

Local government ethical standards

Written evidence

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This submission is in response to Question k.

What is the nature, scale, and extent of intimidation towards local councillors?

This Parish Council has been the subject of an extremely unpleasant, time-consuming and expensive campaign by a resident couple seeking to annex land over which the Council claims custody.

The behaviour to which Council staff and members have been subjected falls well outside the normal pursuit of a civil dispute and to date has included:

- An allegation to the police of misconduct in a public office, following the Council's refusal to supply the complainant with a copy of an email which the Information Commissioner's Office subsequently ruled he had no right to see. The police quickly determined that no crime had been committed;
- An allegation of evidence tampering to the ICO, following its decision in the Council's favour. In the Council's view, this amounted to an allegation of attempting to pervert the course of justice. The allegation was published on the ICO's website as part of the decision finding in the Council's favour.

As a small Parish Council (annual turnover c.£45,000), we have found ourselves under-resourced, and indeed in danger of being out-resourced by a determined adversary. Our legal insurance cover is of very little assistance and the principal authority can offer little but sympathy. From our modest precept we have had to hire a defamation lawyer, sadly to scant effect. We (both councillors and staff) feel intimidated.

What measures could be put in place to prevent and address this?

Town and parish councils, especially smaller ones, do not employ legally trained staff and can ill-afford to hire consultants. When faced with problems such as ours, where resources are in danger of being swamped, access to emergency resources are needed. The obvious route appears to us to be via the legal services department of the principal authority. We understand that in the case of some principal authorities this kind of support is available; in our case it largely is not. We hope that a national protocol can be developed to deal with the problem.

Dear Sirs

RE: COMMITTEE ON STANDARDS IN PUBLIC LIFE – REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS

I refer to your consultation on local government ethical standards and would forward Newark & Sherwood District Council's responses to the specific questions raised in the consultation documentation as follows:-

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not please say why.

The Council has put local procedures in place which have worked relatively effectively. The opportunity to exercise discretion in determining whether or not to investigate complaints at a local level and to explore whether alternative remedies might be more effective than a formal investigation are particularly welcomed and have been extremely effective in tackling the root causes of poor behaviours.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

The most significant gap is the lack of effective sanctions should a councillor choose to ignore the outcome of a standards hearing. We have particularly experienced difficulties where our standards hearing panel has recommended sanctions in respect of a parish councillor where a clear code of conduct breach has been found but the parish council has chosen to ignore those recommendations and take no action.

In those circumstances there is nothing the District Council can do other than to name and shame.

- c. Are local authorities adopted codes of conduct for Councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes exist?

The Council has adopted a relatively light touch code but has found that this has proved effective in covering a broad range of behaviours rather than seeking to be unduly prescriptive in drawing up its code.

The Council supports the interpretation of the code with a range of protocols which give further guidance, for example protocols on Member/Officer relationships, gifts and hospitality and on dealing with planning matters.

All new Councillors receive training on the code of conduct when elected to office and we also do regular update training for our town and parish councils.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the seven principles of public life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors interests. Are these requirements appropriate as they stand? If not, please say why.

We have not experienced any difficulties with this. There is of course an element of discretion in how the code of conduct is framed and scope to alter or amend should the need arise although this has not proved necessary in our case.

We issue regular reminders to our elected Members and to our town and parish councillors to ensure that the register is kept up to date.

A reminder is also included on the agenda for each Council meeting reminding Members of the need to declare interests where appropriate.

Where there may be difficulties in determining where a conflict might arise – for example a member who is also a director of one of the Council's arms-length organisations – we have issued additional guidance.

- e. Are allegations of Councillor misconduct investigated and decided fairly and with due process?

The Council has put in place detailed procedures for investigating and deciding on allegations. It is considered that these meet due process and no additional safeguards are necessary. We consider that the requirement for the Independent Person to comment before the Standards Hearing Panel makes a decision relating to a code of conduct breach is a useful safeguard and has proved helpful to members of the hearing panel. We have also built a requirement into our processes to ensure that the Monitoring Officer, who has delegated authority to carry out initial filtering of complaints, must do so in consultation with the Independent Person. It is considered that this brings an independent and objective view into the process.

