

6 September 2019

Committee	Standards Committee
Date	Monday, 16 September 2019
Time of Meeting	2:00 pm
Venue	Tewkesbury Borough Council Offices, Avon Room

ALL MEMBERS OF THE COMMITTEE ARE REQUESTED TO ATTEND

Agenda

1. ANNOUNCEMENTS

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the visitors' car park at the front of the building and await further instructions (during office hours staff should proceed to their usual assembly point; outside of office hours proceed to the visitors' car park). Please do not re-enter the building unless instructed to do so.

In the event of a fire any person with a disability should be assisted in leaving the building.

2. APOLOGIES FOR ABSENCE

To receive apologies for absence.

3. DECLARATIONS OF INTEREST

Pursuant to the adoption by the Council on 26 June 2012 of the Tewkesbury Borough Council Code of Conduct, effective from 1 July 2012, as set out in Minute No. CL.34, Members are invited to declare any interest they may have in the business set out on the Agenda to which the approved Code applies.



Item	Page(s)
4. MINUTES	1 - 8
To approve the Minutes of the meetings held on 24 September 2018, 28 May 2019 and the special meeting held on 26 July 2019.	
5. UPDATE ON REVIEW OF THE STANDARDS REGIME	9 - 20
To consider the attached report following the review of the conduct regime by the Committee on Standards in Public Life	
6. SEPARATE BUSINESS	
The Chairman will move the adoption of the following resolution: That under Section 100(A)(4) Local Government Act 1972, the public be excluded for the following items on the grounds that they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act.	
7. SEPARATE MINUTES	21 - 22
To approve the separate Minutes of the meeting of the Committee held on 24 September 2018.	

DATE OF NEXT MEETING	
MONDAY, 16 MARCH 2020	
MEMBERSHIP OF COMMITTEE	
Tewkesbury Borough Council Members	Councillor C M Cody Councillor M Dean (Vice-Chair) Councillor L A Gerrard Councillor J W Murphy Councillor C Reid Councillor P E Smith and Councillor P D Surman (Chair)
Non-Voting Independent Persons	Mr M Jauch and Mr P J Kimber
Non-Voting Parish Representative	Mr D J Horsfall

Recording of Meetings

In accordance with the Openness of Local Government Bodies Regulations 2014, please be aware that the proceedings of this meeting may be recorded and this may include recording of persons seated in the public gallery or speaking at the meeting. Please notify the Democratic Services Officer if you have any objections to this practice and the Chairman will take reasonable steps to ensure that any request not to be recorded is complied with.

Any recording must take place in such a way as to ensure that the view of Councillors, Officers, the public and press is not obstructed. The use of flash photography and/or additional lighting will not be allowed unless this has been discussed and agreed in advance of the meeting.

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Standards Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Monday, 24 September 2018 commencing at
2:00 pm**

Present:

Tewkesbury Borough Council
Members:

Councillor M Dean (Vice-Chair)
Councillor P D Surman (Chair)
Councillor M G Sztymiak
Councillor H A E Turbyfield and
Councillor R J E Vines

Non-Voting Independent Person: Mr P J Kimber

Non-Voting Parish Representative: Mr D J Horsfall

ST.3 ANNOUNCEMENTS

3.1 The evacuation procedure, as noted on the Agenda, was taken as read.

ST.4 APOLOGIES FOR ABSENCE

4.1 Apologies for absence were received from Borough Councillors S E Hillier-Richardson and T A Spencer and Independent Person, Mr M Jauch.

ST.5 DECLARATIONS OF INTEREST

5.1 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.

5.2 The following declarations were made:

Councillor	Application No./Item	Nature of Interest (where disclosed)	Declared Action in respect of Disclosure
P D Surman	Item 5 – Tewkesbury Borough Council Code of Conduct – Applications for Dispensation	Councillor had applied for a dispensation himself.	Would speak and vote.

M G Sztymiak	Item 9 – Code of Conduct – Non-Compliance with Sanction Imposed Consequent upon an Investigated Complaint	Is a Member of Tewkesbury Town Council.	Would speak and vote.
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5.3 There were no further declarations made on this occasion.

ST.6 MINUTES

6.1 The Minutes of the meetings held on 30 April and 15 May 2018, copies of which had been circulated, were approved as correct records and signed by the Chair.

