

Central Bedfordshire Council

GENERAL PURPOSES COMMITTEE

17 December 2015

ANNUAL REPORT ON THE ARRANGEMENTS FOR ETHICAL STANDARDS

Advising Officer: Quentin Baker, Assistant Director Legal and Democratic Services (interim) and Monitoring Officer
(quentin.baker@centralbedfordshire.gov.uk)

Contact Officer: Maria Damigos, Corporate Lawyer
(maria.damigos@centralbedfordshire.gov.uk)

Purpose of this report

1. To provide the Committee with a summary of the Council's ethical governance and arrangements over the last 12 months.

RECOMMENDATIONS

The Committee is asked to:

1. Note how the Council has complied with its obligations in respect of ethical standards under the Localism Act 2011 for the year since July 2014;
2. Resolve that F2 paragraph 12 of the Constitution in relation to appeals from the Standards Sub-Committee under the Arrangements for Dealing with Standards Allegations under the Localism Act 2011 is deleted.

Overview and Scrutiny Comments/Recommendations

1. This Report is an update on ethical standards to General Purposes Committee. No decision by the Executive or Council is required.

Introduction

2. The Localism Act 2011 introduced revised arrangements for local authorities in respect of ethical standards, including the Code of Conduct, Register of Interests and the handling of complaints. This Council's obligations under the Act included certain responsibilities regarding the Register of Interests and the conduct of complaints relating to T&PCs.

3. The Council adopted a new Code of Conduct at its Annual Meeting in April 2012. The relevant provisions in the Localism Act 2011 came into force on 1 July 2012 and in accordance with those provisions the Council subsequently approved the matters that should be included in the Register of Interests and appointed a panel of Independent Persons to provide views on complaints. During the year 2013/14 the Council received an unusually large amount of complaints within a very short time frame and introduced new procedures and the arrangements for dealing with ethical standards within the constitution was reviewed and amended.

The Code of Conduct

4. The Code of Conduct adopted by the Council has also been adopted by most T&PCs in the area. However, it is open to each Council to adopt its own code and so there is not a single code of conduct that covers all councils in Central Bedfordshire. A number of T&PCs have adopted the model Code of Conduct circulated by the National Association of Local Councils (NALC). It is important therefore for Members to be clear which Code they are working to, and for the Code to be easily accessible to members of the public e.g. published on Councils' websites.
5. In practice, the Code seems to provide a sound framework for issues regarding the conduct of Members. However an ongoing issue and area of debate is the sanctions available to the Standards Sub Committee in the event of a breach of the Code. Where there is a serious breach or persistent breaches of the Code there is no ability to suspend a Member from public office or attendance at public meetings. A list of sanctions is found at paragraph 11 of Appendix A attached.

The Register of Interests

6. The Council decided to confine the items that must be included in the Register of Interests to those disclosable pecuniary interests that were prescribed by the government in Regulations. However, the Council also adopted the following general obligation: As an over-riding obligation, Members are required to abide by the law and the Nolan Committee Seven Principles of Public Life in determining whether any additional interests should be disclosed.
7. All councillors are under an obligation to notify the Monitoring Officer of any disclosable pecuniary interests they have within 28 days of their election to the Council. In August 2012, the Secretary of State issued guidance for councillors entitled: Openness and transparency on personal interests. In this guidance, the Secretary of State emphasised that under the principle of honesty holders of public office have a duty to declare any private interests relating to their public duties and that this is an ongoing obligation during a Member's term of office.

8. After the May Election all Members were asked to submit a fresh register of interests forms. Members are responsible for updating their register within 28 days of any change in their interests. Failure to disclose a pecuniary interest is a potential criminal offence. All Council members have disclosed their pecuniary interests. One member does need to update their interests and assistance with this is required and is being arranged.
9. This Council's Monitoring Officer is responsible under the Act for ensuring that the registers of interest for all the T&PCs in the area are published on the Council's website and are available for inspection. Currently the Council has been informed of 644 Town and Parish Councillors (this figure includes notification of co-opted councillors) and as at mid September 2015 the Monitoring Officer has received 579 completed forms which is a 90% return. Some of the returned forms have been queried and further contact and chasing will be carried out for the outstanding forms.

