

Report for: Standards Committee, 14th October 2019

Title: Review of Ethical Standards

Report

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Ward(s) affected: N/A

Report for Key/

Non Key Decision: Non key

1. Describe the issue under consideration

This report proposes changes to the Council's Constitution in accordance with recommendations made by the national Committee on Standards in Public Life in its report on Local Government Ethical Standards.

2. Cabinet Member Introduction

N/A

3. Recommendations

3.1. That the Committee recommend full Council:

- a) Note the best practice points and recommendations in the report on Local Government Ethical Standards from the Committee on Standards in Public Life (Appendix 3).
- b) Agree the following amended versions of the Constitution:
 - (i) Part 5 Section A – Members' Code of Conduct – pt 1 (Appendix 1).
 - (ii) Part 5 Section A – Members' Code of Conduct – pt 2 – Process for handling complaints (Appendix 2).

The proposed amendments are summarised and explained at paragraphs 4.1 to 4.29 below.

4. Reasons for decision

- 4.1. Many of the best practice points contained in the report on Local Government Ethical Standards (“the Report”) are already in place at the Council and so do not require any action.
- 4.2. The points requiring action are outlined below, with reasons. All seek to improve ethical standards and transparency.

Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

- 4.3. The Report stated that most allegations of breaches of local authority codes of conduct related to allegations of bullying and harassment. Accordingly, it was considered important to ensure such matters were covered effectively. By offering clear definitions and examples it will be easier to adjudicate with consistency on whether or not the code has been breached.
- 4.4. The Council’s existing Code of Conduct already prohibits bullying but does not go into the level of detail recommended in the Report. Accordingly, changes are proposed. The proposed definitions and examples are taken from the Report on Local Government Ethical Standards.

Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

- 4.5. The Report noted that compliance with standards investigations is an important aspect of ethical conduct. It is important for members to show appropriate respect for the process and that the process is not subject to disruption or abuse that wastes public money and time. Accordingly, it was considered appropriate to include these obligations within codes of conduct.
- 4.6. The Council’s existing Code of Conduct already contains a similar provision requiring members to co-operate fully and honestly with any scrutiny appropriate to their office. However, it is proposed to amend this to explicitly include any formal standards investigations. There is not currently an express prohibition on trivial or malicious allegations are it is proposed to amend the Code of Conduct to include this.

Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

- 4.7. The Report observed that some local authorities had adopted a minimal code of conduct that were not adapted to the needs and context of the organisation. Regular reviews would help to ensure codes of conduct remain relevant and effective.

- 4.8. The Council's existing Code of Conduct already contains many of the recommendations made in the report and has been regularly reviewed. The most recent amendments were made on 24 July 2017. In line with the Report, it will be reviewed annually in the future and views will be sought as appropriate.

An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

- 4.9. The Report noted that codes of conduct are central to upholding high standards in public life. Therefore, they must not be inaccessible on a local authority's website or as an annex to an authority's constitution.
- 4.10. The Council's Code of Conduct is currently accessible on the Council's website but provided as part of the Constitution. Accordingly, officers will ensure the Code of Conduct can be easily located on the website without having to first refer to the Constitution as a whole.

Local authorities should update their gifts and hospitality register at least once per quarter.

- 4.11. The Report stated that the accessibility and timeliness of local authority members updating their registers of interests varies widely. Some registers were not updated for long periods. This is undesirable because independent oversight and inspection is important to maintaining high ethical standards and local authorities should facilitate this by ensuring registers are accessible and up to date.
- 4.12. At the Council, Members' registers of gifts and hospitality are currently updated every 3-6 months. Members are sent their existing registers and asked to review them and communicate any changes. In the future, this will be done at least once every 3 months and the relevant page on the Council's website will be amended to make it clear that this is the case.
- 4.13. The Report also recommends that the Government require (by way of an updated model code of conduct) local authorities to record gifts and hospitality received by members over a value of £50, or totalling £100 over a year from a single source. This is to provide consistency with the £50 threshold for registering donations during election campaigns (by virtue of section 71A and schedule 2A paragraph 4 of the Representation of the People Act 1983). At the Council, the threshold for recording gifts and hospitality was set at £25 following full Council's consideration of a recommendation of the Standards Committee on 24th July 2017.

Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

- 4.14. The Report noted that openness and transparency are important safeguards to holding those in public office to account. Accordingly, decisions on formal

investigations should be published and include sufficient information to enable the decision to be understood.

- 4.15. At present, decision notices are published on the website. However, it is recommended that the Council's Process for Handling Complaints be amended to specify what the decision notice should include and explicitly require publication on the Council's website.

A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

- 4.16. The Report noted the importance and varied nature of the role of monitoring officer. It also recognised the potential for a conflict of interest given that the monitoring officer has a professional relationship with members, providing procedural and legal advice to enable them to pursue their objectives. Accordingly, it is considered important for there to be procedures in place to address any conflicts of interest.

- 4.17. Steps are already taken at the Council to address any conflicts of interest. However, it is proposed that the Council's Process for Handling Complaints be amended to make it clear that any potential conflicts of interest should be raised at an early stage and to give examples of the steps that may be taken to address them. For example, in addition to the above suggestion in the report, it may be appropriate for the deputy monitoring officer to undertake the investigation.

Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

- 4.18. The Report notes that some local authorities have set up separate bodies without offering sufficient clarity as to their involvement. It notes the importance of separate bodies practising ongoing assurance, oversight and transparency, in-keeping with the local authority's own governance principles.

- 4.19. The Council's existing separate bodies, namely Homes for Haringey and the Alexandra Park and Palace Charitable trust, already publish their reports and associated papers. This will continue to be the case and will be done for any further separate bodies that are set up.

- 4.20. The Council currently includes the separate bodies in its statement of accounts, but does not refer to them within the annual governance statement. Therefore, they will be included within the annual governance statement in the future.

Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

- 4.21. The Report recognises the importance of a healthy organisational culture, characterised by the timely, fair and accurate identification by senior leadership

of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. It also recognised the important role to be played by political parties in showing leadership and maintaining an ethical culture.

- 4.22. The Report states that the informal resolution of emerging issues is ideal and senior officers should work with group leaders and whips to this end. However, naturally, where there is a serious issue or formal complaint, the formal standards processes should be followed with the necessary checks and transparency.
- 4.23. These recommendations are already in place at the Council and will continue to be implemented in the future, to support the other, formal changes to the Code of Conduct and Process for Handling Complaints.

Local authorities should have access to at least two Independent Persons. A legal indemnity should be provided to Independent Persons if their views or advice are disclosed. An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

- 4.24. The Council is required to appoint at least one Independent Person as part of its arrangements for dealing with allegations of a breach of the Code of Conduct by virtue of section 28(7) of the Localism Act 2011.
- 4.25. The Report noted that local authorities use Independent Persons in different ways. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation.
- 4.26. The Council currently has two Independent Persons and will continue to look to have at least two in the future. Therefore, no changes are proposed in this regard.
- 4.27. The Report highlights that the view of Independent Persons have recently been disclosed pursuant to the Freedom of Information Act 2000. It expresses concern that an Independent Person may not automatically enjoy an indemnity if a member or member of the public were to take legal action against them, in the way that an officer or member would. Accordingly, it recommends that local authorities should take steps to provide an indemnity to Independent Persons.
- 4.28. Officers have confirmed with the Council's insurer that Independent Persons would be covered by the existing policy in place. Therefore, no further action is proposed on this point.
- 4.29. The Report states that Independent Persons should be seen primarily as impartial advisors to local authorities on code of conduct allegations. It notes that many monitoring officers appreciate the impartial view they can offer but that not all local authorities make good use of their Independent Person. Accordingly, the Report recommends that local authorities do so, as set out above.

4.30. In practice, an Independent Person is already consulted on such matters at the Council. However, it is proposed to amend the Process for Handling Complaints to formalise this important role.

5. Alternative options considered

5.1. It would be open to the Committee to do nothing. However, this is not recommended.

5.2. This is because it is important that the Council acts in accordance with best practice when it comes to ethical governance. The proposed amendments will provide clarity and ensure the Council's ethical governance processes are transparent, readily understood by members, officers and the public, and thereby promote confidence in the Council.

6. Background information

6.1. Standards for England (formerly the Standards Board) was previously responsible for drawing up an England-wide code of conduct for councillors, registering pecuniary interests and dealing with allegations of breaches of the code of conduct. This included imposing sanctions on councillors, which could include suspending them from office.