6.2 The Parish representative indicated that, even though they would not attend as it was part of the main Council meeting and only dealt with the election of Chair and appointment of Vice-Chair of the Committee, the Parish representatives and the Independent Persons should be advised of the May meeting.

ST.7 TEWKESBURY BOROUGH COUNCIL CODE OF CONDUCT - APPLICATIONS FOR DISPENSATION

7.1 The report of the Monitoring Officer, circulated separately at Pages No. 1-12, set out the basis for the determination by the Standards Committee of applications for dispensation made by Members of the Borough Council in order to participate in the item of business on the Tewkesbury Borough Plan Preferred Options to be considered by the Council on 26 September 2018. The Committee was asked to determine the applications for dispensation which had been received from Councillors in order to enable them to participate in the matter.

7.2 For clarification, the Monitoring Officer explained that there was a piece of legislation that allowed anyone making an application for a dispensation to participate in the discussion of the applications and vote on it should they need to; this meant the Chair was entitled to attend the meeting despite the fact that he had made an application for dispensation. She advised that a number of applications had been received and the Committee was required to decide them on the grounds that granting the dispensation was in the interests of persons living in the authority's area; or that it was otherwise appropriate to grant a dispensation. In accordance with the Council's Code of Conduct those were the grounds on which dispensation could be granted – there were two other grounds, as set out in Paragraph 2.1 of the report, but they were not relevant to the applications being considered today. All eight applications were from Members of the same political party but this would not affect the political representation on the Council to the extent that it was likely to alter the outcome of any vote relating to the business, neither would the number of Councillors affected by interests impede the transaction of the business.

7.3 The Monitoring Officer advised that there was only one application for a dispensation in respect of a disclosable pecuniary interest; the Councillor's spouse owned a piece of land which was proposed for allocation within the Tewkesbury Borough Plan. The Councillor had made the application on the basis that the land was not within her Ward and it would be in the interest of her Ward for her to participate. However, it should be noted that there were two other Members that represented the same area, as such, it would not be left under-represented if she was unable to participate. Members needed to consider what a normal member of the public might perceive if the Councillor was allowed to participate. In addition,

there were four applications which had been made by Borough Councillors who were also County Councillors as the County Council had land holdings and owned land within employment and housing allocations in the Plan; the Councillors had no direct pecuniary interest but it did fall within the definition of an 'other' interest – the same Councillors had already received dispensations for the Joint Core Strategy. There was another application from a Councillor who had a joint interest with family members in land within the Borough and where a proposed housing policy, RES4, could possibly lead to favourable consideration of development of that land. The plan was at an early stage of its statutory process and there was no certainty, following consultation, that the policy referred to would survive as currently drafted. The Committee noted that the Councillor represented a single-Member ward, that the land the subject of the interest was not actually allocated for development and that the policy may be subject to change / deletion following consultation. A further application was received from a Councillor on the basis of family land ownership in the proximity of a proposed allocation, although the land in which the interest was held was not subject to any allocation in the plan. It would have been open to the Councillor to have decided, in those circumstances, that they did not have an interest in the matter. The final application was from a Councillor who had a close friend, who was another Borough Councillor, that owned land which might directly benefit from being allocated in the Borough Plan; that Member was the sole Ward Councillor for Shurdington.

7.4 During the discussion which ensued, a Member questioned why the Councillor who owned land that was not allocated was different from the Member whose spouse owned land that was allocated. In response, the Monitoring Officer explained that the Councillor had a disclosable pecuniary interest because she knew the land was recommended for allocation; however, Members that owned land which had not been allocated had no greater interest at this stage than anyone else that owned land within the Borough. One other thing the Committee needed to consider when granting dispensations was the amount of time they would be granted for. The report to Council suggested the next stage of the Borough Plan would be considered in Spring 2019 so it was recommended that dispensations be granted to the end of the term of the Council which would mean further dispensations should not be required. There was always the possibility that interests would change and other Members may need to apply for a dispensation during that period which would be perfectly acceptable. The Monitoring Officer would send out advice to Members as and when issues were being considered to remind them to consider whether a dispensation was required.

