

Standards and Ethics Committee

**Wednesday, 25 April 2018, County Hall, Worcester, WR5 2NP
- 10.00 am**

Present:**Minutes**

Mr R P Tomlinson (Chairman), Mr R C Adams,
Mr R M Bennett, Dr A J Hopkins, Mr S J Mackay,
Dr K A Pollock and Mr R M Udall

Independent Members (non-voting):
Dr M Mylechreest, Mr C Slade and Dr P Whiteman.

Mr R Needham (Independent Person) was also in
attendance.

Available papers

The members had before them:

- A. The Agenda papers (previously circulated); and
- B. The Minutes of the meeting held on 18 October
2017 (previously circulated).

**260 Apologies and
Named
Substitutes
(Agenda item 1)**

An apology was received from Ms P A Hill.

The Committee wished to send their best wishes to Ms P
A Hill for a speedy recovery.

**261 Declarations of
Interest
(Agenda item 2)**

None.

**262 Public
Participation
(Agenda item 3)**

None.

**263 Confirmation of
Minutes
(Agenda item 4)**

RESOLVED that the Minutes of the meeting held
on 18 October 2017 be confirmed as a correct record
and signed by the Chairman.

**264 Local
Government
Ethical
Standards -
Stakeholder**

The Committee considered a consultation issued by the
National Committee on Standards in Public Life to inform
its review of local government ethical standards.

The consultation document posed a series of questions
and the Committee discussed each one in turn as

Consultation (Agenda item 5)

follows(with main member comments minuted and formal response as set out):

- a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*
- b. *What, if any, are the most significant gaps in the current ethical standards regime for local government?*
 - The mediation aspect of the local process worked very well and the Monitoring Officer should be congratulated for his role in this respect
 - The only concern for some members was the lack of sanction available for a breach of the Code of Conduct
 - The existing local Code of Conduct arrangements worked satisfactorily and others considered there was no need for further sanctions
 - It was particularly important that the anonymity of the councillor, who was the subject of the complaint, should be maintained until a breach was found.

Response:

The existing local Code of Conduct has worked well since its introduction to ensure high standards of conduct by Worcestershire county councillors. To date no complaints have been sufficiently strong to warrant a formal finding of a breach of the Code. Possible gaps in the regime are addressed below.

Codes of conduct

- c. *Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?*
- d. *A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.*
 - The 'pan-Worcestershire' approach to a single Code was to be commended for promoting

consistency and reducing confusion
consistency and reducing confusion

- Induction was good and real-life examples were useful.
- Parish councils had particular difficulty in interpreting the legislation for the registration and declaration of councillors' interests
- The current arrangements lacked the clarity of the previous Code of Conduct in terms of the need to register an interest. This was a particular problem where a request for funding was made through the Member Divisional Fund. In response, the Head of Legal and Democratic Services highlighted the difference between registering an interest (DPIs) and declaring an interest at a meeting which was relevant to the debate. The Code covered both aspects. He emphasised that the current arrangements relied on member disclosure and it was the responsibility of the individual councillor to declare an interest at the appropriate time including any requests made through the Divisional Fund procedure
- What responsibility did a councillor have to declare his or her Freemason membership? The Head of Legal and Democratic Services advised that unlike under the previous regime, such a declaration was only required where the membership was relevant to the issue being discussed.

Response:

The Council's locally adopted Code of Conduct for councillors was considered clear and easily understood and covered an appropriate range of behaviours. In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the 8 principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all 8, and we understand a majority of town and parish councils in the county as well. This seems a very good practice particularly in 2 (and 3) tier areas. It also meant that training at one authority was deemed equally good for another authority, reducing the resource demands of induction and simplifying 'the message'. County induction included real-life examples which made it equally 'real' for councillors and was appreciated.

The current requirements for registering and

declaring councillors' interests are considered satisfactory in that they set out the expectations clearly, did not unnecessarily or disproportionately interfere with the workings of democracy - although by their nature largely relied on the honesty and integrity of individual councillors and indeed their knowledge of the potential interest.

Investigations and decisions on allegations

- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*
- i. *What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?*
 - ii. *Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?*
 - iii. *Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?*
- The processes worked well
 - An independent point of view was seen as very useful
 - The Head of Legal and Democratic Services felt able to withstand political pressure and had 2 Deputy Monitoring Officers should there be a conflict of interest in any particular case.

Response:

The Council has adopted clear and fair processes for investigating and deciding conduct complaints. The Committee was confident that allegations of councillor misconduct would be investigated and decided fairly and with due process as set out in the local processes.

The role of the Independent Person was considered

sufficient to ensure the objectivity and fairness of the decision process in ensuring a completely independent viewpoint would be heard. The Monitoring Officer is authorised to 'filter' complaints and often consults with the Chairman, Independent Person or independent member of the committee before deciding on the best approach, and this access was very useful.

The Council has a satisfactory process in place should the Monitoring Officer be subject to a conflict of interest or undue pressure. Should such a situation arise he/she would consult the Chairman of the Standards and Ethics Committee and if necessary delegate functions to the deputy Monitoring Officer or engage external support.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*
- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?*

- There were mixed views on whether express sanctions should be made available
- Some members thought there should be some form of sanction other than naming and shaming but not to the extent of removal from office, which was a matter for the electorate. Naming and shaming could be ineffective and in some extreme cases could be positively welcomed by the councillor who was the subject of the complaint
- The Head of Legal and Democratic Services indicated that under the old regime, disqualification could only be done at a national level. At local level, it had been open to the Committee to suspend a councillor, request an apology or order further training if a breach of the Code had occurred. However under the current regime there were no express sanctions available and in effect, naming and shaming was the only sanction available
- In response to a query, the Head of Legal and Democratic Services indicated that under the

locally adopted procedures, the councillor who was the subject of a complaint was informed by the Monitoring Officer as soon as practicable after the complaint was received. Depending on the nature of the complaint, the Monitoring Officer might undertake preliminary enquires with the councillor. The Chairman of the Committee would generally be informed and if appropriate the views of an independent member or independent person were often sought to get a second opinion before reaching a view on how to deal with the complaint

