

## **COUNCIL**

**23 JANUARY 2020**

# **UPDATE ON A REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS**

Report from: Perry Holmes, Monitoring Officer

### **Summary**

This report seeks approval to some changes to the Members' Code of Conduct following a report from the Committee on Standards in Public Life (CSPL) on ethical standards in local government, which was published in January 2019. This report sets out the response from the Councillor Conduct Committee to the best practice recommendations for Local Authorities made by the CSPL and also proposes a minor amendment to the Code as a consequence of the Civil Partnership (Opposite-sex Couples) Regulations 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 Members' 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 Over the last 20 years the standards regime in local government has moved from a largely unregulated one to, initially, a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and then abolished in 2012, giving way to the highly devolved system which is currently in place.

- 2.4 The CSPL published its [20<sup>th</sup> 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. The Act fundamentally changed the standards regime in local government by repealing the Model Code of Conduct which applied to all local authorities, repealing the need to have a Standards Committee and abolishing the sanctions which could be applied, such as suspension or disqualification. Councils were faced with a much more limited range of actions, which cannot include suspension or disqualification, available where a Member is found to have breached the Code.
- 2.5 This report of the CSPL was not prompted by any specific allegations of misconduct, but to assure itself that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.
- 2.6 The CSPL found that the vast majority of councillors and officers want to maintain the highest standards of conduct. However, a minority of councillors engage in bullying or harassment, or other highly disruptive behaviour. The CSPL also found that a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.
- 2.7 The CSPL raised concerns about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making. Whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.
- 2.8 The CSPL made a number of recommendations to improve ethical standards in local government. The highlights of key findings in the report of the CSPL and the full suite of recommendations are set out in Appendix 1. The CSPL report can be accessed via the internet link listed under background papers at the end of this report. Twenty six recommendations are for consideration by the Government and other bodies and many of these would require legislative change. There are a further fifteen best practice recommendations directed at local authorities which could be implemented immediately. The CSPL intends to review the implementation of these in 2020.
- 2.9 Medway Council's Councillor Conduct Committee considered the findings of the review at its meeting on 13 March 2019. Given the timing of this report and the forthcoming local elections, Members concluded that no action be taken on the report until later in the year and agreed that it be reviewed and considered further in the next municipal year.
- 2.10 Subsequently the Councillor Conduct Committee considered a proposed response to each of the 15 best practice recommendations for local authorities at its meeting held on 6 November 2019 and the following table details the response agreed by the Councillor Conduct Committee against each of these recommendations. Members were encouraged by the fact that much of these recommendations were already embedded in the Council's procedures and practices.

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: <b>Partially met</b></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>The Councillor Conduct Committee has <b>recommended that Council</b> amend the Code as follows (also shown as tracked changes at Appendix 2) and to replace paragraph 2.1 (ii) and (iii) with:</p> <p><i>(ii) "You must not bully or harass any person (including specifically any Council employee)".</i></p> <p><i>(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".</i></p> <p>It is also proposed to add the following definition:</p> <p><i>"(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.)"</i></p> <p>In addition, it is recommended that the examples of bullying provided in the CSPL report be added to the Medway Code shown as tracked changes to the Code at Appendix 2.</p>

No.	Recommendation	Council response
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: <b>Not currently met</b></p> <p>There is no such explicit requirement in Medway's Member Code of Conduct. The Councillor Conduct Committee <b>has recommended that the Council</b> should 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><i>“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”</i></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 the Councillor Conduct Committee has agreed 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: <b>Partially met</b></p> <p>The Councillor Conduct Committee has agreed that the Member Code of Conduct should be reviewed 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: <b>Already met</b></p> <p>The Member Code of Conduct, along with all related procedures, complaint forms and associated guidance are available on the Council's website. The Councillor Conduct Committee has instructed officers to add a link to the Member complaints procedures from the webpage relating to Council complaints generally.</p>

No.	Recommendation	Council response
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: <b>Already met</b></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: <b>Already met</b></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 the Councillor Conduct Committee has agreed to amend question 9 of the screening assessment form to read: "<i>Bearing in mind the circumstances of the complaint, would it be proportionate and in the public interest to investigate?</i>" The Committee has also agreed to add a note at the bottom which states: "<i>public interest will be determined on the basis of whether the complaint 'can' be investigated and in addition, whether it 'should' be investigated</i>". 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: <b>Already met</b></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
8	<p>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>	<p>Current status: <b>Met as a result of the decision by the Councillor Conduct Committee</b></p> <p>The Councillor Conduct Committee has agreed that when it 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> <p>The Committee queried the extent to which the Independent Person was currently consulted and accepted that it could sometimes be difficult for Members to be completely objective when they know the person who is the subject of the complaint and therefore welcomed this additional input from the Independent Person. Whilst this will add an element of delay into the process, it will also strengthen the process by ensuring Members and the Monitoring Officer have the benefit of an independent, objective view before a decision is made to either carry out a formal investigation or dismiss a complaint as being without merit, vexatious or trivial.</p>
9	<p>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>	<p>Current status: <b>Partially met</b></p> <p>The Council already publishes information on its website, as part of the Minutes of the Councillor Conduct Committee, and the Committee has agreed that this approach could continue.</p>

