

REPORT REFERENCE NO.	SC/19/1
MEETING	STANDARDS COMMITTEE
DATE OF MEETING	8 APRIL 2019
SUBJECT OF REPORT	REVIEW OF CODE OF CONDUCT AND COMPLAINTS GUIDANCE
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<p><i>That the Committee considers the contents of this report with a view to:</i></p> <p><i>(a). recommending to the Authority that:</i></p> <p><i>(i) an indemnity be provided for Independent Person(s) and co-opted members (if appointed) of the Standards Committee to meet any reasonable costs incurred in securing appropriate legal advice and representation in respect of any civil or criminal proceedings that may arise from their involvement in Authority standards matters – this indemnity to include a requirement that any expenditure incurred by the Authority under the indemnity be refunded in the event of a conviction that was not subsequently overturned on appeal</i></p> <p><i>(ii) the Authority’s Code of Conduct be amended:</i></p> <p><i>A. to incorporate the following definition of harassment in paragraph 4.2(4):</i></p> <p><i>“harassment” may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:</i></p> <ul style="list-style-type: none"> <i>• spoken or written words or abuse;</i> <i>• offensive tweets, e-mails or comments on social networking sites;</i> <i>• images and graffiti;</i> <i>• physical gestures;</i> <i>• facial expressions; and</i> <i>• jokes</i>

	<p>B. to insert the following into the General Obligations paragraph of the Code (paragraph 4.1)(you must....)</p> <p>(6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness;</p> <p>C. to insert the following into paragraph 4.2 of the Code (you must not....)</p> <p>(10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.</p> <p>(iii) two Independent Persons be appointed, with the Clerk delegated authority to undertake the process for and determine the appointments and with the term of office of the Independent Persons to be limited to three years, renewable once;</p> <p>(iv) that the Independent Persons be remunerated on the basis £100 for each standards issue they are involved in;</p> <p>(v) that up to four co-opted members be appointed to serve on the Standards Committee, with the Clerk delegated authority to undertake an appropriate appointments process and confirm actual appointments</p> <p>(vi) that the co-opted members be remunerated on the basis of £500 per annum.</p> <p>(b). approving the following amendment to the Guidance on Making a Complaint:</p> <p>amend the “Other Assessment Criteria” sub-heading by insertion of the words (the Public Interest Test) and amending the introductory paragraph to read “If your complaint meets the above criteria, the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies”.</p> <p>(c). determining whether to adopt either Option A or Option B as set out in paragraph 4.15 and relating to dealing with complaints that have been subject to investigation i.e. whether or not to hold hearings;</p> <p>(d). that, subject to the decision at (c) above:</p> <p>(i) should Option A be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting; or</p>
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	<p>(ii) <i>should Option B be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting, initially with a Hearing Panel comprising three Members of the Standards Committee, selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee; with the Hearing Panel to be expanded subsequently to include two co-opted members, subject to the Authority approving the appointment of such members and to the appointments having been made.</i></p> <p>(e). <i>that the complaints handling arrangements be amended as follows:</i></p> <p>(i) <i>for those instances where a formal investigation report concludes that there is no breach of the code and/or no sanction is recommended, the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person; and</i></p> <p>(ii) <i>for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the 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 (or other action) applied;</i></p> <p>(f). <i>that the Clerk be authorised:</i></p> <p>(i) <i>to revise the current Guidance on Making a Complaint to produce two separate documents (a Guide to Making a Complaint; and Procedures to be Followed on Receipt of a Complaint), both to be published on the website; and</i></p> <p>(ii) <i>to amend the Procedures document to reflect the new arrangements as determined at (c) and (e) above.</i></p>
<p>EXECUTIVE SUMMARY</p>	<p>At its meeting on 30 April 2018, the Authority approved recommendations from the former Determinations and Dispensations Committee that saw, amongst other things, the change in name of that Committee to the Standards Committee along with revisions to the Authority's approved Code of Conduct and associated guidance and procedures for the making of and handling of complaints. These changes had been prompted by experience on operation of the new ethical standards regime as introduced by the Localism Act 2011.</p>

