

# **Slough Borough Council**

<b>Report to:</b>	Standards Committee
<b>Date:</b>	19 July 2022
<b>Subject:</b>	Update on Government's Response to Committee on Standards in Public Life
<b>Chief Officer:</b>	Sarah Wilson (Monitoring Officer)
<b>Contact Officer:</b>	Sarah Wilson (Monitoring Officer)
<b>Ward(s):</b>	All
<b>Exempt:</b>	No
<b>Appendices:</b>	None

## **1. Summary and Recommendations**

- 1.1 The purpose of this report is to provide members with an update on the Government's response to the Committee on Standards in Public Life report and recommendations arising from its review of Local Government Ethical Standards and to provide details of how these recommendations would apply in the local context of Slough.

### **Recommendations:**

The Committee is recommended to:

1. Note the update and the Council's local procedures.

### **Reason:**

Local authorities remain accountable for implementing and applying the Seven Principles of Public Life in local government via implementing and monitoring the effectiveness of their ethical frameworks and taking action when there are breaches of this framework.

## **2. Report**

### **Introduction**

- 2.1 The Committee on Standards in Public Life published a Local Government Ethical Standards report on 30 January 2019. The committee considered whether there was a need to return to a centralised system to govern and adjudicate on standards, however it concluded that whilst the independence and consistency of the system could be enhanced, there was no need to reintroduce a centralised body. The report did contain a number of recommendations and identified best practice to improve ethical standards in local government. This included recommendations to change primary legislation, secondary legislation and the Local Government

Transparency Code. The report also included best practice recommendations for local authorities which would be a benchmark of good ethical practice.

- 2.2 The Monitoring Officer is responsible for keeping the ethical framework under review and for reporting to this committee on best practice.

## **Recommendations**

- 2.3 On 18 March 2022, Kemi Badenoch MP – Minister of State for Equalities and Levelling Up Communities – responded to Lord Evans of Weardale, the Chair of the Committee on Standards in Public Life. The following sections summarise the recommendations, the Government's response and the situation as it applies in Slough.

### **Recommendation 1**

The Local Government Association (LGA) should create an updated model code of conduct.

Government response: It is for individual councils to set their own local code, in line with the Localism Act 2011. The LGA published an updated model code of conduct in January 2021.

Slough context: The Council adopted the LGA's model code of conduct in 2021.

### **Recommendation 2**

The Government should ensure that candidates standing for or accepting public offices are not required to disclose their home address.

Government response: The Government will consider amending the regulations to achieve this aim and will consult with candidates and councillors on the best means to ensure that they are not required publicly to disclose their home address.

Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

Slough context: The Monitoring Officer has the ability to grant a dispensation to councillors to prevent their home addresses being published on their register of interest. A number of dispensations were granted to councillors following the local election in May 2022.

### **Recommendation 3**

Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media.

Government response: It is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media. There is a boundary between an elected member's public and private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

Slough context: The Council has adopted the model code of conduct which highlights the difference between strongly felt political debate and unacceptable acts of abuse, intimidation and violence. The Code explains when a member is acting in an official capacity, which includes when a member seeks to use their position to confer an advantage.

#### **Recommendation 4**

The Localism Act 2011 should be amended to state that they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.

Government response: The LGA have updated their own model code of conduct to cover action when a reasonable member of the public with knowledge of the facts could form the impression that the individual was acting as a member.

Slough context: The Council has adopted the model code of conduct and training has been delivered to elected members who were re-elected in 2022.

#### **Recommendation 5**

The Regulations on disclosable pecuniary interests should be amended to include unpaid directorships, trusteeships, management roles in a charity or a body of a public nature and membership of any organisation that seeks to influence opinion or public policy.

Government response: Unpaid roles may need to be declared if they are relevant to council business, and councillors should recuse themselves, if necessary, if discussions relate to private bodies they are involved in. The government will keep the matter under review but has no immediate plans to amend the regulations.

Slough context: The Council already requires elected members to register a wider range of interests than that covered in the regulations. Elected members should seek advice of the Monitoring Officer if they are unclear on which interests they should register and declare at a meeting and whether they should participate in a meeting.

#### **Recommendation 6**

Local authorities should establish a register for gifts and hospitalities with set amounts as set out in their code of conduct.

Government response: The LGA model code includes a requirement to register gifts and hospitalities with an estimated value of at least £50. The Government agrees that there is merit in the register being publicly available.

Slough context: The Council has adopted the model code of conduct and provided training to members who were elected in 2022 on the requirement to register gifts and hospitalities. The code also requires registration of any gift or hospitality that has been offered but refused and states that elected members should refuse any gift or hospitality, irrespective of estimated value, where this could give rise to a real or substantive personal gain or reasonable suspicion of influence.

**Action:** The Monitoring Officer will review the arrangements and consider whether the register should be published or reported on a regular basis to this committee as part of the Council's commitment to transparency.

#### **Recommendation 7**

The Localism Act should be amended in relation to disclosable pecuniary interests.

