

Audit and Standards Committee

Committee on Standards in Public Life Best Practice Recommendations- Member Code of Conduct

5 November 2020

Recommendation(s)

1. That the Committee considers the response to the Committee on Standards in Public Life and endorses the response at Appendix 1

1. Executive Summary

- 1.1 As members will be aware the Local Government Association (LGA) is currently developing a model member code of conduct and the outcomes of their consultation are expected later in the year or possibly, early next year.
- 1.2 The Committee on Standards in Public Life's is currently seeking feedback on progress made by Councils in the implementation of the Best Practice recommendations set out in their 2019 report into [Local Government Ethical Standards](#). In that report, they identified some best practice recommendations which they consider represent a benchmark for ethical practice and which they expect any local authority should implement.
- 1.3 The County Council's proposed response to the Best Practice recommendations made by the Committee on Standards in Public Life are set out in Appendix 1.

2. Financial Implications

None

3. Environmental Implications

None.

4. Supporting Information

- 4.1 The Committee on Standards in Public Life is following up recommendations made in its January 2019 report on local government ethical standards.
- 4.2 When the Standards regime changed in 2012 it was left to individual local authorities to devise their own codes of conduct subject to the inclusion of certain statutory requirements e.g. around the principles of public life, registration and declaration of interests and complaint handling.

- 4.3 Our current code is the standard code suggested by the Local Government Association when the standards regime changed in 2012. Following the regime change in 2012 members wanted a code that was short and simple to understand and supported arrangements that removed some of the bureaucracy which had bedevilled the previous Standards regime. It was considered that the LGA 2012 version of the Code met these requirements.
- 4.4 We have not experienced some of the problems that we are aware other councils have encountered since the regime change. Many local authorities have made additions to the standard Code to deal with the problems experienced. We have not considered it necessary to do this and our own Code reflects the standard Code. As members are aware the Local Government Association is currently consulting on a new model code to bring a more consistent approach to standards across local government.
- 4.5 The Council is largely compliant with the best practice recommendations. There are three main areas where our current approach differs:-
- (a) Gifts and hospitality registers. When the new regime came into being the completion of gifts and hospitality registers were no longer a statutory requirement. Our experience as a local authority was that there were rarely any entries other than the occasional bouquet of flowers or an occasional meal.
 - (b) Whilst the outcomes of most standards investigations where there is finding of a breach of the code of conduct are recorded in Council minutes and any that have reached a formal hearing would automatically be recorded as part of the public record, there are rare occasions where having regard to the complainant's wishes we do not publish a finding of fault. Nor do we publish the outcomes of complaints which have not been upheld.
 - (c) We have generally not conducted annual reviews of the code of conduct or consulted more widely on its provisions with other stakeholders. Although given the recent changes proposed by the LGA the code is under review at this time by this Committee
- 4.6 Councils that have experienced widespread governance failures or significant levels of complaints are more likely to have made changes to their codes in response to the issues facing them. The County Council has not experienced such issues and members are generally supportive of the principles of good governance and maintaining ethical standards in public life.
- 4.7 In terms of the differences in practice highlighted above our view is that
- (a) It would be premature to re-introduce Gifts and Hospitality registers given that the LGA and Committee on Standards in Public Life proposals are based on different financial value thresholds and the outcome of the LGA review is yet unknown. It would be appropriate to revisit this issue once the outcome of the consultation on the model Code is known.

- (b) It would be appropriate to carry out more regular reporting about complaints to the Audit and Standards Committee to be incorporated into an annual report covering wider standards matters. However we consider anonymity should be maintained where there is no finding of a breach of the code unless the member concerned requests that the outcome of the complaint should be publicly recorded. We also consider that whilst in relation to breach cases, we should err on the side of disclosure, discretion should be retained on a case by case basis to maintain anonymity having regard to the specific facts of the case and the complainant’s wishes. This approach would be consistent with the previous standards regime.
- (c) Our approach to date has been to review the code if there appears to be some necessity to do so either because of national changes or local difficulties. We consider that this approach remains reasonable and proportionate. However if the Audit & Standards Committee considers annual reviews desirable arrangements can be put in place for officers to undertake an annual review of the code, the outcome of which could be incorporated into an annual standards report (as referred to at (b) above).

5. Timescales associated with the decision and next steps

- 5.1 The Committee on Standards in Public Life has requested that Councils provide a response on the progress they have made in implementing the best practice recommendations by 30 November 2020. If approved by the Committee, the Council’s response at Appendix 1 would be submitted in advance of this deadline.
- 5.2 The outcome of the LGA review of the model code is not expected until later in the Autumn, and possibly into the new year. The government response to the Committee on Standards in Public Life 2019 report on ethical standards in public life is still awaited. Many of the more significant issues relating to the Code of Conduct such as the availability of appropriate sanctions and to what extent the code should apply to conduct in a member’s private life cannot be resolved without further legislation.