	<p>Since that time, there have been two further Standards Committee hearings and, in January of this year, the Committee on Standards in Public Life published the findings of its review into local government ethical standards.</p> <p>This contains a number of “best practice” recommendations along with other recommendations the majority of which would require legislative change.</p> <p>This report now considers the Authority’s current regime in light of experience over the last twelve months and the contents of the Committee on Standards in Public Life report and suggests areas where revisions might be beneficial.</p>
RESOURCE IMPLICATIONS	As indicated in the report.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	<p>A. Executive Summary, Recommendations and Best Practice Recommendations from the report by the Committee on Standards in Public Life on Local Government Ethical Standards.</p> <p>B. Amended Code of Conduct</p> <p>C. Amended Guidance on Making a Complaint</p>
LIST OF BACKGROUND PAPERS	<p>Local Government Act 1972</p> <p>Local Government & Housing Act 1989</p> <p>Local Government Act 2000</p> <p>The Local Authorities (Members’ Allowances)(England) Regulations 2003</p> <p>The Fire & Rescue Services Act 2004</p> <p>The Localism Act 2011</p> <p>The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012</p>

1. INTRODUCTION

- 1.1. At its meeting on 30 April 2018, the Authority approved recommendations from the former Determinations and Dispensations Committee that saw, amongst other things, the change in name of that Committee to the Standards Committee along with revisions to the Authority's approved Code of Conduct and associated guidance and procedures for the making of and handling of complaints. These changes had been prompted by experience on operation of the new ethical standards regime as introduced by the Localism Act 2011.
- 1.2. Since that time, there have been two further Standards Committee hearings and, in January of this year, the Committee on Standards in Public Life published the findings of its review into local government ethical standards. This contains a number of "best practice" recommendations along with other recommendations the majority of which would require legislative change.
- 1.3. This report now considers the Authority's current regime in light of experience over the last twelve months and the contents of the Committee on Standards in Public Life report and suggests areas where revisions might be beneficial.

2. LEGISLATIVE BACKGROUND

- 2.1. The Localism Act 2011 introduced a new ethical standards regime for all local authorities. The former regime under the Local Government Act 2000 provided, amongst other things, for a Model Code of Conduct which applied across all authorities together with an independent external body – the Standards Board for England – which administered arrangements for dealing with complaints that Members had failed to follow the Code of Conduct. The Standards Board for England was able, in cases where breaches of the Model Code were established, to impose a range of sanctions up to and including suspensions.
- 2.2. The Localism Act 2011 ("the Act") saw the old regime completely abolished, with local authorities placed under a duty to promote and maintain high standards of conduct by Members and co-opted members of the authority and so doing to:
 - adopt a code dealing with the conduct expected of authority Members and co-opted members when acting in that capacity (Section 27(2) of the Act);
 - ensure that the code so adopted is, when viewed as a whole, consistent with the seven "Nolan" principles of public life (Section 28(1));
 - include provision in the code of registering and disclosing pecuniary and other interests (Section 28(2));
 - have in place arrangements to investigate and make decisions on allegations of breaches of the code of conduct adopted (Section 28(6));
 - appoint one or more "independent persons" whose views:
 - must be taken into account by the authority before it makes a decision on an allegation which has been investigated (Section 28(7)(a)); and
 - may be sought by the authority in other circumstances (to be determined by the authority in question) and by a Member or co-opted member subject to an allegation (Section 28(7)(b));

- maintain and publish on its website a register detailing for each Member and co-opted member (including the spouse or civil partner of the Member or co-opted Member or anyone with whom the Member or co-opted member is living either as husband or wife or as if they were civil partners) a register of disclosable pecuniary interests and any other interests as determined by the authority (Sections 29 and 30).

