

STANDARDS COMMITTEE

CHAIRMAN: Cllr Rosalind Prowse

DATE: 5 April 2019

REPORT OF: Task & Finish (Code of Conduct) Group

SUBJECT: FIRST REPORT OF TASK & FINISH (CODE OF CONDUCT) GROUP (2019)

RECOMMENDATIONS

(a) The Committee recommends to full Council that the Code of Conduct applicable to the Council be amended as follows from 8 May 2019:

- (i) The format of the Code be revised as set out in Appendix A subject to delegated authority be given to the Monitoring Officer to make such additional minor amendments to further promote clarity in content (including its presentation) as she considers appropriate.
- (ii) Two new obligations be added to require councillors not to act in a manner which brings their office as councillor or the council into disrepute; and to ensure co-operation and compliance with any standards investigation and prohibit malicious complaints (as shown in paragraph 4.6 and 4.7 of Appendix A)
- (iii) The definition of non-statutory interests which need to be declared at meetings (but not recorded in the Register of Interests) and in respect to which councillors are prohibited from participating in the debate (other than where members of the public are permitted to speak) and voting, be extended to include:
 - (a) where “*a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the councillor’s consideration or decision-making in relation to that matter*” (as shown in paragraph 6.4 of Appendix A) and
 - (b) financial interests (as per paragraph 6.3 of Appendix A) of Members themselves as well as of their friends, relatives or close associates.

- (iv) The sanctions for breach of the Code involving removal from committee be revised slightly so that it be made clear that full Council could resolve to remove a member from a relevant position (subject to compliance with political allocation rules) and that a recommendation to Group Leaders could be made to invoke relevant party rules to further sanction the member (e.g. remove them from their group) in a timely manner.

AND

(b) The Committee resolves that:

- (i) the Task and Finish (Code of Conduct) Group reconvene in 2019/20 as outlined in section 8 of the report;
- (ii) Members be encouraged via their Group Leaders to promote the 'top tips' for managing meetings (as shown in Appendix B).

1 PURPOSE

- 1.1 To present the findings and recommendations of the Task and Finish (Code of Conduct) Group ("**the T&FG**") to the Standards Committee.

2 BACKGROUND

- 2.1 Further to the Committee's resolution at its meeting on 27 February 2019, the T&FG (comprising Cllr Prowse, Cllr Keeling, Cllr Jones and the Council's independent persons, Mrs A Smith and Mr G Barnicott) met on two occasions to review the Council's 2012 Code of Conduct for Members ("**the Code**") and the associated complaints procedure. The findings and recommendations of the group are detailed in this report.
- 2.2 So far as possible within the limited time available to the T&FG in 2018/19, in reaching its recommendations the group considered a variety of matters including feedback gathered from officers, members and the public as part of the existing standards applied by councillors; good practice recommendations of the Report on Standards in Public Life (January 2019); and the experience and practices from other local authorities. The T&FG also took account of the Council's own experience in recent years and months, and the views expressed at the Standards Committee meeting in February 2019.

3 AREAS CONSIDERED

- 3.1 Recognising its duty to promote and maintain high standards of conduct and noting the increased level of complaints in 2018 to date particularly against district councillors, the T&FG considered whether the Code was sufficiently clear for complainants (to ensure that complaints were warranted) and councillors (to avoid breaches and secure high standards of conduct); and / or what changes might be needed to the Code and the investigations procedure. In doing so it identified the following areas for consideration.

- (i) Whether the existing obligations on councillors to behave in a respectful manner and not to intimidate or bully others, could be further promoted with reference to examples of relevant behaviours.
- (ii) Whether the definition of non-statutory interests (i.e. interests other than disclosable pecuniary interests) should be revised to ensure that personal conflicts of interests of members were fully captured and to reflect the emerging definition on personal interests recommended in the Report on Standards in Public Life. In this regard, concern was noted about situations where there is a potential conflict for members when dealing with situations where the council applied for permission itself (e.g. for housing development).
- (iii) Whether the Code should be extended to include two new general obligations on councillors namely to (a) not to bring the Council or the office of councillors into disrepute (b) to co-operate with standards investigations.
- (iv) Whether changes to the Code and / or Investigations Procedure should be made to reflect good practice including recommendations set out in the Report on Standards of Public Life and to improve understanding and clarity generally.

