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STANDARDS COMMITTEE THURSDAY, 16 JANUARY 2020

A MEETING of the STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER,
COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS on THURSDAY, 16 JANUARY 2020 at
10.00 am

J. J. WILKINSON,
Clerk to the Council,

8 January 2020

BUSINESS		
1.	Apologies for Absence.	
2.	Order of Business.	
3.	Declarations of Interest.	
4.	Minute (Pages 3 - 6) Minute of meeting held on 17 January 2019 for noting. (Copy attached).	2 mins
5.	Annual Report on Councillors' Compliance with the Ethical Standards Framework for 2018-19 (Pages 7 - 12) Consider report by Service Director Regulatory Services. (Copy attached).	30 mins
6.	Any Other Items Previously Circulated.	
7.	Any Other Items which the Chairman Decides are Urgent.	

NOTES

1. Timings given above are only indicative and not intended to inhibit Members' discussions.
2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Membership of Committee:- Councillors S. Aitchison (Chairman), A. Anderson, K. Drum, J. Greenwell, C. Hamilton, E. Jardine, E. Robson and S. Scott

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SCOTTISH BORDERS COUNCIL STANDARDS

MINUTES of Meeting of the STANDARDS
held in Council Headquarters, Newtown St
Boswells, Melrose, TD6 0SA on Thursday,
17 January 2019 at 10.00 am

Present:- Councillors S. Aitchison (Chairman), A. Anderson, K. Drum, J. Greenwell,
E. Robson and S. Scott

Apologies:- Councillors C. Hamilton and E. Jardine
In Attendance:- Monitoring Officer and Service Director Regulatory Services, Democratic
Services Officer (F. Walling), Trainee Democratic Services Officer.

1. **MINUTE**

- 1.1 There had been circulated copies of the Minute of the meeting held on 7 December 2017 and adjourned meeting on 12 December 2018.

DECISION

APPROVED the Minutes.

- 1.2 The Monitoring Officer and Service Director Regulatory Services, Mr Brian Frater gave an update on the decisions agreed at the meeting held on 7 December 2017. Members were updating regularly their declaration of interest register and were submitting their monthly hospitality returns. Members had requested a procedure to be developed for Councillors for dealing with vexatious complainers. The Monitoring Officer explained that a Vexatious Complainants Group was already set up for Officers chaired by the Service Director Customer and Communities. He recommended that Councillors should adopt the same procedure and report to this group if they had any constituent complainers who they considered were becoming vexatious. It was agreed that this was a simple solution whilst recognising that this was only likely to involve a very small number of complainers. The Monitoring Officer advised that the procedure would be communicated to all Members at the briefing session dedicated to Standards on 30 January 2019. An e-mail would be sent out to all Members from the Chairman highlighting the importance of attending this briefing session.

DECISION

AGREED that:-

- (i) **Councillors adopt the same procedure as that used by officers and report any constituent complainers who they consider were becoming vexatious to the Vexatious Complainants Group; and**
- (ii) **the procedure be communicated to all Councillors at the Members' briefing on 30 January 2019.**

2. **ANNUAL REPORT ON COUNCILLORS' COMPLIANCE WITH THE ETHICAL STANDARDS FRAMEWORK FOR 2017-18**

- 2.1 There had been circulated copies of a report by the Monitoring Officer which provided details on Scottish Borders Council's compliance with the Ethical Standards Framework for 2017 – 2018 and also considered matters relating to Training, Register of Interest and the Hospitality Register. The report provided some additional information and

recommendations on further work to be carried out relating to the Council's Protocol on Councillor's Personal Conduct/Behaviour and the Code of Conduct for Community Councils.