- 2.3. Section 31 of the Act requires all Members and co-opted members with a disclosable pecuniary interest to declare this interest at meetings when matters where the interest exists are being discussed and not to participate in the debate or vote on such matters. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, made under Section 30 of the Act, identifies disclosable pecuniary interests that must be both registered and declared at meetings. Section 34 of the Act makes failure to register and/or declare a disclosable pecuniary interest an offence which may only be instituted by the Director of Public Prosecutions and which is punishable, on summary conviction, of a fine not exceeding level 5 on the standard scale (currently £5,000).
- 2.4. The Act removed the ability for Members to be suspended or disqualified for proven breaches of the code of conduct. Consequently, sanctions currently available to local authorities (including this Authority) include public censure, apology, training, removal from committee and/or outside body responsibilities and withdrawal of access to facilities and resources.
- 2.5. Other than the requirements of Section 28, there are no prescriptions in the Act either in relation to the contents of the code of conduct to be adopted by an authority or the nature of arrangements for dealing with allegations of non-compliance with the code.

3. LOCAL GOVERNMENT ETHICAL STANDARDS – A REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 3.1. At its meeting on 30 April 2018, the Authority approved a response to the review being undertaken by the Committee on Standards in Public Life on local government ethical standards. The review had been prompted not by any specific allegations of misconduct but rather to assure the Committee that the current framework introduced by the Localism Act was conducive to promoting and maintaining the standards expected by the public.
- 3.1. The findings of the review were published by the Committee in January 2019. The full report of the Committee on Standards in Public Life can be accessed by following the link below:
- <https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- The report contains some 26 recommendations for amendments to the current legislative regime, the majority of which would require statutory change. The report also identifies some 15 examples of best practice which the Committee expects should be implemented by local authorities.
- 3.2. Appendix A to this report set out the Executive Summary of the Committee's review report, together with the 26 recommendations and 15 best practice examples, annotated where relevant with considerations for this Authority.
- 3.3. Specifically, the Committee is asked to consider whether it would wish to recommend to the Authority:

- (a). that, in line with Recommendation 11, an indemnity be provided for Independent Person(s) and co-opted members (if appointed) of the Standards Committee to meet any reasonable costs incurred in securing appropriate legal advice and representation in respect of any civil or criminal proceedings that may arise from their involvement in Authority standards matters. This indemnity would include a requirement that any expenditure incurred by the Authority under the indemnity be refunded in the event of a conviction that was not subsequently overturned on appeal.
- (b). that, in line with Best Practice recommendations 1 and 2, the Authority's Code of Conduct be amended as follows:
 - (i) the following definition of harassment be incorporated into paragraph 4.2(4):

"harassment" may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:

 - spoken or written words or abuse;
 - offensive tweets, e-mails or comments on social networking sites;
 - images and graffiti;
 - physical gestures;
 - facial expressions; and
 - jokes
 - (ii) the following be inserted into the General Obligation paragraph of the Code (paragraph 4.1) (you must...):

(6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness.
 - (iii) the following be inserted into paragraph 4.2 of the Code (you must not...):

(10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.
- (c). that, in line with Best Practice recommendation 7, two Independent Persons should be appointed and the Clerk delegated authority to undertake the process for and make the appointments, with the term of office for the Independent Persons to be limited to three years, renewable once;
- (d). that Independent Persons be remunerated on the basis of £100 for each standards issue that they are involved in, in recognition of the associated time commitment.

3.4. In recognition of Best Practice recommendation 6, the Committee is also recommended to approve that the Guidance on Making a Complaint be amended to insert the words (the Public Interest Test) after the "Other Assessment Criteria" sub-heading and amending the introductory paragraph to read:

"If your complaint meets the above criteria, it may be that the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies:"

- 3.5. For ease of reference, copies of the Code of Conduct and Guidance on Making a Complaint, amended in accordance with (b) and (c) above, are provided at Appendices B and C respectively to this report.