7.5 Accordingly, it was

RESOLVED

1. That dispensations be **GRANTED** to Councillors Awford, Bird, Cromwell, Gore, Hollaway, Smith and Surman on ground (c), in the interests of persons living in the authority's area, and that the dispensations in respect of any further consideration of the Tewkesbury Borough Plan remain in place until 1 May 2019.
2. That the dispensation be **REFUSED** in respect of the application from Councillor Day due to the clear disclosable pecuniary interest that the Councillor has.

ST.8 GIFTS AND HOSPITALITY PROTOCOL

- 8.1 The report of the Deputy Monitoring Officer, circulated at Pages No. 7-21, attached a revised Gifts and Hospitality Protocol for Councillors. Members were asked to consider the amended Protocol and recommend it to the Council for adoption.
- 8.2 The Monitoring Officer explained that the Committee had now reviewed all of the Protocols which complemented the Code of Conduct and the Gifts and Hospitality Protocol was the last one in its Work Programme for review. The changes were recommended as set out within the report and shown as track changes within the Appendix; the review had found that the Protocol was generally fit for purpose; however, there were some minor amendments that needed to be made to bring it in line with the Council's adopted Code of Conduct - those amendments were identified at Paragraphs 2.1.1 to 2.1.4 of the report.
- 8.3 Members felt the recommended amendments were extremely sensible and, accordingly, it was

RESOLVED That it be **RECOMMENDED TO COUNCIL** that the amended Gifts and Hospitality Protocol for Councillors be **ADOPTED**.

ST.9 SEPARATE BUSINESS

- 9.1 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.10 SEPARATE MINUTES

- 10.1 The separate Minutes of the meeting held on 30 April 2018, copies of which had been circulated, were approved as a correct record and signed by the Chair.

ST.11 CODE OF CONDUCT - NON-COMPLIANCE WITH SANCTION IMPOSED CONSEQUENT UPON AN INVESTIGATED COMPLAINT

(Exempt – Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 – Information relating to any individual)

- 11.1 The Committee considered information in respect of non-compliance with a sanction imposed following a Code of Conduct complaint investigation and agreed that, subject to her speaking to the two complainants, the Monitoring Officer would write to the Councillor who was the subject of the complaint, and the relevant Town Council, to express the Committee's disappointment at the refusal to apologise.

The meeting closed at 2:52 pm

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Standards Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Tuesday, 28 May 2019 commencing at 6:15 pm**

Present:

Tewkesbury Borough Council
Members:

Councillor M Dean (Vice-Chair)
Councillor Mrs S E Hillier-Richardson
Councillor T A Spencer
Councillor P D Surman (Chair)
Councillor M G Sztymiak
Councillor H A E Turbyfield and
Councillor R J E Vines

Non-Voting Independent Persons: Not Required

Non-Voting Parish Representative: Not Required

ST.1 ELECTION OF CHAIR

1.1 The Mayor opened the meeting by seeking nominations for the Chairmanship of the Committee.

1.2 It was proposed and seconded that Councillor P D Surman be nominated as Chair of the Committee. Upon being put to the vote it was

RESOLVED That Councillor P D Surman be elected as Chair of the Standards Committee for the ensuing Municipal Year.

ST.2 APPOINTMENT OF VICE-CHAIR

2.1 Councillor P D Surman took the chair and invited nominations for Vice-Chair of the Committee.

2.2 It was proposed and seconded that Councillor M Dean be nominated as Vice-Chair of the Committee. Upon being put to the vote it was

RESOLVED That Councillor M Dean be appointed as Vice-Chair of the Standards Committee for the ensuing Municipal Year.

The meeting closed at 6:20 pm

TEWKESBURY BOROUGH COUNCIL

Minutes of a Special Meeting of the Standards Committee held at the Council Offices, Gloucester Road, Tewkesbury on Friday, 26 July 2019 commencing at 11:00 am

Present:

Tewkesbury Borough Council
Members:

Councillor C M Cody
Councillor M Dean (Vice-Chair)
Councillor J W Murphy
Councillor C Reid
Councillor P E Smith and
Councillor P D Surman (Chair)

Non-Voting Parish Representative: D J Horsfall

ST.3 ANNOUNCEMENTS

3.1 The evacuation procedure, as noted on the Agenda, was taken as read.

ST.4 APOLOGIES FOR ABSENCE

4.1 Apologies for absence were received from Borough Councillor, L A Gerrard; Independent Persons, M Jauch and P J Kimber; and Parish representative, D J Horsfall.