- 2.2 The Commissioner for Ethical Standards in Public Life in Scotland's annual report was laid before Parliament on 31 October 2018. During 2017-18 the Commissioner received a total of 146 complaints relating to 80 cases, which represented a reduction in both the number of complaints and number of cases over the previous years. The majority of complaints received (134) were against Councillors in Local Authorities. The subject matters which attracted complaints were detailed in the report and the main changes from 2016/17 included a significant increase in complaints relating to breach of key principles and misconduct on individual applications and a reduction in the number of complaints alleging disrespect. There were reductions in complaints relating to failure to declare an interest, breaches of confidentiality and misconduct relating to lobbying. The majority of complaints (123) were made by members of the public followed by complaints submitted by Councillors (19).
- 2.3 During 2017-18, 4 complaints were lodged against 4 Scottish Borders Councillors. All were submitted by a member of the public or external organisation. The complaints received in 2017-18 covered the following areas:- (a) Disrespect of public (2 complaints) and Conflict of Interest/Declarations of Interest (2 complaints). None of the complaints received resulted in referrals to the Standards Commissioner or reports to the Standards Commission within the period covered by this report. One complainant has subsequently referred his complaint to the Commissioner and the outcome would be reported in next year's report. The remaining 3 complaints were not pursued further by the complainants after contact had been made to the Council. In two instances, it was concluded that no breach had occurred. In the remaining case the Councillor accepted he had made inappropriate comments for which an apology was made. The Monitoring Officer reported that there were no concerns as the trend and scale were at a low level which was positive.
- 2.4 The report went on to explain that the Elected Members' Registers of Interests were published on the Council's website and were also available to view in paper format from Democratic Services. The Registers were reviewed every six months and were amended according to the information provided by the Members. Members were also required to comply with Section 4 of the Code of Conduct whereby the Registers were updated when a Registerable Interest changed.
- 2.5 Elected Members were required, on a monthly basis, to complete a Hospitality Register within which they would declare hospitality/gifts offered (valued at over £50), whether accepted or not. Members were also required to send a completed monthly pro-forma return (including nil returns) to Democratic Services, who maintained the Members' Hospitality Register. All forms were scanned electronically and published on the Council's website. In addition, a summary sheet of all responses for the current financial year was kept with the paper copy of the Register for ease of reference. A quarterly report was submitted to the Service Director Regulatory Services in his role as Monitoring Officer. The Monitoring Officer reported that Members were updating regularly their declaration of interest register and were submitting their monthly hospitality returns.
- 2.6 Training on the Ethical Standards Framework was provided to members as part of the Induction training held in May 2017 and Members were provided as a matter of course with links to briefing papers produced by the Commissioner for Ethical Standards including recent case reviews. Members were also advised of the publication of revised Guidance on the Councillors' Code of Conduct and to the availability of that guidance on the Standard Commission's website. Recent revisions have included an Amendment of the Code in July 2018 and the provision of guidance on Bullying and Harassment. An ongoing programme of further monthly briefings and training events was now in place covering a wide range of subject matters including, where appropriate, guidance on Conduct related issues. The next briefing session would be held on 30 January 2019

which would be devoted to Standards matters and would give Members the opportunity to discuss any issues. An electronic library of Member Guidance provided access to relevant information available to Members.

- 2.7 The Monitoring Officer went on to refer to the future work programme. The Council's own Protocol on Councillor's Personal Conduct/Behaviour was produced in 2002. This supplemented the Standards Commission's Code of Conduct and included guidance on internal procedures to be followed where complaints were received. It also provided positive and negative examples of personal conduct/behaviour. This Code was now out of date and required to be reviewed to ensure it reflected the current Standards Commission Code and to take account of issues such as the use of social media and new Data Protection requirements. Officers had commenced work on a review and would report back to the Standards Committee in early 2019. Members had previously expressed concern about the conduct of a small number of Community Councillors. Community Councils and Community Councillors were not subject to the Standards Commission's Code of Conduct but did have a Scheme for Establishing Community Councils which included a voluntary Code of Conduct. It was proposed to review the Scheme for Establishing Community Councils in 2019 and a report setting out possible amendments would be brought forward to this Committee before being presented to Council. There would be an opportunity to discuss these two pieces of work in more detail at the Members Briefing on 30 January 2019.
- 2.8 Discussion followed and the Monitoring Officer answered questions raised by Members. He emphasised the importance of attending Members' briefings and confirmed that attendance records were kept for each session. With regard to the review of the Community Council Scheme and the opportunity to determine whether the Community Council Code of Conduct was adequate to deal with alleged misconduct the view was expressed that the Code of Conduct should be balanced to encourage people to become members of Community Councils and not prevent them from putting themselves forward. The Monitoring Officer advised that although Scottish Borders Council had a role in the administration of Community Councils and would offer guidance and assistance it should intervene only when appropriate. In response to a question he added that Community Councils may need assistance and training in the interpretation of the Community Empowerment Act.

DECISION

NOTED:-

- (a) the details on the Council's compliance with the Ethical Standards Framework for 2017-18, training, registers of interest and hospitality;**
- (b) that the Monitoring Officer would provide a report in early 2019 following a review of the SBC Protocol on Councillors' Personal Conduct/Behaviour to better reflect the current Standards Commission Code, the use of social media and the new Data Protection requirements;**
- (c) that the Monitoring Officer would provide a report at the appropriate time on the Ethical Standards Framework Compliance for 2018/19; and**
- (d) that a review of the Scheme for Establishing Community Councils would be carried out in 2019 and that a report setting out possible amendments to the Scheme would be brought the Standards Committee before being presented to Council.**

The meeting concluded at 10.30 am

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ANNUAL REPORT ON COUNCILLORS' COMPLIANCE WITH THE ETHICAL STANDARDS FRAMEWORK FOR 2018-19

Report by Service Director Regulatory Services
STANDARDS COMMITTEE

16 January 2020

1 PURPOSE AND SUMMARY

- 1.1 This report advises Elected Members on compliance with the Ethical Standards Framework for 2018-19.**
- 1.2 The report provides Members with details of Scottish Borders Council's compliance with the Ethical Standards Framework for 2018-19. The report also considers matters relating to Training, Register of Interests and the Hospitality Register and updates Members on progress with the review of the National Code of Conduct for Councillors and the Scottish Borders Community Councils Scheme review (including a review of the Code of Conduct for Community Councillors).

