

Joint Audit and Governance Committee



Report of the Monitoring Officer

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Annual Report on the Councillors' Code of Conduct for 2018-19 and 2019-20

Recommendation

To note the annual report on the councillors' code of conduct for the 2018-19 and 2019/20 municipal years.

Purpose of Report

1. The purpose of this report is to update the Joint Audit and Governance Committee on code of conduct work during 2018-19 and 2019-20, including the number of district and parish code of conduct complaints processed. The report also includes information on significant potential changes to the code of conduct regime.

Strategic Objectives

2. High standards of conduct underpin all of the councils' work and the achievement of both councils' strategic objectives.

Background

3. District councils have direct responsibility for standards in public life, not only for our district councillors, but also for all parish councillors in our districts. In 2012, the Oxfordshire Secretaries and Monitoring Officers' Group recommended a code of conduct which has been adopted by all of the district councils, the county council and almost all of the parish councils across both districts. At the current time, no changes are proposed but potential national changes are explained in paragraph 16 of the report.
4. The code of conduct is based on the seven principles of public life, or "Nolan" principles, which are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

5. Although the councils have the responsibility for maintaining these standards, we are currently very limited in terms of sanctions, particularly when it comes to parish councillors. This, together with the fact that a number of parish complaints are between councillors and/or political activists, and the need to balance the public interest with the public purse, means that we often take a pro-active and/or alternative way to resolve disputes. This includes:
 - giving advice to councillors/clerks which enables them to resolve their own difficulties or to use an alternative form of dispute resolution
 - requiring evidence of an attempt to resolve the matter informally or a reasonable explanation of why this has not been explored before a formal complaint is progressed
 - imposing a “high bar” when it comes to disputes between councillors and/or political activists
 - being clear when a matter is not a code of conduct matter and referring complainants to the relevant organisation such as the Oxfordshire Association of Local Councils
 - offering alternative forms of dealing with conflict, such as mediation, police involvement or training (after we have made an assessment of the circumstances)
6. On most occasions alternative interventions or advice are offered before a formal complaint is received, on others we use the alternatives as a form of “local resolution”.
7. The procedures were last ratified by the Joint Audit and Governance Committee in March 2016 and are operating well. No changes are proposed at the present time but a further report will be brought to the committee once the way forward on the potential national changes is known.
8. Much of the code of conduct work (apart from registers of interests) is done informally and consists of giving advice over the telephone or by email. We do not routinely record this work but it is reasonably significant and is often valuable in avoiding more substantial problems later on.
9. Each council retains the services of two “independent persons” to assist in maintaining and promoting high ethical standards in the district councils and the parish councils in South and Vale. The role of “independent person” was created by the Localism Act 2011. The independent persons both provide advice to the subject councillor and guidance to the monitoring officer. The terms of office of the current independent persons are due to expire on 31 October 2020 but the Councils will be asked at their October meetings to authorise the Monitoring Officer to extend their terms of office until May 2021 pending the receipt of further information on potential changes to the standards framework.
10. We do record all complaints which come in to us formally (we insist that all are made on a complaint form that provides all the necessary information, unless there is a proper reason why this cannot be done).
11. A short summary of the formal complaints dealt with in the 2018-19 and 2019-20 municipal years is included in the appendix to this report. A report was prepared for the March meeting of the committee but as that was cancelled and the volume of committee business prevented consideration of the report at the July meeting, the opportunity has been taken to cover both 2018-19 and 2019-20 in this report.

12. There was a pattern of disagreements between parish councillors in the lead up to the parish council elections. Since the elections, the councils have held several training sessions with parish and town councils on the code of conduct.

