

Central Bedfordshire Council

General Purposes Committee

28 March 2019

Report on the Arrangements for Ethical Standards

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Purpose of this report

To provide the Committee with a summary of the Council's ethical governance arrangements since October 2018 and to comment and give direction on those areas of best practice contained in the Government's Committee on Standards in Public Life.

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 6 months since October 2018; and**
- 2. Comment on those areas of best practice, as contained in the report of the Government's Committee on Standards in Public Life, and provide direction where needed.**

Introduction

1. The Localism Act 2011 ('the Act') 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 includes complaints relating to Town and Parish Council (T&PCs) councillors. The Act came into force on 1 July 2012 and in accordance with the Act the Council adopted a Code of Conduct, approved the matters that should be included in the Register of Interests and appointed a panel of Independent Persons to provide views on complaints. The General Purposes Committee has responsibility for exercising the Council's functions under Chapter 7 of the Localism Act 2011 relating to ethical standards.
2. The Government's Committee on Standards in Public Life recently completed its review of local government ethical standards. The Committee published its report on

30 January 2019. The report contains 26 recommendations and 15 areas of best practice.

The Code of Conduct

3. 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 T&PC to adopt its own code and so there is not a single code of conduct that covers all councils in Central Bedfordshire. 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. A Parish Council was found recently not to have a code of conduct. It has since adopted one and published it on its website.
4. In practice, the Code appears to provide a sound framework for issues regarding the conduct of Members. However an ongoing issue and area of debate remains the sanctions available to the Monitoring Officer and 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 are found at paragraph 34 of Appendix A attached.

The Government's Committee on Standards in Public Life

5. The Government's Committee on Standards in Public Life recently completed its review of local government ethical standards. The Committee published its report on 30 January 2019 and is available to view at: <https://www.gov.uk/government/collections/local-government-ethical-standards>. The report contains 26 recommendations and 15 areas of best practice. One of the recommendations is that local authorities should be given the power to suspend councillors, without allowances, for up to six months.
6. The areas of best practice are as follows.
7. **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.** – This is not in the Council's code of conduct. The Monitoring Officer advises it is included. The Committee is asked to consider this and give its direction.
8. **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.** – This is not in the Council's code of conduct. The Monitoring Officer advises it is included. The Committee is asked to consider this and give its direction.
9. **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. – This is not current practice. The Committee is asked to consider this and give direction.

10. **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.** – This is current practice for the website; the Monitoring Officer is unsure how easily available it is in council premises, though it is expected a copy would be printed off by reception staff if a member of the public requested it.
11. **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.** – This is not current practice. Gifts, if declared by members, are published on the individual members register of interests form under 'Other Interests'. There is not a separate register for gifts and hospitality received by members. The Committee is asked to consider this and give direction.
12. **Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.** – This is not current practice although the Monitoring Officer takes into account the public interest when considering code of conduct allegations. The arrangements for standard allegations (Appendix A) lists a referral criteria at paragraph 14 which is similar to a public interest test. The Committee is asked to consider this and give direction.
13. **Best practice 7: Local authorities should have access to at least two Independent Persons.** – This is current practice. Luton Borough Council led on the recruitment and formal appointment of four Independent Persons which the Council has access to.
14. **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 part current practice. The Independent Person is consulted except where the Monitoring Officer concludes that a complaint is clearly without merit i.e. discloses no potential breach of the code. In such cases if the complainant challenges this it is open to the Monitoring Officer to then consult with the Independent Person. A number of complaints are made each year which are without merit and to consult with the Independent Person would create additional work and cost. The Committee is asked to consider this and give direction.
15. **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.** – This is current practice for all decisions whether at the initial assessment stage or later.

16. **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.** – This is current practice and is contained in Appendix A which is published on the website.
17. **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.** – Not applicable to this Council.
18. **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.** – It is current practice for the Monitoring Officer to provide this advice and support, to handle investigations and to arrange standards hearings on alleged breaches by T&PC councillors.
19. **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.** – There is not such a procedure in place, although no conflicts of interest have arisen to date. If a conflict of interest arose an alternative could include the Deputy Monitoring Officer undertaking the investigation. The Committee is asked to consider whether it requires procedures be put in place to address any conflicts of interest when undertaking a standards investigation and if so whether it wishes the procedure to include asking the Monitoring Officer from a different authority to undertake the investigation.
20. **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.** – This will be considered for this year's annual governance statement which is in the remit of the Council's Audit Committee.
21. **Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.** – None of the Council's political groups appear to have designated whips in the way implied. Senior Officers meet with group leaders as and when the need has arisen; a regular meeting is not considered necessary.

The Register of Interests

22. The items that must be included in the Register of Interests are those disclosable pecuniary interests that were prescribed by the government in Regulations. 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. The Council's current register includes a section on 'Other Interests'.

23. 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. They are also responsible for updating their register within 28 days of any change. Failure to disclose a pecuniary interest is a potential criminal offence. Under the principle of honesty, holders of public office have a duty to declare any private interests relating to their public duties and this is an ongoing obligation during a Member's term of office.
24. All Council members have disclosed their pecuniary interests.
25. Under the Act, the Monitoring Officer is responsible for ensuring that the registers of interest for all the T&PCs in Central Bedfordshire are published on the Council's website and are available for inspection.
26. The up to date figures for notification of Town and Parish Councillors interests is attached as Appendix C. Occasionally hardcopy forms are still received and when this occurs the Monitoring Officer contacts the Clerk of the T&PC and requests they arrange for the councillor to submit their interest via the on-line facility on CBC's website.

