

Crawley Borough Council

Report to Governance Committee

5th March 2019

Update Report on Standards, Including the Review of Local Government Ethical Standards by the Committee on Standards in Public Life

Report of the Monitoring Officer: Head of Legal, Democracy and HR - Report LDS/145

1. Purpose

- 1.1 To provide the Committee with background information on the Council's adopted Code of Conduct for Councillors and Arrangements for dealing with written allegations that a Member has breached the Code of Conduct together with an update on Code of Conduct Complaints. The Report also summaries the recently published Report by the Committee on Standards in Public life on its review of current arrangements of Local Government Ethical Standards.

2. Recommendations

- 2.1 The Committee is asked to
- a) Note the report of the Monitoring Officer.
 - b) Request that the Monitoring Officer submit a further report to the Governance Committee in June for the Committee to consider the implementation of the Best Practice recommendations as set out in the Report by the Committee on standards in Public Life on its review of Local Government Ethical Standards

3. Background

- 3.1 The Localism Act 2011 introduced fundamental changes to the system of The Regulation of Standards of Conduct for Elected and Co-opted Members abolishing the previous standards regime whilst introducing a more "light touch" standards arrangements. The Localism Act included in brief the following measures:-
- The abolition of Standards for England (previously the 'Local Government Standards Board for England');
 - A requirement for local authorities to promote and maintain high standards of conduct;
 - The abolition of the previous statutory sanctions;
 - Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local

authorities were to establish a code, which was to be consistent on the seven 'Nolan principles' of public life, and to specify sanctions for breaking it;

- Requirements concerning how local codes of conduct should treat the registration and disclosure of pecuniary and other interests;
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests;
- The appointment of an Independent Person.

Code of Conduct

3.2 Section 27 of the Localism Act 2011 places a duty on relevant authorities to promote and maintain high standards of conduct by Members and Co-opted Members of the authority. For this purpose the Council must adopt a Code dealing with the conduct that is expected of Members and Co-opted Members of the authority when acting in that capacity. The Code when viewed as a whole must be consistent with the following set of principles of public life commonly referred to as the Nolan Principles:-

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

3.3 Further, a Code is required to include provision for the registration of Disclosable Pecuniary Interests and Non-Pecuniary Interests. The Monitoring Officer is required to establish and maintain a register of interests of Members and Co-opted Members.

3.4 The Council's current Code of Conduct was adopted by the Council on 18th July 2012 and is incorporated in the Council's Constitution.

Complaints about Breaches of the Code of Conduct and Investigating Alleged Breaches

3.5 The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a Member has not complied with the Code of Conduct, and arrangements under which decisions on allegations may be made. The Act removed the statutory requirement for local authorities to have a Standards Committee.

3.6 The Council abolished the Standards Committee in 2012 and delegated Standards functions in the main to the Governance Committee. The Appointments and Investigating Committee has responsibility with Members sitting as a Panel when considering the recommendations of an Independent Person where a complaint has been the subject of a formal investigation and where a Member has been found to have breached the Code of Conduct following a hearing before an Independent Person.

3.7 The Council adopted arrangements for dealing with Code of Conduct complaints on 18th July 2012. All complaints that a Member has breached the Code of Conduct must be dealt with in accordance with those arrangements.

3.8 Those arrangements enable the Monitoring Officer to assess the complaint and govern the roles of the Monitoring Officer and the Independent Person when considering Code of Conduct complaints.

- 3.9 Set out at Appendix A is a summary of all Code of Conduct complaints that have been dealt with under those arrangements.

The Independent Person

- 3.10 Under the Localism Act 2018 Councils must appoint at least one Independent Person to advise the Council before it makes a decision on an allegation that it has decided to formally investigate. The Independent Person may also give the Council their views on any other allegations.

Local Government Ethical Standards: Committee on Standards in Public Life

- 3.11 The Committee on Standards in Public Life was established in 1994 and is responsible for promoting the Seven Principles of Public life commonly known as the Nolan Principles, the principles of public life apply to anyone who works as a public office-holder and includes all those who are elected or appointed to public office. The Committee has conducted a Review of local government ethical standards with regard to the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011. Their Report was published on 30th January 2019.

- 3.12 The Terms of Reference for the Review were:-

- (a) To examine the structures, processes and practice in local government in England for:
 - a. Maintaining Codes of Conduct for local Councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing Codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
- (b) To assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
- (c) To make any recommendations for how they can be improved; and
- (d) To 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.

- 3.13 The Review considered all levels of local government in England, including town and parish Councils (excluding Combined Authorities, metromayors and the Mayor of London).

