

# Audit and Governance Committee

21 July 2020

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

## Code of Conduct and Complaints Handling Process Review by the CRWP

<b>Final Decision-Maker</b>	Audit and Governance Committee
<b>Portfolio Holder(s)</b>	Councillor Alan McDermott, Leader of the Council
<b>Lead Director</b>	Lee Colyer, Director of Finance, Policy and Development
<b>Head of Service</b>	Patricia Narebor, Head of Legal Partnership and Monitoring Officer
<b>Lead Officer/Author</b>	Patricia Narebor, Head of Legal Partnership & Monitoring Officer Keith Trowell, Team Leader (Corporate Governance)
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

### This report makes the following recommendations to the final decision-maker:

1. Note the report and the CRWP's conclusions.
2. Approve the proposed actions set out in the report.
3. Await the model code of conduct & primary legislation and refer appropriate changes back to this Committee for comments.

### This report relates to the following Five Year Plan Key Objectives:

- Our Borough to support a well borough
- Our people to support effective leadership
- Providing value to ensure we operate in a business-like way

### Timetable

<b>Meeting</b>	<b>Date</b>
Constitution Review Working Party	10 & 30 January and 18 February 2020
Management Board	26 February 2020
Constitution Review Working Party	11 March 2020
Audit and Governance Committee	21 July 2020

# Code of Conduct and Complaints Handling Process Review by the CRWP

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Following concerns raised by Members arrangements were put in place to review the Council's Code of Conduct ('the Code') and associated protocols, including the procedure to deal with complaints against councillors, to ensure that they are fit for purpose and meet the needs and concerns of Members.
- 1.2 Reviews of the Council's Constitution (the Constitution') are undertaken by the Constitution Review Working Party ('the CRWP'). The CRWP has been tasked with reviewing that part of the Constitution that deals with the Code and the local arrangements for dealing with Code complaints ('the local arrangements').
- 1.3 This report provides an update of the CRWP's work and provides an update on the work of the Local Government Association (the LGA).
- 1.4 The Committee for Standards in Public Life has considered this issue and has made recommendations to government and the LGA is working on a review of the model Local Government Code of Conduct

## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Localism Act 2011 introduced new arrangements to replace the regime in place for standards in local government. These arrangements have been criticised by many and the Committee for Standards in Public Life ('the CSPL') has reviewed the effectiveness of the current arrangements in the light of the changes made by the 2011 Act. In January 2019 the CSPL issued its report "Local Government Ethical Standards - A Review by the Committee for Standards in Public Life" ('the Report'). The report made 26 recommendations and a further 15 best practice recommendations as set out in Appendix A. Some of the recommendations and best practices require primary legislation and some are already contained in the Council's local arrangements as shown in Appendix A.
- 2.2 Following a request by the Audit and Governance Committee and other members, the Council requested that the Chair of the CRWP should investigate the issue – inviting comments and feedback from councillors and making recommendations to the CRWP that might subsequently be considered by Full Council.
- 2.3 The Chair of the CRWP invited comments and offered interviews with members to understand any concerns about member behaviour, allegations of bullying and how the complaints process is operating and the effectiveness of the sanctions available. A number of possible improvements were identified and some administrative changes have already been acted upon by the Monitoring Officer- see paragraph 5 and Appendix B. Other concerns have also been

raised in the CSPL Report and are the subject of its recommendations, the majority of which require legislation.

- 2.4 The first of the CSPL's recommendation is for the LGA to create an updated model code of conduct. On 10 June 2020 the LGA issued an update on the Association's progress with updating the model code. The LGA is currently undertaking a consultation on the draft code that closes on 17 August 2020. The feedback from the consultation will help the LGA to develop a final draft, which will be reviewed by the LGA's Executive Advisory Board before being presented to the next LGA General Assembly expected to be held in the Autumn of 2020.
- 2.5 The CRWP has reviewed the Council's Code and the local arrangements and procedures alongside the recommendations and best practice set out in the Report. Appendix A shows the CRWP's comments and suggested actions against each recommendation/best practice.
- 2.6 As to the CSPL's recommendations, the CRWP has concluded that:

Recommendation 1 is being dealt with by the LGA as stated in 2.2 above and no action is required by the Council at this time. It would be better to not make substantive changes to the Constitution now given that substantial change may well follow publication of the LGA new model Code. It has been asserted that some have not submitted complaints of bullying because of lack of effective sanctions. Such sanctions are covered by recommendations from the CSPL but implementation by the Council must await legislation.

Recommendations 2, 3, 4, 5, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 require legislation to enable their implementation by the Council.

Recommendations 8 and 12 are in the Council's local arrangements in part although the independent person is appointed for a fixed term of four years (rather than two years) as specified in the recommendation.

