



Public Session

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Agenda Item No: 7

To: Audit and Governance Committee
Date: 18 April 2018
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Lead Officer: Gillian Marshall, Solicitor to the Council

Title: Ethical Standards

Summary:

This report advises the Audit and Governance Committee that the Committee on Standards in Public Life is undertaking a review of local government ethical standards. As part of this review, the Committee on Standards in Public Life is currently holding a public stakeholder consultation. The report asks the Committee to consider whether it should respond to the consultation and of issues that could be considered in the response.

Recommendations:

The Committee is recommended to:

- i) Consider this report and express a view as to whether the Council should take part in the consultation exercise.**
- ii) If the Committee is of the view that the Council should respond to the consultation to delegate to the Monitoring Officer in consultation with the Chair of the Committee the drafting of a response that takes into account any comments made by the Committee.**

Reasons for recommendation

To provide a response to the consultation within the time limits if required.

1. Introduction and background

1.1 The Localism Act 2011 fundamentally changed the local authority Standards regime in England. The Committee on Standards in Public Life (CSPL), which advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders, is undertaking a review of local government ethical standards.

1.2 The CSPL maintains a watching brief on the local government standards regime. In its 2013 report "Standards Matter" the CSPL outlined its concerns regarding possible issues re the local government standards framework under the Localism Act of 2011:

'The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely'.

1.3 As part of this review, the CSPL is holding a public stakeholder consultation. The consultation is open from 12.00 Monday 29th January 2018 and closes 17.00 on Friday 18 May 2018. Full details of the consultation can be viewed at <https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

1.4 A copy of the consultation paper is also appended to this report.

2 The Report

Terms of reference of the CSPL Review

2.1 The terms of reference for the review are to -

Examine the structures, processes and practices in local government in England for:

- a. Maintaining codes of conduct for local councillors;
- b. Investigating alleged breaches fairly and with due process;
- c. Enforcing codes and imposing sanctions for misconduct;
- d. Declaring interests and managing conflicts of interest; and
- e. Whistleblowing.

2.2 Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;

2.3 Make any recommendations for how they can be improved; and

2.4 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.

- 2.5 The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London).
- 2.6 The CSPL requests that any submission includes any factual information that can be offered in order for the committee to draw conclusions and any recommendations for action which responders would like the Committee to consider.

The Consultation Questions and Comments on possible responses

- 2.7 The Committee on Standards in Public Life has posed the following specific questions. Comments of the Monitoring Officer are provided in *italics* after each Question to assist the Committee in its consideration of the consultation questions.

a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Comment: It is considered that the existing structures, processes and practices in place in Selby District Council work to help ensure high standards of conduct within the current statutory ethical standards regime for local government.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Comment: It is considered that, arguably, the most significant gap within the current regime is a lack of significant sanctions available in the event of a finding of a breach of the code of conduct and in the situation where the subject member refuses to accept the recommended sanctions. A further issues is the time that it takes to deal with complaints given the need to have procedural fairness but without any powers to compel parties to co-operate with an investigation.

c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Comment: It is considered that the Council's Code of Conduct for Members, which is based on the former statutory code while necessarily technical in places, is reasonably easily understood by members. It is considered that the Code covers the appropriate range of behaviours in relation to member conduct. Training on conduct issues is offered to District Councillors when they are inducted and refresher training is also offered periodically. The content of the member induction process is periodically reviewed. Parish Councillors are offered annual training on standards issues.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Comment: It is considered that these requirements are appropriate as they stand.

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

Comment: It is considered that allegations of councillor misconduct are investigated and decided upon fairly and with due process however the lack of any ability to compel subject Councillors and complainants to co-operate significantly hampers concluding matters in a timely fashion particularly in relation to parish issues.

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Comment: The Council's 'Standards Arrangements' were recently reviewed and strengthened and now set out a complaints process consisting of up to three stages – initial assessment; investigation; and hearing (before a Hearing Panel). Standards

At each stage the both parties are given the opportunity to make representations and submit evidence.

One of the Council's three Independent Persons will also be involved at each stage of the member complaint process.

It is considered that the processes in place meet the requirements of due process however issues of timeliness remain and speeding up the process must not be done at the expense of ensuring a fair process and hearing to both complainant and complained of.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Comment: The current requirement in relation to Independent Person involvement, when considered alongside the Council's procedures is considered to be sufficient to ensure objectivity and fairness.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to

conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Comment: The Monitoring Officer does have involvement in decision-making at certain stages of the member complaints process (for example the Initial Assessment decision is made by the Monitoring Officer in consultation with the Independent Person), although the decision made at the final hearing stage is made by the Hearing Panel. In the event that the Monitoring Officer did consider that there was a risk of a conflict of interest she would recuse herself from involvement in the complaint and the Deputy Monitoring Officer would deal with the matter.

f. Are existing sanctions for councillor misconduct sufficient?

Comment: It is considered that there is a case to be made that the sanctions under the current standards regime are insufficient.

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

The sanctions available are -

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code, it will –

- Publish its findings in respect of the Subject Member's conduct;*

And it may -

- Report its findings to Council for information;*
- Recommend to Council that the Member be censured;*
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;*
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;*
- Instruct the Monitoring Officer to arrange training for the Member;*
- Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;*
- Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or*
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.*

It is suggested that the deterrent value of these sanctions is limited. The Monitoring Officer is aware of at least two cases where the Subject Member has refused to accept recommendations to attend retraining and apologise for the conduct. One case is in respect of a Parish Council and as the Council does not make facilities available and the Councillor cannot be excluded from meeting the only sanction has been that of a censure motion and limited local publicity.