In terms of conflict of interest the Monitoring Officer would never deal with both the investigation of a complaint and advising a hearing panel on a code of conduct breach. An Investigating Officer is appointed where it is determined that the complaint warrants a formal investigation and normally this would not be either the Monitoring Officer or Deputy Monitoring Officer. However, if either were involved in the investigating process they would not then advise the hearing panel.

- f. Are existing sanctions for Councillors misconduct sufficient?

The Council's view is that it would be helpful to have a range of more robust sanctions available both in case of its own elected members and in respect of town and parish councillors.

Sanctions to date have included a requirement to undergo further training or to be removed from a position of responsibility but sanctions are only really effective if they are supported by the relevant political groups. It follows that in the case of an independent member "behaving badly" it is difficult to impose effective sanctions.

The problems in respect of parish councils choosing to ignore recommendations of the District Council's hearing panel in respect of sanctions have been highlighted earlier.

- g. Are existing arrangements to declare Councillors interest and manage conflicts of interest satisfactory?

It is considered that existing arrangements to declare Councillors interests and manage conflicts of interest are satisfactory and councillors generally are aware of the circumstances in which they need to declare interests.

It is fair to say that the definition of disclosable pecuniary interests is quite narrow and could potentially be extended although our members have recognised that even where a disclosable pecuniary interest does not strictly arise in law they may nonetheless have a conflict of interest in the matter (for example in relation to a planning application relating to close relative) and they have not participated in discussion or voting on the matter.

- h. What arrangements are in place for whistle blowing by the public, councillors and officials? Are these satisfactory?

The Council has a comprehensive whistle blowing policy which is publicly available and follows latest best practice guidance.

- i. What steps could local authorities take to improve local government ethical standards?

It is our view that the most effective way to promote high ethical standards is to create a culture which promotes ethical behaviours and where poor behaviours are not tolerated. This requires active engagement from both officers and members in promoting good behaviours.

- j. What steps could central government take to improve local government ethical standards?

Broadly we have welcomed the opportunity to take local ownership of ethical standards and would not wish to see a move back to national regulations but the local standards framework could be more effective if legislation were in place giving the ability to impose more effective sanctions for code of conduct breaches.

k. What is the nature, scale and extent of the intimidation towards local councillors?

Our elected Members have not highlighted any particular instances of intimidation although derogatory and potentially defamatory comments posted against local Councillors on social media has increasingly become an issue of concern.

I hope you will find the above comments useful.

Yours faithfully

A solid black rectangular box used to redact the signature of Kirstin H Cole.

Kirstin H Cole
Acting Chief Executive

This response is submitted by Elizabeth Howlett. I am a qualified solicitor and managed legal services in local government for twenty years. I was a deputy Monitoring Officer at a unitary authority and Monitoring Officer at a district council. I have run my own legal practice for seven years and specialise in, amongst other areas, governance and standards. I have carried out a number of standards investigations for different authorities so have an overview of issues across the country.

- a. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**
Not entirely. Two issues – lack of clarity around ‘softer’ (non-financial) breaches such as bullying and intimidation and a lack of effective sanctions
- b. **What, if any, are the most significant gaps in the current ethical standards regime for local government?**
Failure to address behaviour, especially bullying and intimidation. Failure to punish adequately serious transgressions.

Codes of conduct

- c. **Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**
Financial interests are clear although there is concern that it is too tightly drawn and that those with more remote family ties are prejudiced despite being apparently exempt from having to declare. The approach to behaviour is where it is weakest.
- d. **A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors’ interests. Are these requirements appropriate as they stand? If not, please say why.**
Registrations and declarations generally work well. There is uncertainty around declarations of non-pecuniary interests and this causes inconsistency. It is not a national code so there are inconsistencies in approach across administrative boundaries.

Investigations and decisions on allegations

- e. **Are allegations of councillor misconduct investigated and decided fairly and with due process?**
 - i. **What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**
Authorities generally have detailed processes. Criticisms tend to be made where people are unhappy with the outcome. The issue around privacy/confidentiality and transparency tends to be tricky.
 - ii. **Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an**

allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

I was a Monitoring Officer under the old regime. It was overly complicated but I found having Independent Members of the Standards Committee very helpful. Simply seeking views makes their input less transparent. There is no obvious route for exchanges of views between Councillors and Independents. There was resistance amongst some Councillors to having Independent Members on Standards Committee so it would be helpful for this requirement to be strengthened.