No.	Recommendation	Council response
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: <b>Already met</b></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 website<sup>ii</sup></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: <b>Not currently met</b></p> <p>The Councillor Conduct Committee has agreed that the Monitoring Officer should seek the views of all 11 parish councils in Medway on this recommendation before it is implemented.</p>
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: <b>Already met</b></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: <b>Already met</b></p> <p>These procedures are in place in Medway</p>

No.	Recommendation	Council response
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: <b>Not currently met</b></p> <p>There is a separate workstream underway to establish a framework for scrutiny of the alternative delivery models set up by the Council (Medway Commercial Group, Medway Development Company and Medway Norse). This includes Member training and consideration of advice issued by the Centre for Public Scrutiny (CfPS) on scrutiny of risk and commercialisation. The Councillor Conduct Committee has asked the Monitoring Officer to consider including 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: <b>Partially met</b></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>

### 3. Localism Act – Disclosure of pecuniary interests on taking office

- 3.1 S.30 of the Localism Act 2011 requires Members and voting co-opted Members to notify the Monitoring Officer of any disclosable pecuniary interests (DPIs), as specified in regulations. These interests must also be entered in the Member's register of interests by the Monitoring Officer. If a Member is present at a meeting and they know they have a DPI in a matter then they must disclose the interest, not take part in any discussion or vote on the matter and they must leave the meeting room.
- 3.2 The Act, until it was recently amended, stipulated that the requirement to disclose and register DPIs also applied where the interest is that of the Member's spouse, civil partner, a person with whom the Member is living as husband and wife or a person with whom the Member is living as if they were civil partners. Since the November meeting of the Councillor Conduct Committee there has been a minor change in the law in terms of how the categories of people who could give rise to a Member having a DPI are described. This is as a result of the Civil Partnership (Opposite-sex Couples) Regulations 2019. These Regulations allow opposite-sex couples to enter into a civil partnership and, with effect from 2 December 2019, amended the wording of the Localism Act.



3.3 There is therefore a need to amend the Members' Code of Conduct to ensure it complies with this change in legislation. These amendments are shown as tracked changes to the Code at Appendix 3. Once the changes to the Code have been agreed the Monitoring Officer will amend the wording of the notification of DPIs, non-pecuniary interests and gifts and hospitality forms to reflect the changes to the wording in the Code.

#### **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 A review of the Councillor Code of Conduct every four years 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 The Localism Act 2011 requires the Council to:

- have in place a Code of Conduct, which must include provisions it considers appropriate in respect of the registration and disclosure of pecuniary and non-pecuniary interests. (Members are required by law to register specified Disclosable Pecuniary Interests (DPIs)).
- ensure that its Code, when viewed as a whole, is consistent with the Seven Principles of Public Life.
- publicise the adoption, revision or replacement of its Code of Conduct.
- have arrangements in place for investigating and making decisions in relation to allegations about Member conduct.
- appoint at least one independent person whose views must be taken into account before the Council makes a decision on any particular allegation it has decided to investigate. The view of the Independent person may also be requested by the Council on any allegation more generally and also by any Councillor, Parish Councillor or voting co-opted Member if that person's behaviour is the subject of an allegation.
- establish and maintain a register of Members and voting co-opted Members' Interests.

5.3 On 2 December 2019 the Civil Partnership (Opposite-sex Couples) Regulations 2019 amended the wording of S.30 (3) of the Localism Act 2011 in respect of the disclosure of pecuniary interests on taking office, as detailed in section 3 above.

5.4 Many of the other recommendations of the Committee on Standards in Public Life, which are set out at Appendix 1, will require legislative change

5.5 The Committee on Standards in Public Life will review the implementation by local Authorities of the 15 best practice recommendations, as set out in the table in paragraph 2.10 of this report and Appendix 1, 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 Council is asked to:

- 6.1.1 approve the proposed changes to the Members' Code of Conduct regarding bullying and harassment as recommended by the Councillor Conduct Committee and demonstrated as tracked changes in Section 2 (General Conduct) of Appendix 2 to this report;
- 6.1.2 approve the additional changes to the Members' Code of Conduct in relation to how the categories of people who could give rise to a Member having a DPI are described in order to comply with the Civil Partnership (Opposite-sex Couples) Regulations 2019, as described in paragraphs 3.1-3.3 of the report and shown as tracked changes at Appendix 2 to this report, and;
- 6.1.3 note the other decisions taken by the Councillor Conduct Committee in response to the best practice recommendations from the Committee on Standards in Public Life, as set out in the table below paragraph 2.10 of this report.

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### **Appendices**

Appendix 1 – Summary of the report from the Committee on Standards in Public Life report on 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**

[Committee on Standards in Public Life report on Local Government Ethical Standards](#)

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<sup>i</sup> Link to webpage - [https://www.medway.gov.uk/info/200167/councillors/118/councillors\\_code\\_of\\_conduct/1](https://www.medway.gov.uk/info/200167/councillors/118/councillors_code_of_conduct/1)

<sup>ii</sup> Link to webpage - [https://www.medway.gov.uk/info/200167/councillors/118/councillors\\_code\\_of\\_conduct/1](https://www.medway.gov.uk/info/200167/councillors/118/councillors_code_of_conduct/1)