

STANDARDS COMMITTEE

Wednesday, 31st July, 2019

10.00 am

Wantsum Room - Sessions House





AGENDA

STANDARDS COMMITTEE

Wednesday, 31st July, 2019, at 10.00 am
Wantsum Room - Sessions House

Ask for: **Denise Fitch**
Telephone: **03000 416090**

Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room

Membership

Mr J A Kite, MBE (Chairman), Mr R H Bird (Vice-Chairman), Mrs A D Allen, MBE, Mr R C Love, OBE, Mr G Lymer, Mr J P McInroy and Mr C Simkins

Please note: that the unrestricted part of this meeting may be filmed by any member of the public or press present.

By entering into this room you are consenting to being filmed. If you do not wish to have your image captured please let the Clerk know immediately.

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Substitutes
2. Declarations of Interest
3. Minutes of the meeting held on 30 October 2018 (Pages 5 - 6)
4. Monitoring Officer's Update (Pages 7 - 18)

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Benjamin Watts
General Counsel
03000 416814

Tuesday, 23 July 2019

KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held in the Wantsum Room - Sessions House on Tuesday, 30 October 2018.

PRESENT: Mr R H Bird, Mr J A Kite, MBE, Mr G Lymer, Mr J P McInroy and Mr C Simkins

IN ATTENDANCE: Mr B Watts (General Counsel), Ms D Fitch (Democratic Services Manager (Council)) and Mr T Godfrey (Scrutiny Research Officer)

UNRESTRICTED ITEMS

1. Election of Chairman

(Item 2)

(1) Mr McInroy proposed and Mr Simkins seconded that Mr Kite be elected Chairman of the Committee.

(2) RESOLVED that Mr Kite be elected Chairman of the Standards Committee.

2. Election of Vice-Chairman

(Item 3)

(1) Mr Lymer proposed and Mr McInroy seconded that Mr Bird be elected Vice-Chairman of the Committee.

(2) RESOLVED that Mr Bird be elected Vice-Chairman of the Standards Committee.

3. Declarations of Interest

(Item 4)

There were no declarations of interest.

4. Minutes of the meeting held on 29 July 2015

(Item 5)

The minutes of the meeting held on 29 July 2015 were taken as a correct record and signed by the Chairman.

5. Monitoring Officer's update

(Item 6)

(1) Mr Watts introduced his update and reminded Members that although there had not been a meeting of the Committee since the 2017 Election, business relating to the ethical framework and other Member issues had been considered by the Governance and Audit Committee and the Scrutiny Committee, as appropriate,

during this period. It was the intention to ensure that the Standards Committee met on a regular basis.

(2) Mr Watts referred to Appendix D which listed the complaints against Members and the outcomes. There had been an increase in the number of complaints made against Members during the current year compared to previous years and an increasing number of these related to the use of social media. To assist in addressing this issue, Member social media training had been offered to all Members. He confirmed that there had not been any complaints against Members in the past 2 years which had resulted in an investigation and referral to a Hearing Panel. He answered questions of clarification on the complaints process. Members considered the format and frequency of this information.

(3) Mr Godfrey outlined the context and outcome of the recently published Independent Inquiry Report by Dame Laura Cox DBE (The Cox Report) - *The Bullying and Harassment of House of Commons Staff*. Members agreed that they would find it helpful for Members of the Committee to be kept aware of this and similar reports and for this information to be circulated outside of the meeting.

(4) The Committee confirmed that they did not wish to receive updates on Code of Conduct and other related training for Members as this was now incorporated within the recently approved Member Development Plan and would therefore be monitored as part of that Plan.

(5) RESOLVED that

- (a) the report of the Monitoring Officer be noted.
- (b) the Committee receive an unrestricted update on complaints against Members at their meetings and this be in the form of an anonymised table referring to categories of complaint.
- (c) meetings of this Committee be held twice a year, in late May/early June and December/January.
- (d) the Standards Committee–Sub Committee (Hearing Panel) be appointed with the three voting Members being Mrs Allen, Mr Bird and Mr Kite.

By: Benjamin Watts - Monitoring Officer
To: Standards Committee – 31 July 2019
Subject: Monitoring Officer's Update
Classification: Unrestricted

Summary: This report sets out an update from the Monitoring Officer to the Standards Committee.

1 Introduction

- (1) The County Council on 19 July 2012 adopted a new standards regime, as required by the Localism Act 2011 and established a Standards Committee with the Terms of Reference set out in the Constitution.