ST.5 DECLARATIONS OF INTEREST

5.1 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.

5.2 There were no declarations made on this occasion.

ST.6 TEWKESBURY BOROUGH COUNCIL CODE OF CONDUCT - APPLICATIONS FOR DISPENSATION

6.1 The report of the Monitoring Officer, circulated at Pages No. 1-3, set out the basis for the determination by the Standards Committee of applications for dispensation made by Members of the Borough Council in order to participate in the item of business on the Pre-Submission Tewkesbury Borough Plan to be considered by the Council on 30 July 2019. The Committee was asked to determine the applications for dispensation which had been received from Councillors in order to enable them to participate in the matter. The Committee also needed to agree the period of time for which the dispensations should last.

- 6.2 The Monitoring Officer advised that a number of applications had been received and the Committee was required to decide them on the grounds that granting the dispensation was in the interests of persons living in the authority's area; or that it was otherwise appropriate to grant a dispensation. In accordance with the Council's Code of Conduct those were the grounds on which dispensation could be granted – there were two other grounds, as set out in Paragraph 2.1 of the report, but they did not apply to the applications being considered today. All five applications were from Members of the same political party. In terms of the length of time for which the dispensation would be granted, the Monitoring Officer suggested that the end of the current Council term i.e. May 2023 should be acceptable and, if any circumstances in regard to the interests declared changed, new dispensations would have to be applied for at that point.
- 6.3 The Monitoring Officer advised that there were three applications made by Borough Councillors who were also County Councillors as the County Council had land holdings and owned land which was allocated in the Plan; the Councillors had no direct pecuniary interest but it did fall within the definition of an 'other' interest. The interest was a consequence of them being an elected Member to the County Council. There was also an application from a Councillor who could equally have decided that they did not have an interest at all – land was owned by a family member which was adjacent to an allocation but was not itself allocated in the Borough Plan. The Member represented a two-Member Ward so she was not the sole representative of the area which was important to note. Members agreed all of these applications for dispensation should be granted as none had any direct interest in the sites in the Plan and that it was in the interest of person's living in the Borough to be represented on this important matter.
- 6.4 The final application was from a Councillor who owned a share in land that may benefit from a proposed policy within the Plan – RES 4 – which promoted the principle of very small scale residential development in villages. The land in question was not allocated for development but the policy (applied to the land) could assist in any development gaining planning permission. The Member concerned was also the Lead Member for local planning and the Committee needed to consider if it should grant the dispensation in the interests of the whole Borough. In response to a query, the Monitoring Officer explained that the Councillor had been granted a dispensation when the Plan was in the draft stages but the current circumstances were slightly different as the Plan was no longer draft; in addition, the Member now represented a dual Member Ward rather than a single Member Ward. A Member felt it was important to note that the land in question had been the subject of planning applications for development which had been refused previously; however, the policy referred to would remove those barriers to development which he felt meant the dispensation in this case should not be granted. The Monitoring Officer reminded the Committee that the dispensation was for the whole Borough rather than the individual Ward and that the Member had had a dispensation in place until May this year. Another Member agreed with the previous speaker and expressed the view that the transparency and public perception point was valid given that the Member had direct, albeit shared, ownership of the land and was highly likely to benefit if the new policy within the Borough Plan was approved.

6.5 Accordingly, it was

RESOLVED

1. That dispensations be **GRANTED** to Councillors R A Bird, K J Cromwell, A Hollaway and V D Smith on ground (c), in the interests of persons living in the authority's area, and that the dispensations in respect of any further consideration of the Tewkesbury Borough Plan remain in place until the end of the current term of the Council on 1 May 2023.
2. That the dispensation be **REFUSED** in respect of the application from Councillor M A Gore as the Ward represented by the applicant was now a dual-Member Ward, therefore the electorate is ensured representation. In addition, the current policies do not support the development of the land which was the subject of the interest and Policy RES 4, if approved, could likely result in pecuniary advantage to the applicant and her family.