4. LOCAL REVIEW OF CURRENT ARRANGEMENTS

- 4.1. In compliance with the requirements of the Act, the Authority initially adopted a Code of Conduct and arrangements for dealing with allegations in 2012. These, in the main, retained the contents of the previous Model Code and mirrored arrangements in place for dealing with allegations under the old regime.
- 4.2. The Authority has not dealt with many complaints relating to failure to follow the Code of Conduct but in light of experience in those complaints that had been dealt with, both the Code and arrangements were reviewed and revised in 2018. Since that time, a further review has been undertaken in light of the experience in dealing with other complaints since that time.
- 4.3. In undertaking this review, the opportunity has been taken to examine the arrangements currently in place for the constituent authorities and for Cornwall Council (which has previously provided assistance for this Authority on standards issues). As previously indicated, other than a requirement to have in place “arrangements” to deal with alleged code of conduct breaches, there are no statutory prescriptions as to what form these arrangements should take. Consequently, there are a number of local variations to the arrangements in place for constituent authorities and Cornwall Council. This aspect of the review has focussed on:
- whether or not the arrangements feature hearings to determine the outcome of complaints that have been investigated; and
 - whether the arrangements provide for co-opted members of Standards Committees.
- 4.4. The outcome of this review is summarised in the table below:

Authority	Total size of Standards Committee	No. of Independent Members	Holds hearings (Yes or No)
Devon County Council	12	5	N
Somerset County Council	9	4	Y
Plymouth City Council	6	0	N
Torbay Council	6	0	Y
Cornwall Council	18	4	N

- 4.5. Other issues of relevance here are:

Cornwall Council

Does not at present hold hearings and only refers those issues to its Standards Committee where it is felt that public censure is necessary, to confirm this decision.

Devon County Council

Devon County Council's procedures provide for the full Standards Committee to consider the findings of investigations together with the views of the Independent Person on those findings for determination and imposition of sanction(s) as appropriate. Additionally, at such full Standards Committee hearings, the Devon County Council procedures allow the co-opted members to give an "indicative vote" on whether or not a breach has occurred and what the sanction for that breach should be.

Somerset County Council

While Somerset County Council's procedures provide for hearings to be held, the Chair of the Standards Committee, in consultation with the Monitoring Officer, has delegated authority to determine the scope and content of the hearing panel process following a "case management" meeting involving the Chair of the Standards Committee, the Subject Member, the Monitoring Officer, the County Solicitor and a co-opted member of the Committee. The format of the hearing may be a full hearing with witnesses etc. or whether the matter could be dealt with by written representations.

Plymouth City Council

Rather than having a Standards Committee as such, Plymouth City Council has a Standards Advisory Panel whose views are sought by the Monitoring Officer on sanctions to apply following an investigation when a breach of the code has been found.

Torbay Council

Hearings following investigations are conducted not by the full Standards Committee but by a Hearings Panel of three Members selected from the full Standards Committee.

- 4.6. This Committee has delegated authority to oversee the arrangements for assessment, investigation and determination (as appropriate) of allegations of any breach of the Code of Conduct. Given this and in light of the above review findings, the Committee is invited to consider and determine the following.

Co-opted Members

- 4.7. Devon, Somerset and Cornwall each feature co-opted members as part of their standards arrangements. Unlike the Independent Person, whose role is defined and required by the Localism Act, the Act does not require any authority to feature, as part of its arrangements, co-opted members.
- 4.8. That having been said, the presence of co-opted members who are independent from the Authority would convey a strong public message that the Authority does take seriously its statutory duty to promote and maintain high standards of ethical conduct by its Members. The Local Government Act 1972 empowers this Authority to appoint, should it wish, co-opted members to serve on its Standards Committee. While the Local Government and Housing Act 1989 prohibits co-opted members from exercising an actual vote, the Authority could adopt a convention similar to that of Devon County Council of giving co-opted members an "indicative vote" on issues (albeit that this could not be binding.)

