

TEWKESBURY BOROUGH COUNCIL

Report to:	Standards Committee
Date of Meeting:	26 November 2020
Subject:	Committee on Standards in Public Life – Progress on Best Practice Recommendations
Report of:	Borough Solicitor
Corporate Lead:	Borough Solicitor
Lead Member:	Lead Member for Corporate Governance
Number of Appendices:	One

Executive Summary:

This report provides an update on the Council's progress in relation to the best practice recommendations of the Committee on Standards in Public Life (CSPL) in its report of 30 January 2019. The CSPL has asked all local authorities to provide an update, by the 30 November 2020 on their progress against those recommendations. This report attaches, at Appendix 1, a suggested response to the CSPL for the Committee's consideration and determination.

Recommendation:

The Committee is asked to consider the progress against the CSPL best practice recommendations as set out in this report and to determine the response to be made, a suggested form of which is set out at Appendix 1.

1.0 INTRODUCTION/BACKGROUND

- 1.1** On 30 January 2019, the Committee on Standards in Public Life (CSPL) published a report <https://www.gov.uk/government/publications/local-government-ethical-standards-report> following its review, during 2018, of Local Government Ethical Standards. This report made a number of recommendations to the Government for changes to legislation, for example to include additional sanctions for breaches of the Code and also to revise the rules on declarations of interests, gifts and hospitality. The CSPL also asked the Local Government Association (LGA) to produce a Model Code of Conduct. In addition, the report identified 15 recommended areas of best practice which the CSPL considered did not require any changes to legislation and could be implemented voluntarily by all local authorities. The CSPL confirmed that it would, in due course, be following up progress against the best practice recommendations.
- 1.2** At its meeting on 16 September 2019, the Standards Committee considered the CSPL report including the Council's current position with regard to the best practice recommendations.

1.3 On 8 June 2020, the LGA released a draft Model Code of Conduct for consultation and, at its meeting on 11 August 2020, the Committee considered the draft Model Code and resolved its consultation response to the LGA on behalf of the Council. It has recently been confirmed by the LGA that the consultation responses have been considered and a final version of the Model Code is being prepared to be submitted to the LGA board for approval at its meeting on 3 December 2020. The Model Code will then be published.

1.4 At the end September / early October 2020, the Chair of the CSPL wrote to all Local Authority Chief Executives, referring to the best practice recommendations in the January 2019 report which had been identified to improve ethical standards in local government. The expectation that Local Authorities should implement those recommendations was confirmed. The Chair requested an update from each Authority with regard to progress made against these best practice recommendations and included a template for response. The responses, which are requested by the 30 November 2020, will be published on the Cabinet Office and the CSPL websites in the new year.

2.0 BEST PRACTICE RECOMMENDATIONS

2.1 The 15 best practice recommendations made by the CSPL are set out in paragraph 2.2 below and also in Appendix 1 which is the template form supplied to the Council for its response. The views of the Committee when it considered the CSPL report have been used to draft the responses suggested in the document at Appendix 1.

2.2 The Council’s current position

No.	Best Practice Recommendation	Tewkesbury Borough Council Position
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.	<p>The TBC Code of Members’ Conduct includes a prohibition on bullying and although the Code does not include a definition of bullying, the definition used in determining any complaints is that codified by the Advisory Conciliation and Advice Service (ACAS) as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”</p> <p>The TBC Code does not currently include a specific prohibition on harassment but does include a requirement to “treat others with respect” against which any complaint of harassment would be assessed.</p> <p>The Model Code of Conduct is due to be approved and published by the LGA at the beginning of December 2020 and it is anticipated, from the draft of the document, that these provisions will be included in the Model Code.</p>