Appendices

- 1. Appendix 1 Response to the Committee on Standards in Public Life

Background Papers

- 1. [Local Government Ethical Standards Report 2019](#)
- 2. [Draft LGA Model Code of Conduct](#)

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The report was circulated to the following members prior to publication:

Local Member(s):

Other members:

Committee on Standards in Public Life Best Practice Recommendations

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

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.

We currently use the same definition of bullying and harassment as those in our employment policies. Our induction course for members covers these areas and we consider that this is part of the requirement in our Code of Conduct to treat people with respect. We have experienced no problems in practice with this approach. We would wish to await the outcome of the LGA Model Code of Conduct consultation before making any changes to ensure there is consistency across Councils. When the new provisions were brought into force in 2012, working together, we set out to achieve some consistency with the Warwickshire district/borough councils to avoid dual-hatted members having to cope with multiple codes. This was partially successful however we still aspire to achieve a consistent approach.

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.

The Accountability Principle requires councillors to subject themselves to scrutiny which would in our view include co-operating with any formal standards investigation. We have not experienced any problems in this regard. Our criteria for commencing any investigation screens out at an early stage trivial or malicious allegations by anyone. See response to Best practice 6 below.

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.

[Subject to the views of the Audit & Standards Committee] Generally our approach has not been to conduct reviews of our Code of Conduct unless national changes or local difficulties require changes. There have been no local difficulties that have required a review to be undertaken. We are awaiting the outcome of the Local Government Association Model Code Review before making any changes as we would prefer to achieve a consistent approach with the Warwickshire district/borough councils wherever possible.

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.

Our Code of Conduct and the arrangements for making complaints forms part of the complaints part of our website and can be easily located using the search engine on the Council's home page of the website. A copy can be easily printed off in council premises

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.

Gifts and hospitality registers for members ceased to be a legal requirement when the standards regime changed in 2012. We did not find the registers at that time provided much benefit and there were rarely any entries other than the occasional bouquet of flowers or the occasional meal given as a thank you. We note the Committee on Standards in Public Life base such registers on a value of £50, however the consultation carried out by the Local Government Association suggests a value of £25. If we are to change our practice we would prefer to wait until a firmer position has been reached to enable us to do so on a consistent basis with other authorities. Particularly as a significant number of our councillors are dual-hatted or even triple-hatted members.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

We consider that we meet this best practice recommendation. We set criteria against which cases are filtered 'We focus only on allegations that we believe have the potential to damage the public's confidence in local democracy.'.....

We will only refer a complaint for investigation if the following criteria are met:

- *it is serious enough, if proven, to justify the costs of an investigation; or*
- *it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it; and*
- *the conduct complained of occurred within 6 months of the date the complaint was received.*

We will not normally refer complaints for investigation where they fall within one or more of the following categories

- *we believe it to be malicious, relatively minor, or tit-for-tat*
- *the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained*
- *the complaint concerns acts carried out in the member's private life, when they are not carrying out the work of the authority or have not misused their position as a member*
- *it appears that the complaint is really about dissatisfaction with a council decision*
- *there is not enough information currently available to justify a decision to refer the matter for investigation.*

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

We comply with this. Indeed we established a joint panel of Independent Persons with two of our district/borough councils and a neighbouring unitary authority to ensure our arrangements were robust and there was sufficient work for the Independent Persons to maintain their skills. We review and update the panel membership every 4 years with the next review scheduled for 2021.

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.

We comply with this

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.

Whether or not the complaint outcome is published separately depends on the circumstances. We take account of the complainant's views in coming to a decision about publication. Our experience is that where there is formal finding of a breach of the code in most cases these have been resolved at a Council meeting. Given the current limitations on sanctions the most likely outcomes are Censure by the full Council and/or an apology given at full Council together with an undertaking to undertake training when considered necessary. These events would normally be published as part of the minutes on our website without the need for separate publication. However we do consider that more regular reporting on complaints to our Audit & Standards Committee would be desirable in the future and are proposing that this be incorporated into an annual standards report. Although, where there has been no finding of fault we would preserve the anonymity of the member concerned unless the member concerned asked for the matter to be published. Similarly we believe that discretion should be retained on a case by case basis to maintain anonymity having regard to the specific facts of the case and the complainant's wishes.

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.

We comply with this.

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

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.

Not applicable

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.

We comply with this

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.

We report on the bodies we have established in our annual statement of accounts and our annual governance statements. Our trading companies details are registered with companies house and documents filed in accordance with the general requirements for companies.

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

Complaints are relatively rare and appropriate senior officers and group leaders are involved in discussions should an issue arise.