



Name of meeting: Standards Committee

Date: 11th September 2019

Title of report: Standards Update

Purpose of report

To brief the standards committee on any developments following the publication of the CSPL report on ethical standards in local government since March 2019.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance IT and Transactional Services? Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes
Cabinet member portfolio	Cllr Graham Turner

Electoral wards affected: All

Ward councillors consulted: None

Public or private: Public

Have you considered GDPR? Yes

1. Summary

- 1.1 This report follows on from the report that was before the Standards Committee on the 6th of March 2019.
- 1.2 This report will look at any developments since the publication of the CSPL report on standards in public life.
- 1.3 It will focus on what Kirklees have done, any wider developments and whether there are any changes that the committee should consider recommending.

2. Information required to take a decision

2.1 Action taken so far

- 2.1.1 The recommendations made by this committee following the publication of the CSPL report were taken to 2019 Annual Council after consideration at Corporate Governance and Audit committee. These were both the recommendations made by the CSPL and 'best practice' suggestions.
- 2.1.2 All of the CSPL recommendations that were approved by this committee were adopted and the necessary changes to the constitution have now been made.
- 2.1.3 Other 'best practice' guidelines were approved by this committee and the majority of these have been implemented. Those still to be implemented are:
 - 6. The publication of a clear and straightforward public interest test against which allegations are filtered – there is some work that will need to be done on the complaints form and the Kirklees website that will incorporate this test
 - 7. Local Authorities should have access to at least 2 Independent Persons – the recruitment process for a 2nd IP is currently in progress
 - 14. Councils should report on separate bodies they have set up – the Head of Risk is looking at how best to do this
- 2.1.4 Following the decision to publish any decision notices, the standards process has been amended and the first decision notice is due to be published shortly.
- 2.1.5 One of the recommendations of the CSPL report – that standards should be reviewed annually and consulted on – was considered but

not adopted. Instead, it was resolved that there should be a bi-annual review.

- 2.1.6 The standards process was last reviewed over two years ago and Committee is asked to recommend that a review be commenced and also to consider who might be consulted as part of the review.
- 2.1.7 Contact was made with Town and Parish Councils, following the CSPL suggestion that they should be encouraged to adopt the Code of Conduct of their principal authority. Kirkburton and Mirfield Town Councils have advised that they have resolved to adopt the Kirklees code. Holme Valley Parish Council have declined to do so and will continue to use the NALC drafted Code of Conduct. The remaining town and parish councils are yet to formally consider adoption.
- 2.1.8 The council's auditors, who are named as a contact in the whistleblowing policy have been asked to provide a named contact for inclusion in the policy.

2.2 National developments and updates

- 2.2.1 It may appear that the government response to the CSPL report has been muted, apart from issuing a briefing paper – '*Local Government Standards in England*' – in March 2019, but there has been a number of developments following on from the publication of the report.
- 2.2.2 The CSPL meets on a monthly basis and any follow up work on ethical standards and the report is a recurring agenda item.
- 2.2.3 Since the publication of the report, the committee has met 6 times and the meeting minutes record what actions have been taken. The key points are detailed below:
- The committee resolved to prepare a follow up paper to the report (Feb 2019)
 - Positive responses to the report in the media were noted (April 2019)
 - The Ministry of Housing, Communities and Local Government had engaged positively with the report – the committee had been clear that the report should be considered as a whole and not 'cherry picked' by the Ministry (April 2019)
 - A follow up plan to monitor 'Best Practice' recommendations was proposed (April 2019)

- The committee were in contact with the Local Government Ombudsman to discuss their proposed role in the suspension appeal process – they have confirmed that would be willing to take the role on (May 2019)
- The committee also noted that it had been contacted by a joint Association of Democratic Services Officers (ADSO)/Lawyers in Local Government (LLG)/Society of Local Council Clerks (SLCC) ‘task force’ who wanted to offer assistance and support (May 2019). A representative from West Yorkshire is part of the LLG group.
- The committee reported a positive meeting with the ‘task force’ (June 2019)

2.2.4 The joint ‘task force’ referred to in 2.2.3, comprising of members of ADSO, LLG and SLCC, has offered assistance and support for the proposed changes and have met with the CSPL. The SLCC statement reads:

‘the Task Group has offered its services to the committee. The Group believes it could provide much experience and knowledge to the Local Government Association to assist drafting the new code of conduct and by supporting authorities to implement many of the best practice recommendations in the CSPL report’.