		<p>The Council will, following the publication of the Model Code, be reviewing both its own Code of Conduct and that which it recommends to the Parish Councils within the area. At that point, it would be appropriate to make the best practice amendments recommended.</p>
2:	<p>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</p>	<p>This recommendation is met as regards the requirement to comply with a formal standards investigation which is included within the Council's Code of Members' Conduct.</p> <p>There is no reference in the Code to trivial / malicious complaints and the need to include it is questioned as it would, more appropriately, be a matter for consideration in the determination of any complaint. The criteria within the Council's adopted arrangements for determination of complaints allows trivial and / or malicious allegations to be rejected by the Monitoring Officer.</p>
3:	<p>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.</p>	<p>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 instances of 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. As stated earlier, the LGA Model Code is due to be published in December and it would be suggested that the frequency and mechanism for reviewing the Code be considered when the Council reviews its Code.</p>
4:	<p>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.</p>	<p>The Council's Code is readily accessible on the website which is accessed via the Council Information area. It is also available at the Council Offices via Democratic Services.</p>

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 Council maintains a gifts and hospitality register and Members are regularly reminded by email of the requirement to make any declarations. The register is therefore continually updated, but is not in a CSV format or published on the Council's website. The register is currently available upon request. The format and publication arrangements should be considered when reviewing the Code of Conduct.
6:	Councils should publish a clear and straightforward public interest test against which allegations are filtered.	A public interest assessment takes place by the Monitoring Officer, in consultation with the Independent Persons, in respect of all complaints 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 that is currently carried out.
7:	Local Authorities should have access to at least two Independent Persons.	The Council has appointed two Independent Persons and it therefore already meets this recommendation.
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 Council's current process delegates the consideration and determination of complaints to the Monitoring Officer in consultation with the Independent Persons. This includes the decision whether or not to undertake a formal investigation. 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.
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.	As referred to in 8. above, the Council has delegated authority to the Monitoring Officer, in consultation with the Independent Persons, to determine complaints, including informal resolution wherever that is possible. Since the current regime was introduced in 2012, there have been very few complaints referred for formal investigation and all have been in respect of Parish / Town Councillors. The Council's procedure confirms that it will prepare a decision notice which will be made available for

		<p>public inspection.</p> <p>As part of the review of the arrangements for dealing with complaints, the Monitoring Officer will add the requirement, in these circumstances, to publish a decision notice.</p>
10:	<p>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.</p>	<p>The Council meets this recommendation, except that this does not include the estimated timescales for investigation and outcomes. This will be addressed as part of the review referred to in 9 above.</p>
11:	<p>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.</p>	<p>Advice is provided in these terms to Parish Councils, however, there are practical difficulties in implementing this recommendation. For example, it is conceivable, that the Clerk may wish to complain about the behaviour of a Chair of a Parish Council in circumstances where the Parish Council itself does not wish to make the formal complaint. Consequently, although this is encouraged and supported, it is ultimately dependent upon each Parish Council agreeing to do so.</p>
12:	<p>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.</p>	<p>The Council complies fully with this recommendation.</p>
13:	<p>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.</p>	<p>The Monitoring Officer has appointed a Deputy who would be able to act in the event of any conflict of interest on the part of the Monitoring Officer.</p> <p>Investigations are not carried out by the Monitoring Officer personally, but independently by a suitably qualified person from the shared legal service. The Council's procedure also provides that this investigation could be carried out by an officer from another Local Authority.</p>

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.	The Council includes, within its Annual Governance Statement, details of the company in which it holds a joint ownership interest (Ubico) . There is still work to be done on the element regarding the company publishing its board agenda, minutes and annual reports in an accessible place. The CSPL report recognises that some of that information will be confidential and therefore would not be published. It is suggested that officers work with the separate bodies to secure compliance with this recommendation. This can be done alongside the overall review of the Code and local arrangements.
15:	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	As the Committee is aware, there have been a very low incidence of standards issues, but Group Leaders have always been willing to meet with the Monitoring Officer and any other senior officers to discuss any that have occurred. In the current circumstances, it would be appropriate for these ad-hoc meetings to continue to take place rather than to schedule regular meetings.

3.0 CONCLUSIONS AND RECOMMENDATIONS

- 3.1 The Committee is asked to consider the Council's progress against the best practice recommendations as set out at paragraph 2.2 above and Appendix 1 and determine the Council's response to the CSPL.

Background Papers: Report of Committee on Standards in Public Life dated 30 January 2019. <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

Report and minutes of Standards Committee on 16 September 2019.

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Appendices: 1 – CSPL Template for the 15 Best Practice Recommendations with Suggested Responses.