

COUNCILLOR CONDUCT COMMITTEE

6 NOVEMBER 2019

UPDATE ON A REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS

Report from: Perry Holmes, Monitoring Officer

Summary

This report provides an update on the Council's response to the best practice recommendations made by the Committee on Standards in Public Life following its review of ethical standards in local government, which was published in January 2019.

1. Budget and Policy Framework

- 1.1 The Councillor Conduct Committee is responsible for promoting and maintaining high standards of conduct by Councillors and voting and non-voting co-opted Members. The Committee may make recommendations to the Council on revisions to the Councillor Code of Conduct and is responsible for adopting any procedures necessary in order to undertake its functions including the assessment, investigation and hearing of allegations of Councillor misconduct.

2. Background

- 2.1 High standards of conduct in local government are needed to protect the integrity of decision making, maintain public confidence and safeguard local democracy.
- 2.2 The Committee on Standards in Public Life (CSPL) was established in 1994 as an independent advisory non-departmental body. The Committee is responsible for advising the Prime Minister on ethical issues relating to standards in public life, conducting broad enquiries into standards of conduct and promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 2.3 The CSPL published its 20th report in January 2019 on the subject of ethical standards in local government following a review of the effectiveness of the current arrangements for standards in local government, particularly following the changes made by the Localism Act 2011.
- 2.4 The full report is attached at Appendix 1 and includes 15 best practice recommendations which are listed below in section 4. The Committee expects local authorities to fully implement the best practice recommendations which should be

considered as a benchmark of good ethical practice and the Committee intends to review the implementation of these in 2020.

Councillor Conduct Committee – 13 March 2019

- 2.5 The Councillor Conduct Committee considered the findings of the review at its meeting on 13 March 2019 and the minutes of the discussion on the matter at that meeting are set out below.
- 2.6 The Monitoring Officer introduced the report which provided the Committee with an overview of the key outcomes of the report published in January 2019 by the Committee on Standards in Public Life on the subject of ethical standards in local government. Appendix 1 to the report provided a summary of the highlights of the report, its recommendations to Central Government and its best practice recommendations to local authorities. The Monitoring Officer explained that in relation to the latter, Medway had already addressed many of these points in its current Member Code of Conduct and related arrangements.
- 2.7 A Member referred to the recommendation of the Committee on Standards in Public Life that local authorities should be given discretionary powers to establish decision making standards committees with voting independent members to decide on allegations and impose sanctions.
- 2.8 The Monitoring Officer also drew attention to the recommendation for local authorities that the Independent Person(s) appointed under s28 (7) of the Localism Act 2011 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 Monitoring Officer is minded to dismiss as trivial or vexatious.
- 2.9 Given the timing of this report and the forthcoming local elections, Members shared the view that no actions be taken on this report until later in the year.
- 2.10 The Committee noted the report and agreed that it be reviewed and considered further in the next municipal year.

3. Review of Councillor Code of Conduct and Procedures

- 3.1 The following table details the proposed Council response against each of the 15 best practice recommendations for local authorities to consider and implement.

| No. | Recommendation | Council response |
|-----|--|--|
| 1 | <p>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> | <p>Current status: Partially met</p> <p>The current Medway Members' Code of Conduct, which came into force in January 2018, does include a reference to bullying but it does not refer to harassment, or include a definition or provide examples of the sort of behaviour covered by such a definition.</p> <p>It is therefore proposed to recommend Council to amend the Code as follows (also shown as tracked changes at Appendix 2) and to replace 2.1 (ii) and (iii) with:</p> <p>(ii) "You must not bully or harass any person (including specifically any Council employee)".</p> <p>(iii) "You must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is or is likely to be involved in any complaint about any alleged breach of this code of conduct".</p> <p>It is also proposed to add the following definition:</p> <p>"(Note: bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)"</p> <p>In addition, it is recommended that the examples of bullying provided in the CSPL report at page 34 (of Appendix 1) be added to the Medway Code shown as tracked changes to the Code at Appendix 2.</p> |