Register of Interests

13. All councillors and co-optees at both district and parish level, are required to submit a register of their interests to the Monitoring Officer which is publicly available. All of these registers are signed off and published by the district council. Councillors and co-optees are also required to keep their registers up to date. The democratic services team requests these documents from parish clerks (on behalf of their councillors) as well as from district councillors after election/co-option and sends reminders bi-annually for amendments to be registered.
14. There is an option for councillors/co-optees to request that their addresses and similar identifiers are removed from the public register if this is “sensitive information”. Over the past year the Monitoring Officer has continued to receive a number of these requests. The Monitoring Officer has granted all requests in order to reduce potential risks to both the councils and to individual councillors. With current trends in making contact (via email, messaging and social media), home addresses are becoming less relevant as a means of the public contacting a councillor. The original forms have the home addresses, but are not put in the public domain.

Potential changes in legislation

15. On 30 January 2019, the Committee on Standards in Public Life published its review report on local government ethical standards. The full report is available at this link:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF
16. The report recommends the following changes to the code of conduct regime:
- 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
 - 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
 - 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
 - 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
 - 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

- 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
- 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”
- The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once
- 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
- 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 suspending the councillor would be a proportionate sanction
- 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
- 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
- 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
- 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 and the Ombudsman’s decision should be binding on the local authority
- 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
- Local authorities should be given the power to suspend councillors, without allowances, for up to six months

- The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions and these powers should be put beyond doubt in legislation if necessary
 - The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished
 - Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks
 - 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
 - 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
 - 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
 - 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
 - Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998
 - Councillors should be required to attend formal induction training by their political groups and national parties should add such a requirement to their model group rules
 - Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards
17. It is not yet clear whether the government will accept all of these recommendations and, if so, what will be the timetable for implementation. However, the Local Government Association (LGA) is working on a revised model code of conduct based on the recommendations set out in paragraph 16 above (insofar as the recommendations can be incorporated without legislation) and this is expected to be launched in October 2020. A further report will be brought to the committee and the Councils when any changes to the current arrangements are proposed.

Issues

18. As noted in paragraph 16 of this report, legislative changes may 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. It would be helpful to know what new legislative requirements will be introduced on publishing individual code of conduct complaints before making any changes to current procedures. In the meantime, the Monitoring Officer continues to consider and respond to any public or media requests for information on individual

complaints on their merits and in accordance with freedom of information and data protection legislation.

Financial Implications

19. Code of conduct work and the administration of code of conduct complaints is met from existing budgets. The Independent Persons undertake their role voluntarily although occasional expenses and training costs are met. No external investigators were engaged during 2018-19 or 2019-20. The potential costs of the proposed changes to the code of conduct regime will be assessed when the way forward is clearer.

Legal Implications

20. The Localism Act 2011 requires councils to have a code of conduct which sets out the standards expected of councillors when acting in their official capacity. Councils must also have in place procedures to investigate and determine allegations against councillors.
21. The government's response to the recommendations of the Committee on Standards in Public Life is awaited and a further report will be brought forward when any changes are known and/or when the LGA model code has been published.

Risks

22. If the councils fail to adopt and maintain a code of conduct and processes for the investigation of complaints, there is a risk of failure to comply with the statutory requirements, to the councils' reputation and also to the integrity of their corporate governance and decision-making processes. Both councils have these in place.
23. Using alternative methods of dispute resolution where there is no formal complaint, or where the parties agree, or where the Monitoring Officer suggests local resolution reduces the cost of dealing with formal complaints and often provides a more satisfactory outcome for all parties involved.

Other Implications

24. None.

Conclusion

25. This report is for the Joint Audit and Governance Committee to note and to be aware of the work of the Monitoring Officer in respect of councillor code of conduct matters, the recommendations of the Committee on Standards in Public Life and the proposed timetable for the LGA model code.

