



City of Westminster Standards Committee

Meeting: Standards Committee

Date: 21 March 2019

Classification: For General Release

Title: Review of Local Government Ethical Standards by Committee on Standards in Public Life

Report of: Tasnim Shawkat, Monitoring Officer

1. Executive Summary

1.1 This report advises the Committee on the outcome of the review by the Committee on Standards in Public Life (CSPL) on Local Government ethical standards

2. Recommendations

2.1 To note the 26 recommendations made by the Review of Local Government Ethical Standards by Committee on Standards in Public Life and the 15 best practice points.

2.2 To note the council already practices many of the recommendations which do not require legislative changes as a matter of good practice.

2.3 To consider what further changes could be made to the Council's Code of Conduct and Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct, which would not require legislative changes.

3. Review of Local Government Ethical Standards by Committee on Standards in Public Life

Background

3.1 On 29 January 2018 CSPL launched a consultation on Local Government Ethical Standards. On 15 March Committee Members considered the terms of reference for the review. 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 alleged breaches fairly and with due process
- enforcing codes and imposing sanctions for misconduct
- declaring interests and managing conflicts of interest; and
- whistleblowing

And to:

- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
- make any recommendations for how they can be improved
- 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

3.2 The Council's Standards Committee together with the Council's Independent Persons responded to the consultation in May 2018. A copy of the Council's response to the review is appended to this report marked **Appendix 1**.

The Report on Local Government Ethical Standards

3.3 The CSPL published its report on 30 January 2019. The report can be accessed here: <https://www.gov.uk/government/publications/local-government-ethical-standards-report>. The report proposes a range of measures which it mainly recommends to Government but also to the Local Authorities, including Parish Councils.

3.4 The report reinforces the high standards of conduct required in local government to protect the integrity of decision-making, maintain public confidence and safeguard local democracy.

3.5 The report concludes that there is no need to return to a centralised body to govern and adjudicate on standards and that Local Authorities should

retain ultimate responsibility for implementing and applying the seven principles of public life (Nolan Principles) in Local Government.

- 3.6 Members are specifically referred to the Executive Summary and the Recommendations. Some of the recommendations require changes to primary legislation, secondary legislation and the Local Government Transparency Code.
- 3.7 The report also sets out a list of Best Practice recommendations which Local Authorities should consider as a benchmark of good ethical practice and implement.

Summary of key findings relevant to the City Council

- 3.8 The report is divided into 8 chapters. This report does not refer to all chapters but instead aims to summarise some of the key issues relevant for the City Council. The key findings the Committee is asked to note are as follows:
- i) Whilst it is recommended that there should be an updated model code of conduct, the review recognised that there are benefits to councils being able to adopt their own codes depending on its own culture and the specific issues it may face.
 - ii) The report highlights that areas such as gifts and hospitality, social media use, and bullying and harassment have all increased but are not regularly reflected in the codes of conduct recommended by the Government and the Local Government Association.
 - iii) **Bullying/ harassment:** In particular, codes do not have specific behaviours that would amount to bullying. The Committee can consider whether it would be helpful for the Council's code to include a definition of bullying/ harassment. There is no statutory definition of bullying but the report refers to a definition used by ACAS (Advisory, Conciliation and Arbitration Service). Harassment is defined in the Equality Act 2010.
 - iv) **Social Media:** The report states that, at the moment, codes of conduct can only apply when Councillors is acting in their capacity as a Councillor. The report recognises how the use of social media presents a challenge in determining whether a code of conduct applies to instances of behaviour. One of the recommendations is that Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. This will require a change in legislation to permit local authorities to presume so when deciding upon code of conduct breaches. However, at its meeting on 6 December 2018 the Committee considered and approved a guide to Members on the use of social media. The Committee suggested that a list of "do's and don'ts" be circulated on the Members bulletin on a regular basis, to publicise and remind members regarding use of social media.
 - v) **Gifts and hospitality:** The report refers to gift value of £50 to £100. The report highlights that there are three broad principles surrounding gifts

and hospitality that should guide whether an individual should accept gifts or hospitality, namely purpose, proportionality, avoiding conflicts of interest to safeguard the principle of integrity. Westminster City Council's code requires Members to register gifts and hospitality with a value in excess of £25. The Monitoring Officer suggests that the Code could be updated to include the reference to "purpose and proportionality" in addition to avoiding conflict of interest. The Council is also working on a specific guide on gifts and hospitality for Members involved in Planning Committee work where these principles should be highlighted.

- vi) **Planning and gifts and Hospitality:** Reference is made in the report to the Council's investigation concerning a Councillors gifts and hospitality. The report goes on to state that as part of their review the evidence received suggests that the acceptance of gifts and hospitality is of most concern when it comes to planning. "Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should generally therefore not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest." The Committee is aware of the review commissioned by the Chief Executive in relation to the Council's planning process and a report in relation to this will be considered at the next Standards meeting. The Committee should also have the opportunity to comment on the written guidance to be provided to Members involved in planning decisions.