- 4.9. Co-opted Members views could be sought generally on how best the Authority discharges its statutory duties (e.g. future reviews of the Code of Conduct and arrangements for dealing with breaches) and could also be sought in relation to code breaches that have been subject to investigation when reaching a conclusion on whether or not there has been a breach and if so what sanction should be imposed.
- 4.10. The Committee is invited to recommend to the Authority that up to four co-opted members should be appointed to serve on the Standards Committee, with the Clerk delegated authority undertake an appropriate appointments process and confirm the actual appointments. It would also be permissible to pay co-opted members a small allowance to recognise the time commitment involved. It is suggested that this be fixed initially at £500 per annum and that, subject to approval by the Authority, the Clerk be authorised to amend the Authority's Approved Scheme of Members Allowances to reflect this.

Whether or not to hold hearings

- 4.11. Neither Devon nor Plymouth holds hearings to determine the outcomes of any alleged code breaches which have been subject to investigation.
- 4.12. While this might seem contrary to natural justice principles, the following should also be recognised:
- that arrangements to deal with such issues under the Localism Act should be proportionate, given that sanctions such as suspension are currently not available;
 - that Subject Members have the opportunity to comment on investigation reports at the draft stage and have these comments reflected in the final report to be considered by the Standards Committee;
 - that there is a danger of hearings can become overly adversarial rather than seeking to determine, on the balance of probability, whether evidence presented indicates a code breach and if so what sanction(s) should apply.
- 4.13. It is also worth noting that the Devon County Council procedures have been tested at judicial review and found to be fully compliant with the requirements of the Localism Act.
- 4.14. Alternatively, if the Committee is minded to retain a hearings process for to determine those cases where an investigation indicates there may have been a code breach, then it is suggested that hearings are not conducted by the full Standards Committee but rather by a Hearings Panel comprising three Members and two co-opted members selected (subject to the Authority approving the appointment of such members) by the Monitoring Officer (in consultation with the Committee Chair) from the full Standards Committee. This would provide for a timely, proportionate process.
- 4.15. The Committee is invited to consider and determine one of the following options:
- Option A:** that instances where alleged code breaches have been the subject of investigation be determined by the full Standards Committee, with neither party (i.e. complainant and Subject Member) having a right of attendance; or
- Option B:** that instances where alleged code breaches have been the subject of an investigation be determined by a Hearings Panel comprising three Members and two co-opted members (subject to the Authority approving the appointment of such members) selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee.

4.16. It is recommended that:

- (a). should Option A be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting; or
- (b). should Option B be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting, initially with a Hearing Panel comprising three Members of the Standards Committee, selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee; with the Hearing Panel to be expanded subsequently to include two co-opted members, subject to the Authority approving the appointment of such members and to the appointments having been made.

4.17. It is also recommended that, irrespective of which Option at 4.15 above is determined, the complaints handling arrangements be amended as follows:

- (a). for those instances where a formal investigation report concludes that there is no breach of the code and/or no sanction is recommended, the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person;
- (b). for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the 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 (or other action) applied;
- (c). that the Clerk be authorised:
 - (i) to revise the current Guidance on Making a Complaint to produce two separate documents (a Guide to Making a Complaint; and Procedures to be Followed on Receipt of a Complaint), both to be published on the website; and
 - (ii) to amend the Procedures document to reflect the new arrangements as determined at paragraphs 4.15 and 4.17 above.

5. CONCLUSION

5.1. The Committee is invited to consider the contents of this report and determine:

- what, if any changes, it would wish to recommend to the Authority to the Code of Members' Conduct; and
- what, if any, changes it would wish to make in relation to the required arrangements for dealing with allegations of breaches of the approved Code.

MIKE PEARSON
Director of Corporate Services