

# TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Standards Committee held at the Council Offices,  
Gloucester Road, Tewkesbury on Monday, 16 September 2019 commencing at  
2:00 pm**

## **Present:**

Tewkesbury Borough Council  
Members:

Councillor C M Cody
Councillor L A Gerrard
Councillor J W Murphy
Councillor C Reid
Councillor P D Surman (Chair)

Non-Voting Independent  
Person(s):

Mr P J Kimber
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Non-Voting Parish Representative: Mr D J Horsfall

## **ST.7 ANNOUNCEMENTS**

7.1 The evacuation procedure, as noted on the Agenda, was advised to those present.

## **ST.8 APOLOGIES FOR ABSENCE**

8.1 Apologies for absence were received from Tewkesbury Borough Councillors M Dean (Vice-Chair) and P E Smith; and Independent Person M Jauch.

## **ST.9 DECLARATIONS OF INTEREST**

9.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.

9.2 There were no declarations of interest made on this occasion.

## **ST.10 MINUTES**

10.1 The Minutes of the meetings held on 24 September 2018, 28 May 2019 and the special meeting held on 26 July 2019, copies of which had been circulated, were approved as correct records and signed by the Chair subject to the following amendments:

- 28 May 2019 – the Membership of the Committee needs to be updated.
- 26 July 2019 – D J Horsfall should not be in the attendance as he gave his apologies.

**ST.11 UPDATE ON REVIEW OF THE STANDARDS REGIME**

- 11.1 The report of the Monitoring Officer, circulated at Pages No. 9-20, informed the Committee of the outcome of the review into local government ethical standards by the Committee on Standards in Public Life. Members were asked to note the report and consider the Council's response to the best practice recommendations of the Committee on Standards in Public Life.
- 11.2 The Monitoring Officer explained that the current conduct regime had arisen from the Localism Act 2011 which had introduced significant changes to the way in which the conduct of elected Members was handled. This had seen the removal of the national Code of Conduct, the Standards Board and the sanctions to suspend or disqualify Councillors from Office. Instead, the post 2011 regime had placed a duty on Councils to adopt their own Code of Members' Conduct, to put in place procedures to investigate complaints about breaches of the Code by Councillors, including Parish and Town Councillors, and to appoint at least one Independent Person. In 2018, the Committee on Standards in Public Life had undertaken its review and considered that robust arrangements were needed to safeguard local democracy, maintain high standards of conduct and protect ethical practice in local government.
- 11.3 The Committee on Standards in Public Life consultation period had run from 29 January to 18 May 2018, and the Standards Committee had made a response which was set out at Appendix 1 to the report. The view of the Committee at that time was that, whilst the Council had low incidents of complaints and contraventions of the Code, which showed it was doing the job it had set out to do, one of the flaws with the system was that there were no robust sanctions available. The Committee had felt there ought to be more meaningful sanctions e.g. suspension or deduction of allowances rather than the current censure, requesting an apology or limiting a Councillor's access to a Committee or Council meeting. Despite the Council not having any particular issues with Councillors' behaviour, the Committee had felt this ought to be considered, particularly as there had been an incident whereby a Parish Councillor had been reluctant to apologise despite being asked to do so and Members had been uncomfortable that there were no robust measures that could be taken. In terms of the Council's Register of Interests, the Monitoring Officer indicated that she had made a separate consultation response to express the view that the current requirements to disclose data about a Councillor's spouse or civil partner did not comply with Data Protection Regulations – she had not received a response to the specific issue she had raised but the Committee on Standards in Public Life had included in its review, consideration of Interests.
- 11.4 26 refinements had been recommended by the Committee on Standards in Public Life – although it had found the current system worked well overall – and those were listed at Appendix 2 to the report. Many of them required changes to the law by the government and it was not known when those may be considered. It was noted that the first recommendation was that the Local Government Association (LGA) should create an updated model Code of Conduct in consultation with representative bodies of Councillors and Officers in all tiers of local government; the Monitoring Officer advised that the Council's Code of Conduct needed to be reviewed but she would wait until the new model Code was available before the Committee commenced that work. She anticipated that the introduction of a model Code would result in a common approach across geographical areas which would be helpful as some Councillors served a number of local authorities in an area which could all have different Codes; this was confusing both for the Councillors and for the public. In Tewkesbury Borough, there were five Parishes that had adopted the National Association of Local Councils (NALC) Code of Conduct rather than the same one as