2 Kent Code of Conduct for Members

- (1) The Kent Code of Conduct was adopted by the County Council on 12 December 2013 following consideration and recommendation by the Standards Committee.
- (2) Update on the Registration of Members Interests and declaring gifts and hospitality
- (3) I can confirm that all Members elected to the County Council since the last meeting of the Standards Committee, in accordance with the Code of Conduct (paragraph 4 (1) of the Constitution in effect at the time), signed Disclosable Pecuniary Interest (DPI) forms within 28 days of becoming a Member of KCC. These forms should be updated by Members within 28 days of a change to their DPI. All DPI forms are uploaded onto each Member's KCC webpage and are available for public inspection.
- (4) Other Significant Interests (OSI) declared by Members at meetings are recorded in the minutes for that meeting.

Code of Conduct Training for County Members

- (5) As part of the post-election induction for Members arrangements were made for both newly elected and re-elected Members to either attend a training session on the Members Code of Conduct or a one to one session with the Monitoring Officer/Deputy Monitoring Officer or Head of Democratic Services. There is a process in place to ensure that following any by-election Code of Conduct training is provided. Training was given to Mr Burden and Mr Clinch following their election at by-elections in May 2019.

Operation of Code of Conduct

- (6) A function of this Committee is to receive, monitor and assess the operation and effectiveness of the arrangements for dealing with Member Code of Conduct Complaints.
- (7) The Localism Act 2011 resulted in changes to the process for dealing with Code of Conduct complaints made against Elected Members.
- (8) Attached as Appendix A is an overview of the Complaints received since May 2017 and the outcome or progress to date.

Registration of Gifts and Hospitality

- (9) As part of the Code of Conduct Training Elected Members are made aware of the requirement under the Code to notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value, or annual cumulative value of £100 or more received and accepted in their role as an Elected Member. This notification must be made within 28 days of receipt of the gift or hospitality.
- (10) The notification is made on a standard form which is then published on each individual Member's KCC webpage and available for public inspection. Currently 15 Members have submitted such a notification. I have no reason to believe that there are any other notifications required which have not been submitted, but of course the onus is on Elected Members to comply with this requirement.

3 Sub-Committee - Hearing Panel

- (1) As set out in the Terms of Reference for the Standards Committee, part of the remit of the Committee is to appoint a sub-committee to deal with Code of Conduct complaints, following investigation by the Council's Monitoring Officer. This sub-committee is also referred to as a "Hearing Panel".
- (2) The Membership of the Standards Sub-Committee was agreed at the meeting of 30 October 2018 as being Mrs Ann Allen, Mr Rob Bird, and Mr Jeremy Kite.

4 Recent Developments

- (1) Members of the Standards Committee received an overview of the Cox report into 'The Bullying and Harassment of House of Commons Staff' at the previous meeting. Although it had a narrow formal remit, this report holds lessons for any organisation run by and/or supporting elected members at every level of the British state. In particular, the presence of a small but persistent minority of offenders who are not being dealt with undermining the good work and efforts of the vast majority is echoed in the CSPL report. The specific criticism of a culture that is fixated on ensuring the business of the organisation continues and finds workarounds and temporary fixes to cases of bullying and sexual harassment at all levels (elected member: officer and officer: officer) rather than dealing with the incidents is one that all similar organisations need to reflect on. The conclusions of the Cox

report put the emphasis heavily on culture and the aggregation of individual behaviours over formal procedures.

- (2) In January 2019, two reports of relevance were published. The first was the into 'Local Authority Governance' by the National Audit Office. The focus of the report was on financial management rather than standards and codes of conduct. However, a clear link is drawn between a local authority exhibiting good governance and its ability to avoid the problems reported at Northamptonshire County Council.
- (3) The second report published in January 2019 was 'Local Government Ethical Standards' by the Committee on Standards in Public Life (CSPL).

