

# STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

Tuesday, 26 February 2019

Present:

Councillors	A Davies	C Blakeley
	C Jones	G Ellis
	B Kenny	P Gilchrist
	J McManus	S Williams (In place of T Cox)

In attendance: Independent Member Mr G Kerr

23 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Tony Cox and Bernie Mooney.

24 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

No declarations of absence were received.

25 **MINUTES**

**RESOLVED:**

**That the Minutes of the meetings of the Committee held on 20 November 2018 and 31 January 2019 be confirmed as a correct record.**

26 **REVISION OF MEMBERS' ICT POLICY**

The Head of ICT Strategy and Delivery introduced his report reminding Members that the Council was responsible for a wide variety of information, some of which was personal and sensitive. Elected Members were responsible for the personal information of Wirral citizens in their Ward/Constituency. Members and the Council had legal and moral responsibilities to ensure that the security of that information was maintained.

It was also reported that the Council maintained an Information Governance Framework which sought to protect the security of its information assets. This was a combination of policy, procedural and technical controls which together helped officers and Members to manage the risks to the confidentiality, integrity and availability of Council information.

Appended to the report at Appendix 1 was the Members' Information and ICT Acceptable Use Policy which confirmed responsibilities as a new or existing Elected Member of Wirral Council in terms of the acceptable use of Council information and ICT facilities. As well as outlining responsibilities under the Data Protection Act it also detailed the key policy rules that must be followed to ensure the safe handling, storage and use of Council and constituents' information. It supplemented the Members' Code of Conduct, and replaced the existing 'Members' ICT Policy' previously agreed by the Council on 19 December 2016.

The Head of ICT Strategy and Delivery informed that the Members' ICT Policy had been updated to take account of the 1998 Data Protection Act and the 2018 Data Protection Act. A few small changes had been made in respect of the security of emails and improvements in technology.

The Committee noted that no other options had been considered because failure to adequately protect the Council or Constituents' information would result in a compromise of its security which could have a number of negative consequences for the Council, including:

- Financial penalties - The ICO could issue monetary penalties up to €20 million to organisations which have failed to comply with the DPA.
- Legal ramifications – Serious breaches of the DPA could result in legal action, including prosecution.
- Reputational damage – Data breaches were often reported in the media and consequently result in the public perception of an organisation and/or the individuals who represent them, being damaged.
- Emotional / physical harm – The compromise of personal and sensitive data could result in harm to the individuals to whom the information related.
- Compliance – Failure to maintain information and ICT security could result in the Council not complying with the Public Services Network (PSN) and NHS Data Security and Protection Toolkit standards. This could result in the authority being unable to deliver key services.

Members then asked a number of questions which were answered by the Head of ICT Strategy and Delivery and the Director of Governance and Assurance. Issues raised included the following:

- The role of the Members' Equipment Steering Group. It was considered that it should have had the opportunity to make recommendations on it and sign off the revised Policy.

- The webcasting service interruption during the Extraordinary Council meeting held on 25 February 2019. Members had requested that the meeting be held in the Civic Hall but there had not been sufficient time to do this in order that the meeting could be webcast. This was disappointing as a lot of members of the public had been expected and did attend but as there was not enough room in the public gallery, had to be accommodated in Committee Rooms 1 and 2. Regrettably, there had been a wifi problem and the signal had dropped out. Consequently, members of the public had missed a lot of the meeting because of the interruption. It was noted that the webcasting was provided by a private company and did not use the Council's network.
- The Civic Hall was not designed for Council meetings and there was no webcasting equipment in there. On special occasions with plenty of notice suitable accommodation for a Council meeting may be found e.g. Civic Hall, Floral Pavilion, other hired space but this would incur an additional cost as it would also mean hiring a private company to provide webcasting because the Council's mobile kit did not accommodate all 66 Members.
- The Council now owned a cinema but it could not be used for Council meetings because it only owned the freehold, not the operation or the leasehold. It was leased to a cinema provider (Vue). If Vue Cinemas wished to let the Council use the cinema they would hire it out to the Council.