The meeting closed at 11:50 am

TEWKESBURY BOROUGH COUNCIL

Report to:	Standards Committee
Date of Meeting:	16 September 2019
Subject:	Committee on Standards in Public Life Recommendations
Report of:	Sara Freckleton Monitoring Officer
Corporate Lead:	Sara Freckleton Monitoring Officer
Number of Appendices:	Two

<p>Executive Summary:</p> <p>This report informs the Committee of the outcome of the Review by the Committee on Standards in Public Life into Local Government Ethical Standards.</p>
<p>Recommendation:</p> <p>To note the report and consider its response to the best practice recommendations of the Committee on Standards in Public Life</p>

1.0 INTRODUCTION/BACKGROUND

- 1.1** The current conduct regime arose from the Localism Act 2011 which introduced significant changes to the way in which the conduct of elected Members was handled. The national Code of Conduct, Standards Board and sanctions to suspend or disqualify Councillors from Office were removed. The post 2011 regime 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 Town and Parish Councils) and to appoint at least one Independent Person whose views have to be taken into account when considering an investigation.
- 1.2** In 2018, the Committee on Standards in Public Life (CSPL), which advises the Government on ethical standards across the whole of public life in England, undertook a review of local government ethical standards. The CSPL considers that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct and to protect ethical practice in local government. The consultation period ran from 29 January to 18 May 2018.

- 1.3** The Terms of Reference of the review were to:-
- i. examine the structures, processes and practices in local government in England for:
 - maintaining Codes of Conduct for local Councillors;
 - investigating alleged breaches fairly and with due process;
 - enforcing Codes and imposing sanctions for misconduct;
 - declaring interests and managing conflicts of interest; and
 - whistleblowing.
 - ii. assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
 - iii. make any recommendations for how they can be improved.
 - iv. 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.
- 1.4** The Standards Committee considered the consultation document at its meeting on 30 April 2018 and formulated the basis of its response. The Committee then delegated authority to the Borough Solicitor / Monitoring Officer, in consultation with the Chair of Standards Committee, to finalise a response to CSPL. The letter was sent on 15 May 2018 and is attached at Appendix 1.
- 1.5** On 30 January 2019, the CSPL published its twentieth report called “*Local Government Ethical Standards*”. The full report is available online at the following link.
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- 1.6** Overall, CSPL appears to be satisfied that the current arrangements are working and that, overall, standards of conduct are high. It was found that there was no appetite to return to a centrally regulated regime and it accepted that the benefits of devolved arrangements should remain but that this required strengthening to deal with the minority of Councillors who do not adhere to the required standards of conduct and engage in disruptive or abusive behaviour. The Committee also discovered some perceived risks in relation to the rules around conflicts of interest and gifts and hospitality which they considered to be inadequate.
- 1.7** The CSPL has made a number of recommendations - which are set out in Appendix 2 - and which are intended to strike the balance between allowing ethical standards to be dealt with locally whilst providing a system which can hold to account those who commit the most serious or persistent breaches. The key recommendations include:
- Local Government Association to produce an updated model Code of Conduct.
 - There should be the same Code across a geographical area with Parishes being under a requirement to adopt the principal authority code.
 - A rebuttable presumption that Councillors public behaviour is in their Official Capacity.
 - Revised rules on declaring interests, gifts and hospitality.
 - A new power for local authorities to suspend Councillors without allowances for up to six months.
 - A right of appeal to the Local Government Ombudsman for suspended Councillors.

- Strengthened role for the Independent Person with fixed term (two year) appointment.
- Greater transparency about the number and nature of Code of Conduct complaints.

1.8 The CSPL report is to the government and it is acknowledged that a number of the recommendations will need legislative change for which there is currently no indication of a timetable for consideration. Further updates to the Committee will be provided as progress is made on the recommendations.

2.0 ISSUES FOR CONSIDERATION

2.1 In addition to the recommendations referred to above, CSPL also provided best practice recommendations which are directed at local authorities. It is the CSPL view, and indeed expectation, that any local authority can and should implement them voluntarily. CSPL intends to review the implementation of its suggested best practice in 2020.

2.2 The best practice recommendations, together with comments from the Monitoring Officer, are set out below to enable the Committee to consider and determine its response.

2.3 Best Practice Recommendations

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.