Background Papers

None

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SOUTH

Case Reference	District or Parish	Nature of Complaint	Decision	Comments
2018/2019 MUNICIPAL YEAR				
S2018/2	Parish	Complaint of aggressive and abusive behaviour	Local resolution	Apology provided. Matter not significant enough to justify public money/time on an investigation.
S2018/4	District	Complaint about process at a meeting	No further action	Proper procedure was followed and the decision was properly taken in line with procedure.
S2018/5 and /6	Parish	Complaints of aggressive behaviour	No further action	Indications of errors of judgement on both sides. Apology provided. Matter not significant enough to justify public money/time on an investigation.
S2019/1	District	Failed to meet several tests of the code regarding a planning application	No further action	Decision on planning application was properly taken in line with procedure.
S2019/3	Parish	Abuse of use of council resources	No further action	Proper procedure was followed.
2019/2020 MUNICIPAL YEAR				
S201920/7	Parish	Complaint about a conflict	No further action	Interest declared and

		of interest in a planning application and aggressive behaviour		no parish council decision required on the matter. Issue of aggressive behaviour subject of previous complaints (S2018/5 and /6) on which no further action decision issued.
S201920/8	Parish	Failure to register an interest	No further action	Councillor updated register of interest form. Matter not significant enough to justify public money/time on an investigation.
S201920/9,/10,/11,/12,/13	Parish	Complaints about process for preparation of neighbourhood development plan and failure to register an interest	No further action	Process followed in preparation of the plan or the merits of a plan is not a code of conduct matter. The relevant councillors completed a register of interests as required.
S201920/14	Parish	Complaint about process of running of meeting	No further action	Complaint relates to council procedures and is therefore not a code of conduct matter. A 'high bar' applies to dealing with complaints between

				councillors. Matter not significant enough to justify public money/time on an investigation.
S201920/15	Parish	Failure to declare a disclosable pecuniary interest	No further action	Incident happened in distant past and not significant enough to justify public money/time on an investigation.
S201920/16	Parish	Inappropriate comments on social media	No further action	Not acting in official capacity therefore not a code of conduct matter
S201920/17	Parish	Inappropriate photograph posted on social media	No further action	Not acting in official capacity therefore not a code of conduct matter
S201920/18	Parish	Complaint about handling of a complaint.	No further action	Complaint relates to council procedures. Not significant enough to justify public money/time on an investigation.
S201920/19	Parish	Complaint about use of information obtained at a parish council in a private capacity	No further action	Matter subject of a hearing at another body. Investigation not merited and would not resolve issue between complainant and parish council. Not significant enough to

				justify public money/time on an investigation.
S201920/20	Parish	Inappropriate approaches to an employer and a social media post	No further action	Not acting in official capacity therefore not a code of conduct matter

VALE

Case Reference	District or Parish	Nature of Complaint	Decision	Comments
2018/2019 MUNICIPAL YEAR				
V2018/2	Parish	Complaint about a conflict of interests in preparing neighbourhood plan	No further action	Legal and political status of neighbourhood planning group is not a code of conduct matter. Matter not significant enough to justify public money/time on an investigation.
V2018/3	Parish	Complaint about aggressive behaviour	No further action	Incident happened in distant past and no attempt made by parties to seek local resolution.
V2019/1, /2, /3 and /5	Parish	Complaints about not following procedure	No further action	Not investigated as this was not a code of conduct matter
V2019/4	Parish	Complaint about aggressive and abusive behaviour	No further action	A 'high bar' applies to dealing with complaints between councillors. Matter not significant enough to justify public money/time on an investigation.
2019/2020 MUNICIPAL YEAR				
V201920/01	Parish	Attendance at a rally with what was considered	No further action	Not investigated as acting in private capacity. Subject of

		an offensive placard		complaint apologised for any offence caused.
V201920/02	Parish	Complaint about not following procedure	No further action	Not investigated as this was not a code of conduct matter
V201920/03	Parish	Complaint about not following procedure and threatening behaviour	No further action	Complaint relates to council procedures and is therefore not a code of conduct matter. A 'high bar' applies to dealing with complaints between councillors. Matter not significant enough to justify public money/time on an investigation.