Government response: There are no plans to repeal the provision in relation registration of disclosable pecuniary interests, which include an obligation to register pecuniary interests of a councillor's spouse or partner where these are known.

Slough context: The Council has adopted the model code of conduct which requires registration of a wider range of interests and declaration of interests and non-participation in meetings in specified circumstances. As non-registration of a disclosable pecuniary interest is a criminal offence, it is right that the list is specific so there is clarity on whether an offence has been committed.

### **Recommendation 8**

The Localism Act should be amended to require that independent persons are appointed for a fixed term of two years, renewable once.

Government response: This is more appropriate to be implemented as a best practice recommendation. The above rate of turnover may be unachievable, bearing in mind the small pool of people capable and willing to undertake the role. The role of the independent person is quite demanding, but unpaid and therefore individuals may be unwilling to take it on with these limitations in place.

Slough context: The Council has appointed a new independent person for a term of 4 years. The Council will advertise the role on a 4 year basis or when there are vacancies, but it is appropriate to have discretion to agree a longer term of a particular individual if there are no suitable candidates to replace them.

### **Recommendation 9**

The Local Government Transparency Code should be updated to provide that the view of the independent person should be formally recorded in any decision notice or minutes.

Government response: The Government does not agree. The suggestion has merit but will depend on circumstances. Where there is a determination of no case to answer from an unfounded complaint, it should not necessarily be a legal requirement to publish details of that unfounded complaint.

Slough context: The Monitoring Officer agrees that the level of detail published in relation to a complaint should be considered on a case by case basis. The Monitoring Officer has confirmed with the Independent Person that he should provide their comments in writing, so there is a written record of his view, however fairness may not require details of these comments to be published.

### **Recommendation 10 to 16**

The recommendations relate to a sanction of suspension, having voting independent members and voting parish councillors and having a right of appeal to the Local Government Ombudsman which is binding on the local authority.

Government response: A deliberate policy decision was taken not to include a power of suspension in the Localism Act. The sanctions in the current regime are deemed sufficient, including censure and barring from specific roles. In addition where a member is part of a political group, the political group can take action under its own disciplinary procedures. The Government will engage with sector representative groups to seek views on strengthening sanctions for breaches which fall below the bar of criminal activity, but involve serious incidents of bullying and harassment or disruptive behaviour.

Slough context: Details of breaches of the code of conduct are reported to committee, with themes addressed. In addition the Monitoring Officer meets the leaders of the two political parties and would discuss any complaint received where it may be appropriate for the political party to consider investigating and taking action in accordance with party disciplinary procedures.

### **Recommendation 11**

Local authorities should provide legal indemnity to independent persons if their views or actions are disclosed.

Government response: The government agrees in principle, but does not consider that there is a need to require this through secondary legislation.

Slough context: The Council has a relatively low level of complaints that require formal investigation. The provision of a legal indemnity can be considered on a case by case basis.

### **Recommendation 15**

The Local Government Transparency Code should be updated to require councils to publish annually the number of code of conduct complaints they receive, what the complaints broadly relate to, the outcome of those complaints, including if they are rejected as trivial or vexatious and any sanctions applied.

Government response: This is better addressed as best practice. The form and content of annual reports are a matter for local authorities to determine.

Slough context: The committee will receive regular, more than annual, updates on code of conduct complaints and themes, including complaints that have not been referred for a formal investigation. There is a separate report on this committee's agenda.

### **Recommendation 17**

The Government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be in legislation.

Government response: The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. The government will consider this further.

Slough context: The Council's code of conduct includes the above as a sanction.

### **Recommendation 18**

The criminal offences in the Localism Act relating to disclosable pecuniary interests should be abolished.

Government response: The criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption, is a necessary and proportionate safeguard and deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

Slough context: Member training has reminded elected members of the requirement to register interests and the criminal offence that will be committed if DPs are not

correctly registered. Reminders are sent out to elected members on an annual basis to ensure they check their register and update it.

### **Recommendation 20**

The Localism Act should be amended to state that parish councils must adopt the code of conduct of their principal authority or the model code.

Government response: The government does not agree that this is necessary and has no plans to repeal the Localism Act. This is a matter for local determination.

Slough context: There are three parish councils within the borough of Slough and it is a matter for elected members of those councils to determine the appropriate code of conduct for their authority.

### **Recommendation 21**

The Localism Act should be amended to state any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant parish council.

Government response: The government has no plans to repeal the legislation, but will give this matter further consideration.

Slough context: This is a matter for the national government to consider.

### **Recommendation 22**

Legislation should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.

Government response: The government agrees in principle with this recommendation and recognises this will be pertinent to monitoring officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the other two statutory officers and who may be subject to personal pressures when conducting high profile breach of conduct investigations. The Government will engage with sector representative bodies of all tiers of local government to seek views on this.

Slough context: The three statutory governance officers are key to assisting the Council to improve its governance arrangements and ensure the ethical framework is effective. These officers support each other. In addition there is an active Berkshire Monitoring Officer group for the purposes of sharing best practice and supporting each other.

