

COMMITTEE ON STANDARDS IN PUBLIC LIFE REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS

MEETING: (1) STANDARDS AND AUDIT COMMITTEE
(2) CABINET MEMBER FOR FINANCE AND GOVERNANCE

DATE: (1) 24TH FEBRUARY 2019
(2) tbc

REPORT BY: MONITORING OFFICER

WARD: ALL

FOR PUBLICATION

1.0 PURPOSE OF REPORT

- 1.1 To report to members the review by the Committee on Standards in Public Life (CSPL) on local government ethical standards.
- 1.2 To make recommendations for best practices changes to the Council's standards system.

2.0 RECOMMENDATION

- 2.1 That the CSPL report be considered and
- 2.2 The council's performance against the CSPL proposals and suggested and recommended changes to the council's standards system at Appendix 2 are reviewed and supported.
- 2.3 The Members' Code of Conduct and the council's procedures for consideration of complaints against members be amended accordingly.

3.0 BACKGROUND

- 3.1 The current standards system has been in place since changes were introduced by the coalition government in the Localism Act 2011. While simplifying the members' ethical standards system, dispensing with much bureaucracy, and closing the national body overseeing standards (Standards for England), after several years of operation there is a growing belief that the current system lacks teeth and consistency.
- 3.2 The annual report on standards to this committee in February referred to the recommendations of the CSPL review, published late January¹. It was agreed that a further report be submitted to the committee on the review.

4.0 CSPL REVIEW

The Report

- 4.1 The 110 page CSPL report was published on 21st January 2019. It made 15 best practice recommendations that local authorities should adopt and a further 26 recommendations for action by government or other organisations.

Executive Summary

- 4.2 While the complete report can be accessed online, the 3 page executive summary is attached at Appendix 1. The overriding message of the review is that high standards of conduct in local government are needed to protect the integrity of decision making, maintain public confidence and safeguard local democracy.
- 4.3 The report concludes that while the vast majority of councillors and officers maintain high standards of conduct, some councillors nationally do not behave properly, most of the cases relating to bullying, harassment or disruptive behavior. In some cases misconduct is persistent or repeated.

5.0 REVIEW THEMES

The following is a summary of the main review findings.

Code of conduct

- 5.1 The review finds that the absence of a national model code weakens the standards system. The ability of each authority to adopt its own code leads to variation in quality and clarity of the codes, causing confusion in the public and in councillors who are members of several tiers of local authority.

¹ <https://www.gov.uk/government/collections/local-government-ethical-standards>

5.2 Many codes fail to adequately address social media use and bullying and harassment. The review recommends an updated model code be made available, but which can be adapted by local authorities and reviewed annually. The scope of the code should be widened, with, for example, a rebuttable presumption that a councillor's public behavior is in their official capacity as a councillor. Currently only conduct as a councillor is covered by the code.

Interests

5.3 The review recommends clarifying the system for declaring and managing interests, with the registration requirement to be expanded to include both pecuniary and non-pecuniary interests. An objective test should be adopted for identifying which interests should be declared.

Complaints and Investigations

5.4 While monitoring officers filter and investigate complaints, every local authority should have a standards committee (not currently mandatory), to advise on standards issues, decide on alleged breaches and sanctions. They should also include independent members with ability to vote.

Independent Persons

5.5 The current requirement for Independent Persons (IPs) to have a role in standards matters should be strengthened and clarified, with suspension of a councillor only possible if agreed by the IP. Their views should be published in any formal decision. However, they should only be appointed for 2 years, with only one extension of 2 years. They should have a legal indemnity for their advice, which when in the public interest, should be published.

Sanctions

5.6 The type of sanction available should also be clarified, with the ability to suspend a councillor for up to 6 months without allowances. The lack of robust sanctions leaves little ways of enforcing sanctions or addressing serious misconduct. There should be an appeal against suspension to the Local Government Ombudsman whose decision will be binding. Annual statistics should be published.

5.7 While some authorities operate good party discipline, this is not universal and lacks independence and transparency. Non grouped councillors do not have a party structure to ensure discipline.

- 5.8 The current criminal offences relating to failure to properly register disclosable pecuniary interests are disproportionate and ineffective and should be abolished.

Town and Parish Councils

- 5.9 Principal authorities should continue to investigate alleged code breaches by parish councillors. This can be a disproportionate burden for some authorities with many parishes. Parishes should be required to adopt the principal authority's code and any decisions on standards should be binding on the parish. Monitoring Officers should be adequately resourced for this role and parish clerks should be appropriately qualified to uphold governance.

