

Report for: Standards Committee, 25th January 2022

Title: **Recent Developments on Ethical Standards**

Report authorised by: Fiona Alderman – Head of Legal and Governance and Monitoring Officer

Lead Officer: **Stephen Lawrence-Orumwense – Head of Legal (Social Care and Contracts) and Deputy Monitoring Officer.**

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non key

1. Describe the issue under consideration

This report highlights recent developments in the ethical standards of elected members that might be of interest to members of the Standards Committee in its role of promoting and maintaining high standard of conduct.

Cabinet Member Introduction

N/A

2. Recommendations

2.1. The Committee is asked to note the report

3. Reasons for decision

3.1 The function of the Committee includes promoting and maintain high standards of conduct by elected and co-opted members, assisting to observe the Members' Code of Conduct and advising the Council on the revision of the Code of Conduct. This report on recent developments helps to better inform the Committee in undertaking these functions.

4. Alternative options considered

4.1. There are no alternative options to considered.

5. Background information

5.1 The report reviews:

In Southwark Council (January 21) – Independent Investigator finds that Councillor breached Code of Conduct by acting anonymously through Twitter

<https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/49250-councillor-breached-code-of-conduct-by-acting-anonymously-through-twitter-independent-investigator-finds>;

In Maldon District Council – Police called to Council meeting arguments over standards report <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/48731-police-called-to-council-meeting-argument-over-standards-report>; and

The Committee on Standards in Public Life has published 'Upholding Standards in Public Life', the final report and recommendations of the Standards Matter 2 review. <https://www.gov.uk/government/publications/upholding-standards-in-public-life-published-report>.

Southwark Council - Councillor breached Code of Conduct by acting anonymously through Twitter, independent investigator finds
<https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/49250-councillor-breached-code-of-conduct-by-acting-anonymously-through-twitter-independent-investigator-finds>

- 5.2 The Councillor was the Cabinet Member for Housing. In November 2017, the Councillor set up a Twitter account, @SouthwarkYIMBY and made anonymous posts on Twitter regarding housing related issues and proposed developments in Southwark. The Councillor posted tweets regarding specific proposals for development on the Priors Court development and a proposed development on the Elim Estate. In February 2021 the Councillor was contacted by the South London Press who stated that they believed he was behind the Account, which he admitted. The Councillor then resigned as Cabinet Member, issued a written apology and referred themselves to the Monitoring Officer to determine whether there was a breach of the Code of Conduct for Members.
- 5.3 The Complainant made a complaint about a tweet posted on 11 February 2021 in response to tweets made by the @BallcourtGarden twitter account managed by the complainant. The Complainant states the tweet was aggressive, and that the use of the word 'nimbyism' was offensive, intended to undermine the integrity of the campaign group and the Councillor's behaviour was dishonest and not in accordance with the Code of Conduct. The tweet read "*This is pathetic nimbyism. Looking at the planning documents it's clear a lot of consultation with estate residents has gone into these proposals. Does the controller of this twitter account live on the estate?*" The Monitoring Officer commissioned an Independent Investigation into the complaint.
- 5.4 The Investigator in his report acknowledged that "*The use of social media by elected Members and the distinction between acting in the capacity of a Member and acting in a private capacity has been the source of much debate and difficulty. It cannot be the case that any use by an elected Member of social media at any time regardless of context and content is subject to the application of the Code, however how far the Code applies to the use of social media by elected Members is not a straight forward distinction to make, and very much depends on the particular facts and circumstances.*" The Investigator found that (albeit very finely balanced) the Code:

- did apply to the Councillor in relation to those tweets about Priory Court and the Elim Estate Ball Court;
 - did apply in relation to other tweets and retweets that referred to schemes and developments in which the Councillor had been involved in his official capacity; but
 - did not apply in relation to the residue of tweets by the Account as these were more general in nature.
 - that the tweets referring to specific developments and schemes in which the Councillor had been involved in a formal capacity (mainly retweets) are generally inoffensive and uncontroversial.
- 5.5 With reference to tweets regarding Priory Court and Elim Estate Ball Court, the Investigator found that the content was *'at time provocative'*, but did not amount to a breach. The Investigator found that by acting anonymously there is evidence of a failure, by the Councillor, to comply with the Code of Conduct. *"Although we do not find that the content of the tweets falling within the scope of the Code constituted a breach, we do find that by acting anonymously the Councillor has breached the Code."* In relation to those tweets to which the Code applied, the Councillor's behaviour was in breach of the Nolan principles of 'openness' and 'leadership', as well as paragraphs 10 and 11 as set out in the Council's Code.
- 5.6 Under s28 (11) of the Localism Act 2011, a local authority can impose the following sanctions for breach of the Code of Conduct following an investigation; a) Censure or reprimand the member; b) Recommend that Council censure or reprimand the member; c) Recommend removal for Cabinet, or portfolio responsibilities; d) Instruct the Monitoring Officer to arrange training; e) Removal from outside bodies; f) The withdrawal of facilities from the member; and g) Exclusion of the member from council offices or other premises. The Investigator did not recommend any further action be taken for the breach. The matter can reasonably be resolved without the need for a hearing. The sanctions/actions available following a hearing fall significantly short of the consequences that have come to bear quite independently of the standards process.
- 5.7 The Monitoring Officer accepted the recommendation of the Investigating Officer and determined that a Local Resolution is appropriate for the following reasons:
- The Councillor immediately accepted responsibility for their actions and issued a public apology at Council Assembly.
 - The Councillor acknowledged throughout the investigating process that their actions were not appropriate and has repeatedly expressed remorse.
 - The Councillor resigned from Cabinet.
 - The Councillor sent a written apology to the Complainant on 24 June 2021.

