



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
24 November 2020  
Agenda Item

Ward(s) Affected: All

**Standards in Public Life: An Update**

**Report by the Monitoring Officer**

**Executive Summary**

**1.0 Purpose**

- 1.1 Members of the Joint Governance Committee will be aware of the report of the Committee on Standards in Public Life and the work of the Local Government Association on the Model Code of Conduct.
- 1.2 This report seeks to provide members of the Joint Governance Committee with an update on the progress of the work of the Committee on Standards in Public Life and the Local Government Association, and to set out the implications for Adur and Worthing Councils.

**2.0 Recommendations**

- 2.1 Members of the Joint Governance Committee are asked to note the contents of this report.
- 2.2 Members of the Joint Governance Committee are asked to nominate 4 members, from their membership, to sit on a Joint Officer/Member

Constitutional Working Group, to consider standards and ethics matters, including :

- the LGA Model Code of Conduct,
- the recommendations of the Committee on Standards in Public Life and,
- the arrangements surrounding Councillor Conduct at Adur and Worthing Councils.

2.3 The Joint Governance Committee is recommended to require a report back from the Joint Officer / Member Working Group with recommendations on the issues set out at 2.2 above, at their meeting in March 2021.

### **3.0 Background**

- 3.1 It is expected that Elected and Co-opted Members of the Borough, District and Parish Councils will uphold the highest standards of conduct expected of holders of public office. Section 28 of the Localism Act 2011 requires the Councils to have a Code of Conduct for Elected Members and both Adur and Worthing Councils adopted a Code in 2015, updated in 2020, which forms part of the Constitution. Lancing Parish Council and Sompting Parish Council have their own Code of Conduct for their Members, adopted by the relevant Parish Council.
- 3.2 Face to face training on the Code of Conduct is offered by the Monitoring Officer to all Members on an annual basis and training is also included in the new Member induction day. Regular updates and briefings are included in the Members' Bulletin.
- 3.3 The Adur & Worthing Code of Conduct is based on the 7 Nolan principles for those who hold public office: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 3.4 The Localism Act places emphasis on local resolution of conduct matters, and the Councils' internal procedures provide authority to the Monitoring Officer to dispose of matters by way of informal resolution where appropriate.
- 3.5 Section 28(6) and 28(7) of the Localism Act 2011 requires the Councils to put in place 'arrangements' under which allegations that a Member of the Borough, District or Parish Council has failed to comply with the relevant Authority's Code of Conduct when they are acting in their capacity as a Councillor. The Localism Act also provides an obligation on Local

Authorities to appoint at least one Independent Person to act as a consultee when considering standards matters.

3.6 The Joint Governance Committee is responsible for standards, ethics and probity matters, audit and accounts activity and the constitutional framework. Within its terms of reference the Committee has the following responsibilities:

- To lead on the Council's duties to design, implement, monitor, approve and review the standards of ethics and probity of the Council, its Councillors and Co-opted Members.
- To promote a culture of openness, ready accountability and probity in order to ensure the highest standards of conduct of Councillors and Co-opted Members.
- To oversee and manage a programme of guidance, advice and training on ethics, standards and probity for Councillors and Co-opted Members and on the Members' Code of Conduct.
- To establish a standards sub-committee to receive reports following investigation on behalf of the Monitoring Officer into allegations of misconduct by Members and to determine appropriate action in respect of alleged breaches of the Members' Code of Conduct.
- To receive an annual report from the Monitoring Officer on the local resolution and assessment of allegations of breach of the Member Code of Conduct, by Members of the Councils and any Parish Council.
- To support the Monitoring Officer ... in their statutory role.

#### **4.0 Committee on Standards in Public Life**

4.1 Members will recall the report brought to them in November 2019 entitled 'Standards in Public Life' which updated Members of the Joint Governance Committee with the work recently undertaken by the Committee on Standards in Public Life and their recommendations in respect of ethical standards.

4.2 The Committee on Standards in Public Life, Chaired by Lord Evans of Weardale, in addition to many recommendations that require legislative changes, made some best practice recommendations. These, together with the Monitoring Officers response are set out below:

**4.2.1 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.**

The Codes of Conduct for Adur District Councillors and Worthing Borough Councillors adopted in January 2020 include prohibitions on bullying and harassment. Further work needs to be undertaken in respect of including a definition and examples within the code.

**4.2.2 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.**

The Adur and Worthing Standards Procedure Rules provide that the Monitoring Officer may reject any complaint considered to be trivial or malicious. Further work needs to be undertaken in respect of including a provision in the code itself to prohibit trivial or malicious allegations by councillors, and to require councillors to comply with any formal standards investigation.

**4.2.3 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.**

Adur and Worthing Councils reviewed their codes of conduct in January 2020 and a further review will be required in early 2021.

**4.2.4 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.**

Adur and Worthing Council's Codes of Conduct are available on their website and form part of each Council's constitutions. They are readily available to councillors and the public. Recent Coronavirus legislation provides that where documentation is required to be available for inspection at the offices of the Council, making it available by electronic means, is currently sufficient.