5 'Local Government Ethical Standards' by the Committee on Standards in Public Life

- (1) This report produced a longer and more detailed set of recommendations than the Cox Report. These were separated out into:
 - a. 26 recommendations to government, the Local Government Association, parish councils and political parties as to changes that need to be made to either legislation or guidance; and
 - b. 15 best practice recommendations.
- (2) Although the CSPL is only an advisory committee, its status and the rising levels of interest in this area means that at least some, if not all, of the legislative and regulatory changes are likely to be brought in, though not necessarily at the same time or exactly as set out in the recommendations. Some would only require secondary legislation and so be relatively easy to introduce. It would be for KCC to determine whether it supported the proposed changes and whether to make any changes which would bring KCC practices as close to them as possible pending changes to legislation/guidance.
- (3) 13 of the 15 best practice recommendations are relevant to KCC and any changes needed to introduce them at KCC where they did not already apply would be possible under the current system. Where KCC does not adhere to the precise wording, this does not necessarily mean that KCC is not achieving the aim intended by the recommendation through a different mechanism/approach. Again, with the status of the CSPL, there is likely to be informal pressure within the local government sector to explain any gaps between these best practice recommendations and actual practice.
- (4) A summary of the CSPL report along with the two sets of recommendations is set out in Appendix B.

6 Recommendations:

- (a) To note and comment on the actions, as set out in Appendix A, taken by the Monitoring Officer in dealing with complaints;
- (b) To approve the appointment of a sub-committee to deal with Code of Conduct complaints, following investigation by the Monitoring Officer;
- (c) To make any recommendations relevant to the Committee's role and function in promoting ethical conduct by Elected Members, including any in response to the report by the Committee on Standards in Public Life.

Background Documents

Local Government Ethical Standards by the Committee on Standards in Public Life, January 2019. <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

KCC Code of Conduct for Members and procedures for complaints. <https://www.kent.gov.uk/about-the-council/complaints-and-compliments#tab-10>

Northamptonshire County Council Best Value Inspection January – March 2018 by Max Caller CBE, March 2018. <https://www.gov.uk/government/publications/northamptonshire-county-council-best-value-inspection>

Local Authority Governance by the National Audit Office, January 2019. <https://www.nao.org.uk/report/local-authority-governance-2/>

The Bullying and Harassment of House of Commons Staff. Independent Inquiry Report by Dame Laura Cox DBE, October 2018. <https://www.parliament.uk/documents/dame-laura-cox-independent-inquiry-report.pdf>

Officer: Tristan Godfrey
Tel: 03000 411704
E-mail: tristan.godfrey@kent.gov.uk

| Date of Complaint | Description | Advice of Independent Person | Outcome |
|-------------------|---|--|--|
| 04.07.19 | Complaint that a Member had not responded to local issues raised by a member of the public. | | Awaiting outcome |
| 24.05.19 | Complaint that a Member had been abusive and threatening to a member of the public | Sought 28.06.19 and offered same day. The complaint as it stands is not enough to show a breach of the code but advised the Member be offered words of advice. | General Counsel spoke to the Member concerned. Investigating one further aspect of the complaint before reaching a final decision. |
| 29.04.19 | Complaint about a Member's use of social media following posts that the complainant perceived as divisive and prejudicial | Sought 28.06.19 and offered the same day. The complaint as it stands is not enough to show a breach of the code but advised the Member be offered words of advice. | Draft response being approved. |
| 25.02.19 | Informal complaint - Complaint that a Member had been threatening and rude to members of the public | | 20.03.19 - Response sent to complainant that there has been no breach of the Code of Conduct as Member was not acting in their capacity as an elected Member |
| 25.02.19 | Complaint that a Member had been threatening and rude to members of the public | | 20.03.19 - Response sent to complainant to confirm there has been no breach of the code of Conduct as Member was not acting in their capacity as an elected Member |

| Date of Complaint | Description | Advice of Independent Person | Outcome |
|-------------------|--|--|--|
| 18.03.19 | Complaint about a Members' comments on social media and the Member's conduct following these posts | | General Counsel spoke to the Member concerned and confirmed no breach of the Code of Conduct as the posts were outside the scope of the Code and the more recent conduct did not breach the Code. Draft response being approved. |
| 12.03.19 | Complaint about a Member's behaviour at a Council planning meeting and that they had falsely reported a Parish Council's view on a planning application | Sought 09.04.19 and given 15.04.19 - These are serious complaints and should be investigated fully if there is evidence to support them, but such evidence is lacking in the complaint submitted. IP advice is to inform Complainant that complaints must be rejected but if further evidence should be submitted, IP would consider the complaint again | Sent IP advice to Ben Watts who would like to speak to the IP about the complaint. Meeting set for 28.06.19. Agreed that there was no breach of the Code of Conduct but that words of advice should be given to the Member concerned. |
| 27.11.18 | Complaint that a Member had not correctly declared interests and participated in discussions at Council meetings which related to a matter they had an interest in. Also, that the Member concerned was using social media to promote personal interests including their business. | Sought 22.01.19 and given 25.01.19 - Subject to confirmation that the Member concerned had registered any interests, the Member has not breached the Code of Conduct. | 19.03.19 - Wrote to complainant to confirm that there has been no breach of the code of conduct, but we were still investigating the matter relating to the declarations of interests. 09.07.19 – Confirmed the declarations of interest are in order and draft response being approved. |

