

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	2 OCTOBER 2019
Heading:	COMMITTEE ON STANDARDS IN PUBLIC LIFE – UPDATE FROM THE WORKING GROUP		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

The purpose of this report is to update the Committee on the work undertaken so far by the Standards Committee Working Group in respect of the Best Practice Recommendations of the Committee on Standards in Public Life (CSPL) in their January 2019 report relating to Local Government Ethical Standards.

Recommendation(s)

To note the work undertaken so far by the Standards Committee Working Group in respect of the Best Practice Recommendations of the Committee on Standards in Public Life (CSPL) in their January 2019 report relating to Local Government Ethical Standards.

Reasons for Recommendation(s)

To ensure the Committee charged with ensuring high standards of conduct is aware of the CSPL report and to ensure it considers if any of the best practice recommendations contained in that report should be implemented by this Council. The CSPL will review implementation of its best practice recommendations to local authorities during 2020.

Alternative Options Considered

(with reasons why not adopted)

There are no other options considered appropriate at this stage.

Detailed Information

COMMITTEE ON STANDARDS IN PUBLIC LIFE – REPORT ON LOCAL GOVERNMENT ETHICAL STANDARDS

The Committee on Standards in Public Life (CSPL) advises the Prime Minister on ethical standards across the whole of public life in England. It is an independent advisory non-departmental public body.

During 2018, the CSPL undertook a review of local government ethical standards. *“The review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.”*

Members will recall receiving a summary report at its meeting in July 2019. The Committee resolved that:

- “a) informal working groups be arranged to discuss the findings of the CSPL report and feed back to the Committee in October for recommendation to Council;*
b) the Director of Legal and Governance (and Monitoring Officer) will explore the possibility of sharing the Monitoring Officer function to avoid investigation conflict via the Nottinghamshire Network.” (Min. Ref. SP.24)

The informal working group has met on two occasions so far (10 and 17 September 2019) supported by the Monitoring Officer.

The table below sets out a summary of each Best Practice Recommendations of the CSPL and the actions agreed by the working group so far:

CSPL – Summary of Best Practice Recommendations

Number	Best Practice	Current position	Action/Comments from Working Group
1	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.	Prohibition for bullying (2.3 in the Code of Conduct) included but no definitions or examples	<ul style="list-style-type: none">• Agreed to review Code of Conduct to insert definitions.• Consider if definitions also needed for other elements such as respect etc. to ensure consistency.• Research definitions of “bullying” for consideration (see below)• Not sure examples should sit in the Code itself – may be

			better in a Protocol/Guidance Note appended to the Code
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>Requirement to comply with investigation not in Code but there is a provision in the complaints process which states that if a member fails to co-operate then the investigation continues and failure to take part will be taken into account.</p> <p>Complaints process allows "<i>malicious, politically motivated or tit-for-tat</i>" complaints to be refused by MO but no prohibition in the code.</p>	<ul style="list-style-type: none"> • Agreed to review Code of Conduct – see further comments below. • Agreed to review complaints process • Prohibitions to be included but include the Council's existing wording in the complaints process as well
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>Code reviewed frequently (generally every 2 years).</p> <p>No consultation carried out previously outside the organisation.</p>	<ul style="list-style-type: none"> • Introduce annual review but some concern was raised at how resource intensive this may become when there will often be little change to be made. • Agreed to consider consultation options, but again question the value this will produce compared to the resource effort. • Suggested consultation with existing channels (rather than creating new ones) such as the Citizens' Panel, Youth Council. To consider other stakeholders?

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.	Code is available on the internet but not very prominent.	<ul style="list-style-type: none"> • Agreed to consider how to make Code more prominent on website. • Agreed to make copies available at offices.
5	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>Currently review returns annually. Do not publish or report to Committee.</p> <p>Reminder to Members sent annually.</p> <p>Average 1-3 declarations per year.</p>	<ul style="list-style-type: none"> • Agreed to develop a Register on the Website • Agreed to introduce quarterly reporting through Committee • Agreed to produce a Guidance Note for Members (in line with the annual reminder) which could form an appendix to the Code
6	Councils should publish a clear and straightforward public interest test against which allegations are filtered.	The Complaint process, which is published, does include assessment criteria with some mention of proportionality.	<ul style="list-style-type: none"> • Agreed to review complaints process to incorporate a clearer/more detailed test. • As per previous actions, agreed to ensure this is then published in an accessible/easy to find location on the website.
7	Local authorities should have access to at least two Independent Persons.	Already have 2 IPs	<ul style="list-style-type: none"> • No action needed
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>Already happens for each complaint received.</p> <p>Review process to consider wording "<i>without merit, vexatious or trivial</i>"</p>	<ul style="list-style-type: none"> • Agreed to review the complaints process to consider the current wording and the suggested wording.
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	A decision notice is always produced including all suggested	<ul style="list-style-type: none"> • Agreed with the need to publish in a suitable place on the website.