- iv) **Investigations and Safeguards:** The report recognises that there has to be an effective, fair, impartial and transparent procedure, in which Councillors and the public can have confidence. The report considers the role of the Independent Person (IP) and how this role could be strengthened and clarified. The review makes a number of recommendations in relation to the role of the IP, some of which the Council already has in place. There is, for example, recommendation that IPs are consulted by the Monitoring Officer when considering whether a complaint should be investigated or not. The Monitoring Officer's practice is to do so but this could be expressly stated in the Arrangements. It is recommended that the views of the IP are included in any investigation report. The Monitoring Officer and investigating officers practice is to include the IP's comments in decision letters or reports. A further recommendation is that IPs are invited to Standard hearings and their views are taken into account before the Committee takes any decision on whether the member's conduct constitutes a failure to comply with the code and as to any action to be taken following a finding of failure to comply with the Code. IPs are currently invited to the Standards Committee and would be invited to hearings if there were to a hearing. As mentioned above IPs views are integral to investigation reports and decision letters in the City Council and this could be expressly stated in the Arrangements.

- vi) **Filtering of complaints:** The report states that the focus should remain on individual local authorities maintaining high standards in their own

councils. This should include a filtering mechanism to ensure only allegations of real merit are investigated and the use of serious sanctions should remain rare.

- vii) **Sanctions:** The report states that the current sanctions available to local authorities are insufficient and that a lack of robust sanctions damage public confidence in the standards system and that there is no means of addressing serious or repeated misconduct. The report recommends that local authorities should be given the power to suspend councillors without allowances for up to six months and any Councillors who is suspended should be given the right to appeal to the Local Government Ombudsman. This change will require legislation.
- viii) **Supporting Officers:** The report highlights the challenging and broad role of the Monitoring Officer as well as the practical tensions and potential for conflicts of interest. The Monitoring Officer for the Council already has in place processes, in line with the recommendations and best practice recommendations, for example appointing a different legal officer to undertake a code of conduct investigation and the ability to seek advice from the Monitoring Officer for Kensington and Chelsea due to being a Bi-Borough legal service. Also external legal advice has been and will be sought as necessary and appropriate.
- ix) **Leadership and culture:** The report states that an ethical culture requires leadership from a range of individuals and groups: an authority's Chief Executive, political group leader and the chair of the Council. Maintaining an ethical culture day to day relies on an impartial, objective Monitoring Officer who is supported by the Chief Executive and Councillors. The Monitoring Officer notes and supports the best practice recommendation for senior officers to meet regularly with political group leaders and whips to discuss standards issues. The Monitoring Officer has already arranged mandatory training for Councillors in relation to ethics and the code of conduct following. The Monitoring Officer has been particularly keen to reinforce the message that although rules and guidance is necessary, it is leadership and culture which has the most impact on the standing of the Council's ethical standard.

List of good practice already adopted by the City Council

- 3.9 The Council has already adopted some of the recommendations and best practice guides. It is worth noting the following:
- i) The Council's code of conduct requires Members within 28 days of receipt to register any gift, benefit or hospitality in excess of £25 which they have accepted as a Member from any person or body other than the City Council. The Register is online and is updated as and when Members register new entries, whereas the CSPL recommends quarterly.
 - ii) Whilst a legislative change is required to s31 Localism Act 2011 in relation to declaring interests and not taking part in debate and decisions where there is no Disclosable Pecuniary interest, the Monitoring Officer already provides training and advice to Members to declare an interest

and not take part in debate and decision “If a member of the public, with knowledge of the material 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”. Members do consider whether they should participate in a debate or vote at a meeting in such circumstances and heed the advice.

iii) The views of the IP are taken into account by the Monitoring Officer when considering whether to dismiss or investigate a complaint and if an investigation is completed, the views of the IP are recorded in the investigation report. A process is in place for the IP to be invited to standards hearings and their views in relation to any findings concerning a breach of the code and sanctions would be taken into account by the Committee and recorded in any decision/ minutes. The Council has provision for three IPs, whereas the recommendation is for two. In addition the Monitoring Officer can call upon other legal officers to undertake investigations and as the Council is part of a Bi-borough legal team, can seek the advice and views of the Monitoring Officer for Kensington and Chelsea and/or seek external legal advice.

iv) The Monitoring Officer presents an annual report to the Standards Committee in relation to the number of complaints in the last year and themes arising.

vi) Following the implementation of the Localism Act 2011 the Council adopted the government department’s model code of conduct. Both the Code of Conduct and the Arrangements for dealing with complaints alleging a breach of the code of conduct have been subsequently amended when there have been lessons to be learnt from complaints (“The Arrangements”).

vii) The Council’s code of conduct and the Arrangements are published on the Council’s website. They can be found doing a search for Westminster Members code of conduct and Westminster complaints against Members. The website provides guidance as to how complaints can be made and who they should be sent to.

viii) The Monitoring and her officers provide support and training to the Parish/ Community Council concerning complaints.

3.10 As already referred to, most of the recommendations will require a change in legislation, before the City Council can adopt them.

4 Financial Implications

4.1 There are no financial implications for this report.

5. Legal Implications

5.1 The Council and individual Members are required to promote and maintain high standards of ethical behaviour as is required under section 27 of the Localism Act 2011 (“the Act”) Under section of the 28 of the Act, the Council

must have in place “arrangements “ under which allegations that a member or co-opted member of the Council, or of a Committee of Sub-Committee of the Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.

- 5.2 In order to implement some of the recommendations amendments would have to be made to sections 27, 28 and 31 Localism Act 2011. In addition, amendments would have to be made to The Relevant Authorities Disclosable Pecuniary Interests) Regulations 2012 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015..

**If you have any queries about this report please contact: Reuben Segal, Acting Head of Committee and Governance Services, Tel: 020 7641 3160
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