

Report to Standards Committee

13 March 2019

By the Monitoring Officer

INFORMATION REPORT



**Horsham
District
Council**

Not Exempt

Standards Update: March 2019

Executive Summary

The Council has determined that the Standards Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This report provides details regarding the long awaited report of the Committee for Standards in Public Life report published on 30 January 2019.

Recommendations

The Committee is asked to note the contents of the report.

Reasons for Recommendations

- (i) To ensure that the Committee, the Members of the Council and others to whom the report is circulated are kept up to date with developments in the ethical framework; and
- (ii) To promote and maintain high standards of conduct amongst members.

Background Papers

Localism Act 2011

Wards affected: All

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Background Information

1 Introduction and Background

- 1.1 The purpose of this report is to inform and update Members of the Council on matters of interest relating to ethical standards and the code of conduct.

2 Relevant Council and Government policy

- 2.1 The statutory background can be found in the Localism Act 2011, Part 1 Chapters 6 and Chapter 7 and the Regulations made under that Act. The relevant Government policies, with regard to the ethical framework are contained in Department for Communities and Local Government Guidance 'Openness and Transparency on Personal Interests: A Guide for Councillors' and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.
- 2.2 The Council's policy is set out in its Constitution and through the activities of this Committee and Council.

3 Details

The Committee on Standards in Public Life (the "CSPL") was established in 1994 and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles. The full report, which runs to 108 pages and is therefore not attached, can be accessed here:

<https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>

- 3.2.1 The terms of reference for the CSPL's review were to:

- 3.2.1 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
 - e. Whistleblowing

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

- 3.2.3. Make any recommendations for how they can be improved

- 3.2.4 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.

- 3.3 The CSPL observed that local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as

licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

- 3.4 High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.
- 3.5 The evidence received by the CSPL supports the view that the vast majority of councillors and officers maintain high standards of conduct. There was, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There was also evidence of persistent or repeated misconduct by a minority of councillors.
- 3.6 The CSPL were also concerned 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 decisionmaking.
- 3.7 The CSPL considered that giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. The CSPL specifically considered whether there is a need for a centralised body to govern and adjudicate on standards, in the same way as there used to be the Standards' Board for England, however the Committee concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.
- 3.8 Recommendations and identified best practice was highlighted by the CSPL to improve ethical standards in local government. The recommendations are made to government and to specific groups of public office-holders and these recommendations include a number of changes to primary legislation, including the introduction of the right to suspend a member for up to 6 months, all of which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which the CSPL indicates could be implemented more swiftly. The government have a period of 3 months in which to formally respond to the CSPL recommendations.
- 3.9 Of particular interest to Members will be the CSPL best practice recommendations for local authorities which they indicate should be considered a benchmark of good ethical practice, which the Committee expects that all local authorities can and should implement. The Committee has indicated that they propose reviewing the implementation of the best practice in 2020. A full set of the good practice recommendations are set out at Appendix A for Members' ease of reference.
- 3.10 The report by the CSPL deals with a number of specific areas. Of particular interest to members will be the provisions relating to Codes of Conduct, declaring and managing interests, investigations and safeguards and sanctions. More detail is provided in relation to each of these areas below.

Code of Conduct

- 3.11 Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. The CSPL found that there is considerable variation in the length, quality and clarity of codes of conduct and considered that this creates confusion among members of the public, and among councillors who represent more than one tier of local government. The CSPL considered that many codes of conduct fail to address adequately, important areas of behaviour such as social media use and bullying and harassment. The CSPL therefore recommends that an updated model code of conduct should be made available to local authorities in order to enhance the consistency and quality of local authority codes.
- 3.12 The CSPL considered that there are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. There is a specific recommendation that the scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

- 3.13 The CSPL found that the current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The CSPL recommends that the current requirements for registering interests should be updated to include categories of nonpecuniary interests. There is also a recommendation that the current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

- 3.14 Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. The CSPL noted that each local authority should maintain a standards committee which may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.
- 3.15 Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The CSPL considered that the Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent Person agrees both that there has been a breach and that suspension is a proportionate sanction. The CSPL considered that the Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

- 3.16 There was consensus that the current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining

high standards, lacks the necessary independence and transparency to play the central role in a standards system. The CSPL found that the current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

- 3.17 The CSPL therefore recommended to government that local authorities should be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.
- 3.19 Finally, the CSPL indicated that the current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL CONSIDERATIONS

- 5.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.