6.2. Changes were made by the Localism Act 2011 and took effect in April 2012. Standards for England was abolished and local authorities were required to adopt local codes of conduct based on the seven 'Nolan principles' of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Allegations were to be investigated locally but the power to suspend councillors for breaches of the code of conduct was removed.

6.3. Following these changes, the Standards Committee considered the legislative changes and options in 2011 and 2012, and the Council decided to maintain many of the provisions from the former England-wide code of conduct on 21st May 2012. The code of conduct has since been reviewed but the changes have been comparatively minor.

6.4. The Report has been published in 2019 following a wide-ranging consultation. The review covered all local authorities in England. 319 written submissions were received from a range of local authorities, stakeholder organisations, officers, councillors and members of the public. Two roundtable seminars were held, one with monitoring officers, clerks and independent persons, and one with academics and think tanks. 30 individual stakeholder meetings were held and five local authorities were visited.

6.5. The Report made recommendations for local authorities, as outlined in this report. It also made recommendations to other bodies such as the Government and the Local Government Association. These include giving local authorities the power to suspend members without allowances for up to 6 months (which would require legislation) and creating a national model code of conduct for local authorities. Such recommendations have not yet been implemented. However,

the position will be monitored by officers to ensure the Council's code of conduct remains up to date.

7. Contribution to strategic outcomes

- 7.1. The Council's Constitution supports the governance of the Council and its decision-making, thereby assisting the Council to meet its strategic outcomes.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 8.1. Any training needs that may rise will be contained within the Democratic Services budget

Procurement

- 8.2. None.

Legal

- 8.3. 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 dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity.
- 8.4. By virtue of section 28 of the Localism Act 2011, a code of conduct must be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 8.5. The Council may revise its existing code of conduct under section 28(5) of the Localism Act 2011.
- 8.6. The Council's Code of Conduct and Process for handling complaints form part of the Constitution. Only full Council may make changes to the Constitution by virtue of Part Three Section B – Responsibility for functions: Full Council and Non-Executive Bodies, section 1, paragraph 1(a).
- 8.7. There have not yet been any legislative changes associated with the report on Local Government Ethical Standards from the Committee on Standards in Public Life. However, the Report recommended that associated legislative changes be made in the future. This will be monitored to ensure the Council's Code of Conduct and Process for handling complaints remain up to date.
- 8.8. Legal comments are included in the body of the report where appropriate.

Equality

- 8.9. No equalities directly arise from this report.

9. Use of Appendices

- 9.1. Appendix 1: Part 5 Section A – Members’ Code of Conduct – pt 1.
- 9.2. Appendix 2: Part 5 Section A – Members’ Code of Conduct – pt 2 – Process for handling complaints.
- 9.3. Appendix 3: Report on Local Government Ethical Standards from the Committee on Standards in Public Life.

10. Local Government (Access to Information) Act 1985

- 10.1. The Council’s Constitution, which can be found at:
<https://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CIId=873&MIId=7972&info=1&MD=Constitution>
- 10.2. Report for the Standards Committee, 20th December 2011: The Localism Act 2011 – The Amended Standards Regime, which can be found at:
<https://www.minutes.haringey.gov.uk/documents/s24540/2011%2012%2020%20Agenda%20itemReport%20to%20Update%20Standards%20Committee%20Localism%20Act.pdf>
- 10.3. Report for the Standards Committee, 22nd March 2012: Ethical framework, which can be found at:
<https://www.minutes.haringey.gov.uk/documents/s25661/Signed%20report%20The%20Ethical%20Framework%20220312.pdf>
- 10.4. Report for Full Council, 21st May 2012: Ethical Framework, which can be found at:
https://www.minutes.haringey.gov.uk/documents/s26243/The%20Ethical%20Framework%20report%20_signed%20report.pdf
- 10.5. Minutes of the Standards Committee Meeting, 6th July 2017: Proposed Changes to the Council’s Constitution, which can be found here:
<http://www.minutes.haringey.gov.uk/documents/g8198/Printed%20minutes%2006th-Jul-2017%2019.00%20Standards%20Committee.pdf?T=1>
- 10.6. Report for Full Council, 24th July 2017: Constitutional Changes, which can be found at:
<http://www.minutes.haringey.gov.uk/documents/s95118/Standards%20report%20to%20Full%20Council%20Constitution%20changes%20-%2024%20July%202017.pdf>