- 2.7 In respect of the CSPL's Best Practice ('BP') recommendations the CRWP has concluded:

BPs 1, 6 and 7 should be implemented. The existing code prohibits a member bullying any person but a definition of bullying is recommended to be incorporated into the Code.

BPs 2, 3, 5, 8, 11 and 14 should await the revised model code of conduct.

BPs 4, 9, 12 and 13 are included in the Council's processes.

- 2.8 For the purpose of BP 1 it is intended to utilise the definitions contained in the CSPL report:

"Bullying" - Offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone.

“Harassment” - Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

It is proposed that these definitions together with examples of such behaviour will be incorporated in the local arrangements subject to awaiting any definition proposed by LGA in the new model code that will be considered by the CRWP.

- 2.9 For BP 6 – The public interest test is being considered. However, the model code of conduct being updated by the LGA will likely address this requirement. The wording will be drafted taking into account the LGA’s proposal, if considered appropriate.
- 2.10 As to BP 7 the feasibility of appointing Maidstone’s current Independent Person as a second Independent Person for Tunbridge Wells is being explored.
- 2.11 During the CRWP’s review, the Chairman sought views from councillors and others, who had views on the Code or the complaints process to assist with the review undertaken by the CRWP. A number of written views were submitted in writing; others were received in face to face meetings or telephone conversations with the Chairman. A number of these were on a non-attributable basis. A summary of the comments received and responses to the comments is attached as Appendix B.

### **3. Guidance on Social Media and Bullying and Harassment**

- 3.1 The guidance on social media and bullying and harassment was circulated to all borough councillors. It is also forwarded to parish councils following the assessment of individual complaints, when it is considered that the guidance may assist the parish council to address relevant matters. The Monitoring Officer can only make a recommendation that a parish council consider using the guidance but cannot mandate that the guidance form part of a parish council’s policies. Relations between borough councils and parish councils feature in recommendations from the CSPL Report and require legislation.
- 3.2 The CRWP suggested that there be specific reference to the guidance in the Code. This suggestion will be implemented once the Code is updated.
- 3.3 The CRWP considered suggestions that the Council has a general culture of bullying. In response to requests from the Chairman of the CRWP, eight councillors from all tiers of the Borough provided their views and 5 of them met with the Chairman. From the information received coupled with the data on complaints (below), it is clear that there is no widespread culture of bullying within the Council. That said, it is clear that some members believe that a small number of councillors have engaged in behaviour that they believe to be tantamount to bullying or harassment and those who consider that they have been subject to such behaviour report that they have found it very stressful.
- 3.4 Outlined below is a summary of the complaints received over the last two municipal years set out in various categories:

## List of complaints

### April 2019 to March 2020

Total no of complaints	Nature of complaint: Bullying		Nature of complaint: Other	
	Received	Upheld	Received	Upheld
Borough Council - 10	4	0	6	0
Town and Parish Councils - 2	0	0	2	0

Of the two complaints involving bullying, it was concluded in one of the cases that there was no evidence that the complainee subject member was acting in an official capacity and insufficient evidence was provided to substantiate the complaint.

The second case involving bullying related to one councillor suggesting that another councillor had not written their own speech and this was resolved informally by the subject member rendering an apology and being provided with training.

### April 2018 to March 2019

Total no of complaints	Nature of complaint: Bullying		Nature of complaint: Other	
	Received	Upheld	Received	Upheld
Borough Council - 4	2		2	
Town and Parish Councils - 6	5		1	

Of the two borough council complaints involving bullying, there were insufficient grounds to pursue one of the complaints. No action was taken relating to the second complaint because the preliminary local assessment criteria found that the complainee subject member was no longer a councillor when the complaint was reviewed.

No complaints were received between April and June 2020.

In summary, from April 2018 to June 2020 there have been six charges of bullying involving Borough Councillors. None were upheld, four were dealt with

informally and two have yet to be concluded. This does not provide evidence of a bullying culture within the Council, but it cannot account for any bullying that does not give rise to a complaint, as discussed above.

#### **4. Timelines**

4.1 Timelines – the timelines by which particular actions are required to be taken when assessing code of conduct complaints are tight. Whilst promptness in dealing with complaints is a priority, the timelines should be slightly extended to avoid giving an unrealistic expectation to parties involved with a code of conduct complaint. When the MO responds to a complaint, the timelines need to be set out explicitly and may vary from case to case. At the same time, there needs to be a clear description of actions to be taken, by whom and by when.

#### **5. Actions Taken**

5.1 The initial correspondence sent on receipt of a new complaint to complainants and subject members has been revised in order to provide greater clarity as regards timescales and procedures.