4 RESPECT, INTIMIDATION & BULLYING

- 4.1 The group pointed out that the requirements to treat others with respect and not to bully or intimidate others (which form part of the Council's Code) have long been part of standards expected of councillors, such having been included in the former national code of conduct since before 2003. It highlighted that basic good manners and courtesy to others and 'treating others as you would want people to treat your own friends' were all essential and key to avoiding breaches of these parts of the Code. Further, it noted that there is a range of guidance particularly from the former National Standards Board which provided helpful guidance for members on what is and is not for example, disrespectful.
- 4.2 The T&FG considered it appropriate for all to recognise that the requirement to act in a respectful manner did not prevent political banter nor the expression of differences in political views, but comments which attacked an individual's personal characteristics or integrity were not acceptable. Another type of situation involving disrespectful behaviour might include a member who persistently refused to obey the chairman's ruling at meeting and / or refused to be quiet when asked by the chairman.
- 4.3 Similarly, in respect to bullying and intimidation which was not infrequently referred to in complaints about member conduct towards employees (at both a district and parish / town council level), it was noted that reasonable criticism of others is acceptable (e.g. when it concerns poor performance) but concerns should be addressed in the correct manner (e.g. through managerial processes, not public meetings where for example in the case of officers, it is not possible to respond on an equal footing and such comments can unjustifiably damage professional reputations). In response to feedback on

existing member and officer relations particularly within the context of the pending start of a new four year council term, the group considered it would be helpful for members to be provided with a list of key contacts and telephone numbers for each service area (to avoid members simply expecting junior officers to be able to respond instantly to issues raised by them as well as to seek to make prior appointments where possible to ensure that officers are not otherwise engaged); and for members to give officers advance notice of questions / issues they had before formal, usually public meetings so there was every prospect of comprehensive answers being given.

- 4.4 As part of the recent national report into standards of conduct in private life, the T&FG noted that the Council's own Standards Committee had endorsed the best practice recommendation that all councils should include prohibitions on bullying and harassment in their code of conduct, including definitions and examples of the sort of behaviour covered by the provisions. The TF&G has therefore put together some suggested changes to the Council's current code to supplement the Code's existing relevant provisions (see Appendix A foot-notes).
- 4.5 In helping to promote and maintain mutual respect between members and officers particularly at the start of a new council term, the group also supported the Standards Committee's decision at its last meeting to require members to attend standards training and for such events to include officers on occasion. It is currently proposed to have an officer and member event in the form of the Code Conduct training within the May 2019 member induction programme.
- 4.6 As part of a drive to improve respect between members themselves regardless of their political grouping, the T&FG also considered that a 'meet and greet' event as part of the pending member induction programme would be beneficial. Further, it added that given members were representatives of the Council, at formal meetings in particular full Council, members should be expected to dress appropriately. How members presented themselves (in terms of their appearance and language) inevitably had an impact on the image which the Council gave of itself to the public generally.
- 4.7 Whilst the group emphasised that each member was responsible for their own behaviour, in helping to secure respect members showed to officers and other members in formal meetings, the TF&G also considered that improvements could be made to the support and training provided to chairpersons in the new Council. In this regard, the T&FG considered that the emerging Member Development programme should include courses on '*How to Effectively Manage Meetings*' or similar, but also that members should learn from existing members' practical experience. In the latter regard, the views on top tips for being an effective chairperson were sought from the Chairman of Overview and Scrutiny, Cllr M Haines. He identified five very helpful and practical tips for which the group's thanks are conveyed to Cllr Haines. The T&FG proposes that the tips are included in member induction packs or otherwise made available to members who wish to be appointed to such positions (see Appendix B). The group also asks that Group Leaders ensure that those

persons identified as prospective chairpersons have their attention drawn to such.