- The Councillor has attended Code of Conduct and Social Media Training since the Complaint was received and the self-referral to the Monitoring Officer.
- The Councillor has agreed to undertake a conciliation meeting with the Complainant if requested.

The Monitoring Officer recommended to the relevant Committee accordingly.

Deputy Monitoring Officer comment

- 5.8 This was a complex investigation which had to navigate the tricky legal pathways of determining whether by posting anonymous tweets the Councillor was acting in his capacity as a Councillor, which tweet was caught by the Code and whether there was a breach and whether the Councillor acting anonymously is a breach of the Code. The Investigation Report which is a 'must read' carefully navigates through these issues and comes to a reasoned and reasonable outcome which is endorsed by the Monitoring Officer. The case is a valuable insight into the type of issues that the Committee is likely to encounter when considering complaints involving social media postings.

In Maldon District Council (Nov 21) - Police called to council meeting argument over standards report <https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/48731-police-called-to-council-meeting-argument-over-standards-report>

- 5.9 On 4th November 21, Police were called to a council meeting at Maldon District after a councillor refused to stop saying "point of order". The Councillor was challenging the council's consideration of a report that found him to have breached the code of conduct. The report was published in early September and listed several complaints made against him from other councillors, which claimed he had been "abusive", "haranguing", "rude", and had disclosed private communications, amongst other complaints. At the meeting, councillors voted on sanctions against him in light of the report's findings.
- 5.10 As the Chair of the meeting, attempted to call a vote on the sanctions, the Councillor interrupted by repeatedly saying "point of order". The Chair read out rule ten of The Council and Committee Procedure Rules, which says the Chair may move that a "member named be not further heard" if they are disruptive. The rule adds that if the council member continues to behave irregularly, improperly, or offensively, or by wilfully obstructing the business of the council, the Chair can move that the member leave the meeting or move to adjourn the meeting altogether. The Chair moved that the Councillor shall not be heard, which the majority of councillors seconded. When the Councillor continued to disregard the motion, the Chair moved to have him removed. Afterwards, two police officers entered the room, and removed him as he was breaching the peace. The Council moved to ban the Councillor from all committees, including the planning, district planning, working groups and outside bodies committees for 18 months, to 2023. No councillors voted against the move.

Deputy Monitoring Officer comment

- 5.11 The Chair simply had no option but to apply the Committee Procedure Rules and remove the Councillor from the meeting.

Committee on Standards in Public Life (CSPL) Standards Matter 2 Findings <https://www.gov.uk/government/publications/standards-matter-2-the-committees-findings>;

- 5.12 In September 2020, CSPL launched the *Standards Matter 2* review to evaluate the strengths and weaknesses of the institutions, policies and processes that implement ethical standards in Westminster and beyond. CSPL has focussed on the arrangements in central government. In June 2021, CSPL published his finds on four areas of standards regulation that require significant reform: the Ministerial Code and the Independent Adviser on Ministers' Interests, the business appointment rules and the Advisory Committee on Business Appointments (ACOBA), transparency around lobbying, and the regulation of public appointments. In this final report, the content of those findings are translated into recommendations to government, alongside several new recommendations published here for the first time.

List of Recommendations

Recommendation 1 The Civil Service should review its approach to enforcing ethical standards across government, with a view to creating a more rigorous and consistent compliance system, in line with the recommendation of the Boardman report.

Recommendation 2 The government should pass primary legislation to place the Independent Adviser on Ministers' Interests, the Public Appointments Commissioner, and the Advisory Committee on Business Appointments on a statutory basis.