the Borough Council – from a Monitoring Officer point of view it would be better if the government decided everyone should adopt the same Code. Also included was a recommendation that Councillors should be presumed to be acting in an official capacity in their public conduct, including statements made on publicly accessible social media, and that Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon Code of Conduct breaches; the Monitoring Officer advised that social media had been a particular issue in some areas of the country, with Members stating that they had not been acting in their official capacity when they had used social media, and the government felt that needed to be addressed. In terms of the power to suspend Members, whilst this was a recommendation of the Committee on Standards in Public Life, the Monitoring Officer was unsure whether the government would agree as it had previously taken the view that suspension of Councillors could result in residents not being properly represented. There was also a strengthened role for the Independent Persons recommended; Tewkesbury Borough Council already used them so that recommendation would not be onerous; however, the Monitoring Officer was concerned about the possibility of them only being allowed to serve for a fixed two-year term which could only be renewed once. She felt this would be extremely difficult to manage and would not be good for consistency of decisions; she was also concerned about the gaps in knowledge any new Independent Person would have. In terms of the recommendation that the Local Government Transparency Code should be updated to require Councils to publish annually the number of Code of Conduct complaints received; what the complaints broadly related to; the outcome of those complaints, including if they were rejected as trivial or vexatious; and any sanctions applied, the Monitoring Officer explained that the Committee on Standards in Public Life had been concerned about bullying and, in particular, bullying of Councillors which was the reason for the quick introduction of legislation to stop candidates who were standing for, or accepting, public offices having to disclose their home address. The Deputy Monitoring Officer indicated that this had caused quite a lot of confusion during the recent local elections; particularly when people standing for Parish Councils wanted to list their address as being ‘in the Parish’ rather than ‘in Tewkesbury Borough’ which was what the legislation required. She felt that the legislation had been rushed in, with no awareness campaign in place, and that it may have to be amended in due course. There had been concern raised by candidates that residents may feel they had something to hide by not putting their addresses on their nomination form, but this was not generally the case - it was about protecting where people lived for good reasons. Also, the Notices which displayed a candidate’s address were placed on the worldwide web so there was a lot of personal data available to everyone, even if the candidate was subsequently not elected.

11.5 The Monitoring Officer advised that the Committee on Standards in Public Life had also put in place 15 best practice recommendations which were things that the Committee had to consider and decide upon. The following was raised:

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. The Monitoring Officer’s view was that this would not be onerous to amend but it made sense to wait until such time as the LGA model Code was released. The Committee **AGREED** that the Council’s Code should not be amended until the LGA model Code could be considered.

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 Monitoring Officer confirmed that currently she, along with the Independent Persons, ruled out malicious allegations but this could be included in the Code when it was reviewed following the release of the model Code. The Committee **AGREED** that this could wait until the review of the Code.
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. The Monitoring Officer advised that the Code had not been formally reviewed but it was informally reviewed every time a complaint was received, and consideration was given to whether there were any patterns to the complaints that may need changes to the Code; she felt an annual review was unnecessary and inappropriate. Members **AGREED** that a paragraph could be added to the reports on complaints to ask whether the complainant felt any changes needed to be made but that otherwise there was no justification for an annual review.
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. The Council already followed this best practice approach.
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. The Monitoring Officer confirmed that Tewkesbury Borough Members were reminded on a monthly basis to register gifts/hospitality received; the Council's register could be published but there was currently nothing on it. It was **AGREED** that this would remain under review and if there was an increase in the number of registrations it could be published.
6. Councils should publish a clear and straightforward public interest test against which allegations are filtered. It was **AGREED** that the Monitoring Officer would review the procedure and include wording in terms of the public interest test.
7. Local authorities should have access to at least two Independent Persons. The Council already followed this best practice approach.
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. The Monitoring Officer advised that she currently consulted on every complaint as a matter of course so the Council already followed this best practice approach.
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. The Monitoring Officer explained that the Council's system was to try and resolve issues informally. Where there was a formal complaint there was an official letter issued which stated the findings of the investigation and the sanction applied. The Monitoring Officer was of the view that it was not appropriate to publish that letter – she would be anxious not to have third party input to the results of a complaint as this was not necessarily helpful in ensuring closure of a resolved matter. There were other authorities that did publish decisions and she understood the probity issues but, as Tewkesbury

Borough Council had never done it before, she requested the view of the Committee. It was **AGREED** that the issue would be reviewed when the next complaint was considered.

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. The Council already followed most of this best practice approach; however, it was **AGREED** that timescales would be added when the complaint procedure was reviewed.
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. It was **AGREED** that a Councillor should not ask a Parish Clerk to make a complaint against another Parish Councillor as it would undermine the impartial and independent role of the Clerk.
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. The Council already followed this best practice approach.
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. This was not an issue for Tewkesbury Borough Council, but it did have a Deputy Monitoring Officer who could deal with investigations in the event of a conflict of interest for the Monitoring Officer. The Committee could not see an instance where a Monitoring Officer from another authority would need to assist.
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 Agenda and Minutes and Annual Reports in an accessible place. The Council already complied with this best practice approach as it reported on Ubico; however, the Committee was unsure why this was relevant in the conduct regime.
15. Senior Officers should meet regularly with Political Group Leaders or Group Whips to discuss standards issues. It was confirmed that the senior management team would not wait for a meeting if there was something that needed to be discussed but, equally, it would not set monthly meetings for no reason if there were no matters to consider.

11.6 The Monitoring Officer indicated that she would await the drafting of the legislation with interest as some items would be quite difficult to get right. In respect of an ongoing investigation, it was **AGREED** that the Monitoring Officer would bring the costings with the investigator's report to a future meeting to indicate how much investigations into Town/Parish Councillors cost the Borough Council. It was considered that the cost of investigating a breach of the Code of Conduct was disproportionate to the sanctions which were available.

**ST.12 SEPARATE BUSINESS**

12.1 The Chair proposed, and it was

**RESOLVED** That, under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they involve the likely discussion of exempt information as defined in Part 1 of Schedule 12A of the Act.

**ST.13 SEPARATE MINUTES**

13.1 The separate Minutes of the meeting held on 24 September 2018, copies of which had been circulated, were approved as a correct record and signed by the Chair.

The meeting closed at 3:05 pm