- iii. **Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

Monitoring Officers are very good at recognising where there is conflict of interest or the potential for undue pressure and will usually delegate or outsource as necessary.

Sanctions

- f. **Are existing sanctions for councillor misconduct sufficient? No.**
- i. **What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**
The sanctions used are those available. It tends to be an apology – private or public, training and publicity about the breach. This is sufficient to make some councillors appreciate the seriousness of what has happened but the most blatant offenders tend to be unmoved/unaffected by such sanctions.
- ii. **Should local authorities be given the ability to use additional sanctions? If so, what should these be? Yes.** The power to suspend for up to six months should be restored and the six month period should be longer in more serious cases.

Declaring interests and conflicts of interest

- g. **Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.**
- i. **A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**
- ii. **What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

There is an issue about DPs being too narrowly drawn and an issue about declarations of non DPs. Examples which are not DPs but where there is concern from the public about a failure to declare tend to be where a councillor is a trustee of a charity or sitting on the management body of a local body or living in close proximity to a planning application site or

being related to an applicant for a permission or licence. These might be perceived as preventing a councillor from giving objective consideration to an issue but it is too easy for a councillor to point to the Code of Conduct and ask where it says they have to declare it.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Most authorities have provision for this but it can be very difficult especially for employees within a small authority.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

Involve the Independent Members more. Provide greater clarity on the approach to non DPIs. Work towards a consistent national approach to standards.

j. What steps could *central government* take to improve local government ethical standards?

Provide the power to impose significantly greater sanctions. Recognise that non - financial interests matter. Improve how bullying and intimidation is dealt with at a national level so that the culture of zero tolerance to it is the norm.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

Social media seems to be the place where most of the bullying and intimidation and name-calling goes on. There is a general perception that behaviour has deteriorated. This is a much wider social issue but a key cause for concern is that it can deter people from entering public life. We need to address what are acceptable standards of behaviour online as a society.

There is a growing body of case law on the issue of vexatious requests and the ability of authorities to control these might be useful in the context of managing social media. A few high-profile prosecutions might also be useful.

Thank you for the opportunity to comment.

Elizabeth Howlett

[REDACTED]

27th April 2018

Review of Local Government Ethical Standards: Stakeholder Consultation

State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;

Richard Ivory, Solicitor and Monitoring Officer, Service Director, Legal and Governance, Southampton City Council on behalf of Southampton City Council (SCC)

[REDACTED]

Include a brief introduction about yourself/your organisation and your reason for submitting evidence;

As Solicitor to the Council and Monitoring Officer overall governance of ethical and standards of SCC is vested in me. SCC has 48 elected members and since the introduction of the new local Code and regime has had to investigate numerous complaints, from the trivial, politically motivated ones to more serious allegations.

Members and officers feel the current statutory regime is seriously flawed, without any meaningful sanctions, requires review and realigning to regain credibility with the public, elected members and lawyers/Monitoring Officers

*Be concise – we recommend no more than 2,000 words in length; and
Contain a contact email address if you are submitting by email.*

RESPONSE

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

The structure of having a solely local code leads to inconsistencies in neighbouring authorities and/or for members who are twin hatted (or more).

Sanctions imposed are extremely limited, varied, arbitrary and can be politically motivated given they are wholly internally regulated (although not at SCC in my experience) and generally administered by a politically balanced committee on which the Administration has the majority of seats.

Monitoring Officers can be placed under severe political pressure to achieve a certain outcome. When this arises it places them in an invidious and conflicted position and now without any realistic statutory protection of dismissal given the fairly recent changes in the law. This needs redressing.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

- A wholly local code without any external oversight leads to inconsistent approaches, political pressure being applied and a lack of confidence in the process by the public
- No external or independent oversight, although the DIP element is useful and works well
- Weak sanctions
- No statutory protection for Monitoring Officers
- That the MO does not need to be legally qualified. This seems at odds with the need for the CFO to be professionally qualified in their field. It lends no credibility that a senior officer, unqualified or with any standing in the niche field of law involved, can either investigate and/or advise accordingly.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

They vary widely due to political arrangements in each authority.

