

Review of the Effectiveness of the Council's Code of Conduct for Members

Purpose of Report

1. To ask the Standards Committee to consider whether any changes need to be made to the Council's Code of Conduct for Members in the light of the matters covered in this report.

Background

2. At its meeting on 8 October 2014 the Committee received a report reviewing the Council's arrangements for discharging its duty under section 27 Localism Act 2011 to promote and maintain high standards of conduct by Councillors. The Committee agreed:
 - 1) *To task the Monitoring Officer with investigating the effectiveness of the Code of Conduct Complaints Procedure by collecting and analysing evidence on complaints received by Wiltshire Council, and to examine the Codes and procedures at other local authorities, and to bring a set of recommendations on any proposed changes to the Committee at its meeting on 21 January 2015.*
 - 2) *To ask the Monitoring Officer to liaise with colleagues in other Local Authorities to lobby the Secretary of State for Communities and Local Government for a change in the legislation to permit further sanctions, as agreed by a council's Standards Committee, to be imposed in the event of a breach of a Code if deemed appropriate.*
3. Under the Localism Act 2011 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. The council adopted a model code of conduct issued by the Department for Local Government and Communities (DCLG) with some variations. A copy of the current Code of Conduct is attached at Appendix 1.
4. A summary of the position on codes of conduct in other authorities, provided by Hoey Ainscough Associates Limited is included at Appendix 2.
5. A large proportion of Wiltshire's parish, town and city councils have adopted the same Code of Conduct as Wiltshire Council.
6. As principal authority Wiltshire Council deals with all complaints made under the code of conduct for unitary, parish, town and city councillors in accordance with its agreed complaints procedure.
7. A summary of the complaints received since the introduction of the new standards regime is attached at Appendix 3.

Main Considerations for the Committee

8. The purpose of the Code of Conduct is to promote accountability, transparency and public confidence in local government. The Code of Conduct should be framed in a way that supports these objectives.
9. The Monitoring Officer, complainants and the Independent Persons report that they have found it difficult to link complaints to specific paragraphs of the Code. This issue was highlighted during the case study discussions at the seminar on standards on 23 July 2014, led by Hoey Ainscough Associates. It has resulted in a significant reduction in the number of complaints that have been referred for investigation – only 3 since the new Code came into operation in July 2012.
10. Appendix 3 provides a brief summary of every complaint assessed since July 2012. The right hand column states whether the complaint would have been referred for investigation under the old statutory code of conduct. This is not an indication that the complaint would have been upheld – a judgement of that nature cannot be made without the evidence having been tested by means of investigation and hearing. However, it is of concern that so few complaints can be linked to the current provisions of the Code in a way that enables referral for investigation.
11. From Appendix 3 it is evident that of the 122 complaints assessed since July 2012, 61 would probably have been investigated under the provisions of the old Code of Conduct. However, many of these relate to the declaration of interests. The statutory provisions regarding members' interests have been fundamentally reformed and a comparison of complaints regarding interests is therefore not relevant. However, 39 complaints would probably have been investigated under the following provisions of the old Code of Conduct, which required that when acting in their official capacity, members were required to:
 - treat others with respect;
 - not to bully others;
 - not to act in a way that would bring their office or authority into disrepute;
 - not to act in a manner that would cause their authority to be in breach of any relevant equalities duties.
12. Whilst not all of these 39 complaints would have warranted an investigation, and the new assessment procedures would assist in sifting out the less serious complaints, the fact that only 3 complaints were put forward for investigation is a cause for concern.
13. This is a particular concern where complainants allege bullying or serious disrespect by a councillor. Since the Code, as it is currently framed, does not specifically provide for bullying or disrespect to be a breach of the Code, these complaints have generally not been referred for investigation. If a member could be proven to have bullied others or treated them disrespectfully it is difficult to establish that this behaviour fails to meet an (undefined) standard of selflessness, integrity, objectivity, accountability, openness, honesty or leadership.

14. This means that complainants who have brought complaints that could reasonably be regarded as serious may be left without redress. It also means that if a councillor is alleged to have bullied an employee, the Council may be unable to demonstrate that it has met its duty of care towards its employees, in that there is no other statutory avenue through which an allegation of bullying by a councillor can be investigated and addressed.
15. The Council has a duty to comply with the provisions of the Equality Act 2010. Section 149 (1) of the Equality Act 2010 provides: -

(1) A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
16. As the Code stands there may be difficulties in dealing with an allegation that a councillor has not complied with their obligations under the Equalities Act as there is no specific provision in the Code for such an allegation to be investigated, nor for any breach in the equalities duties to be addressed.
17. Similar considerations apply to the duty of confidentiality owed by councillors in respect of confidential information.
18. When a complaint is made, whether or not it is well founded, it is likely to cause the subject member significant stress. The broad nature of the Code, as currently drafted, makes it difficult for the Monitoring Officer to provide subject members with the protection of a clear and robust rejection of complaints relating to behaviour that is not capable of breaching the Code. Its lack of clarity may also result in complainants bringing complaints that they might not, with a clearer and more specific Code, decide to pursue.
19. The lack of clarity and specificity in the wording of the Code means that it is highly subjective, and while parties may hold equally strong but conflicting views on whether alleged behaviour is capable of breaching, for example, the general principle of "integrity" it is difficult to draft a clearly reasoned and understandable decision notice that explains precisely why a complaint will not be taken further. Clarification of the Code, particularly where it relates to personal conduct, may strengthen it and protect members against complaints being brought where they would clearly not be capable of breaching any of the provisions of the Code.

Gifts and Hospitality

20. At its meeting on 21 October 2014 Council referred the following motion to the Standards Committee to consider and report back to full council:

Further to this Council adopting its Code of Conduct at Full Council in

February, this Council considers amending the Code of Conduct to include a register of gifts and hospitality.

The existing Code states, at paragraph 2, 'you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.'

To protect members and to ensure full; transparency, for Wiltshire Council, and its members this Council adopts a register of interests for all gifts and hospitably over £25.00.

21. The requirement for members to register gifts and hospitality exceeding £ 25 in value that had existed under the former statutory code of conduct was repealed by the Localism Act 2011. The new code adopted by the council provides at paragraph 2 of the code:

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

22. At its meeting on 4 February 2014 the council decided not to make any changes to the code of conduct on gifts and hospitality on the basis that the existing provision at paragraph 2 of the code was adequate. However, some members have expressed the view that they would find it helpful for Wiltshire Council to require gifts and hospitality over, say £25, in value to be declared on the register of interests currently maintained by the Monitoring Officer in order to provide greater transparency and protection to members.

Environmental Considerations

23. None.

Financial Considerations

24. None arising directly from this report.

Legal Implications

25. As outlined in the report. The council is obliged to meet its statutory requirements regarding the promotion and maintenance of high standards of conduct under the Localism Act 2011.

Recommendations

26. Members are asked to consider whether the code of conduct should be amended to include more specific provision on the standards of conduct expected of members and on the registration of gifts and hospitality in order to provide greater clarity and

enforceability.

27. If members are minded to make changes to the Code officers will draft the necessary provisions in accordance with the Committee's wishes and bring these back to the Committee for final review before the Committee makes its recommendations to full Council.

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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 – Hoey Ainscough Associates Ltd – Code of Conduct Discussion Paper

Appendix 3 - Summary of complaints received since 1 July 2012