Comment - The majority of the cases reviewed by CSPL related to bullying or harassment, or other disruptive behaviour. The Council's Code of Conduct does have a prohibition on bullying at Para 7(2) and consequently the recommendation is partially met. It would not be onerous to amend the Code to include harassment along with a definition of bullying and harassment.

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.

Comment – This recommendation is also partially met within the Council's current Code of Conduct at clause 11, although the current Code does not include any provision which prohibits trivial or malicious allegations by Councillors. Such allegations have not been a particular issue at all at this Council or any of its Parishes, although there would be no difficulty in including such a clause in accordance with the recommended best practice.

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.

Comment – The current Code of Conduct has been in place since July 2012 and there has been no formal review by the Council. The Standards Committee has periodically considered informally whether a review was necessary and concluded that, in view of the low numbers of complaints and even fewer breaches of the Code by Councillors, it remains effective. Complaints are continually monitored with the objective of identifying any amendments of the Code which may be desirable. Referring to recommendation 1 from the CSPL, it is likely that a new model Code will be produced by the LGA. It would therefore be appropriate to consider what review mechanism may be introduced when that work has been completed and the Committee has had an opportunity to consider the new model Code.

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.

Comment – The Council's Code of Conduct is readily accessible on the website in the section "About the Council". Every Councillor is provided with a copy of the Code. It is also available at the Council Offices via Democratic Services.

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.

Comment – The Council maintains a Gifts and Hospitality Register (although not as CSV) which is constantly updated. Members are regularly reminded by email of the requirement to make any declarations of gifts/hospitality and to update their Register of Interests. Currently, the Register is available for inspection but is not published on the website. It is recommended that consideration be given to including this within the Council information section of the website referred to above.

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

Comment – A public interest assessment takes place between the Monitoring Officer and Independent Persons in respect of all complaints which are considered and determined. However, there is no published test to reflect this consideration. It is recommended that the Monitoring Officer reviews the complaints procedure to include appropriate wording to reflect the public interest test.

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

Comment – The Council has access to two Independent Persons and is therefore already compliant with this standard.

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.

Comment – The Council's current process delegates complaints to the Monitoring Officer in consultation with the Independent Persons. Every formal complaint, together with the proposed response, is referred to the Independent Persons for review and comment. The Council therefore complies with this recommendation.

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.

Comment – The publication of findings is not routine within the Council's complaints procedure. Publication/Censure is a potential sanction in itself. However, in the light of the CSPL recommendations, the Monitoring Officer will review the procedure.

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.

Comment – Guidance on how to make a complaint under the Code of Conduct is easily available on the Council's website. However, this does not include likely timescales. This will be reviewed by the Monitoring Officer.

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.

Comment – Town and Parish Councils should take corporate responsibility when allegations of a Councillor’s conduct towards a Clerk are made. This is not a controversial proposal and is, in any event, part of the employer’s duty of care to the employee. Clearly, if the Chair is alleged to be the person carrying out the conduct, other members of the Parish Council should report.

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.

Comment – This is something that is already in place. However, the role does not extend beyond providing advice in relation to ethical matters and would not include advising on governance issues. Town and Parish Councils will need to take advice from their Associations on the latter.

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.

Comment – The Monitoring Officer has appointed a deputy who would act in the unlikely event of a conflict for the Monitoring Officer. If neither were able to act for any reason, and there was not a suitably qualified person available within the shared legal service, it would be in order for a Monitoring Officer from another authority to be asked to assist.

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.

Comment – This is already in existence but should be reviewed to ensure that there is full compliance.

Best practice 15: Senior officers should meet regularly with Political Group Leaders or group whips to discuss standards issues.

Comment – As stated previously, the incidents of complaints against Borough Councillors are very low. Nevertheless, any that have arisen, have been discussed as necessary/appropriate with Political Group Leaders. In the current circumstances, it would be appropriate for such ad-hoc meetings to continue to take place rather than to schedule regular meetings.

3.0 CONCLUSIONS AND RECOMMENDATIONS

3.1 The Committee is requested to consider the best practice recommendations and the comments.

3.2 The Monitoring Officer will also, as part of ongoing training, advise Parish Councils of the outcomes from the CSPL report and the proposals.