Independent Persons

10. The Council worked in collaboration with Bedford, Luton and Milton Keynes Councils and the Bedfordshire and Luton Fire & Rescue Service and the Buckinghamshire and Milton Keynes Fire Authority to establish a joint panel of Independent Persons. This arrangement continues to work well providing an effective backstop and reality check for the Monitoring Officer as part of the initial assessment and investigations stages of the procedures.
11. The Act provides that each Council must appoint at least one Independent Person whose views are to be sought and taken into account before the Council makes a decision following the investigation of a complaint that a Member of the Council or a Town or Parish Councillor has failed to comply with the Code of Conduct. The Council normally also consults an Independent Person when making a decision on how to progress a complaint which comes under the Code of Conduct. A minimal fee and reasonable expenses are provided to an Independent Person per case and all Independent Persons are held on the Panel by way of retainer, the cost of which is shared across the Authorities.

Complaints

12. A copy of the procedure that the Council has adopted for handling complaints is attached as Appendix A.
13. The procedure provides that where the conduct complained of comes under the Code of Conduct, the Monitoring Officer will carry out an initial assessment of the complaint, in consultation with an Independent Person to decide whether there is a potential breach of the Code of

Conduct and accordingly to take (i) no further action, (ii) recommend a local resolution, or (iii) proceed to a formal investigation. If a formal investigation is required, interviews will be conducted by an investigating officer and the views of the Independent Person sought. A report is then produced for the Monitoring Officer to make a final decision or refer to the Standards Sub Committee. At any point the Monitoring Officer can ask for a review of the complaint by the Standards Sub-Committee or (after investigation) a hearing to determine the facts and, if appropriate, sanction the Member. Current resources to administer this work are the Monitoring Officer's time, support from the Corporate Lawyer (0.8FTE), a locum Corporate Lawyer (0.4FTE) and assistance from the Committee Services Manager. During the past year 2 cases have been investigated by external solicitors (at a cost of approximately £10k) and 10 complaints were reviewed by external solicitors (at a cost of approximately £8k).

14. Since August 2014 to September 2015 there have been 33 complaints received with 42 complaints being carried over from 2013/14 making a total of 75 complaints being dealt with in the 12 month period to September 2015. The complaints received are spread across 13 Town and Parish Councils and Central Bedfordshire Council. In this 12 month period 8 of the complaints received were against CBC councillors. 66 complaints had been closed leaving 9 open matters as at the end of August 2015.
15. As at November 2015 there are 6 open matters: one matter is at initial assessment stage, an investigation report will be submitted to the Monitoring Officer in respect of 4 complaints and the last complaint is awaiting local resolution. Appendix B shows the cumulative totals of complaints received since June 2012.
16. There have been delays in the historic complaints inherited by the previous Monitoring Officer, and these have in part been addressed with implementation of a new tracking system, and subsequent appointment of the Corporate Lawyer to assist with this work. A year by year comparison shows that more complaints have been dealt with this year but the changes to the end to end procedures both via the Constitution as detailed below and day to day working have resulted in a more efficient process with better management of the expectations of complainants.

Training

17. The complaints received have shown where training and guidance is most needed for Town and Parish Councillors and this is to be facilitated in conjunction with NALC and the Clerks to the T&PCs.
18. Since August 2014 there has been ongoing liaison with the Clerks which has seen an increase in the queries received to assist with matters being dealt with before they become complaints.