	<p>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>elements except that the views of the IP have not normally been included.</p> <p>It is some considerable time since an investigation led to a finding of misconduct.</p> <p>Information has been published in the past, but not necessarily the full decision notice.</p>	<ul style="list-style-type: none"> • Include as part of the Complaints Process. • Agreed a template decision notice could be produced to ensure consistency.
10	<p>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>	<p>The complaints process setting out this detail is available on the website but it is not always easy for the public to find it.</p> <p>An electronic complaint form has already been developed to make the process easier.</p>	<ul style="list-style-type: none"> • Agreed as set out previously to consider suitable location on the website. • Agreed to consider (as part of the complaints process review) if it is clear. • Agreed to introduce electronic complaint form.
11	<p>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>	<p>Currently accept complaints however made, including if made directly by the clerk.</p>	<ul style="list-style-type: none"> • Committee questioned the purpose of this recommendation and how practical it is to enforce such an approach – would a complaint made by the clerk be refused? • Agreed to contact the parish clerks for their views • Agreed to contact NALC for its view • Agreed to check the detailed explanation in the CSPL report

			<p>for the background detail (see below)</p> <ul style="list-style-type: none"> • Agreed one example of an exceptional circumstance would be the complaint being about the Chairman
12	<p>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>	<p>Advice, support and investigations relating to alleged breaches already provided as far as existing resources allows.</p> <p>Can be a disproportionate number of complaints.</p> <p>MO has 2-3 DMOs to support.</p> <p>Training provided annually to MO and DMO.</p> <p>Small budget available for investigations. Due to budgetary pressures not possible to increase resources.</p>	<ul style="list-style-type: none"> • Acknowledged the extent of the role of MO for the Parish complaints. • Acknowledged that resources are limited. • Agreed to check the detailed explanation in the CSPL report (see below) • Agreed to seek the views of the Parish and NALC.
13	<p>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>	<p>MO from another authority has investigated an ADC complaint in the past and the MO as investigated for others if time</p>	<ul style="list-style-type: none"> • Agreed to support a discussion taking place at a County level to develop something suitable and acceptable • Committee took the view that a pre-requisite would be to recharge for the MO/DMO time

		allowed. This is as part of an informal arrangement.	
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.	This used to take place for Ashfield Homes Ltd. No relevant separate bodies currently.	<ul style="list-style-type: none"> No action needed at this time.
15	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	Regular meetings take place with all Group Leaders generally with CEO but standards issues not necessarily discussed routinely. CEO and Mo meet with the Leadership team weekly. CEO and MO discussions will take place on an ad hoc basis regarding specific issues.	<ul style="list-style-type: none"> Committee were concerned that introducing quarterly meetings, for example, would be too frequent and not necessarily needed; they were happy with the CEO and MO using their discretion to have ad hoc meetings when considered necessary/helpful.

Best Practice Recommendation 1

Bullying and Harassment – definitions and examples

The Working Group has looked at possible bullying and harassment definitions and examples which might be incorporated into the Code.

Page 33 of the CSPL report produced an extract from Newcastle City Council's code of conduct which the Working Group considered:

"You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(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.)"

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (ACAS) have codified a definition:

"offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient".

Harassment as defined in the Equality Act 2010 is:

"Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual."

Examples of bullying behaviour set out in the ACAS guidance and repeated in the CSPL report include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities

Bullying or harassment are instances of serious misconduct which are likely to be persistent behaviours rather than one-off instances.

A councillor should not be considered to be bullying or harassing an officer or other councillor simply by making persistent enquiries or requests for information and not by saying something the

individual simply dislikes or with which they strongly disagree (Chapter 2, page 35 of the CSPL report).

Bullying and harassment is not necessarily face to face, it may occur through written communications, visual images, email and telephone.

The Working Group has indicated its preference to use the ACAS definition and examples of bullying set out above and the definition of harassment set out in the Equality Act 2010, but noted that harassment may not be confined to only those with protected characteristics.

Best Practice Recommendation 2

Compliance with standards processes

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.

Extract page 41 of the CSPL report:

“Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.”