It was reported that the Head of ICT Strategy and Delivery (Jeff Ashworth) was leaving the Council and that his last day at work would be 22 March 2019. Members put on record the Committee's thanks for the work he had done and wished him well for the future.

**RESOLVED:**

**That the Members' Information and ICT Acceptable Use Policy be recommended to the Council for approval.**

**27 COUNCIL PROCEDURE RULES - STANDING ORDER CONCERNING VOTING AND ELECTRONIC VOTING**

The Director of Governance and Assurance introduced a report which sought to address deficiencies in Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) concerning voting methods. It had regard to the model standing order contained in statutory Guidance and recommended a revised standing order to make improvements and to cater for use of the electronic voting system in the Council Chamber.

Attached to the report was:

- Appendix A - the Council's current standing order 18 on 'Voting'.

- Appendix B - the Model Standing Order upon which the above was based and to which the Council must have regard.
- Appendix C – the recommended revised Standing Order on Voting.

The Committee was informed that the Council was legally required to have regard to the statutory Guidance in drafting Council standing orders. The draft revision at Appendix C was based on the model standing order contained within the Guidance, together with:

- (a) those elements of the existing WBC standing order that appear to have been drafted with good reason and are not otherwise found in the Model; and
- (b) amended to cater for the addition of an electronic voting system and the Council's preferred custom and practice as set out in the report.

The Committee noted that another option available to it was that the current standing order remained unchanged. However, this would not address the issue of the current standing order requiring a vote at each meeting to allow for use of electronic voting. Alternatively, the standing order could be amended in some other way, perhaps as part of an overall review. This would mean a delay.

The Committee was aware that the Council Chamber's Electronic Voting System had been activated in mid-August 2018. Demonstrations for Elected Members had taken place on 26 September and on 3, 8 and 10 October 2018 and the first Council meeting utilising the new electronic voting system had taken place on 15 October 2018.

Following the installation of the new electronic voting system in the Council Chamber, and consultation with Members on its usage, it had been identified that the Council's Constitution would require revision of Standing Order 18 of the Council Procedure Rules. This was primarily that the default method of voting should be altered to electronic voting as opposed to a 'show of hands'. This alteration would negate the need to vote and suspend standing orders at the beginning of every Council meeting, to enable use of the electronic voting system at future meetings.

Member's views had been sought on an alteration to the existing standing order. Following debate, the Committee had formed the view that the additional sections suggested that covered the issue of electronic voting, taken largely from a detailed standing order used in another council, would alter the balance and flow of the meeting. Rather, the Committee requested that the Council Procedure Rule 18 be re-considered in its entirety, with a

further Council meeting taking place between that meeting and the Committee considering this matter again.

The Committee noted that the current standing orders included reference to and means of utilising electronic voting, including the Mayor's powers where the system had failed or was potentially misused. These were drafted for a previous electronic voting system, however, and missed several elements. In particular, the current standing order:

- presumed or required a vote on whether to use the electronic voting system at the beginning of each meeting (at 18(1)); and
- was confusing in relation to a recorded vote (referred to as a 'card vote') in that it did not necessarily differentiate between a recorded vote and the current means of electronic voting and did not specify the stating of the vote for the gallery and web-cast.

It was noted that the current standing orders, therefore, required a vote at the beginning of each meeting to permit the use of electronic voting system and to waive the standing order to provide clarity.

Members noted that the two were quite different in places and certain paragraphs appeared to be missing or worded in an entirely different way in the Council's standing order compared to the Model. Members also noted that this situation was repeated elsewhere in the Council's Constitution, hence Appendix C which was recommended to the Committee as a replacement standing order 18 of the Council Procedure Rules for adoption by the Council.

It was reported that having regard to the statutory Guidance, the draft at Appendix C was based on the model standing order, together with those elements of the Council's standing order that appear to have been drafted with good reason and were not otherwise found in the Model and amended to cater for the addition of an electronic voting system and the Council's preferred custom and practice.