5.2 Arrangements are in place to :

- Incorporate into the Code the definitions of harassment and bullying set out in paragraph 2.8 above (BP1)
- Appoint a second Independent Person (BP7)
- Require current and newly elected borough councillors to sign up to the Code and to emphasise in the member induction process the importance of the Code's requirements
- Facilitate external Code training for all borough councillors
- Provide an update on the Code at Parish Chairman's meetings

#### **6. General Member Protocol and Protocol on Member/Officer Relations**

6.1 A review of the General Member Protocol and the Protocol on Member/Officer Relations will also be necessary since they form part of the Council's governance arrangements and relevant to the Code of Conduct. The content of the Protocol will be considered against the CSPL's recommendations and best practice suggestions together with the LGA's model Code of Conduct and the local arrangements.

#### **7. AVAILABLE OPTIONS**

7.1 Accept the proposals outlined in Appendix A so as to incorporate into the Code and the local arrangements those CSPL recommendations and best practices that can be integrated without primary legislation or the launch of the new model code.

The recommendations in the CSPL report are supported, but primary legislation is necessary before many of them can be implemented. The LGA is currently undertaking a consultation on a new model code of conduct that closes on 17

August 2020. The new model code will be presented to the next LGA General Assembly expected to be held in the Autumn of 2020. The CRWP will consider the finalised model code of conduct prepared by the LGA and that implemented by Kent County Council and make suggestions to the Committee regarding an updated Code for the Council.

7.2 Reject the recommendations and/or approve alternative proposed actions. Alternative actions are not recommended at this stage since these may conflict with existing or subsequent legislation and may not be in conformity with the model code of Conduct. Conflict may also arise with the Code adopted by Kent County Council.

7.3 Do nothing.

## **8. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

8.1 The preferred option is that at 7.1 above. this option provides at present the most appropriate response to the concerns raised in respect of the Code and the local arrangements. It recognises that there may be substantive changes to the Constitution once the new model code and legislation is enacted.

## **9. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

9.1 Views have been received from borough and parish councillors and from members of the public who have expressed an interest in CRWP's review. The views received are summarised in Appendix B.

## **10. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

10.1 The decision will be published on the Council's website.

10.2 The approved changes will be made to the Code and the local arrangements for incorporation in the Constitution subject to the approval of Full Council.

## **11. CROSS-CUTTING ISSUES AND IMPLICATIONS**

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Legal</b> including Human Rights Act	<p>1. The Localism Act 2011, section 28(1) provides that the Council must ensure that the Code of Conduct adopted under the Act, when viewed as a whole, should be consistent with the following principles: (a)selflessness; (b)integrity; (c)objectivity; (d)accountability; (e)openness; (f)honesty and (g) leadership.</p> <p>2. The Council (other than the Parish /</p>	Head of Mid Kent Legal Partnership

	<p>Town Councils must have in place (a) arrangements under which allegations can be investigated, and (b) arrangements under which decisions on allegations can be made.</p> <p>3. The current Code of Conduct and the arrangements for dealing with complaints complies with the existing statutory requirements.</p> <p>4. The report outlines the review undertaken by the Committee for Standards in Public Life and the review of the model code of conduct carried out by the Local Government Association (“LGA”). Relevant changes will be incorporated into the Council’s Code of Conduct once primary legislation has been enacted and the revised model Code of Conduct is updated by the LGA.</p>	
<b>Finance and other resources</b>	Additional resources may be required to enable the Constitution, the Code and the arrangements relating to the Code to be updated and consequential amendments to be reviewed. A significant change in how code of conduct complaints are reviewed and investigated may require additional resources to enable officers to comply with these requirements.	Head of Mid Kent Legal Partnership
<b>Staffing establishment</b>	There are no staffing implications arising from this report.	Head of HR, Customer Service and Culture
<b>Risk Management</b>	There are no risk management implications arising from this report.	Head of Mid Kent Legal Partnership
<b>Data Protection</b>	The code of conduct complaints outlined in this report must be considered on a general basis to avoid a breach of the Data Protection Act 2018.	Team Leader (Corporate Governance), MKLS
<b>Environment and Sustainability</b>	There are no environmental and sustainability implications arising from this	Sustainability Manager

	report.	
<b>Community Safety</b>	No community safety issues arise from the report.	Community Safety Manager
<b>Health and Safety</b>	There are no health and safety implications arising from this report.	Corporate Health and Safety Advisor
<b>Health and Wellbeing</b>	The Code of Conduct contributes to the Council discharging its obligations relating to the health and wellbeing of residents, stakeholders and Councillors.	Head of Housing, Health and Environment
<b>Equalities</b>	This decision is relevant to the Council responsibilities under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.	Corporate Governance Officer

## 10. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Annotated table of CSPL recommendations and best practice recommendations.
- Appendix B: Annotated table of comments from borough and parish councillors and members of the public

## 11. BACKGROUND PAPERS

- Local Government Ethical Standards A Review by the Committee on Standards in Public Life :  
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- LGA Report setting out the review of the model code of conduct may be found at:  
<https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life-and-review-model-code-conduct>