

Decision Maker: **STANDARDS COMMITTEE**

Date: **Thursday 31st October 2019**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **MONITORING OFFICER'S GENERAL REPORT**

Contact Officer: Philippa Gibbs, Deputy Democratic Services Manager
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Chief Officer: Mark Bowen, Director of Corporate Services

Ward: All Wards

1. Reason for report

1.1 To update the Committee on a number of standards issues -

- Standards Commission for Scotland Case
 - Committee for Standards in Public Life - Intimidation in Public Life
 - Dispensations granted
 - Gifts and Hospitality declarations
 - Register of Interests
 - Code of Corporate Governance 2018/19
 - Work Programme and Matters Outstanding
 - Independent Persons
 - Complaints
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2. **RECOMMENDATIONS**

- (1) That the Committee notes and comments on the Monitoring Officer's report.**
- (2) That an interview panel be established comprising the Chairman, Vice-Chairman and the current Independent Person, supported by the Monitoring Officer, to interview the candidates for the role of Independent Person and make a recommendation to full Council on 9th December on the appointment of one or more Independent Persons.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £358,740.
 5. Source of funding: 2019/20 revenue budget
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Personnel

1. Number of staff (current and additional): 6.79fte
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Statutory Requirement: Local Government Acts 1972 and 2000 and subsequent legislation.
 2. Call-in: Not Applicable: This report does not involve an executive decision.
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Procurement

1. Summary of Procurement Implications: Not Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The standards system affects all Members of the Council, and potentially any member of the public who considers that a member may have breached the Code of Conduct.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

Standards Commission for Scotland Case

- 3.1 There are different Standards Systems operating in the devolved administrations in Wales and Scotland. However cases there can influence standards matters in England. Recently a Sheriff Principal has found in favour of the Standards Commission for Scotland, the first ever substantive appeal against one of its decisions, in a case providing that when acting in a quasi-judicial capacity the enhanced protection afforded politicians to make political comment, under the European Convention on Human Rights (ECHR), is less likely to be engaged. The case concerned a councillor who was suspended for making inappropriate remarks during a licensing hearing to a taxi driver seeking to renew his license.
- 3.2 In that hearing a Councillor was alleged to have said to an applicant, that he did not “understand why two women would live with you never mind get married to you” and that “I think this man is a bully and I don’t want bullies driving people around in taxis in Fife”, at a meeting of the council’s Regulation and Licensing Committee on 15 December 2015. His application was refused, with the committee finding that he was not a fit and proper person to hold a licence. The application for renewal had prompted a letter from Police Scotland, which was not an objection to his application, but detailed allegations of violence, controlling and abusive behaviour and stalking in relation to his relationship with his estranged wife and stepson.
- 3.3 The applicant appealed the decision and the court allowed the appeal on the basis, among other things, that the committee had acted contrary to natural justice. Reversing the committee’s decision and ordering the Council to grant the licence.. The applicant then complained to the Commissioner for Ethical Standards in Scotland who suspended the Councillor for 2 months. The suspension was upheld on Appeal.
- 3.4 The case is not binding on the English legal system but it may influence the approach taken in England. It is worth remembering that there is also English case law which does not recognise licensing panels as quasi-judicial – but the message to be taken from this case is that there is arguably a difference between freedom to make political comment in a council debate and what can be said at a licensing hearing (and possibly even a planning meeting) with the case pointing to a lower level of protection for “political comment” under Article 10 of the ECHR when a councillor is sitting in a quasi-judicial capacity.
- 3.5 For political comment then a degree of immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive speech that would not be acceptable outside context is tolerated (see e.g. *Heesom v Public Services Ombudsman for Wales R (Calver) v Adjudication Panel for Wales and De Haes and Gijssels v Belgium.*) because whilst Article 10 rights are qualified the courts are understandably reluctant to curtail freedom of political speech.

Committee for Standards in Public Life – Intimidation in Public Office

- 3.6 Managing the response to any intimidation in public life has become increasingly pertinent as a result of recent national issues. The normal requirement is that details of all Members’ property interests in the borough are published. Where there are instances of intimidation of Members or their families then home address details can be removed by the Monitoring Officer from their Declaration of Interests page on the Council website under section 32(2) of the Localism Act 2011. This is usually subject to review after three or six months, depending on the circumstances of the case. One home address is currently withheld for this reason. The report Committee for Standards in Public Life’s report on Intimidation in Public Life is attached at [Appendix 1](#).