Statutory Officers

- 5.10 Employment protection for statutory officers should be extended to cover all types of disciplinary action (not just dismissal) and they should receive proper training on local authority governance.

Commercial activity

- 5.11 Potential conflicts of interest in commercial bodies set up by local authorities should be managed, especially if councillors sit on the bodies. They should be transparent and accountable to the council and public.

Leadership and culture

- 5.12 Ethical leadership is required from standards committee, the chief executive, political group leaders and the council chair. There are clear links between corporate failure and poor ethical standards.
- 5.13 Political groups have a clear role in maintaining standards, but it should not be a parallel system to the authority's standards process. They should set clear expectations of their members and senior officers should be able to maintain effective relationships with the groups, working informally to resolve standards issues where appropriate. Political disagreement will always exist, but it should be civil and constructive. Political groups should require their members attend conduct training.
- 5.14 An impartial Monitoring Officer, with the confidence of councillors with support of the chief executive, is essential.
- 5.15 A local authority's culture should be transparent and scrutiny should be welcomed. Decision making should be open.

6.0 COMMENTS ON THE RECOMMENDATIONS

- 6.1 This council has been fortunate in that it decided to have a standards committee charged with responsibility for maintaining and improving standards. There have been only a few complaints that have progressed beyond assessment, and no code breach has been found. There are also only two parishes, so the parish related work generated in other districts is not replicated here.
- 6.2 The lack of a consistent national model code is a real shortcoming for authorities. The code adopted by many authorities has been difficult to interpret and apply. A strong and authoritative code with clear indications of expected behaviours is necessary, taking account of new directions in conduct (use of social media etc). More effective ways of assessing whether or not a councillor's conduct is in their official capacity, or is being used to benefit that, is needed.
- 6.3 While it is welcomed that a national body overseeing standards is not proposed to be introduced, Standards Board for England (Latterly Standards for England) did ensure that a consistent suite of guidance and case decisions was available to inform local decision making.
- 6.4 Strong party discipline has helped ensure a good ethical culture in Chesterfield, with the Monitoring Officer having a respectful relationship with members.
- 6.5 The Independent Person has been an effective way of getting an impartial view on allegations and provisional conclusions of the monitoring officer on complaints. However, it is not felt that a mere 2 + 2 year appointment is adequate in an authority with few complaints. At Chesterfield they are appointed for 4 years, with a potential for a further 4 years. This gives time to build up expertise and knowledge of the authority's working.
- 6.6 Similarly, the current lack of independent co-opted members on the standards committee under the current system has meant that all standards matters are formally considered only by councillors, without input from independent committee members who are able to view matters from the perspective of the public.
- 6.7 The role of the Local Government and Social Care Ombudsman (LGO) in appeals against the imposition of a sanction where there has been maladministration reinforces the complaint route that is already open to those dissatisfied with actions of the council, though the different roles of the LGO

would need to be clear. Currently those involved with the standards process can take their dissatisfaction through the council's complaints process and ultimately to the LGO if they wish.

- 6.8 Many of the best practice recommendations are either already in place at Chesterfield, or can be adopted with little change in practice.
- 6.9 Some of the proposals for action by government etc require primary legislation, though others could be introduced by the council. Clearly those requiring legislation require government time to consider the proposals and consultation on any draft legislation. It is not yet known how quickly this will occur.
- 6.10 Other comments and recommendations are included at Appendix 2.

7.0 CONCLUSIONS

- 7.1 The CSPL report is welcomed. It is considered that Chesterfield fares well against the study of ethical standards across the country, and already has in place much of the best practice recommended or can introduce it relatively easily.
- 7.2 Appendix 2 Part 1 sets out the best value recommendations and Part 2 the recommendations for government and other bodies, together with suggestions and recommendations as to whether or not the proposals can or should be adopted at Chesterfield.

8.0 RECOMMENDATION

- 8.1 That the CSPL report be considered
- 8.2 The council's performance against the CSPL proposals and suggested and recommended changes to the council's standards system at Appendix 2 are reviewed and supported.
- 8.3 The Members' Code of Conduct and the council's procedures for consideration of complaints against members be amended accordingly.

9.0 REASON FOR RECOMMENDATION

- 8.1 To enable the Council to operate the ethical standards system effectively and as recommended by the Committee on Standards in Public Life in accordance with best practice and as required by the law.

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