- 4.8 Whilst acknowledging that the Code of Conduct set out the standards required of its own members and that disrespect, bullying and intimidation by its members would not be tolerated, the group did want to note that it was aware that on occasions members (and officers) had been subject to such unacceptable behaviour from the public. Such behaviour was clearly not acceptable albeit it would need to be addressed through private action and referral to the police as appropriate. Members were reminded that whilst the Code legally only applied to them when acting in an official council capacity or otherwise holding themselves out as so acting (as defined in Appendix A and reflective of the existing Code), members should avoid placing themselves in situations where behaviour in their private life might reasonably be viewed as undermining the high standards of conduct required of them as a councillor or which might bring the Council into disrepute.

5 EXTENSION OF NON STATUTORY INTERESTS

- 5.1 The T&FG considered the rules regarding interests as set out in the existing Code. In noting the light touch approach to the current rules in respect to non-statutory interests (i.e. those interests set out in paragraph 14 and Appendix B of the current code), it was concluded that they did not address situations where a councillor themselves might gain or lose personally to a significant degree (e.g. where they were a member of a private sports club which was applying for a grant to improve facilities which they would benefit from unlike the majority of others in their ward or district; or where members themselves, as opposed to their relatives or close associates might otherwise gain financially which did not currently fall within interests under Appendix A of the Code).
- 5.2 Whilst the group was not aware of any evidence that the current very limited definition of non-statutory interests had presented a significant issue in recent years, the group considered it important that members of the Council were seen not to be putting personal interests above the public interest when making decisions as a councillor. Consequently it recommends amendments to the existing rules to address these gaps, including an additional paragraph as shown in Appendix A at paragraph 6.4 (which is recommended in the national Report on Standards in Public Life (January 2019)) and the inclusion of the word "Member" in paragraph 6.3 (currently paragraph 14 in the existing code).
- 5.3 In respect to the recommendation that a member with a paragraph 6.4 interest should not participate in the discussion on the matter nor vote, the member may still stay in the room. This is consistent with the Council's existing rules on non DPI financial interests (in paragraph 6.3 of the revised code in Appendix A and within the existing code). It should be noted that this is less onerous than the requirement for DPIs where members are also required to leave the meeting room.

6 NEW OBLIGATIONS

- 6.1 The group considered that the limited number of obligations within the Code regarding behaviour other than matters arising in connection with interests, was currently limited. For example behaviour which was clearly inappropriate but not necessarily within the confines of paragraphs 1 to 6 of the existing code may not readily be caught by the Code (e.g. repeated breaches of the Code). Similarly, a failure to co-operate with an investigation may not be an obvious breach.
- 6.2 Consequently, members considered that a 'catch-all' provision would be appropriate (i.e. so that behaviour (albeit only in an official capacity) which could reasonably be regarded as bringing a councillor's office or the Council into disrepute, as per the former national code of conduct, would be caught). In addition, it considered a new provision requiring members to comply with and co-operate with an investigation regarding an alleged breach of the Code would promote and maintain credibility in the complaints process, particularly given some concerns about the absence of co-operation by members on occasion who were alleged to have breached the Code and / or other poor conduct of some members when responding to complaints. It was noted that a provision had also been advocated by the national Committee on Standards in Public Life covering this area. As such it is proposed that a new provision be included in the Code which required "councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors".
- 6.3 In summary the group proposes that two new obligations are added to the Code as shown in paragraphs 4.6 and 4.7 of Appendix A to this report.