Dispensations Granted

- 3.7 The Council has delegated to the Monitoring Officer, in consultation with members of the Urgency Committee, the authority to grant dispensations to Councillors to attend and speak at meetings of the authority in circumstances where, under the Code of Conduct, they have a disclosable pecuniary interest (Scheme of Delegation to Officer, Part 2A, 3 (xxv)). Where these dispensations have been sought, they are typically about town planning issues, where the Code of Conduct means that councillors have less opportunity to assert their interests than other residents, or about employment, where technically there is a disclosable pecuniary interest, but in practice that interest is not significant. In order to be transparent, applications for dispensations since the last meeting are normally presented to this Committee, but in this case no dispensations have been granted since the last meeting.

Gifts and Hospitality Register

- 3.8 Under the Code of Conduct, Councillors are required to declare gifts and hospitality received due to their role as Councillors over the value of £25. These are published on the Council website, with a link from each Member's page. A schedule of the gifts and hospitality declarations made since the Committee's last meeting, is attached as [Appendix 2](#).

Register of Interests

- 3.9 Under the Localism Act 2011, the Register of Interests is required to be published on the Council's website, and a link to each Councillor's declaration is provided on their page. At its meeting in February 2018 the Committee suggested that a print-out of these declarations should be available at each meeting of the Committee for inspection by members of the public, and this will be done.

Code of Governance 2018/19

- 3.10 The final Code of Corporate Governance 2018/19 is attached at [Appendix 4](#) for Members' information. The Code is a requirement of the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (Solace.) The Council conducts an annual review of its governance arrangements which is detailed in the Annual Governance Statement which is published with the annual Statement of Accounts.

Work Programme and Matters Outstanding from Previous Meetings

- 3.11 Full Council at its meeting on 8th April 2019 decided that all Council Committees and Sub-Committees should include provision at scheduled meetings to consider matters outstanding from previous meetings. These matters will often form part of the future work programme. A table of matters outstanding is attached at [Appendix 5](#).
- 3.12 The Council's 2019/20 programme of meetings now includes three scheduled meetings of this Committee. The Committee's next meeting is on Thursday 12th March 2020. Members of the Committee are requested to consider what issues they wish to consider at future meetings.

Independent Persons

- 3.13 Every principal local authority must appoint at least one independent person to be consulted by the authority or by members of the authority on standards issues. The changes to the Standards system brought about by the Localism Act 2011 have greatly reduced the involvement of Independent Persons compared to the former arrangements where there were several co-opted members of the Standards Committee, a need for frequent Sub-Committee

meetings and the Chairman was a co-opted member. However, it is still useful to have two Independent Persons, not only to have a broader input at Committee meetings, but so that different parties on a particular issue are not dependent on the same person for independent advice and also to avoid conflicts of interest.

- 3.14 When Mr Nicholas Marcar resigned as an Independent Person the Council was left with just one Independent Person - Dr Simon Davey. If Dr Davey were to also resign, the authority could potentially be without an Independent Person for a period. The role was advertised for a period earlier this year, but no applications were received. Advertisements in the New Shopper were run on two consecutive weeks in early October (2nd October 2019 and 9th October 2019) and two applications were received. Details of the candidates are set out in the part 2 agenda at [Appendix 6](#).
- 3.15 It is recommended that an interview panel be established comprising the Chairman, Vice-Chairman and the current Independent Person, supported by the Monitoring Officer, to interview the candidates and make a recommendation to full Council on 9th December on the appointment of one or more Independent Persons for a suggested term of five years..

Complaints

- 3.16 A summary of recent complaints against Councillors, since the Committee's last meeting, is included at [Appendix 7](#). As these complaints contain personal details about Councillors and complainants, and also as the Councillors concerned have not necessarily done anything that is clearly against the Code of Conduct, this information is included on the part 2 (private) agenda. There are no formal standards investigations at present.

Non-Applicable Sections:	Impact on Vulnerable Adults and Children/Policy/ Financial/Personnel/Legal/Procurement
Background Documents: (Access via Contact Officer)	None