The Working Group has some concerns about including a provision in the Code requiring involvement in complaints investigations. If a requirement to comply with investigations is added to the Code, failing to do so would itself become a breach of the code and the Working Group question what positive difference this will make in practice due to the current lack of sanctions with “teeth” thus providing no deterrent and therefore no incentive to comply. The Working Group was concerned this may lead to a further increase in workload for the Monitoring Officer and then consequently the Committee without necessarily seeing an improvement in behaviours. The Working Group acknowledges that implementation of recommendations 10 and 16, by the introduction of legislation, thereby introducing a sanction to suspend a councillor without allowances, would provide a deterrent and make the inclusion of a compliance clause more likely to be successfully adhered to. This highlights the potential problem associated with local authorities introducing the best practice recommendations without government also introducing the recommendations through legislation as the CSPL report ought to be implemented in its entirety for it to have the desired impact.

Best Practice Recommendation 11

Chapter 5 - Town and Parish Councils

The CSPL report acknowledges that the vast majority of Parish Councillors serve for the benefit of their community, but that evidence suggests poor behaviour and serious misconduct by some Parish Councillors is creating significant disruption in some communities. This misconduct can create a disproportionate and increased workload for the relevant principal authority.

The oversight regime for parishes is light touch and they fall outside the remit of the Local Government Ombudsman. Under the Localism Act 2011, standards complaints fall to the principal authority. The CSPL report comments that principal authorities should be a point of support and advice on standards issues, and this contact is often between the Monitoring Officer and the Clerk. The CSPL had received evidence that some parishes have an antagonistic relationship with their principal authority and do not respect its formal remit on standards matters; there is a need to balance parish autonomy with accountability.

The report considers that oversight of parish councils must be proportionate in relation to their comparative budget and remit and that if the relationship is positive between the clerk and parish councillors there is often little need for support or additional accountability from the principal authority.

The CSPL found that 15% of parish councils experience serious behavioural issues such as bullying or disrespect towards fellow councillors or the clerk and in 5% of parishes there are such serious issues the parish is unable to carry out some/all of its functions.

The CSPL had received evidence which suggests difficulties persist in resolving complaints within a parish where clerks are not well supported by the parish council itself to formally make and resolve complaints or prevent recurring bad behaviour. The CSPL has therefore recommended that the parish council should take corporate responsibility when allegations of a councillor bullying an employee are received by the parish council, or the chairman, lodging a formal standards complaint, rather than the clerk having to do this themselves (Best Practice Recommendation 11).

The Working Group supports the premise that a parish council should take responsibility for reporting complaints relating to bullying of its employees to the principal authority. However, it is also of the view that there should be nothing to prevent a clerk lodging the complaint.

The Working Group does not feel the District Council is able to implement this recommendation and that this rests with the parish itself. The Working Group has asked the MO to contact the parishes for their views and also to contact the Nottinghamshire Association of Local Councils.

Best Practice Recommendation 12

Chapter 5 - Town and Parish Councils

The CSPL received evidence that dealing with standards issues in parish councils can be onerous for Monitoring Officers and that many issues are long standing disputes or tensions which are not easily remedied. It found that a small number of Monitoring Officers have decided not to provide advice or accept complaints due to insufficient resources. To this end, the CSPL recommended that Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parishes (Best Practice Recommendation 12).

The resources provided to this Council's Monitoring Officer are set out briefly above. The Group also discussed the recent support given to Selston Parish Council to assist in resolving tensions within the Parish whereby the Deputy Monitoring Officer attended Council meetings on a monthly basis for over 12 months and supported the Clerk as an example of a significant resource being provided but one which is not sustainable indefinitely. It is the Working Group's view that this Council provides a proportionate and reasonable level of support to its two parishes when needed and that in light of the Council's financial situation there is little opportunity for increasing this resource.

Implications

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

The best practice recommendations discussed in this report do not require legislation for the Council to implement them if they choose to do so.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	No direct financial implications arising from this report.
General Fund – Capital Programme	No direct financial implications arising from this report.
Housing Revenue Account – Revenue Budget	No direct financial implications arising from this report.
Housing Revenue Account – Capital Programme	No direct financial implications arising from this report.

Risk:

Risk	Mitigation
The Council has recognised the following Corporate Risk: <i>Members' Ethical Framework – Failure to demonstrate high standards of behaviour (CR003)</i>	Consideration of this report and the consequential work of the Committee and its working group demonstrates the Council's commitment to maintaining high levels of ethical behaviour and its commitment to reviewing and implementing best practice.

Human Resources:

There are no HR implications contained in the body of the report.

Equalities:

There are no equalities issues as a direct result of the recommendations in this report.

Other Implications:

None.

Report Author and Contact Officer

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