Committee on Standards in Public Life (Report: January 2019) – *Local Government Ethical Standards* - Summary

1. Introduction

- (a) The role of the Committee of Standards in Public Life (CSPL) is to advise the Prime Minister on ethical standards across the whole of public life. As its cornerstone, it promotes the 7 principles of public life.
- (b) The Localism Act 2011 introduced substantial changes to the laws and processes around how the conduct of Councillors was to be handled. More emphasis was put on individual local councils to adopt their own local code, with the national framework and powers to suspend or disqualify a Councillor abolished.
- (c) The CSPL undertook to conduct a review once the Localism Act had bedded in and did so during 2018. Overall the findings were that standards were high but marred by a small handful of serious and/or persistent offenders. A lot of the evidence gathered by the review pointed towards improvements which could be made in the current guidance and legislation. There was little appetite to return to a centralised, national, system but the CSPL does push for more consistency and powers to deal with the more serious cases. The headline recommendation would give local authorities the power to suspend, without allowances, Councillors for up to six months, but this needs to be seen in the context of the whole package of reforms.
- (d) The report contains a set of 26 Recommendations of mainly legislative and regulatory changes that the CSPL feels should be made. As an advisory Committee, it would be for Government or the relevant body/organisation to agree and bring in the changes. It also has a list of 15 best practices which can be done under current legislation. These are set out below.

2. CSPL: Recommendations and Best Practice

- (a) The CSPL recognises the importance of culture but also believes that the right legislation and regulations can support the development of the right kind of culture and enable practical measures to be taken.
- (b) This balance between rules and culture is also shown in having two distinct sets of recommendations.
- (c) The 26 recommendations for regulatory and legislative changes are set out in the following table:

| No. | Recommendation | Responsible Body |
|------------|---|-------------------------------------|
| 1. | The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government. | <i>Local Government Association</i> |

| No. | Recommendation | Responsible Body |
|------------|--|-------------------------|
| 2. | The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests. | <i>Government.</i> |
| 3. | Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches. | <i>Government.</i> |
| 4. | Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority. | <i>Government.</i> |
| 5. | The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy. | <i>Government.</i> |
| 6. | Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct. | <i>Government.</i> |
| 7. | Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter". | <i>Government.</i> |
| 8. | The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once. | <i>Government.</i> |
| 9. | The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes. | <i>Government.</i> |
| 10. | A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that | <i>Government.</i> |

| No. | Recommendation | Responsible Body |
|------------|---|--|
| | suspending the councillor would be a proportionate sanction. | |
| 11. | Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed. | <i>Government / all local authorities.</i> |
| 12. | Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions. | <i>Government.</i> |
| 13. | Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct. | <i>Government.</i> |
| 14. | The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority. | <i>Government.</i> |
| 15. | The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied. | <i>Government.</i> |
| 16. | Local authorities should be given the power to suspend councillors, without allowances, for up to six months. | <i>Government.</i> |
| 17. | The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary. | <i>Government.</i> |
| 18. | The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished. | <i>Government.</i> |
| 19. | Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks. | <i>Parish councils.</i> |
| 20. | Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. | <i>Government.</i> |
| 21. | Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority. | <i>Government.</i> |
| 22. | The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal. | <i>Government.</i> |

| No. | Recommendation | Responsible Body |
|------------|---|---|
| 23. | The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website. | <i>Government.</i> |
| 24. | Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998. | <i>Government.</i> |
| 25. | Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules. | <i>Political Groups and national political parties.</i> |
| 26. | Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards. | <i>Local Government Association.</i> |

(d) The 15 best practice recommendations are set out in the following table:

| No. | CSPL Best Practice |
|------------|---|
| 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. |
| 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. |
| 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. |
| 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. |
| 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. |
| 6. | Councils should publish a clear and straightforward public interest test against which allegations are filtered. |
| 7. | Local authorities should have access to at least two Independent Persons. |
| 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. |
| 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 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. |

| No. | CSPL Best Practice |
|------------|--|
| 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. |
| 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. |
| 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. |
| 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. |
| 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. |
| 15. | Senior officers should meet regularly with political group leaders or group whips to discuss standards issues. |

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