



Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	AUDIT COMMITTEE - 28 JANUARY 2021
Report Number	AGENDA ITEM 11
Subject	ARRANGEMENTS FOR INVESTIGATING ALLEGATIONS UNDER THE MEMBER CODE OF CONDUCT
Wards affected	ALL
Accountable member	Cllr Patrick Coleman, Chair of Audit Committee Email: patrick.coleman@cotswold.gov.uk
Accountable officer	Patrick Arran, Monitoring Officer Email: patrick.arran@cotswold.gov.uk
Summary/Purpose	To inform the Audit Committee of the Committee for Standards in Public Life best practice recommendations and to provide draft Arrangements for investigating complaints under the Code of Conduct
Annexes	Annex A – Draft Arrangements for investigating alleged breaches of the Member Code of Conduct
Recommendation/s	It is recommended that Audit Committee: <ul style="list-style-type: none">a) Notes the requirement that the Committee for Standards in Public Life Best Practice recommendations should be adopted by all councilsb) Notes that the LGA Model Code of Conduct and the draft Arrangements implement all but two of the Best Practice recommendationsc) Considers the draft Arrangements for investigating complaints appended to this report and, subject to any changes it wishes to make, recommend them to the next appropriate meeting of Council for adoption.d) Authorise the Monitoring Officer to provide town and parish councils with the proposed Arrangements for investigating complaints for information and comment prior to consideration by Council at the next appropriate meetinge) Instructs the Monitoring Officer to ensure that the register of members gifts and hospitality is updated and published quarterly

	<p>f) Instructs the Monitoring Officer & Section 151 Officer to provide a report on any separate bodies set up or owned by the Council as part of the Annual Governance Statement to the committee and giving a full picture of its relationship with those bodies</p> <p>g) Consequent upon all of these recommendations being approved, authorise the Monitoring Officer to make a report to the Committee for Standards in Public Life that the best practice recommendations have been adopted in their entirety</p>
Corporate priorities	Not applicable to this report
Key Decision	NO
Exempt	NO
Consultees/ Consultation	No consultation is required, but the Monitoring Officer will consult informally with town and parish councils about the arrangements as they will be covered by them with the District Council as the Relevant Authority.

1. Background

This report will inform the Committee of the Best Practice recommendations set out in the Committee on Standards in Public Life (CSPL) report called “Local Government Ethical Standards” dated the 30th January 2019. It will also provide a draft document which will set out a process for investigating complaints under the Code of Conduct (the Arrangements). The full report is available online [here](#)

- 1.1 The CSPL undertook a review of the ethical framework for members and the purpose of the study and subsequent report was to provide assurance that the current framework following the implementation of the Localism Act 2011 was achieving its aim of ensuring that the standards expected by the public were being maintained and promoted. Members will recall that the Localism Act abolished the Standards Board for England with the intention that ethical standards would be maintained by Councils at a local level and that member conduct would be judged at the ballot box.
- 1.2 The CSPL review concluded that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The terms of reference for the review were to examine the structures, processes and practices in local government in England for:
- maintaining codes of conduct for local councillors
 - investigating breaches fairly and with due process
 - enforcing codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest
 - whistle blowing
- 1.3 The CSPL also assessed whether the existing structures, processes and practices are conducive to high standards of conduct in local government and were to make any recommendations for how they can be improved.

