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**Tewkesbury
Borough Council**

Review of Local Government Ethical
Standards Committee on
Standards in Public Life
GC:07
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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

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