

Wiltshire Council

Standards Committee

9 October 2013

Review of the Effectiveness of the Council's Arrangements under the New Standards Regime

Purpose of Report

1. To review the operation of the new standards regime since it came into effect on 1 July 2012 and to ask the Committee to consider whether any changes need to be made to improve the efficiency and effectiveness of the council's arrangements.

Background

2. The Localism Act 2011 introduced a new standards framework which came into effect on 1 July 2012. Wiltshire Council, as a principal authority, was required under the provisions of the new legislation to make a number of significant changes to its arrangements governing standards of member conduct.
3. Councils were required to adopt a new Code of Conduct with effect from 1 July 2012. The new Code has to broadly reflect 7 principles of conduct in public life, which are set out in the Act: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. At a meeting of Wiltshire Council on 26 June 2012 Wiltshire Council adopted a Code of Conduct which complies with the statutory requirements. The Code of Conduct is attached as Appendix 1.
4. A large proportion of Wiltshire's parish, town and city councils adopted the same Code of Conduct as Wiltshire Council.
5. The Council also adopted new arrangements for dealing with complaints under the Code of Conduct. These are attached as Appendix 2.
6. This report reviews the operation and effectiveness of the new arrangements from 1 July 2012 to date.

Main Considerations for the Committee

Code of Conduct

7. The table attached as Appendix 3 provides a summary of all Code of Conduct complaints received since 1 July 2012 together with details of their assessment and outcome. By way of comparison the table includes an indication of whether the complaint, if proven, could have breached the former statutory Code of Conduct that existed under the previous standards regime.
8. Since 1 July 2012 a total of 34 complaints about member conduct have been considered against the new Code of Conduct. Of these complaints, 3 did not proceed to assessment, 28 were assessed as requiring no further action and 3 complaints are awaiting an assessment decision. Of the 28 complaints that were assessed as requiring

no further action, 13 were capable, if proven, of giving rise to a breach the Code of Conduct that was in place prior to 1 July 2012.

9. Before the new standards regime came into effect the council was receiving on average 50 complaints a year. Most of these were against parish and town councilors and related mainly to allegations of disrespectful conduct and bringing the council into disrepute. To provide some comparison details of complaints received during 2011/12 are contained in Appendix 4.
10. The lack of effective sanctions under the new arrangements may be a factor in the reduced number of complaints we have received.
11. The fact that no complaints have as yet been referred for investigation under the new procedure does not in itself mean that the new arrangements and Code are not working effectively. It could suggest the opposite - that complaints are being appropriately filtered at the assessment stage and limited public resources are not being expended disproportionately on matters that do not warrant investigation. This seems to be consistent with the trend nationally, as referred to below.
12. There is, however, concern that some complaints are not being referred for investigation because the Code of Conduct does not sufficiently define the kind of behaviour that will give rise to a breach. It is then left to determine whether the alleged conduct breaches the 7 principles set out in the Code or the general obligation to promote and support high standards of conduct. This is more difficult to establish. In other words, there is no specific hook against which breach may be established, unlike the former statutory code, which contained specific provisions relating to conduct such as bullying, disrespect, breach of the equality enactments and breach of confidentiality requirements.
13. Wiltshire Council's Code of Conduct requires its councillors and voting co-opted members to have regard to the Council's Behaviour's Framework when carrying out their, but failure to do so will not in itself amount to a breach of the Code.
14. The independent persons appointed by the council, who are involved in a consultative role at the assessment and review stage, are unanimous in their concern that the absence of clear provision on the expected standards of behaviour of elected councillors in the Code is resulting in cases being rejected that might otherwise be going forward for investigation and this may ultimately undermine public confidence in the democratic process.
15. As far as the provisions of the Code concerning the registration and declaration of interests is concerned, the Committee will recall considering a report on this subject at its last meeting in July. The Committee were not minded to make any changes to the Code in respect of the registration and declaration of additional interests over and above the statutory disclosable pecuniary interests, but agreed that the guidance produced by the DCLG 'Openness and transparency on personal interests' should be used to advise and assist councillors in ensuring openness and transparency in transacting council business. A recommendation on this basis will go forward to full council in November.
16. An indication of the wider picture is set out in Appendix 5 – a Code of Conduct Discussion Paper, prepared by Hoey Ainscough Associates Ltd, who provide consultancy services on governance and conduct issues in local government. A number of the trends identified in the discussion paper reflect the experience in Wiltshire.

17. The Committee may wish to consider whether to recommend any changes to the Code of Conduct to address the concerns that have been identified, or, alternatively whether further clarity may be provided through supporting guidance.

Complaints Procedure

18. The absence of any referrals for investigation has meant that we have not yet been able to fully test the effectiveness of the process for dealing with complaints under the new regime. The focus of activity in the last year has been in dealing with cases which were started under the former regime but fell to be dealt with under the new process by virtue of transitional regulations issued in June 2012. These outstanding cases have been determined under the new procedure but against the former statutory code. The process has been challenging, but has generally worked effectively to ensure that all parties have received a fair hearing. All of these cases have now been concluded.
19. The initial assessment process has worked well with complaints being processed efficiently. Subject members have appreciated having the opportunity to respond to complaints at this stage and this has enabled better decisions to be made.
20. There have been 11 review meetings to date. So far all of these have upheld the original decision of the Monitoring Officer.
21. The role of the independent persons has been developed and has provided valuable support to the process in ensuring fairness, openness and transparency, particularly during hearings. Subject members have generally found it helpful to be able to consult an independent person during the process and this has provided a level of support for the subject member, which was not available under the previous regime.
22. The independent persons have commended the Council for the equitable and balanced way in which complaints have been handled since the inception of the new process. Based on their experience of working within the council's arrangements over the past year they have identified a number of areas for further development:
 - Simplifying the process for making complaints;
 - Ensuring that complainants have all the information and support they reasonably need about the process;
 - Streamlining the investigation process;
 - Maximising the opportunity for alternative resolution at the earliest stage;
 - Minimising delay in the process, particularly at the hearing stage, where availability of the parties, witnesses, and members is limited.
 - Providing suitable training and briefings for members involved in reviews and hearings;
 - Increasing emphasis on an inquisitorial rather than adversarial approach to the process and especially at hearings.
 - Rationalising the allocation of independent persons in cases;
 - Complaints tracking.
23. We will be working on these areas in conjunction with the Chairman of the Standards Committee and our independent persons to secure further improvements in the process.
24. An indication of the wider picture on case handling is contained in Appendix 6.

Environmental Considerations

25. None.

Financial Considerations

26. None arising directly from this report.

Legal Implications

27. The council is obliged to meet its statutory requirements regarding the promotion and maintenance of high standards of conduct under the Localism Act 2011. Failure to operate fair and efficient procedures for dealing with complaints may result in legal challenges and costs.

Conclusion and Recommendation

28. The council's arrangements under the new standards regime have generally operated well during the past year. They are yet to be fully tested before a proper assessment of their effectiveness in promoting and maintaining high standards of conduct can be made. In the meantime there are areas identified in this report where potential improvements may be made.

29. The Committee is asked to consider whether any changes need to be made to improve the efficiency and effectiveness of the council's arrangements and to recommend council accordingly.

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Background Papers

Unpublished reports relied upon in the preparation of this report: None.

Appendices:

Appendix 1 - Code of Conduct

Appendix 2 - Statement of Arrangements for dealing with Code of Conduct complaints

Appendix 3 - Summary of complaints received since 1 July 2012

Appendix 4 - Summary of complaints received 2011/12

Appendix 5 - Code of Conduct Discussion Paper

Appendix 6 - Case Handling Discussion Paper