**4.2.5 Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format.**

Adur and Worthing Council's update their gifts and hospitality register on an ongoing basis, every time Officers are notified by a Councillor of a new entry.

**4.2.6 Councils should publish a clear and straightforward public interest test against which allegations are filtered.**

Adur and Worthing Councils Standards Procedure Rules provide for the Monitoring Officer to apply a public interest test in assessing formal complaints received. Further work needs to be undertaken to include details of the test applied in those rules.

#### **4.2.7 Local authorities should have access to at least two Independent Persons.**

Adur and Worthing Council's, until October 2020, had two Independent Persons, appointed to provide a joint role to both authorities. There is currently only 1 Independent Person in post but members have authorised the appointment of two additional persons; recruitment is ongoing and this Committee is due to convene a Sub Committee to consider appointments in early December 2020.

#### **4.2.8 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.**

Adur and Worthing Council's Standards Procedure Rules provide for the Independent Person to be consulted by the Monitoring Officer on assessment of complaints, despite this not being a statutory requirement. The Monitoring Officer does therefore consult with the Independent Person as to whether to undertake a formal investigation on an allegation, and he/she is given the option to review and comment on allegations which the Monitoring Officer is minded to dismiss as being without merit, vexatious or trivial. Further the views of the Independent Person are always made known to the Joint Governance Committee on an annual basis and at Sub Committee meetings determining complaints following investigation.

#### **4.2.9 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.**

At Adur and Worthing Councils' current practice is where a decision on an allegation following a formal investigation is made, it is made by a Sub Committee of the Joint Governance Committee, and the draft minutes of the meeting are published on the Council's website as soon as possible. The minutes usually include a brief statement of the facts, the provisions of the code engaged, the view of the Independent Person, the reasoning of the Sub Committee, and any sanction applied.

#### **4.2.10 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.**

Adur and Worthing Councils have published guidance on their website on how to make a complaint under the code of conduct and the process for handling complaints. Further work needs to be undertaken on timescales for investigations and outcomes.

**4.2.11 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.**

Consideration needs to be given to include such a provision in the Adur and Worthing Standards Procedure Rules.

**4.2.12 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.**

Consideration needs to be given to the support provided to the Adur and Worthing Monitoring Officer.

**4.2.13 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.**

Adur and Worthing Council's Standards Procedure Rules include provision for Deputy Monitoring Officers, other Monitoring Officers or external appointees to undertake investigations.

**4.2.14 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.**

Further consideration needs to be given to this recommendation.

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

Further consideration needs to be given to this recommendation

## **5.0 Local Government Association**

- 5.1 The Committee on Standards in Public Life report recommended creating an updated model code of conduct, by the Local Government Association, in consultation with the representative bodies of councillors and officers of all tiers of local government.
- 5.2 Consultation on a draft Code ran for 10 weeks from 8th June until 17th August 2020. Members of the Joint Governance Committee will recall the report brought to them at their July 2020 meeting where they were invited to consider the draft Code and engage with the consultation process.
- 5.3 A summary of the consultation response provided by the LGA is as follows:

Overwhelming support for the Code, but a number of issues raised as follows:

- First person or third person?
  - Respect or Civility?
  - More on social media including confidentiality
  - Declaration of gifts £25 too low or £50 too high?
  - Need for accompanying guidance with examples
  - Equality Act - obligations to comply
  - Obligation to cooperate with investigation
  - Compulsory training for members
  - Sanctions
- 5.4 Further to the consultation, the LGA have made minor amendments to the draft Model Code of Conduct. The revised draft Code was considered at an LGA Councillors Forum on 22nd October 2020.
- 5.5 A final code is to be prepared by the LGA and taken to their Board meeting for approval on 3rd December 2020. The approved Model Code will then be published and Guidance issued.

## **6.0 What Does this Mean for Adur and Worthing Councils?**

- 6.1 As set out above further steps need to be taken to consider the recommendations made by the Committee on Standards in Public Life.
- 6.2 The final Model Code of Conduct will need to be considered by Members and if the Joint Governance Committee recommend its adoption, it will need to be taken to each full Council for formal adoption.
- 6.3 The Model Code and the recommendations of the Committee on Standards in Public Life will require a review of the Adur and Worthing Standards Procedure Rules and some significant amendments are likely to be necessary. Proposed changes to Standards Procedure Rules will also need to be considered by the Joint Governance Committee with a recommendation to each full Council for their adoption.

6.4 It is recommended that a Joint Officer / Working Group be established to consider these matters further. It is recommended that the Joint / Officer Working Group comprise the following:

- 4 members of the Joint Governance Committee
- The Councils 3 Independent Persons
- Group Leaders of Adur District Council
- Group Leaders of Worthing Borough Council
- The Council's Monitoring Officer
- The Council's 2 Deputy Monitoring Officers
- The Council's Senior Democratic Services Officer

6.5 It is recommended that the Joint Officer Working Group meet on dates to be arranged between January 2020 and March 2020 with a view to considering the report from the Committee on Standards in Public Life and the Local Government Association's Model Code of Conduct; that the working Group bring a report back to the Joint Governance Committee in March 2020 with recommendations for a revised Code of Conduct and Standards Procedure Rules; that such recommendations are considered by each full Council at their April meetings with revised Codes of Conduct and Standards Procedure Rules for each Council to be effective from 7th May 2021.