19. A briefing session for Clerks was held in March 2015. After the election further information was available for CBC councillors at induction sessions and a tailored ethics presentation. A briefing session on ethical governance was also held in July 2015. A session on social media is currently being planned. All briefing sessions were well attended and well received and interest has already been shown in respect of the social media briefing.
20. In light of the increased volumes in complaints the previous Monitoring Officer worked with her team to revise the process so that it is a better fit for purpose to cope with the volume and complexity of complaints going forward and manage expectations of those complaining by including details about threshold criteria. These changes were approved by Council on 29 January 2015 after a recommendation to do so by General Purposes Committee and the Constitution was subsequently amended. The complaint form and website were also updated to provide further information. New standard letters were drafted to ensure all parties are fully aware of the procedure. A workflow is ready to have live testing on new complaints to help further streamline the procedure and create further efficiencies.
21. In conjunction with the Clerks, the previous Monitoring Officer started to encourage T&PCs to resolve more minor matters at a local level themselves (wherever possible) so that only the more serious potential breaches of the Code would be considered for investigation. This is continuing and has resulted in an increase in guidance being provided to both councillors and Clerks and less formal complaints being received.
22. Going forward, officers of this Council will continue to work with the T&PCs to encourage best practice in use of their procedures and standing orders, as well as liaising with NALC and the Council's Partnership Team to facilitate further training and development opportunities for all Councillors.

Appeals from the Standards Sub-Committee

23. The current provisions regarding the process by which allegations are dealt with includes a right of appeal from a hearing on limited grounds by either the complainant(s) or the subject member. On reviewing practice in other authorities it is noted that procedures in some other authorities don't include an appeal stage. It is noted that the procedure includes the involvement and input from an independent person and it is suggested that this provides an important safeguard and ensures that the process is fair.
24. It is suggested that there is sufficient protection of rights in a hearing of the Standards Sub-Committee which will be dealt with by at least three impartial members with wide discretion to question and request

information. The Standards Sub-Committee will also be able to consult with the Independent Person who considered the matter.

25. There is a cost implication associated with the appeal process as it involves officer and member time and that of the independent person. With these safeguards in place it may be felt that this be a disproportionate use of the Council's resources bearing in mind that there are limited grounds of appeal and bearing in mind that the sanctions which could be imposed are limited. There has been one hearing of the Standards Sub-Committee which was heard by 5 members and then appealed. As well as Monitoring Officer and Members time, the appeal resulted in approximately 65 hours of officer time with no change to the result.

Council Priorities

26. The effectiveness of the Council's governance arrangements contributes to the achievement of all the Council's priorities.

Corporate Implications

Risk Management

27. It is important that the Council has in place an effective local framework to secure high ethical standards in the conduct of its business. The main risk to the Council of a failure in the area of ethical standards is reputational.

Staffing (including Trades Unions)

28. There are no specific staffing issues arising from this report, however members are reminded that the Councillor Code of Conduct is complemented by the Protocol for Member/Officer Relations.

Legal Implications

29. Under the Localism Act 2011, the Council introduced, as required, revised arrangements governing ethical standards, including a Code of Conduct, arrangements for handling complaints and the establishment of a Register of Members Interests. The Council also has responsibility for overseeing the arrangements that are adopted by Town and Parish Councils (T&PCs) and for investigating Code of Conduct complaints made against Town and Parish Councillors. However the Monitoring Officer as at September 2015 also found that she was regularly requested by the T&PCs to advise on a range of legal and/or procedural queries that are unrelated to the Code of Conduct and therefore fall outside of this Council's responsibility. As these are matters for the T&PCs to deal with themselves, the Monitoring Officer liaised with the Clerks to identify appropriate alternative sources of advice and assistance for them to consider.

Financial Implications

30. The proposals contained in this report have no specific financial implications. However Members are advised that there are limited resources available for this work and therefore there is a need to use resources within Legal and Democratic Services as efficiently as possible when dealing with ethical matters to minimise costs.

Equalities Implications

31. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These requirements are recognised in the accountability principle of public life which forms part of the Members Code of Conduct.

Conclusion and next Steps

32. The figures show that the number of complaints being dealt with is increasing overall but as the total complaints open at the end of each month has significantly reduced it can also be seen that the processes in place are working well. The removal of the right of appeal will not prejudice subject members but will reduce the time for the end to end process as well as ensuring Council resources are more effectively targeted.

Appendices

The following Appendices are attached:

Appendix A – Section F2 of Constitution – Arrangements for dealing with Standards Allegations under the Localism Act 2011

Appendix B – Cumulative total of Councillor Code of Conduct Complaints