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| Standards Committee | |
| Meeting Date | 14 June 2022 |
| Report Title | Standards champions within political groups |
| EMT Lead | David Clifford |
| Head of Service | Head of Policy, Governance and Customer Services (Monitoring Officer) |
| Lead Officer | |
| Classification | Open |
| Recommendations | <p>The standards committee is asked to:</p> <ol style="list-style-type: none"> 1. Consider whether a scheme of standards champions would be acceptable to groups and would have a beneficial impact; and if so — 2. Agree to discuss the idea within groups and provide feedback to the monitoring officer with a view to agreeing a final version of the scheme at the next standards committee. |

1 Purpose of Report and Executive Summary

- 1.1 This report introduces the idea of standards champions within political groups, which was first proposed by the standards working group in late March. The report seeks the views of standards committee members on whether the proposal would be acceptable to groups and whether it would be effective in helping to resolve standards issues between members.

2 Background

- 2.1 Members will recall that the standards committee has previously considered the issue of the existence of a broad ‘grey area’ between member conduct which is wholly unproblematic on the one hand and conduct which is a clear breach of the code of conduct on the other. It is right that only conduct which is contrary to the expectations of the code is dealt with as such, and there is rightly a threshold of seriousness which has to be met before public resources can appropriately be used to investigate or otherwise take action against member misconduct.
- 2.2 This situation does result in a problem in terms of how best to handle scenarios in which a member’s conduct towards another member, whether online or in a meeting, has not risen to the level of a clear or sufficiently serious breach of the code but has nonetheless caused the member to whom the conduct was directed to feel offended, intimidated or bullied.
- 2.3 Case law made with reference to Article 10 of the Human Rights Act, which covers the right to free expression, provides for enhanced protection for

politicians, including local politicians, in being able freely to speak their minds. An important case in this regard is *Heesom v Public Service Ombudsman for Wales* (High Court, 2014), in which the judge had this to say about this enhanced protection:

In the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated...Politicians have enhanced protection as to what they say in the political arena, but...because they are public servants engaged in politics, who voluntarily enter that arena and have the right and ability to respond to commentators... politicians are subject to wider limits of acceptable criticism. They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens... The protection goes to “political expression”; but that is a broad concept [which] is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.

- 2.4 This is effectively the legal framework within which the local standards regime is operating when dealing with complaints by one member about something said by another member, and neither the code of conduct nor the standards regime more broadly are able lawfully to impose narrower limits on what members are permitted to say about each other.
- 2.5 It is worth noting the judge’s specific comments about the rights of politicians to respond in kind to adverse commentary by other politicians. This arguably verges on the idea of a self-policing system for councillors publicly disagreeing with each other, as long as their disagreements remain at a (very broadly defined) political level and do not degenerate into ad hominem personal attacks. These latter do not benefit from any protection in law and in general would legitimately be a matter for the standards regime.
- 2.6 This legal framework, which for council standards committees is simply a given, can be interpreted as being somewhat at odds with Swale’s values and aspirations in terms of becoming a council in which the diversity of people and views on the council reflects the diversity of the borough’s communities, and in which all people and perspectives are accorded at least a minimum level of respect and tolerance.
- 2.7 It is important to appreciate however that there is potentially a point of overlap between these two positions, in which councillors on the one hand have the full freedom to express their views and critique one another as robustly as is necessary in a vibrant democracy, but in which, on the other hand, these critiques are delivered in ways which do not seek to intimidate or bully the person who is the subject of them and hence do not inhibit the democracy from being truly representative by discouraging potential councillors from standing for (re)election. This is perhaps the ‘holy grail’ to which Swale should be aspiring.

3 Proposals

- 3.1 This issue was discussed by the standards working group at its inaugural meeting in late March. The working group comprises Cllrs Perkin (chair), Bowen, Gibson, Hunt, Jayes and McCall. The working group's proposal is that each political group on the council should nominate one of its members to act as a 'standards champion' within the group.
- 3.2 While the standards champion role would not have any formal or legal powers, it could potentially create a mechanism whereby conduct falling within the 'grey area' between the wholly unproblematic on the one hand and a breach of the code of conduct on the other could be raised and discussed with the relevant member informally.
- 3.3 A full role description could be developed if members would find this helpful. This would probably include some or all of the following functions:
- To ensure that standards of member behaviour, and their potential for positive and negative impacts on the reputation of the council and the wellbeing of members and officers, are kept high on the agendas of political groups.
 - To work within political groups to educate members on the requirements of the new code of conduct (if and when adopted) and how they apply to those members.
 - To attempt to resolve matters brought to the attention of the standards champion either by other member(s) or by the monitoring officer, concerning a group member's conduct towards another member. This would not apply in cases where the monitoring officer took the view that the code of conduct had probably been breached, but would be restricted to the type of incident between two members in which one member had expressed themselves in a way that was compatible with the case law outlined in paragraph 2.3 above but not with the aspirations of the council outlined in paragraph 2.6 above.
- 3.4 The standards committee is now **recommended** to consider whether a scheme of standards champions would be acceptable to groups and would have a beneficial impact, and if so to agree to discuss the idea within their groups and provide feedback to the monitoring officer with a view to agreeing a final version of the scheme at the next standards committee.

4 Alternative Options

- 4.1 There is no obligation on the standards committee to instigate a system of standards champions, so the committee could choose to reject the proposal. Equally, there are almost certainly many options which could lawfully be pursued as a means of improving the situation described in the report, and members are encouraged to present and discuss these in the committee.

5 Consultation Undertaken or Proposed

- 5.1 Consultation to date has taken place with the standards working group only. As this is an initiative which is intended primarily to be 'for members, by members', standards committee members are asked to consult with their groups on whether it would be acceptable and beneficial.

6 Implications

| Issue | Implications |
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| Corporate Plan | The proposal of standards champions can be argued to support the council's fourth priority of 'Renewing local democracy and making the council fit for the future', as well more specifically as supporting the corporate plan's strategic objective 4.2 to 'Ensure that all elected members are appropriately supported to lead and improve the council's engagement with its disparate geographic and demographic communities, and encourage especially the participation of underrepresented groups in the democratic process'. |
| Financial, Resource and Property | None identified at this stage. |
| Legal, Statutory and Procurement | The legal constraints on the standards committee's ability to police members' public conduct towards one another are set out in the 'Background' section of the report. |
| Crime and Disorder | None identified at this stage. |
| Environment and Climate/Ecological Emergency | None identified at this stage. |
| Health and Wellbeing | None identified at this stage, other than the potential for the proposal to improve the health and wellbeing of any member to whom excessive political 'rough and tumble' causes detriment. |
| Safeguarding of Children, Young People and Vulnerable Adults | None identified at this stage. |
| Risk Management and Health and Safety | None identified at this stage. |
| Equality and Diversity | The potential of the proposal to improve the council's ability to attract and retain candidates for election who reflect the diversity of the community it serves is outlined in the report. |
| Privacy and Data Protection | None identified at this stage. |

7 Appendices

7.1 There are no appendices.

8 Background Papers

8.1 There are no background papers.