2 RECOMMENDATIONS

- 2.1 **I recommend that the Committee notes:**
- (a) the details provided within the report on the Council's compliance with the Ethical Standards Framework for 2018/19, training, registers of interest and hospitality;**
 - (b) progress with the review of the National Code of Conduct for Councillors which has delayed work on a review of the SBC Protocol on Councillors' Personal Conduct/Behaviour; and**
 - (c) that a report will be brought before the Committee at the appropriate time on the Ethical Standards Framework compliance for 2019/20.**

3 BACKGROUND

- 3.1 Previous work by the Internal Audit service looking at the operation of the Councillors' "Code of Conduct" found that the Council had "*sound procedures in place to manage the Code of Conduct, the Council's Complaints Procedure for the Standards Committee*". To ensure that these procedures and standards were maintained it was determined that it would be good practice to report annually on compliance with the Code of Conduct. A subsequent Internal Audit also recommended that it would be appropriate to report on general compliance with the overall Ethical Standards Framework. This report therefore considers Code of Conduct Compliance, Training, the Register of Interests and Hospitality Register.

4 NATIONAL STATISTICS

- 4.1 The Commissioner for Ethical Standards in Public Life in Scotland's Annual report was laid before Parliament on 29 October 2019. In 2018/19 the Commissioner received a total of 173 complaints (relating to 117 cases) against Local Authority Councillors and Members of Devolved Bodies. This represented an increase in both the number of complaints and number of cases over the previous year.

Complaint against Councillors and Members of Devolved Bodies	18/19	17/18	16/17
Complaints Total	173	146	174
Cases Total	117	80	106

- 4.2 The subject matters which attracted complaints are set out below. There have been some changes to category definitions, specifically relating to how complaints relating to disrespect are recorded and reported. The figures now distinguish between respect towards Councillors and disrespect towards employees and members of the public. The main changes from 2017/18 include significant numerical increases in the number of complaints relating to disrespect and failures to declare an interest but significant reductions in relation to alleged breaches of key principles and misconduct on individual planning applications. There were marked increases in complaints relating to lobbying and "others". The majority of complaints (148 against 123 in 2017/18) were made by members of the public followed by complaints submitted by Councillors (21 against 19 in 2017/18).

		18/19	17/18
A	Disrespect of employees/public	38	31
B	Disrespect of Councillors	22	
C	Failure to declare an interest	13	5
D	Breach of Key Principles	11	39
E	Breach of confidentiality	2	3
F	Misconduct on individual applications	24	39
G	Other complaints	25	11
H	Misconduct relating to lobbying	10	3

I	Failure to register an interest	10	4
J	Misuse of Council facilities	0	2
K	Outwith jurisdiction	18	9

- 4.3 The Ethical Standards Commissioner undertook 31 full investigations into the cases before him in the year. Of those 23 were “non-breach reports” while 8 (4.7% of complaints/6.8% of cases) were referred to the Standards Commission with a finding that there had been a breach of the Code.
- 4.4. Of the eight Hearings conducted by the Standards Commission in 2018/19 six resulted in censure for the Elected Member, one resulted in a suspension from the Regulation and Licensing Committee for 2 months and one resulted in a suspension from Full Council for 3 months.

5 SCOTTISH BORDERS COUNCIL POSITION

- 5.1 In 2018-19 there were five complaints lodged against five Scottish Borders Councillors. Four of those complaints were submitted by a fellow Councillor with just one complaint from a member of the public.
- 5.2 In the preceding five financial years, the number of complaints lodged against Scottish Borders Councillors was as follows:-
- 2017-18 4 Complaints
2016 -17 5 Complaints
2015-16 4 Complaints
2014-15 8 Complaints
2013-14 13 Complaints
- 5.3 The complaints received in 2018-19 covered the following areas:-
- (a) Disrespect towards fellow Councillor (4 complaints)
(b) Disrespect towards employee (1 complaint)
- 5.4 Two of the complaints received were resolved internally following discussion with the relevant parties and one complainant decided not to pursue the complaint further. The two remaining complaints were referred to the Standards Commissioner. One of those cases was determined by the Commissioner not to constitute a breach while the other case remains outstanding. In addition to these cases, a further complaint dating from the 17/18 reporting year remained with the Standards Commissioner for determination during the year. That case was finally determined in November 2019 so will be reported in the 2019/20 report.