| No. | Recommendation | Council response |
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| 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. | <p>Current status: Not currently met</p> <p>There is no such explicit requirement in Medway’s Member Code of Conduct. It is proposed that the Council should be recommended to add the following to section 2 of the code (this is also shown as a tracked change to the code at Appendix 2):</p> <p>“You must comply with any formal standards investigation and take any action required by the Councillor Conduct Committee, following consideration of a complaint and you must do so within timescales stipulated by the Committee”</p> <p>To avoid the scope for a proliferation of complaints of misconduct arising from allegations which may be deemed to be trivial or malicious it is proposed instead to include an additional presumption within the Procedures for Councillor Conduct Complaints and to also add this as an additional test to the screening assessment. Both additions are shown as tracked changes to Appendix 3.</p> |
| 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. | <p>Current status: Partially met</p> <p>It is proposed that the Councillor Conduct Committee review the Member Code of Conduct every four years. This is in line with the approach taken at Medway to date and is appropriate given the work involved.</p> |
| 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. | <p>Current status: Already met</p> <p>The Member Code of Conduct, along with all related procedures, complaint forms and associated guidance are available on the Council’s websiteⁱ. It is proposed to add a link to the Member complaints procedures from the webpage relating to Council complaints generally.</p> |

| No. | Recommendation | Council response |
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| 5 | <p>Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</p> <p><i>Please note a CSV file is a Comma Separated Values file. All CSV files are plain text files, can contain numbers and letters only, and structure the data contained within them in a tabular, or table, form.</i></p> | <p>Current status: Already met</p> <p>The Medway Code has clear provisions for the registration of gifts and hospitality by Members which are published to the Council's website as soon as they are registered by the Member (Members are required to notify the Monitoring Officer of any registerable gifts and hospitality within 28 days of receipt, which is held on the register for a minimum of 12 months).</p> <p>Members' Register of Interest information, including registrations of gifts and hospitality, are provided via a web page format which is easily accessible.</p> |
| 6 | <p>Councils should publish a clear and straightforward public interest test against which allegations are filtered.</p> | <p>Current status: Already met</p> <p>The Councillor Conduct Committee uses its screening assessment process (attached within Appendix 3) as its public interest test, against which all complaints are assessed. To strengthen this it is recommended that question 9 of the screening assessment form is amended to read "Bearing in mind the circumstances of the complaint, would it be proportionate and in the public interest to investigate?". It is also recommended to add a note at the bottom which will state "public interest will be determined on the basis of whether the complaint 'can' be investigated and in addition, whether it 'should' be investigated". These amendments are shown as tracked changes in Appendix 3.</p> |
| 7 | <p>Local authorities should have access to at least two Independent Persons.</p> | <p>Current status: Already met</p> <p>The Council has appointed two Independent Persons for a four year term. Their term expires in October 2020 when the local authority will seek to recruit two Independent Persons for a further four year period.</p> |

| No. | Recommendation | Council response |
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| 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. | <p>Current status: Not currently met</p> <p>It is recommended that when the Councillor Conduct Committee is minded to refer a complaint for formal investigation or to take no further action on a complaint on the grounds that it is trivial, malicious, vexatious, politically motivated or tit-for-tat, then its decision will be subject to consultation with the Independent Person to ensure they share the Committee's view. This is reflected as tracked changes to questions 4 and 9 of the screening assessment within Appendix 3 to this report.</p> |
| 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. | <p>Current status: Partially met</p> <p>The Council does publish information on its website, as part of the Minutes of the Councillor Conduct Committee. It is suggested that this approach could continue.</p> |
| 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. | <p>Current status: Already met</p> <p>The Member Code of Conduct, along with all related procedures, complaint forms and associated guidance is available and fully accessible by Members, staff and the public on the Council's websiteⁱⁱ</p> |
| 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. | <p>Current status: Not currently met</p> <p>It is recommended that the Monitoring Officer seeks the views of all 11 parish councils on this recommendation before proceeding to implement it.</p> |