- 3.14 The wide-ranging report, which runs to over 100 pages, finds that while the majority of Councillors and officers maintain high standards of conduct, there is clear evidence of misconduct by some Councillors. The majority of these cases relate to bullying, harassment or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of Councillors. The Committee thought that arrangements for local management of standards should continue but that these needed to be supported by safeguards. The report also raises concerns about risks to standards under the current rules governing declaring interests, gifts and hospitality.

- 3.15 The report provides an excellent review of the current framework governing the behaviour of local government Councillors and executives in England and makes a number of recommendations to promote and maintain the standards expected by the public. While it identifies numerous points of best practice, it makes 26 separate recommendations for improvement.
- 3.16 Key Recommendations include:
- (a) **Local Authorities to retain ownership of their own Codes of Conduct:** the report finds considerable variation in the length, quality and clarity of local authority codes of conduct. It therefore recommends enhancing quality and consistency by requiring the Local Government Association to create an updated model code of conduct. However the Committee recognised the importance of authorities having ownership of their codes and so did not recommend that adoption of the national model should be mandatory. In a bid to help ease the burden on principal authorities (who must investigate code breaches by parish Councillors), the report also recommends requiring parish councils to adopt the code of conduct of their principal authorities or the new model code.
 - (b) **Declaring and Managing Interests, gifts and hospitality:** the report considers that current arrangements for declaring Councillors' interests are too narrow and do not meet public expectations, so it suggests refining the arrangements for declaring and managing interests, including extending the list of registrable interests to include two categories of non-pecuniary interest: (1) relevant unpaid commercial interests such as unpaid directorships; and (2) trusteeship or membership of organisations that seek to influence opinion or public policy. A register of gifts and hospitality should be established with Councillors recording any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single person.
 - (c) **A new "objective" test for when Councillors must withdraw or not vote:** the need to update the test for when Councillors are forbidden from voting or participating in discussion on matters in which they have an interest. The report recommends the test be overhauled and that Councillors be required to refrain from voting or withdraw whenever they have any interest at all – whether registered or not – that a member of the public would reasonably regard as so significant as to likely prejudice the Councillor's decision.
 - (d) **Strengthening the sanctions system:** the report considers the current sanctions insufficient and so recommends allowing local authorities to suspend Councillors without allowances for up to six months, with suspended Councillors enjoying a right of appeal to the Local Government Ombudsman for investigation and a binding decision on the matter.
 - (e) **Presumption of official capacity:** the report recommends combatting poor behaviour by presuming Councillors to act in an official capacity in their public conduct, including statements made on publicly-accessible social media. This arises from the perennial concern that the current understanding of public and private capacity is too narrow, undermining public confidence.

The report further concludes that there is no need for a centralised body to govern and adjudicate on standards, and that various benefits exist to local authorities maintaining their responsibility for implanting and applying the Seven Principles of Public Life.

3.17 Other Conclusions and recommendations include:

- (a) Assisting local authority Monitoring Officers, the “lynchpin of the arrangements for upholding ethical standards”, by extending disciplinary protections and offering additional training for the statutory officers who support them.
- (b) Giving local authorities a discretionary power to establish a standards committee to advise on standards issues and decide on alleged breaches and/or sanctions for breaching the code of conduct.
- (c) Abolishing the current criminal offences in the Localism Act 2011 relating to disclosable pecuniary interests, which are said to be disproportionate in principle and ineffective in practice.
- (d) A strengthened role for the independent Person.
- (e) Requiring local authorities to take a range of steps to prevent and manage conflicts of interest that can arise when decisions are made in more complex and potentially less transparent contexts such as Local Enterprise Partnerships and joint ventures.
- (f) Fostering an ethical culture requires leadership from a number of individuals and groups for example a standards Committee, the CE, political group leaders as well as the Leader of the Council. Political groups should set clear expectations of behaviour of their members, and senior officers should maintain effective relationships with political groups working informally to resolve standards issues where appropriate. Expected standards of behaviour to be embedded in effective training Councillors should be required to attend formal training given by their authorities training, with national parties adding the same requirement to their model group rules.

3.18 The report recognises that many of its recommendations would require primary legislation and therefore be subject to parliamentary timetabling. Some of the recommendations – in particular those relating to registrable interests, statutory officers and formal training for Councillors – could however be implemented relatively quickly. The report also sets out a number of best practice recommendations which local authorities can and should implement. The Committee intends to monitor the uptake of its suggestions in 2020.

3.19 The List of Recommendations and the list of Best Practice Recommendations is set out in Appendix B. Following a full consideration of the Report, including the best practice recommendations by the Monitoring Officer, a further report will be prepared for the meeting for the Governance Committee in June to consider the implementation of the best practice recommendations.

4. Background Papers

[Local Government Ethical Standards A Review by the Committee on Standards in Public Life January 2019](#)

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