- 1.4 As part of its review, the CSPL made 15 best practice recommendations which are contained in the report. The expectation was that the best practice recommendations should be adopted by all councils. The CSPL wrote to all local authority Chief Executives in July 2020 to follow up the recommendations and again in the autumn to ask for progress against the recommendations. To date, this authority has not provided an update whilst the existing Code and Arrangements were considered by the Monitoring Officer who came into post late summer.
- 1.5 Overall, CSPL appears to be satisfied that the current arrangements in England are working and, whilst it accepted that the benefits of devolved arrangements should remain, this required strengthening to deal with the minority of councillors who do not adhere to the Nolan Principles and engage in disruptive or abusive behaviour. The Committee also discovered some perceived risks in relation to the rules around conflicts of interest and gifts and hospitality which they considered to be inadequate.
- 1.6 The CSPL have made a number of recommendations - which are set out in its report - and which they believed strike the balance between allowing ethical standards to be dealt with locally whilst providing a system which can hold to account those who commit the most serious or persistent breaches. The key recommendations include:
- A rebuttable presumption that Councillors public behaviour is in their Official Capacity
 - The criminal offences relating to Disclosable Pecuniary Interests should be abolished
 - A new power for local authorities to suspend councillors without allowances for up to six months
 - A right of appeal for suspended councillors to the Local Government Ombudsman
 - Revised rules on declaring interests, gifts and hospitality
 - Local authorities will retain ownership of their own Codes of Conduct
 - Strengthened role for the Independent Person
 - Greater transparency about the number and nature of Code complaints.
- 1.7 The report was to the Government and it is acknowledged that a number of the recommendations will need legislative change, as it stands any legislative intervention will inevitably be delayed by the pandemic and any issues arising from Brexit. The Monitoring Officer will provide further updates to the Committee as appropriate.
- 1.8 The Monitoring Officer has set out below the best practice recommendations together with his commentary as to the situation at Cotswold DC.
- 1.9 The Monitoring Officer advises the Committee to make a recommendation to Council to adopt the proposed draft Arrangements. Coupled with the LGA Model Code and the other recommendations in this report, the best practice recommendations will have been adopted. This will also enable Cotswold District Council to overtly demonstrate that it has considered and adopted all or some of the best practice recommendations should a review be carried out by CSPL. It must be noted however, that this is not compulsory and they are recommendations, not stipulations.

2. Best Practice Recommendations¹

Best practice 1: 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.

Comment - The majority of the cases reviewed by CSPL related to bullying or harassment, or other disruptive behaviour. The LGA Model Code of Conduct has a prohibition on bullying and harassment together with definitions of bullying and harassment.

Best practice 2: 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.

Comment – This is contained in the LGA Model Code which has gone further and added that members will undertake Code of Conduct training and that members will comply with any sanction imposed on them following a finding that they have breached the Code.

Best practice 3: 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.

Comment – This recommendation results from experiences where Councils have not set out a Code of Conduct in the traditional sense but have merely stated that they expect compliance with the Nolan Principles. This has been built into the Arrangements.

Best practice 4: 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.

Comment – The Council does make the Code of Conduct available online as part of the Constitution, the CSPL requirement goes further and suggests that they should not be "*inaccessible on a local authority's website or as an annex to the authority's constitution*".

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Comment – The Council does publish any Gifts and Hospitality on the website under individual councillor names. Consideration will need to be given as to whether this should be subject to more formal arrangements even if it produces a nil return. In addition, members will need to be reminded to check whether they need to update their declarations of interest at least once per year and in any event if their circumstances change.

¹ These are based on the assumption that Council will adopt the LGA Model Code of Conduct at its meeting on the 20th January 2021 (the date of publication of this report)

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Comment - The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. A public interest test has been included in the draft Arrangements which will be considered below

Best practice 7: Local authorities should have access to at least two Independent Persons.

Comment – Council is considering a report on the 20th January 2021 to appoint two Independent Persons and to re-appoint an existing Independent Persons so it will have access to three IP's and will be compliant with this requirement.

Best practice 8: 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.

Comment – This is included in the draft Arrangements as part of the process.

Best practice 9: 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.

Comment – The publication of findings is within the Council's current Arrangements and is included in the draft Arrangements appended to this report.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Comment – As mentioned previously, the Council does have guidance on its website, but the draft Arrangements are intended to provide a more detailed description of the process with clear guidance to comply with the recommendation. It is good practice to include informal resolution of complaints as a first consideration where there is a breach of the Code of Conduct, but which is not considered serious enough to investigate. Involving the Independent Person in the initial consideration of the complaint provides adequate safeguards to the process.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Comment – The CSPL are of the view, with which the Monitoring Officer concurs, that Parish Councils should take corporate responsibility when allegations of a councillor bullying an employee – normally only the Clerk is employed in smaller councils – are received. This is not a controversial proposal and is any event part of the employer’s duty of care to the employee. Clearly, if the Chair is alleged to be the person carrying out the conduct, other members of the Council should report.