### **Recommendation 23**

The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.

Government response: Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites and government recommends this as a best practice recommendation. The government will work with local government to advance transparency in the sector and to solidify transparency policies and processes and encourage proactive publication of open data across councils.

Slough context: The Council's whistleblowing policy has been reviewed by the Monitoring Officer and is subject to a separate report on this agenda. The monitoring officer email address is provided in the updated policy. In addition a list of national bodies are listed in the schedule for specific types of complaint.

**Action:** The Monitoring will discuss with the chief finance officer and the external auditor whether a named contact for the external auditor can be published on the website. It is not advisable for this to be published in the whistleblowing policy as the named contact may change over time and the policy may not be updated to reflect this.

#### **Recommendation 24**

Councillors should be listed as "prescribed persons" for the purposes of whistleblowing complaints

Government response: Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing. Local councillors are not external to the workplace. The government is open to further representations on the matter on how local accountability can be strengthened in this regard.

Slough context: The Council has a member officer relations code which contains guidance for elected members on what to do if they are concerned about an officer's conduct. Local councillors are not independent of the Council and there is a risk that their role could become confused. Elected members can utilise the provisions of the whistleblowing policy to raise any concerns.

- 2.4 In addition to formal recommendations to Government, the Committee also made some best practice recommendations, which have been reviewed by the Monitoring Officer. Most of the best practice recommendations have been covered in the model code of conduct, which the Council adopted last year. Best practice recommendations that have not been adopted include:
- (a) Publication of a register of gifts and hospitalities. This is covered by an action above.
  - (b) Local authorities should have access to at least two independent persons. The Council only has one independent person, which is deemed sufficient for the level of complaints received. The Council's Monitoring Officer is part of a Berkshire wide group and there may be opportunity to share independent persons if the need arises.
  - (c) Procedures in place to address any conflicts of interest when undertaking a standards investigation. Whilst there are no formal procedures in place, the Berkshire authorities can utilise the services of monitoring officers from another Berkshire council if a conflict of interest arises.
  - (d) Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and the separate bodies should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible format. The Council is undertaking reviews of the governance arrangements for all its owned companies and connected entities. It is planned to report the findings to cabinet later this year.
  - (e) Senior officers should meet regularly with political group leaders or group whips to discuss standards issues. The three statutory governance officers have regular meetings with the leaders of the two political parties. In addition, the

commissioners have taken steps to ensure the leader of the opposition is involved in the internal improvement and recovery board.

### **3. Implications of the Recommendation**

#### **3.1 Financial implications**

- 3.1.1 Accepting the recommendation will not involve any additional expenditure.

#### **3.2 Legal implications**

- 3.2.1 The Localism Act 2011 changed the system for maintaining standards amongst elected members by removing the Standards Board and placing responsibility with individual local authorities. Section 27 place a duty on local authorities to ensure that their members and co-opted members maintain high standards of conduct and require them to adopt a code of conduct for their members.
- 3.2.2 Section 28 confirms that the adopted code should be consistent with the seven “Nolan” principles of standards in public life and must set out the rules that the authority wants to put in place in relation to registering and disclosing pecuniary and non-pecuniary interests. The Council adopted the LGA’s model code of conduct in 2021.
- 3.2.2 Section 28 also requires local authorities to put in place arrangements under which it can investigate an allegation of a breach of the code made in writing and, if it considers that it warrants investigation, requires that the authority appoint at least one independent person whose views must be sought after it has made an investigation and before it takes a decision. The Council appointed Mr R Tomkinson as the Council’s independent person from 19 May 2022.
- 3.2.3 The Standards Committee will assist the Council to meet its duty under s.27 of the Act to maintain high standards of conduct by members and co-opted members. Its core functions include advising on the adoption or revision of the Council’s ethical framework including the code of conduct and to monitor the operation of the same. The Monitoring Officer should produce bi-annual reports on member conduct complaints and an annual report on declarations of interest.

#### **3.3 Risk management implications**

- 3.3.1 Having an effective code of conduct in place setting out the standards of behaviour for elected members and an effective system for managing and monitoring such behaviour is a key part of the Council’s ethical framework and risk management system. As a public body, the Council should act lawfully and in the public interest and failing to do so opens it up to challenge. Decisions of the council can be challenged where they have not been made on a rational basis or having followed a fair process. Ensuring that elected members take decisions in an appropriate and properly informed way, including declining to take part in decision-making when they have a relevant interest, will help ensure fair and lawful decisions and reduce the risk of successful legal challenge.

#### **3.4 Environmental implications**

- 3.4.1 There are no specific environmental implications arising from this decision.

### **3.5 Equality implications**

- 3.5.1 Section 149 of the Equality Act 2010 requires public bodies to pay due regard to the need to
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and those who do not.
- 6.3 The Code of Conduct requires members to promote equalities and not discriminate unlawfully against any person. It explains the central role that elected members have in ensuring that equality issues are integral to the Council's performance and strategic aims and that there is a strong vision and public commitment to equality across public services.

### **4. Background Papers**

None.