2.3 Further possible Standards Process changes

- 2.3.1 This Committee discussed some of the key recommendations made by the CSPL in their report.
- 2.3.2 A number of recommendations were agreed by the committee and, as noted earlier in this report, have resulted in changes to the Constitution and the Standards Process.
- 2.3.3 This section of the report is intended to explore the report further to consider whether there are further changes that could be recommended or discussed by this committee that would be possible to implement.
- 2.3.4 The previous report listed all of the recommendations and ‘best practice’ suggestions made by the CSPL, but not all of these were discussed or considered for approval. Some are entirely outside of the control of the council and will require legislation to make implementation possible. Examples of this are the proposal to allow

members to be suspended, and proposed amendments to the regulations on disclosable pecuniary interests.

2.3.5

The following recommendations are those that were in the CSPL report, but were not subject to any proposed actions by the committee at the last meeting (all numbers refer to appendix A). In the event that members agree to the recommendation in paragraphs 2.1.5 and 2.1.6 that the Standards Process be reviewed it is suggested that members consider whether some of the recommendations, marked with a ‘*’, in the following could form part of that review:

- 1. The Local Government Association should create a model Code of Conduct – this is something that this committee cannot influence (unless the LGA choose to consult) but it is worth noting that, in its consultation response to the CSPL in 2018, the LGA was clear that it did not support a return to a standardised or compulsory code of conduct, stating that it would regard this as a backwards step. We have noted earlier in the report that the ADSO/LLG/SLCC ‘task force’ have offered to assist the LGA in drafting such an example code.
- *3. Councillors should be presumed to be acting in an official capacity in their public conduct, including social media – this is an issue that has arisen recently and there were conflicting views on how far we should go in presuming a member to be acting in an official capacity. This proposal is intended to provide clarity and remove any uncertainty. There is nothing to prevent adopting this presumption on a voluntary basis and members are asked to consider whether doing so would be appropriate and, if so, when and how changes should be made.
- 4. Amendments to the Localism Act to state that a code of conduct applies when a member claims or gives the impression that they act as a member – this is something that was included in the pre Localism Act national code and the CSPL felt it should be reintroduced.
- 5. Amendments to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include unpaid roles, as directors, trustees or charity roles, and membership of organisations that seek to influence opinion or public policy – the CSPL noted that there was potential for conflict to arise where there was no financial benefit to a member from any such role.
- *7. Councils should be required to include in their Code of Conduct a rule that precludes participation where a member has any interest a member of the public would reasonably

regard as so significant that it is likely to prejudice a member – this is something that can be voluntarily adopted, with the associated difficulty with the definition of when an interest would be ‘so significant’. If consideration is given to introducing such a rule, then a suitable definition would need to be formulated and agreed.

- 8. Independent Persons to be appointed for a 2 year fixed term, renewable once – we are in the process of recruiting a new IP and the advert is for a 2 year fixed term. The current IP has been given a 2 year renewal.
- *9. Formal recording of the views of an IP involved in any decision making process – current decision notices do record that the IP took part, even if they don’t record their views. Members are asked to consider if decision notices should record that decisions were either unanimous or, where there is a dissenting view from an IP, whether that should be noted.
- 10. A Local Authority should only be able to suspend a member where the IP agrees with the finding of the breach and the suspension – this would need to be tied into the proposed legislative changes that would be needed to allow suspensions of members.
- *12. There should be a discretionary power to establish decision-making Standards Committees with members from parish councils – Kirklees do already have a Standards Committee, but it is neither a decision-maker and nor does it have any members from Town or Parish Councils. Members are asked to consider if there could be advantages to inviting Town and Parish Councils to attend any committee meetings.
- 13. Councillors should be given a right of appeal to the LGO if they are suspended – this will tie in with the legislation needed to allow suspension. Earlier in this report, it was noted that the LGO had responded favourably to this proposal.
- 14. The LGO should be given the power to investigate whether a breach has occurred where suspension is imposed – this clarifies the appeals process and the CSPL’s intention that it be more than just an appeal on the sanction, but able to effectively conduct a rehearing.
- 16. Local Authorities should have the power to suspend members without allowance for up to 6 months – this is