The Committee was also made aware that adopting standing orders without obvious or evidenced regards having been had to the legal requirement to do so runs the risk of challenge and continuing to waive the existing standing orders in order for a Council meeting to operate was not conducive to good administration and not good practice.

Members then asked the Director of Governance and Assurance a number of questions and made a number of comments. They were all in favour of recorded votes (card votes) involving a roll call, taking precedence which meant that Members would not be required to press the button to record their

vote using the electronic voting system at the same time as voting orally. This would avoid the confusion that had been experienced at the Extraordinary Council meeting on 25 February 2019. It was noted that this was how the report and Appendix C had been written. When a recorded vote was not requested voting in the Council Chamber would involve the use of the electronic voting system.

**RESOLVED:**

**That the Council be recommended to adopt a revised Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) as attached at Appendix C to the report.**

28 **ARRANGEMENTS FOR DEALING WITH COMPLAINTS AGAINST MEMBERS**

The Acting Senior Manager Legal and Committee Services introduced a report that informed the Committee that in 2014 the Council had adopted a Members' Code of Conduct and a process for dealing with complaints made under that Code following the changes to the ethical standards regime introduced by the Localism Act 2011.

Since 2014 there had been experience of dealing with complaints which had highlighted areas for improvement and clarification in the arrangements for dealing with complaints made under the Members' Code of Conduct. In particular, issues had been raised in relation to the timeliness with which complaints had been dealt with under the current protocol.

On 7 November 2018 the Committee had resolved that Officers should be requested to draw up a new bespoke Protocol which detailed arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct. Consequently, a draft revised Protocol was presented to the Committee on 31 January 2019 which resolved to convene a Working Group to consider the proposed draft in more detail.

This report sought authority to adopt the revised Protocol for investigating and making decisions in relation to allegations made under the Members' Code of Conduct which had now been reviewed and revised taking account of the views expressed and proposals and suggestions put forward by Members at the Working Group meeting held on 12 February 2019.

Members noted that robust standards arrangements were required to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The proposed amendments would improve the clarity of the process and would provide the Committee and the Monitoring Officer with the opportunity of dealing with complaints in a

timely manner in accordance with what was currently felt to be professional best practice. They would also provide clarity and transparency for the general public.

Appended to the report for Members' information was an amended Protocol in respect of 'Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct' and six appendices as follows:

- Appendix 1 – Complaint Form
- Appendix 2 – Standards Complaint Process Flowchart
- Appendix 3 – Procedure for Investigation
- Appendix 4 – Standards Panel Procedure
- Appendix 5 – Standards Appeal Panel Procedure
- Appendix 6 – The Assessment Panel's Terms of Reference

Other options being considered were that the current protocol for dealing with complaints against Members remained unchanged or that the current protocol for dealing with complaints against Members was changed in some other way. The Committee noted that adopting the revised Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct" would streamline and clarify the process for dealing with allegations allowing for a faster resolution for suitable matters and reducing the risk of delay in the process.

The Acting Senior Manager Legal and Committee Services reported that the Working group had amended paragraph 2.2 of the revised Protocol to say that within five working days of receipt of a valid complaint a copy of it would be sent to the Member complained about, inviting their written comments within ten working days. Also, paragraph 5.1 of the revised Protocol had been amended to say that the Monitoring Officer would complete his evaluation and assessment within ten working days after receipt of the valid complaint and it did say after receiving any clarification/information requested. However, she now of the view that this was a little confusing and sought Members' agreement for that to be amended so that it was clear that the ten days was following the process in paragraph 2.2 because clearly until the Member had commented it was difficult to finalise the assessment and evaluation and it was important that Members had the opportunity to respond to complaints against them.

Members were then given the opportunity to ask questions and the Director of Governance and Assurance and the Acting Senior Manager Legal and Committee Services responded to them as appropriate.