Background Papers: Localism Act 2011.

Tewkesbury Borough Council Code of Members' Conduct.

Contact Officer: Tewkesbury Borough Monitoring Officer
Tel: 01684 272011 Email: sara.freckleton@teewkesbury.gov.uk

Appendices:

- 1 – TBC Consultation Response to Committee on Standards in Public Life.
- 2 – Recommendations from the Committee of Standards in Public Life.

Borough Solicitor's Unit
Sara Freckleton
Borough Solicitor



Review of Local Government Ethical
Standards Committee on
Standards in Public Life
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Our Contact: Miss Freckleton
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15 May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

I have set out below, for consideration by the Committee for Standards in Public Life, the comments of the Tewkesbury Borough Council Standards Committee following its consideration of the consultation on Local Government Ethical Standards. This submission uses the topic headings from the Consultation Document to provide information on how the conduct regime is operated within Cheltenham Borough Council and also to identify those areas where it is considered that the Committee might wish to consider amendments to the current standards arrangements.

1.0 Overview on existing structures, processes and practices

1.1 The Code of Council adopted by Tewkesbury Borough Council exceeds the minimum required provisions and is based upon the pre- Localism Act statutory version of the Code. A suitably adapted version of that Code has also, upon the recommendation of the Borough Council Standards Committee, been adopted by the majority of the 43 Parish Councils operating within the Borough, the remainder having adopted their own versions which comply with the statutory requirements. Experience of the operation of the Code of Conduct over the past 6 years has resulted in very few formal complaints about Borough Councillor conduct and there have not been any instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct. There have been a number of formal complaints made against Parish Councillors, a significant number of which (over 50%) were made by other Councillors. The more serious complaints have been referred for investigation and some have resulted in findings that Parish / Town Councillor have breached the Code of Conduct. The Council has delegated authority to its Monitoring Officer to determine certain complaints. Consequently, clear breaches of the Code have been dealt with by the Monitoring Officer in consultation with the Independent Persons and have resulted in, for example, Councillors giving written apologies and / or agreeing to undertake Code of Conduct training.



- 1.2 One of the advantages of the current regime (as compared to the pre- 2012 position) is that there is discretion to resolve complaints informally. This has been of benefit as less serious complaints can be resolved quickly and without the “bureaucracy” that existed previously.

2.0 Codes of conduct

- 2.1 The Tewkesbury Borough Council Code of Conduct as stated above is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended comprehensive training on the Code of Conduct, This training is compulsory as part of the Induction process carried out within a few days of election to office. Members are encouraged to seek advice from the Monitoring Officer / Deputy and frequently do so if at all unsure as to the implications of the Code of Conduct. The most frequent queries arise on the matter of interest declaration. The same training and advice opportunity is offered to all Parish Councillors (and Clerks) within the Council area and has been relatively well taken up with additional (as necessary on request) individual bespoke sessions / refresher sessions carried out for Parish Councils.

- 2.2 The requirement for a Code of Conduct to reflect the Seven Principles is appropriate; however, the Tewkesbury Borough Council Standards Committee is of the view that a consistent Code of Conduct across Local Government would be of benefit. This would facilitate public awareness of the standards of conduct which are expected across Local Government and would also assist Members who are elected to more than one Local Authority, each of which could have different conduct requirements, albeit all containing the statutory provisions and being based on the Seven Principles.

3.0 Investigations and decisions on allegations

- 3.1 The Council has made arrangements for allegations of misconduct to be fairly investigated and decided. These arrangements include a delegation to the Monitoring Officer to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and to arrange for investigation. The delegation also enables the Monitoring Officer to seek local resolution of complaints without investigation where it is possible to do so. Where an investigation is undertaken, this is done by a suitably qualified officer (normally an in-house lawyer) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It should be recognised that there is a significant cost to the authority in resourcing an investigation and consequently these are likely only to occur where it is considered to be in the public interest to do so.
- 3.2 The role of the Independent Person is critical to the objectivity and fairness of the process. At Tewkesbury Borough Council, the Independent Persons are also non-voting co-opted members of the Standards Committee. The review may consider whether it would be appropriate for Independent Persons to be full voting members of Standards Committees.