Independent Persons

27. 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. Subject Members also have the right to consult an Independent Person if a complaint is made about them. A nominal fee and reasonable expenses are provided to an Independent Person per case.
28. The Council shares a joint panel of 4 Independent Persons with Luton and Milton Keynes Councils and the Buckinghamshire and Milton Keynes Fire Authority. All Independent Persons were held on the Panel by way of retainer, the cost of which was shared across the Authorities with each Authority paying fees and expenses for their own cases.
29. This arrangement works well providing an effective second opinion for the Monitoring Officer as part of the initial assessment stage and support for Members against whom a complaint has been made. This arrangement also provides greater resilience in the event of unavailability, conflict and also for peaks of complaints as well as a greater breadth of experience.

Complaints

30. A copy of the procedure that the Council has adopted for handling complaints is attached at Appendix A.
31. The procedure provides that where the conduct complained of potentially comes under the Code of Conduct, there will be 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 what, if any, further action to take. This includes formal investigation which could lead to a Standards Sub-Committee hearing to determine the facts and, if appropriate, sanction the Member. At any point the Monitoring Officer can ask for a review of the complaint by the Standards Sub-Committee. Current resources to administer this work are the Monitoring Officer's time with support from the interim Deputy Monitoring Officer who is a lawyer employed by LGSS Law.
32. The procedure was recently amended to permit the Monitoring Officer to reject a complaint that does not disclose a potential breach of the Code of Conduct. This avoids the need to consult the Independent Person when a complaint is clearly without merit thus saving on additional time and the Independent Person's costs.
33. During the past 6 months two cases have been formally investigated concerning one CBC councillor and both cases, in February 2019, were referred to a standards sub-committee.
34. For the period October 2018 to March 2019 the Monitoring Officer has received four new formal complaints. The two complaints (referenced in paragraph 33) were re-opened in June 2018 following receipt of additional evidence. One other complaint was carried over from the previous 6 month period (February 2018 – October 2018) and was concluded in October 2018 with a finding of no breaches.
35. The four new complaints received comprised, two complaints in respect of two Town/Parish councillors, and two complaints in respect of two CBC councillors. Of the complaints against CBC Members one was concluded with no breaches found and one was concluded with a breach found, but no further action. Appendix B shows the cumulative totals of complaints received for the past two years.

Guidance to Town/Parish Councils

36. Since August 2014 there has been ongoing liaison with the T&PC clerks which has seen an increase in the queries related to ethical matters. It is considered this has assisted in matters being dealt with before they become formal complaints. The Monitoring Officer is contacted on a frequent basis by members of the public, T&PC councillors and clerks for advice and guidance on possible breaches of the Code or on general governance/ethical issues within T&PCs. It is hoped that this informal advice and guidance will continue to reduce the number of formal complaints being received in respect of T&PCs. T&PCs are still encouraged to deal with minor matters

at a local level and guidance on ethical matters continues to be provided to both Councillors and Clerks.

Arrangements for the Future

37. The Monitoring Officer retains statutory responsibility for dealing with Code of Conduct complaints and deals with the day to day work relating to Code of Conduct and ethics issues. There appears to have been no noticeable change in the level of contact from T&PC's. However all recent informal complaints/requests for advice in respect of T&PCs have not resulted in formal complaints. This will be monitored for trends as well as preventative measures. Work to encourage best practice for T&PCs continues as and when an issue arises with a T&PC.
38. It remains to be seen whether central government takes action to implement the recommendations of the Committee on Standards in Public Life. This Committee will be updated at its October 2019 meeting on any developments.

Council Priorities

39. The effectiveness of the Council's ethical governance arrangements contributes to the achievement of 'Enhancing Central Bedfordshire', 'Great resident services', 'Protecting the vulnerable; improving wellbeing' and 'A more efficient and responsive Council.'

Corporate Implications

Legal Implications

40. 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 T&PCs and for investigating Code of Conduct complaints made against Town and Parish Councillors.

Financial and Risk Implications

41. There are no specific financial implications.

Equalities Implications

42. 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.

43. Strengthening the code, as suggested at best practice 1, to include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition would help to reinforce understanding of equality legislation and provide greater clarity about standards of behaviour.

Conclusion and next Steps

44. Members are asked to note the contents of this report and provide direction where needed on the areas of best practice contained in the report of the Government's Committee on Standards in Public Life. Depending on the direction given a further report may be required to be brought back to this Committee and full Council if changes to the Constitution (including the Members' Code of Conduct) are required.

Appendices

Appendix A: Part 5B of the Constitution – Arrangements for dealing with Standards Allegations under the Localism Act 2011

Appendix B: Previous 2 years cumulative totals of Councillor Code of Conduct Complaints

Appendix C: Figures for notification of Members Interests

The report of the Government's Committee on Standards in Public Life, is provided through an electronic link:

<https://www.gov.uk/government/collections/local-government-ethical-standards>

Background Papers

None

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