The Committee concluded that the revised Protocol was much clearer now and there was a proper timetable to be followed when complaints against

Members were received. The Workshop had gone well and the Acting Senior Manager Legal and Committee Services was thanked for her hard work on revising the Protocol.

**RESOLVED: That**

**That the Committee agrees:**

- (1) subject to the amendments proposed by the Acting Senior Manager Legal and Committee Services above being included within the revised procedure for dealing with complaints made under the Members' Code of Conduct in accordance with the revised Protocol document attached at Appendix A to the report be adopted; and**
  
- (2) the revised Protocol be posted on the Council's website.**

**29 LOCAL GOVERNMENT ETHICAL STANDARDS - REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE - JAN 2019**

The Director of Governance and Assurance introduced a report that informed Members of the outcome of the Committee on Standards in Public Life's review of Local Government Ethical Standards. The report kept Members abreast of developments with the ethical standards regime and sought approval for immediate actions to be taken in light of the review.

It was reported that on 25 May 2010, the coalition government had announced its intention to abolish the Standards Board regime set out in Part 3 of the Local Government Act 2000. The government had accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected Members to office had the right to expect the highest standards of behaviour. However, it had considered that the standards regime under the LGA 2000, under which all local authorities, by law, had to adopt a national code of conduct and a standards committee to oversee the behaviour of Members and receive complaints, regulated by Standards for England, was ineffective, bureaucratic and encouraged petty complaints or harmful accusations. It, therefore, proposed that, through the Localism Act 2011, local authorities would draw up their own local codes of conduct and it would become a criminal offence for Members to deliberately withhold or misrepresent a financial interest.

However, concerns had been raised by the Committee on Standards in Public Life (CSPL) in various reports, following the implementation of the Localism Act 2011, on whether the sanctions for breach of standards were adequate and it would, therefore, be monitoring the implementation of the new local government standards regime.



The CSPL had taken a review with the following terms of reference:

1. Examine the structures, processes and practices in local government in England for:
  - a. Maintaining codes of conduct for local councillors
  - b. Investigating alleged breaches fairly and with due process
  - c. Enforcing codes and imposing sanctions for misconduct
  - d. Declaring interests and managing conflicts of interest
  - e. Whistleblowing
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
3. Make any recommendations for how they can be improved.
4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The review had covered all local authorities in England, of which there were 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. The CSPL had not taken evidence relating to Combined Authorities, metro mayors, or the Mayor of London.

The review report had run to 100 pages and a list of recommendations was set out in a table in the report to assist the Committee in its deliberations. The CSPL's review report and conclusions was appended to the report

The Committee noted that adopting the best practice recommended in the CSPL report would ensure robust standards arrangements were in place to safeguard local democracy, maintain high standards of conduct, protect ethical practice in local government and would reduce the risk of legal challenge. It would also provide clarity and transparency for the general public.

The CSPL had concluded that its recommendations represented a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of the recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – they would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly.

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government standards. Whilst many of the recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – they would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly.

The Committee noted that the best practice the CSPL had identified was, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represented a benchmark that any local authority in England could and should implement in its own organisation. Ultimately, the CSPL believed that, responsibility for ethical standards rested, and should remain, with local authorities. Senior Councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority identified as, in most cases, already operating in a number of local authorities.

The Director of Governance and Assurance reported that the CSPL's recommendations had mostly accorded with the response that this Committee had put forward when it had submitted its evidence. The CSPL had made recommendations to central government and had also captured what it considered to be best practice. The CSPL had asked the Local Government Association (LGA) to put together a revised Members' Code of Conduct. The LGA had not been keen to take this forward but it was hoped that it would co-ordinate something, again, so that there was a common standard. Local Authorities were expected to review their Codes of Conduct in the meantime. Wirral Council's Code did contain errors as it had been very much 'a lift and shift' from the previous model but when it was moved across there had been little bits left out e.g. some definitions were not carried over into the Code.