Recommendation 3 The Ministerial Code should be reconstituted solely as a code of conduct on ethical standards.

Recommendation 4 A requirement for the Prime Minister to issue the Ministerial Code should be enshrined in primary legislation.

Recommendation 5 The Independent Adviser should be consulted in any process of revision to the Ministerial Code.

Recommendation 6 The Ministerial Code should detail a range of sanctions the Prime Minister may issue, including, but not limited to, apologies, fines, and asking for a minister's resignation.

Recommendation 7 The Independent Adviser should be appointed through an enhanced version of the current process for significant public appointments.

Recommendation 8 The Independent Adviser should be able to initiate investigations into breaches of the Ministerial Code.

Recommendation 9 The Independent Adviser should have the authority to determine breaches of the Ministerial Code.

Recommendation 10 The Independent Adviser's findings should be published no more than eight weeks after a report has been submitted to the Prime Minister.

Recommendation 11 The Business Appointment Rules should be amended to prohibit for two years appointments where the applicant has had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.

Recommendation 12 The Business Appointment Rules should be amended to allow ACOBA and government departments to issue a ban on lobbying of up to five years.

Recommendation 13 The lobbying ban should include a ban on any work for lobbying firms within the set time limit.

Recommendation 14 The government should make adherence to the Business Appointment Rules an enforceable legal requirement for ministers, civil servants, and special advisers, and set out what the consequences for a breach of contract may be.

Recommendation 15 A COBA rulings should be directly binding on applicants.

Recommendation 16 A COBA should have the power to undertake investigations into potential breaches of the Business Appointment Rules, and be granted additional resources as necessary. The Cabinet Office should decide on sanctions or remedial action in the case of a breach.

Recommendation 17 Government departments should publish anonymised and aggregated data on how many applications under the Business Appointment Rules are submitted, approved, or rejected each year.

Recommendation 18 The Cabinet Office should ensure the Business Appointment Rules are applied consistently across all government departments, and work with ACOBA to promote best practice and awareness of the rules.

Recommendation 19 The Governance Code for Public Appointments should be amended to make clear that ministers should not appoint a candidate who is deemed unappointable by an assessment panel, but if they do so, the minister must appear in front of the relevant select committee to justify their decision.

Recommendation 20 The Governance Code should be amended so that ministers must consult with the Commissioner for Public Appointments on the composition of all panel members for competitions for significant appointments.

Recommendation 21 Senior Independent Panel Members should have a specific duty to report to the Commissioner on the conduct of significant competitions.

Recommendation 22 The chairs of ACOBA and HOLAC, the Registrar of Consultant Lobbyists, the Commissioner for Public Appointments and the Independent Adviser on Ministers' Interests should all be appointed through the process for significant public appointments, and the assessment panel for each should have a majority of independent members.

Recommendation 23 Chairs of standards committees should chair assessment panels for the appointment of their independent members.

Recommendation 24 Government departments should publish a list of all unregulated and regulated public appointments.

Recommendation 25 The appointments process for Non-Executive Directors of government departments should be regulated under the Governance Code for Public Appointments.

Recommendation 26 The Cabinet Office should collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database.

Recommendation 27 The Cabinet Office should provide stricter guidelines on minimum standards for the descriptions of meetings and ensure compliance by government departments.

Recommendation 28 The government should publish transparency returns monthly, rather than quarterly, in line with the MPs' and peers' registers of interests.

Recommendation 29 The government should include meetings held between external organisations, directors general, and directors in transparency releases.

Recommendation 30 The government should include meetings held between external organisations and special advisers in transparency releases.

Recommendation 31 The government should update guidance to make clear that informal lobbying, and lobbying via alternative forms of communication such as WhatsApp or Zoom, should be reported to officials.

Recommendation 32 The government should revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases.

Recommendation 33 Consultant lobbyists should also have to register on the basis of any communications with special advisers, directors general, and directors.

Recommendation 34 Consultant lobbyists should have to declare the date, recipient, and subject matter of their lobbying.

5.17 These recommendations findings are essentially for the Prime Minister and his Cabinet and Senior Civil Servants.

6. Contribution to strategic outcomes

6.1. The update supports the governance of the Council and its decision-making, thereby assisting the Council to meet its strategic outcomes.

7. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal and Governance , Equalities)

Finance

7.1. None

Procurement

7.2. None.

Legal

7.3. By virtue of section 27 of the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by members and co-opted members and to adopt a Code of Conduct. The updates above serve to inform the Council in the discharge of its responsibility.

Equality

7.4. None.

8. Use of Appendices

8.1. None

9. Background information Local Government (Access to Information) Act 1985

Southwark Council Standards Investigation Report 9th November 2021