| No. | Recommendation | Council response |
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| 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. | <p>Current status: Already met</p> <p>Since 2011, seven complaints have related to members of the 11 parish councils in Medway, which does not represent an onerous burden on the Monitoring Officer in Medway.</p> <p>The Deputy Monitoring Officer is also an active member of the Kent Secretaries Group which regularly shares learning from best practice.</p> |
| 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. | <p>Current status: Already met</p> <p>These procedures are in place in Medway</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. | <p>Current status: Not currently met</p> <p>There is a separate workstream underway to establish a framework for scrutiny of the alternative delivery models set up by the Council (MCG, MDC and Medway Norse). This will include Member training and consideration of advice issued by the Centre for Public Scrutiny (CfPS) on scrutiny of risk and commercialisation. It is recommended that the Monitoring Officer give consideration to the inclusion of a reference to these bodies in the Council's annual governance statement and request each of them to publish board agendas, minutes and annual reports.</p> |
| 15 | Senior officers should meet regularly with political group leaders or group whips to discuss standards issues. | <p>Current status: Partially met</p> <p>Both group whips are currently members of the Councillor Conduct Committee where standards issues are discussed and the Monitoring Officer will periodically meet with Group Leaders, Group Whips and/or attend group meetings as and when issues for discussion arise.</p> |

4. Risk management

- 4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.
- 4.2 An annual review of the Councillor Code of Conduct will identify any necessary amendments to ensure the Code is consistent with emerging and established best practice

5. Financial and legal implications

- 5.1 There are no financial implications arising from this report.
- 5.2 Many of the other recommendations of the Committee on Standards in Public Life, which are set out in full at Appendix 1, will require legislative change
- 5.3 The Committee on Standards in Public Life will review the implementation by local authorities of the 15 best practice recommendations, set out in section 3 of this report, in 2020. Although local authorities are not obliged to implement these recommendations, they are considered to be best practice for local authorities and a benchmark of good ethical practice and there is therefore an expectation that local authorities will implement them unless there are good reasons not to.

6. Recommendations

- 6.1 The Committee is asked to:
 - 6.1.1 recommend the proposed changes to the Code, as demonstrated as tracked changes at Appendix 2 to the report, to Full Council.
 - 6.1.2 approve the changes to the procedure for dealing with Member Conduct Complaints, as demonstrated as tracked changes at Appendix 3 to the report.
 - 6.1.3 agree to review the Member Code of Conduct on an annual basis and make recommendations to full Council as necessary, and that where possible when substantial changes are proposed, the views of the public, community organisations and neighbouring authorities are sought.
 - 6.1.4 instruct officers to add a link to the Member Code of Conduct webpage from the page relating to Council complaints generally.
 - 6.1.5 agree that decision notices relating to the outcome of formal investigations be produced and published, 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 and that these be kept on the website for a period of 12 months, subject to that when the outcome of a hearing is a Committee finding of no breach, the subject member is given the option as to whether the decision notice includes their name or whether it remains anonymous and does not provide information that could identify the subject member.

- 6.1.6 agree that the Monitoring Officer request the 11 parish councils in Medway to formally acknowledge the expectation that formal 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 and confirm their commitment to adhere to this in relation to any future complaints of this nature.
- 6.1.7 request the Monitoring Officer to give consideration to the inclusion of a reference to all alternative delivery models set up by the local authority in the Council's annual governance statement and that he request each of them to publish board agendas, minutes and annual reports.
- 6.1.8 note all other responses set out in the table at section 3 of this report where no specific or additional action is required.

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Appendices

Appendix 1 – Review of the Local Government Ethical Standards (January 2019)

Appendix 2 – Member Code of Conduct with recommended revisions demonstrated as tracked changes

Appendix 3 – Procedure for dealing with Councillor Conduct Complaints with recommended revisions demonstrated as tracked changes.

Background papers

None

ⁱ Link to webpage - https://www.medway.gov.uk/info/200167/councillors/118/councillors_code_of_conduct/1

ⁱⁱ Link to webpage - https://www.medway.gov.uk/info/200167/councillors/118/councillors_code_of_conduct/1