The Director reported that he had discussed, with colleagues in the Liverpool City Region, how helpful it would be if there was a common Code of Conduct across the region and in a way there was because two years ago when the City Region had been established a Constitution had been put together involving a piece of work that had produced a Code of Conduct for the new Combined Authority. He had been involved with this himself, whilst in private practice. He had taken the best bits of all of the six local authorities and put it together into one common Code so those Members, from each local Authority that went along to the Combined Authority meetings thus wearing two hats would see their own Code reflected to some extent in it. This common Code of Conduct was available for Members to look at, evaluate and consider whether they wanted to change to it.

The Director recommended the Committee to request a report that informed it of what the other Councils in the Liverpool City Region's Standards Committees were doing as the plan was that they would each be considering the outcome of the Committee on Standards in Public Life's review of Local Government Ethical Standards and deciding whether or not to review their

Codes of Conduct. The Committee would then be able to compare the Council's Code with the common Code, decide on any other changes it wished to make and then hopefully by then it may know what the LGA's responses were as well.

The Director informed that the Council accorded pretty much with all the best practice set out with one exception the commercial confidentiality of local authority companies.

A Member drew attention to Best practice 14. and the subsequent comments as detailed in the report as follows:

'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: Our annual governance statement does include reference to separate bodies wholly owned by the Council. The Council has wholly and jointly owned companies. It is considered that the minutes of the company board meetings contain commercially sensitive information which should not be subject to routine publication. The companies are however, subject to the provision of the Freedom of Information Act 2000.
- Recommendation: No further action at this juncture.'

The Member informed that he could not accept that there should be no further action. He proposed that in principle, given the increase in owned and jointly owned bodies, the Minutes should be published as soon as practicable after each decision-making meeting and that Officers be requested prepare a list of bodies that could potentially have their Minutes published and it be recommended to the Cabinet that it seeks their views on this and they be reported back to this Committee for further consideration.

The Director informed that it would not do any harm to ask these bodies to publish what they could and there may be different responses depending on whether or not they were wholly owned bodies. They were not always the same like companies for example.

A Member asked how many bodies this involved and the Director informed her that there were a dozen or so companies in which the Council had share holdings, there may be others that were dormant but in terms of active companies there were three or four limited by guarantee e.g. the Mersey Maritime Group and there were bodies in respect of the Council's activities with the Chamber of Commerce. There were two active trading companies,

trading in the market place (Edsential and Wirral Evolutions) and there was also the Wirral Growth Company Partnership, a body that would be active in the market place. The Council also had interests in two charities.

Another Member asked the Director to provide and circulate to each member of the Committee a complete list of these wholly owned, jointly owned bodies and charities etc. The Director informed that he would provide the information as part of a formal Committee report.

The Member also queried whether there could be one Standards Committee established consisting of Members drawn from each of the local authorities within the Liverpool City Region instead of each authority have their own Standards Committee. The Director reported that it was not uncommon to have joint Standards Committees or rather a separation of the Constitutional and Overseeing provision. However, being judged by a Councillor from another authority did not always sit well with some Members. The Director informed that he was happy to include this on the agenda for consideration at the next meeting of the Liverpool City Region's Monitoring Officers.

**RESOLVED: That**

- (1) the report and the contents of the review be noted;**
- (2) the actions contained within paragraph 3.6 of the report in relation to the Best Practice recommendations with the exception of Best Practice 14, be endorsed;**
- (3) the Committee receive, at a future meeting, a report that informs it of what the other Councils in the Liverpool City Region's Standards Committees have decided to do in respect of their Codes of Conduct, having considering the outcome of the Committee on the Standards in Public Life's review of Local Government Ethical Standards and on progress with the piece of work being carried out at Liverpool City Region level following the review;**
- (4) Officers be requested to prepare a list of those separate bodies that could potentially have their Minutes published and it be the subject of a report to the next meeting of the Committee; and**
- (5) the Cabinet be recommended to seek the views of those separate bodies on the list (at (4) above) on publishing their Minutes and report back to a future meeting of the Committee for further consideration.**