Best practice 12: Monitoring Officers’ roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Comment – This is something which is included in the draft Arrangements. However, the role cannot extend beyond providing advice in relation to ethical matters and would not include advising on governance issues. Parish Councils will need to take advice from their Association(s) on these matters.

Best practice 13: 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.

Comment – The Authority has one Deputy Monitoring Officer, namely Susan Gargett the Legal Services Manager, who would act in the unlikely event of a conflict for the Monitoring Officer. If she were unable to act for any reason, it would be normal practice for a Monitoring Officer from another authority to be asked to assist, this would be on a reciprocal basis and should be cost neutral. This has been included in the draft Arrangements.

Best practice 14: 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.

Comment – This is something that is already in existence but could be re-stated where appropriate.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues

Comment – There is nothing controversial in this recommendation and meetings can take place by exception. Again, this is referred to in the draft Arrangements.

- 2.1 If Council adopts the LGA Model Code and the draft Arrangements are acceptable, then all but two of the best practice recommendations will have been adopted by the Council. In respect of the two recommendations which it was not appropriate to build into the Model Code and Arrangements, the Monitoring Officer has set out recommendations to deal with these.

2.2 The two outstanding which need to be actioned are:

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 14: 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.

- 2.3 It is recommended that the committee considers whether it could demonstrate compliance with best practice recommendation 5 by instructing the Monitoring Officer to update and publish the gifts and hospitality register quarterly. Best practice recommendation 14 could be satisfied by inclusion in the Annual Governance Statement as suggested.
- 2.4 Once adopted, this will enable the Monitoring Officer to notify the CPSL that the authority has formally adopted its recommendations and authority is requested to do this on the authority's behalf.

3. Arrangements for dealing with complaints under the code of conduct

Section 28 (6) of the Localism Act 2011 provides that a relevant authority other than a parish council must have in place—

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made

3.1 In order to implement the CSPL best practice recommendations, the Monitoring Officer has provided draft Arrangements for the Committee to consider recommending to Council for adoption. The draft Arrangements are intended to replace the current arrangements in their entirety. The draft Arrangements contain references to guide members to the corresponding best practice recommendations

3.2 Section 28 (7) of the Localism Act state that the authority must ensure the appointment of at least one independent person:

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a)

- 3.3 The primary purpose of the Independent Person is to provide a check and balance to the arrangements adopted by a Council to determine complaints under the Code of Conduct to ensure that members have an independent view before making decisions on breach and sanctions. This is primarily a safeguard to the rights of individual members in the absence of a body which oversees standards with the abolition of the Standards Board for England and is reinforced in the recent Committee on Standards in Public Life review of the ethical standards regime in England which recommends at least two.
- 3.4 The authority must seek the views of the Independent Person before it makes a decision when there has been an investigation– i.e. the Hearings Panel. The authority may seek the views of the Independent Person in relation to allegation before a decision has been made to investigate. This has normally manifested in the involvement of the Independent Person at the point when the Monitoring Officer is making a preliminary decision who will seek the view – but not be bound by – the Independent Person.
- 3.5 It is the role of the District Council to provide the process under which complaints against town and parish councillors can be investigated. The District Council has responsibility to make findings and recommend sanctions. As such the Monitoring Officer has recommended that, if approved, the draft Arrangements are sent to the town and parish council by way of informal consultation prior to adoption by Council.
- 3.6 It is not intended to provide a commentary on the proposed arrangements, suffice to say that they are intended to be a guide to complainants and members and set out the process in a logical way. They incorporate the CSPL best practice recommendations which are referenced in footnotes in the document.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from the recommendations in this report.

5. LEGAL IMPLICATIONS

All legal implications are set out in the body of the report.

6. RISK ASSESSMENT

There are no tangible risks identified as a result of the recommendations made in this report other than a reputational risk if the authority does not adopt the CSPL best practice recommendations.

7. EQUALITIES IMPACT

There are no equality implications arising from the recommendations in this report.

8. CLIMATE CHANGE IMPLICATIONS

There are no climate change implications arising from the recommendations in this report.

9. ALTERNATIVE OPTIONS

No alternative options have been considered.

10. BACKGROUND PAPERS

None