7 FORMAT

- 7.1 Whilst the T&FG considered that the existing Code and Investigations Procedure were largely fit for purpose, it felt that both elements of the standards framework could be better presented to make them easier to follow. Consequently, the Code format is proposed to be changed as shown in Appendix A. This presents the key provisions with reference to simple questions and sub headings (in little more than 2 sides of A4 rather than the existing 4 pages), with definitions and guides to help members and the public more easily understand what relevant provisions mean, reserved for footnotes at the end of the document. Importantly, other than the amendments addressed above, the substantive content of the Code remains unchanged.
- 7.2 In terms of the standards complaints form, the group considered such useful as it encouraged complainants to provide pertinent information. Nevertheless, the T&FG concluded that it should also be made clearer that complaints would be accepted for consideration even if the form was not completed. Two changes were also recommended by the group which will be implemented by the Monitoring Officer to improve clarity for complainants (and potentially members) namely:

APPENDIX B – COPY REPORT TO STANDARDS COMMITTEE 5.4.19

- a simple flow chart be produced to summarise the investigation procedure and improve understanding; and
- a section be included in the complaints form whereby complainants could identify which of the available sanctions they would prefer if the complaint were to be upheld.

- 7.3 In considering the available sanctions, the T&FG proposed that the sanctions available in the case of a breach should make it clear that on the recommendation of the Standards Committee, the Council could remove a member from a committee or sub-committee or other appointment; and also that an additional provision should be included whereby the Standards Committee could recommend to Group Leaders that they apply their own group disciplinary rules to a member who has breached the Code of Conduct, but importantly, quickly.
- 7.4 More generally, whilst it was hoped by the T&FG that situations where formal sanctions are warranted should not arise (because members comply with the Code), it was considered important for Group Leaders to actively promote and maintain high standards of conduct by their group members and not in any way condone behaviour which might reasonably be viewed as falling below the high standards of conduct required of persons holding public office.

8 OTHER AREAS FOR FUTURE CONSIDERATION

- 8.1 To ensure that any key changes to the Code may be resolved by the existing Council before the May 2019 election, the T&FG has concentrated on key issues only. Further it should be noted that standards legislation will probably be changing in the next 12 months in response to the Report on Standards in Public Life. Consequently the T&FG suggests that:
- (a) The T&FG is not disbanded after its report is submitted to the Standards Committee but is retained so that it may reconvene in 2019/2020 to provide a means by which the Committee might facilitate further detailed work to be undertaken the Code. The councillor membership of the T&FG would be subject to any changes which the Group Leaders propose at the AGM in May 2019; as well as of course, the availability of the independent persons who are able to provide an important and impartial public perspective on the members' ethical framework.
 - (b) Whilst the current report principally concerns the standards required of district councillors, further support and guidance is anticipated to assist town and parish councils in understanding and accommodating changes to the Code in view of the pending changes in the law over the coming year. In cases where issues to be considered by the T&FG also concern town and parish councillors, the parish councillor representative should also be invited to join future meetings of the T&FG which the Standards Committee may wish to allocate to the T&FG for consideration.

- (c) The T&FG should consider in 2019/20 the impact of social media within the context of standards; and also undertake a review of how the amended code (in particular the new provisions) has operated in practice and whether standards of conduct particularly regarding the relationship with officers has improved in view of the changes made.

8.2 In the meantime, the TF&G hopes that the Standards Committee and Council will support the changes it has proposed to the Code and Investigation Procedure. The publication of this report has been advertised in the Members' Newsletter so that all members have had the opportunity to comment on the T&FG report in advance of the Standards Committee. In closing, the T&FG would like to emphasise that its recommendations are made to further promote high standards of conduct amongst its members the vast majority of whom already behave in a manner compatible with the Code and the revisions proposed. It should also be recognised that the changes proposed are consistent with the Council's duty to promote and maintain high standards of conduct which ultimately serve to protect the integrity of decision making, maintain public confidence and safeguard local democracy within the Council's district.

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