- 3.3 As stated above, investigations are dealt with independently of the Monitoring Officer and there is an appointed Deputy Monitoring Officer which reduces the risk of there being conflicts of interest. Whilst there is no experience at TBC of undue pressure being applied, the review could consider whether it may be appropriate for Independent Persons to have a role in supporting Monitoring Officers should such circumstances occur. There is also in place within the Council, a Protocol for Member / Officer Relations, which assists in establishing and maintaining good Member / Officer working.

4.0 Sanctions

- 4.1 The sanctions available are broadly restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body.
- 4.2 Sanctions such as apology and / or training are sufficient to remedy less serious breaches of the Code of Conduct. However, in respect of recurrent / repeat breaches, refusal to accept a sanction or serious breaches of the Code of Conduct, the current sanctions do not appear to be adequate. The Committee did not go so far as to recommend particular sanctions as part of this consultation, but felt that sanctions such as deduction from allowances, or suspension may be worthy of consideration as part of the review.
- 4.3 Members of the public who have occasion to raise concerns / make complaints about Councillor conduct have been surprised at the limited sanctions available. It is understood that the current regime is prefaced by the right of the electorate to decide its representative and therefore sanctions cannot currently be imposed that interfere with that democratic choice. It is also essential that sanctions are proportionate to the breach which has occurred. The review provides the opportunity to resolve the tension between the statutory requirement to have in place arrangements to deal with complaints and the sanctions available to respond to breaches of the Code of Conduct. If there are not to be meaningful sanctions which both reflect the seriousness of breaches and act as a deterrent, then it is suggested that the requirement for the formality of investigating complaints should be reconsidered. The current regime of requiring a formal process which is fair with "due process" is costly to the Council's resources and creates expectation on the part of complainants that serious breaches will be dealt with proportionately which is not always possible given the constraint on sanctions.

5.0 Declaring interests and conflicts of interest

- 5.1 Concerns have been raised previously with the Government Information Commissioner about the registration and publication arrangements within the Localism Act 2011 for Disclosable Pecuniary Interests. The particular concern is about the potential conflict of the current DPI registration and publication requirements with Data Protection / Human Rights legislation, insofar as these requirements extend to publication of the information relating to third parties (spouses and partners etc.) who have not been elected to any office. This will be the matter of a separate submission by the Council's Monitoring Officer.



- 5.2 The Borough Council interest registration and declaration requirements exceed the statutory minimum and requires disclosure of “other interests” including bodies in which the Member holds a position of management or control whether or not appointed by the Council and to charitable bodies, lobby groups and other public bodies. Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £50 or more.
- 5.3 Where Members have an “other interest” and a decision on a matter affects, for example, the financial position of that other interest, Members are required, by the Code of Conduct to declare the interest and not to speak or vote unless dispensation has been received.
- 5.4 The Council has also amended its Standing Orders to reflect the requirement to leave the meeting when Members are precluded from participation.
- 5.5 These arrangements have, the Standards Committee believes, proved satisfactory.

6.0 Whistleblowing

- 6.1 The Council has a Whistleblowing Policy which is available for use by the public, Councillors and officials and this appears, to date, to have been satisfactory.

7.0 Improving standards

- 7.1 Local Authorities should ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also that it is clear that the Monitoring Officer (or Deputy / representative) and Independent Persons are available to provide advice /guidance to individual Members on all aspects of the Code of Conduct. The Code of Conduct should be regularly reviewed to ensure that the Council considers it fit for purpose and complaints that Councillors have failed to comply with the Code of Conduct should also be reviewed by Members (in TBC’s case the Standards Committee) to identify any action, e.g. training, which may be necessary to prevent such breaches recurring.

Yours faithfully

Sara Freckleton
Borough Solicitor and Monitoring Officer



Appendix 2 - Recommendations from the Committee on Standards in Public Life

1. The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.
2. The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.
3. Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. 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.
4. Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.
5. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.
6. Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.
7. Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".
8. The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.
9. The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.
10. A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.
11. Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.
12. Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.
13. Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.
14. The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by

a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.

15. The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.
16. Local authorities should be given the power to suspend councillors, without allowances, for up to six months.
17. The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.
18. The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.
19. Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.
20. Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.
21. Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.
22. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.
23. The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.
24. Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.
25. Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.
26. Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

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