something that would require legislation and is outside of the control of Kirklees.

- *17. Clarification of whether councillors may be lawfully barred or have facilities withdrawn as a sanction – this is something that legislation will be needed for, as the position is currently unclear. The CSPL noted that councils that do withdraw facilities may currently be open to challenge.
- 18. Criminal offences relating to DPLs be abolished – a matter for legislation by parliament.
- 19. Parish council clerks should hold an appropriate qualification – a matter for the Town and Parish Councils, but ought to be welcomed by them as it will ensure trained clerks are in post.
- 21. Requiring any sanction imposed on a parish councillor to be determined by the principal council – this will clarify the position on whether a parish can choose not to impose a sanction. Currently, the position is unclear and the CSPL report suggested that there have been instances where a parish council has declined to impose the sanction decided on by its principal council.
- 22. Extending the protection to statutory officers to cover all disciplinary action and not just dismissal – will need legislation. This would be effectively reversing the position created by the 2015 regulations and reinstating the safeguards that were in place before then.

2.3.6

The following best practice suggestions are those that were in the CSPL report, but were not subject to any proposed actions by the committee at the last meeting (all numbers refer to appendix A):

- 11. Formal standards complaints about the conduct of a parish councillor should be made by the chair or the parish council, rather than the clerk – this a matter for individual town or parish councils, but there is nothing to prevent the Monitoring Officer from raising this with town or parish councils and asking that they adopt this as best practice. The CSPL have already indicated that they will be looking at compliance with their best practice suggestions in 2020.
- 12. Monitoring Officers should provide advice and management of alleged breaches of town and parish council codes of conduct and should be provided with appropriate resources and training – it is currently the case that the MO does investigate alleged breaches and these are run through the Kirklees standards process. The MO will report on the

impact of town and parish council standards matters through the twice yearly complaints update report.

Clearly, a number of these recommendations are ones that are dependent on legislation and action from central government to be able to be implemented, but the committee should keep a watch on any developments. An update report can be provided, should this committee decides it would be helpful.

Of the remainder, members are asked to consider if any could be considered as part of a review. Those marked with an asterisk are ones which it is considered on balance may be ones which the committee may seek views as part of a review / consultation process.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Other (eg Legal/Financial or Human Resources)

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.

4. Consultees and their opinions

N/A

5. Next steps

- 5.1 The Monitoring Officer will continue to monitor any developments in relation to the CSPL's report and recommendations and will update the committee.

6. Officer recommendations and reasons

- 6.1 It is recommended that the report is noted.
- 6.2 That members recommend that a review of the Standards Process be commenced and to consider who should be consulted as part of that.
- 6.3 Members of the committee are asked to recommend which of the proposals considered in paragraph 2.3.5 might be considered as part of a review.
- 6.4 Members are also asked to delegate authority to the Monitoring Officer to finalise the details of the review for consideration at the next meeting of the Standards Committee.

7. Cabinet portfolio holder's recommendations

N/A

8. Contact officer

David Stickley
Senior Legal Officer
01484 221000
david.stickley@kirklees.gov.uk

9. Background Papers and History of Decisions

9.1 N/A

10. Service Director responsible

Julie Muscroft
Service Director – Legal, Governance and Commissioning
01484 221000
julie.muscroft@kirklees.gov.uk

Appendix A