. In those circumstances, the councillor would have to provide specific consent prior to publication.

18.5 Oversight of the System

One parish council asked what the arrangements were to monitor the Monitoring Officer and whether any key performance indicators were contemplated. It was suggested that in the absence of a right of appeal the only remedy was a complaint against the Monitoring Officer.

This committee has oversight of the standards regime and the Monitoring Officer is delegated authority to manage the process. The Independent Person has a significant role in the process and provided a check and balance. If a councillor or complainant is aggrieved with the way the complaint has been dealt with, it is open to them to refer the matter to the Local Government Ombudsman.

18.6 Communications with Councillors

A parish council were of the opinion that communication with the Subject Member needed to be better and that the councillor is not presented with a 'fait accompli'. The draft Arrangements specifically provides for councillors to be informed and that they are able to comment on the complaint and any draft finding.

18.7 Vexatious Complaints

Concerns were raised about dealing with vexatious complaints / complainants and that certain allowances have been made for complainants. The process set out in the Arrangements is intended to ensure that these complaints are sifted out at an early stage. There is a need for a robust process to balance all interests and this will be achieved by a consistent approach to a clear process.

18.8 Current Code of Conduct

Comments were made that the current code does not work well and does not seem to have a satisfactory outcome for either the complainant or the Subject Member. It

is suggested that the current code should be reviewed with the overwhelming view from the respondent council that the code “lacks teeth”. Further concerns have been raised the current code only refers to disclosable pecuniary interests and does not provide for conflicts which may arise in relation to matters where the DPI is not engaged.

A further report will be brought to the committee in the new year regarding the code and the LGA Model Code. In the meantime, the Monitoring Officer will provide guidance through the training currently being provided to parish councillors.

18.9 Complaints Being Discontinued

Concern was raised regarding the prospect of complaints being discontinued where the Subject Member ceases to be a councillor. This is an issue where the councillor stands again and effectively the slate is wiped clean. Provision has been made for this in the case of more serious allegations in that the wording says “The Monitoring Officer will **normally** discontinue a complaint...”. And that an exception will be made where it is in the public interest for formal findings to be made

Financial Implications

19. There are no financial implications arising from the recommendations in this report.

Legal Implications

20. Any legal implications have been set out in the body of the report.

Risks

21. There are no known risks associated with the recommendations contained in this report. The councils will have legal and reputational risks if they do not have adequate arrangements for dealing with complaints under the Code of Conduct. Furthermore, in order to ensure compliance with the best practice recommendations from the CSPL, the current arrangements need to be updated.

Other Implications

22. None.

Conclusion

23. The committee is asked to consider the draft Arrangements and to recommend to the councils for adoption.

Background Papers

None

Appendices

Appendix 1: Draft Arrangements for investigating allegations under the member Code of Conduct