6.6 It is recommended that in their considerations the Joint Officer Working Group consider the following issues:

- Definition of bullying and examples within the Code of Conduct
- Clarity and specific training on when the Code is engaged
- Clarity and specific training of social media and a review of the Council's Social Media Policy
- Prohibition in the Code of Conduct of the bringing of trivial or malicious complaints by Councillors
- A requirement within the Code of Conduct requiring councillors to comply with any formal standards investigation
- A requirement within the procedures for the Joint Governance Committee to review the Code of Conduct on at least an annual basis
- A requirement that the Joint Governance Committee receive a regular report of the register of Gifts and Hospitality
- Inclusion of a public interest test within the Standards Procedure Rules
- Timescales for investigations and outcomes
- Review of the information on the Council's website as to how to make a complaint
- Whether provision is required in the Standards Procedure Rules concerning who should bring a complaint about the conduct of a Parish Councillor towards a Parish clerk and whether similar provisions should be introduced about the conduct of a Councillor towards a District or Borough Council's Monitoring Officer.
- Separate bodies established or owned by the Councils and the conduct and ethics of their members



- Support provided to the Councils' Monitoring Officer
- Regular meetings between Senior Officers, Group Leaders, Joint Chairpersons of the Joint Governance Committee to discuss standards and ethics or regular attendance at Joint Governance Meetings by Group Leaders to discuss standards and ethics issues.
- Compulsory training on standards and ethics for all Councillors, on election and at least annually
- Compulsory training on standards and ethics for all Independent Persons, on appointment, and at least annually
- Compulsory training for members of the Joint Governance Committee, on determination hearings and standards and ethics issues generally, on appointment to that Committee, and at least annually
- Consideration of the arrangements governing the membership of any Sub Committee meeting to hold a determination hearing of a complaint; in particular how that Sub Committee is selected, whether it is politically balanced, whether the Chairman has a casting vote and if not, how a matter is determined in the circumstances of an equal vote, and how the Chairperson of a Sub Committee is selected.
- The procedure of a Sub Committee meeting when hearing and determining a code of conduct complaint.
- Budget implications of carrying out investigations and seeking external advice in respect of standards matters and a recommendation for a separate budget to be provided and to be monitored regularly by the Monitoring Officers and annually by the Joint Governance Committee to ensure the Monitoring Officer has sufficient resources to carry out his/her statutory role.

## **6.0 Engagement and Communication**

- 6.1 The Monitoring Officer regularly consults with the Independent Person, the Chief Executive and the Joint Chairpersons of the Joint Governance Committee on all standards matters.
- 6.2 The Council will need to consider whether they wish to consult with the wider community and stakeholders prior to adopting a revised Code of Conduct in 2021.
- 6.3 The LGA have already consulted widely with Officers, Councillors, and other stakeholders nationally in producing their Model Code of Conduct.

## **7.0 Financial Implications**

- 7.1 There are no financial implications arising from this report.

## **8.0 Legal Implications**

- 8.1 The Localism Act 2011 provides the statutory framework for Member conduct, the mandatory obligation for Local Authorities to have a Code of Conduct and for Councils to have local arrangements for dealing with complaints about Member conduct.
- 8.2 The Terms of Reference of the Joint Governance Committee provide that the Committee is responsible for Standards of Ethics and Probity amongst Members. The Standards Procedure Rules provide procedural arrangements for the consideration of complaints relating to Member conduct.
- 8.3 The Localism Act 2011 provides that the District Council is responsible for dealing with allegations relating to Member conduct in respect of any parishes in its area.

### **Background Papers**

- Part 3 Terms of Reference of the Adur District Council and Worthing Borough Council Constitutions
- Standards Procedure Rules
- Localism Act 2011
- Adur District Council Code of Conduct for Elected Members
- Worthing Borough Council Code of Conduct for Elected Members
- The LGA draft Model Code of Conduct
- The Committee on Standards in Public Life's report on Ethical Standards published January 2019

### **Officer Contact Details:-**

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## **Sustainability & Risk Assessment**

### **1. Economic**

Matter considered and no issues identified.

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified.

#### **2.2 Equality Issues**

Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

Any hearing to be held before the Standards Sub-Committee would be based on the principles of natural justice and comply with Human Rights legislations and particularly the right to a fair trial.

### **3. Environmental**

Matter considered and no issues identified.

### **4. Governance**

Upholding high standards of conduct and probity amongst Members is paramount and breaches of the Code of Conduct have an adverse effect on public confidence in the democratic process and adversely affect the reputation of the Council.