- Generally, breaches of the Code did not arise as a result of deliberate or malicious behaviour but from an ignorance of the Code. In such circumstances, it would be appropriate to require a councillor to make a formal apology and where necessary undertake additional training. Any apology should be in writing
- The problem with naming and shaming as the only available sanction was that if problems continued, there was no further action that could be taken to discipline that councillor. This was a scenario experienced at a local parish council where a parish councillor had used threatening behaviour and refused to apologise or attend training which left the parish council powerless to take further action
- The problem with relying on the electoral process as the ultimate sanction against a councillor was that, dependent on the circumstances/timing of the complaint, it might be a considerable length of time until the next elections. As a result, the complainant might perceive a lack of natural justice
- An Independent Member commented that under the current arrangements councils had been left powerless to discipline councillors for a breach of the Code. No matter how poor the behaviour of the individual councillor, councils had no power to act beyond naming and shaming. There should be some form of further sanction available. However whatever further sanctions were adopted locally, there would need to be some form of national appellate process in place, albeit without the need to establish another form of the Standard Board
- A six-month suspension of a councillor would be too great. Any suspension should be limited to a maximum of a couple of weeks
- It was questionable whether the use of training, as a basis for the re-education of a councillor would work in practice. It should be remembered that the

ability to suspend a councillor from the group remained open to political groups. The impact of naming and shaming on the reputation of a councillor should not be understated

- In response to a query, the Head of Legal and Democratic Services explained that no formal breaches of the Code had been found at the Council since the introduction of the revised Code therefore there had been no recourse to take further action
- An Independent Person commented that the Council needed to have a range of sanctions available to it
- The majority of the Committee considered that there should be additional sanctions but there was no clear consensus what form they should take. A minority considered status quo was sufficient.

Response:

Some concern was expressed over the lack of any sanction, and the Committee came to a majority view that there should be additional sanctions short of disqualification but there was no clear consensus on the nature of those sanctions. A minority felt status quo was appropriate. Current practice here is to attempt informal resolution of complaints where possible, and this was seen as positive.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.*
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.*
- There should be prior registration of interests so

that it was obvious to the public where a conflict of interest might arise. The Head of Legal and Democratic Services commented that there was no duty to prior register interests other than DPIs but rather an onus on councillors to make a declaration at the appropriate time.

Response:

The existing arrangements to declare councillors' interests and manage conflicts of interest were satisfactory. In addition to the DPI restrictions, the Worcestershire Code provides for other situations where declarations of interest are required, and in some cases withdrawal is needed, and this is considered a proportionate balance. The training was seen as effective. [The MO would personally prefer slightly clearer phrasing in the legislation about how DPIs are engaged!]

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Response:

The local arrangements that are in place at the County Council for whistleblowing by the public, councillors, and officials were seen as satisfactory.

Improving standards

- i. What steps could local authorities take to improve local government ethical standards?*
- j. What steps could central government take to improve local government ethical standards?*

- The local arrangements adopted by Worcestershire County Council worked effectively and the Council would encourage other local authorities to adopt a similar approach
- The Government should provide a better example to local government in terms of the behaviour of its MPs
- Independent Members had an important non-political role on the Committee and this should be recognised by the Government with the re-instatement of the voting rights of Independent Members on Standards Committees.

Response:

The local arrangements adopted by Worcestershire County Council worked effectively and the Council would encourage other local authorities to adopt a similar approach.

The Government should re-instate the status and voting rights of Independent Members on Standards Committees. The Council has chosen to continue with 3 independent co-opted members of the committee as it values outside views.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

- There was very little that a councillor could do to prevent or address incidents of abuse/intimidation from a member of the public. The Head of Legal and Democratic Services advised that should a councillor be experiencing a particular problem then his/her contact details could be anonymised and any contact would be redirected through member support
- The abuse of councillors at a local level reflected trends in national politics. The level of abuse had been made worse by the use of social media. It would be sensible to adopt some form of reporting mechanism for members. Whatever process was adopted, members of the public should not be prevented from contacting councillors
- It was difficult to understand the extent of intimidation on a local level without undertaking some form of councillor survey
- Where a councillor was particularly concerned about intimidation then they should report the matter to the police.

Response:

The nature, scale, and extent of intimidation towards local councillors had not been assessed locally. The Council was proposing to undertake a survey of all councillors to gauge the extent of the problem.

It was acknowledged that the Council had very limited measures available to it to prevent and address intimidation by the public. It has occasionally removed private addresses from the

**265 Code of
Conduct -
Complaints
Update (Agenda
item 6)**

member contact details to deal with particular situations, but that has not been common.

RESOLVED: that

- a) the consultation by the National Committee on Standards in Public Life be noted; and
- b) a response be sent to the National Committee on Standards in Public Life on the consultation questions as set out above.

The Committee received a Code of Conduct and complaints update from the Head of Legal and Democratic Services.

In the ensuing debate and in reference to Complaint 01/18, it was commented that meetings of full Council should be the forum for debate and discussion and there was no need to resort to offensive behaviour. Clearly where comments were untrue, the Code would be engaged. However if the remarks made were accurate, referred to issues already in the public domain and the Chairman of the Council had not taken action at the time, it was difficult to understand how the Code could be engaged.

RESOLVED that the outcomes of the recent formal complaints about the conduct of members be noted.

The meeting ended at 11.45 am.

Chairman