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Comment: It is considered that there may, arguably, be a case for additional and more substantial sanctions, potentially including (in the most serious cases) suspension of a member for a limited period (a sanction that was available under the former local authority standards regime). However, if more substantial sanctions were to be available, there would also have to be corresponding safeguards.

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

Comment: It is considered that the current arrangements are broadly satisfactory.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Comment: These statutory duties are considered to be broadly appropriate.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Comment: In addition to the (statutory) category of "disclosable pecuniary interests" the Council's Code of Conduct also recognises other categories of interest – these being matters where the councillor should declare but may participate. These are generally understood. However queries to the Monitoring Officer show that the public do not understand the narrow definition of disclosable pecuniary interests where participation is not permissible and this broader category where it is, nor the restriction to the Councillor and spouse/civil partner in the former case with a broader range in the latter. The distinction between 'interests' in the Code sense and matters which may give rise to an appearance of bias causes confusion for the public and for some councillors and does not assist with the appearance of transparent decision making.

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Comment: The Council has a Whistleblowing Policy in place. These arrangements were recently reviewed and updated and are considered satisfactory.

i. What steps could *local authorities* take to improve local government ethical standards?

Comment: It is considered that local authorities generally could take steps to increase the visibility of their Member Codes of Conduct and the accessibility of their member complaint processes.

j. What steps could *central government* take to improve local government ethical standards?

Comment: It is considered that there may be an argument for central government to provide for more substantial sanctions for breaches of the code of conduct (along with appropriate safeguards).

k. What is the nature, scale, and extent of intimidation towards local councillors?

Comment: It is noted that members may face intimidation in the course of their duties as councillors, although members may be best placed to comment on the extent of this. The rise of the ability of citizens to record and blog about Council meetings has negatively impacted on some parishes where they lack the resources to deal with inaccurate posts and comment and where the recording has a chilling effect on the participation of councillors in the meeting for fear of being inaccurately reported.

l. What measures could be put in place to prevent and address this intimidation?

Comment: The Committee on Standards in Public Life has published 'Intimidation in Public Life: A Review by the Committee on Standards in Public Life', which may be of interest to the Standards Committee

View of the Independent Persons

2.8 The Council's Independent Persons have been consulted on this report and will be available at the meeting to discuss the consultation with the Committee. They have offered the following comments on the operation of the current regime.

2.9 Looking at the Terms of Reference of the Consultation and our experience as Independent Persons for Selby District, our comments follow. Our newest IP has also attended a recent seminar, run by Hoey Ainscough, for Independent Persons in the north of England.

1. The change in Standards arrangements for Selby has been positive :
 - greater involvement of District Councillors via the Audit and Governance Committee. Items on their Agenda, reporting to Council and possible role in complaint Hearings. Also training in anticipation of a possible Hearing. Raised awareness of Standards in general and

their involvement in the structure, processes and practices, particularly the members of the Audit and Governance Committee, but also other members of the Council.

- regular liaison between the Independent Persons and the Monitoring Officer, in addition to action arising from Standards complaints. Quarterly meetings, covering complaints update and discussion of any pertinent issues, Standards issues and concerns across the District, and two way discussion about Standards structures. procedures and practices. Also email consultation about , for example, the Standards Report to Council, changes to the Standards arrangements in Selby, and this exercise.

- greater visibility of the Independent Persons. Attendance at meetings, when invited, of the Audit and Governance Committee and at the Training session.

We were pleased to see that Independent Persons are now included in the list of stakeholders to be consulted about Local Government ethical standards.

2. Another positive has been the training sessions for Parish Councillors, held in different parts of the District. Good numbers attending, high level of interest and volunteers to be involved in any Hearings about Parish Councillors. Raises awareness of Standards in the parishes attending.

Independent Persons were also present at these Parish Training sessions, which were run by the Monitoring Officer, indicating the significance of Standards.

3. Our current problem is the time taken to resolve complaints, especially when an investigation, report and possible Hearing is required. The participants in this are the officers and investigators, the Councillors being complained about and the complainant. Time limits have been put into the process and followed up, but enforcing them is difficult, especially when it is the Councillors being complained about or the complainant.
4. Sanctions. There has been a lot of discussion about the lack and level of possible sanctions. Nearly everyone at the recent IP seminar was in agreement that the main source of concern was the lack of available punishments for offending Councillors. However, it does not seem to be a particular problem in Selby at present.
5. The Consultation asks for evidence of intimidation of Councillors. Selby could probably provide evidence from a website and blog, but whether that is intimidation of Councillors we do not know. It certainly does not help the Councillors or the Parish Council involved. Taken to the extreme, persons mentioned could take legal action or respond in other

ways. But this is probably part of the wide debate about social media and how its contents should be controlled and regulated.

6. Disqualification of Councillors. We are not sure whether this is a matter that the Independent Persons should comment on.

3 Legal/Financial Controls and other Policy matters

Legal Issues

- 3.1 The Council has a legal duty to ensure that high standards are promoted and maintained.

Financial Issues

- 3.2 None

Impact Assessment

- 3.3 A clear standards regime and process promotes confidence in local democracy.

4. Conclusion

- 4.1 This is an important issue for the reputation of local government and responding to the consultation may assist in developing a regime that promotes confidence in local democracy. Accordingly the Committee should
 - i) Consider this report and express a view as to whether the Council should take part in the consultation exercise.
 - ii) If the Committee is of the view that the Council should respond to the consultation to delegate to the Monitoring Officer in consultation with the Chair of the Audit and Governance Committee the drafting of a response that takes into account any comments made by the Committee.

5. Background Documents

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