6 REGISTER OF INTERESTS

- 6.1 The Elected Members’ Registers of Interests are published on the Council’s website and are also available to view in paper format from Democratic Services. The Registers are reviewed every six months and are amended according to the information provided by Members. They are maintained in accordance with the Ethical Standards and Public Life etc. (Scotland) Act 2000 (Register of Interest) Regulations 2003, as amended. Members are also required to comply with Section 4 of the Code of Conduct whereby the Registers are updated when a Registerable Interest changes. Members were reminded of these requirements following the Local Government Elections in May 2017 and again on 8 February and 27 August 2018.

7 HOSPITALITY REGISTER

- 7.1 Elected Members are required to complete a Hospitality Register on a monthly basis. All Elected Members must declare hospitality/gifts offered (valued at over £50), whether accepted or not.
- 7.2 Members are required to send a completed monthly pro-forma return (including nil returns) to Democratic Services, who maintain the Members' Hospitality Register. All forms are scanned electronically and published on the Council's website. In addition, a summary sheet of all responses for the current financial year is kept with the paper copy of the Register for ease of reference.
- 7.3 A quarterly report is submitted to the Service Director Regulatory Services in his role as Monitoring Officer.

8 TRAINING

- 8.1 Section 5 of the Ethical Standards in Public Life etc (Scotland) Act 2000 ("The 2000 Act") requires Councils to:-
 - (a) Promote the observance by its Councillors of high standards of conduct; and
 - (b) Assist them to observe the Councillor's code.
- 8.2 The current Guidance on the Code of Conduct states that:

"Councils should make arrangements to hold or attend training and induction sessions on Ethical Standards, and they should strongly encourage attendance by all of their Councillors and senior officers at such sessions".
- 8.3 Training on the Ethical Standards Framework was provided to Members as part of the Induction training held in May 2017 and a further briefing was also provided to Councillor Penman who was subsequently elected following a By-Election.
- 8.4 Members are provided as a matter of course with links to briefing papers produced by the Commissioner for Ethical Standards including recent case reviews. Members are also advised of the publication of any revised Guidance on the Councillors' Code of Conduct and to the availability of that guidance on the Standard Commission's website. Recent revisions have included an Amendment of the Code in July 2018 and the provision of guidance on Bullying and Harassment and Membership of Arms Length Organisations.

www.standardscommissionscotland.org.uk/guidance/guidance-notes
- 8.5 An ongoing programme of further monthly briefings and training events continues to be provided covering a wide range of subject matters including, where appropriate, guidance on Conduct related issues. An electronic library of Member Guidance providing access to relevant information is also available to Members.

9 WORK PROGRAMME

- 9.1 The Monitoring Officer's previous report for years 2017/18 advised that two pieces of work were to be undertaken in the forthcoming year – a review of the Council's own Protocol on Councillor's Personal Conduct/Behaviour and a review of the Community Council Code of Conduct which is embedded in Scottish Borders Council's Community Council Scheme.

- 9.2 Work on the review of the Community Council Scheme is now underway. It is anticipated that this will be brought to Council in Autumn 2020.
- 9.3 In early 2019 the Scottish Government announced its intention to undertake a comprehensive review of the National Code of Conduct. That work has also commenced and again it is anticipated that proposals will be forthcoming during 2020. As the Local Code will have to have regard to the National Code there is considered to be little merit in progressing with that work until the terms of the new National Code are known.

10 IMPLICATIONS

10.1 Financial

There are no costs attached to any of the recommendations contained in this report.

10.2 Risk and Mitigations

The Council is under a duty in terms of Section 5 of the 2000 Act to promote the observance by its Councillors of high standards of conduct and assist them to observe the Councillors' Code. If the Council fails to provide appropriate guidance and advice and take cognisance of any lessons learned from complaints received there is a risk of Members breaching the code. This could result in reputational damage for the Council and possible censure or suspension for individual Councillors. This risk is managed in the Corporate Risk Register to ensure adequate monitoring and oversight

10.3 Equalities

There are no equality issues arising from this report.

10.4 Acting Sustainably

There are no sustainability issues arising from this report.

10.5 Carbon Management

There is not considered to be any impact on carbon emissions.

10.6 Rural Proofing

There are no rural proofing issues arising from this report.

10.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to either the Scheme of Administration or the Scheme of Delegation are required as a result of these proposals.

11 CONSULTATION

- 11.1 The Chief Executive, Clerk to the Council, Chief Officer Audit and Risk, Service Director HR and the Chief Financial Officer have been consulted and their comments taken into account in the preparation of this report.

Approved by

Brian Frater

Service Director Regulatory Services Signature

Author(s)

Name	Designation and Contact Number
Brian Frater	Monitoring Officer 01835 825067

Background Papers: None

Previous Minute Reference: None

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. SBC can also give information on other language translations as well as providing additional copies.

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