Whilst the Nolan Principles still hold good the White Paper in 1998 expanded these. Subsequently they have been rather watered down and the whole list are no longer included in Codes of Conduct, not least “respect”. This is a problem area in particular and should be one of the core values. However, unless mandated in will not be incorporated in most authorities.

As each authority has to devise (and approve) its own procedures these lead to significant variations. Some authorities take ethics seriously, some not so.

The code’s application has now become very limited since the Livingstone and Surrey Heath cases. It appears that you have to be actually acting in a formal member capacity to be covered. This should, if possible, be widened. Numerous complaints are received by MOs regarding the use of social media, i.e. members commenting inappropriately, acting with an alleged lack of respect or leaking confidential information but it appears as they are not actually “acting as members” at that point in time they are not bound by the Code provisions. To many this appears at odds with holding public office generally and the standards that are ordinarily expected.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors’ interests. Are these requirements appropriate as they stand? If not, please say why.

The registration and declaration system generally works well.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

As above, in terms of investigations generally, yes, but pressure can be applied do not do so. Decision making is made by the elected members as few MOs are delegated to resolve the most serious matters (quite rightly), this can lead to partisan, personal or politically motivated decisions. Justice has to be seen to be done and as the regime is solely internal some question the “natural justice” of the process.

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

We have no issue with the processes we have adopted. There is a detailed, publicised sifting mechanism which is delegated to the MO. Complaints that are trivial, purely politically motivated, out of time etc. are dismissed. However, each authority is different and some have 3 month cut offs for complaints, some far longer. This leads to inconsistencies.

The DIP process works well. Our DIP is kept informed of ethics matters generally and involved in initial sifting of complaints to aid external objectivity.

Clearly MOs can be subject to professional and, more likely, political conflicts/pressures. Without any statutory protection their careers are extremely vulnerable in some instances. The protection should be reinstated. The alternative perhaps would be that a MO never investigates anything at their own authority, this would be at odds with the MO's duty to uphold ethics and standards. That would also be an expensive, long winded and difficult process to administer.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

The sanctions are incredibly weak, realistically at most a censure. This has no credibility with the public. Public censure some years perhaps before going back to the polls for re-election as was the justification for the current “light touch” approach lacks any credibility. This needs significant review. The previous regime was at the other end of the scale and we would not advocate that being re-imposed but suspension from committees, perhaps a national framework including reduction in a member's allowance for a period, even suspension as a member in extreme circumstances should be considered. The difficulty, of course, is that as the matters are dealt with internally there is always the distinct possibility of political manipulation to gain advantage.

The removal of the “respect” Principle can lead to difficulties. There should be a specific sanction where members bully or are vexatious in their dealings with officers in particular.

Conduct should be classified with corresponding punitive outcomes .For example, interview, warning or suspension.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Broadly yes. The public do find it odd, for example, though that a DPI only extends to the members property itself and therefore if a planning application were to be submitted for an adjacent property that it does not apply.

With other interests again there are local variations in Standing Orders. For example, in some authorities members have to leave the room when a matter in which they have a pecuniary interest exists (rather than DPI), in others not so. Consistency should be achieved by clear rules.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

We have a Duty to Act/Whistleblowing policy and procedure in place. It works well (albeit not used that often) and involves the MO, S151 and External or Internal Auditor as appropriate.

Improving standards

What steps could local authorities take to improve local government ethical standards?

What steps could central government take to improve local government ethical standards?

As above, the regime needs a firmer central statutory framework with graded sanctions that are proportionate to the issues. We do not wish to see a return to the previous regime that was simply too heavy handed, expensive and disproportionate.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

We are not aware that this is an issue

Review of Local Government Ethical Standards: Stakeholder Consultation

The Bedfordshire Association of Town & Parish Councils represents 114 of 117 parish and town councils in Bedfordshire. Bedford Borough Council and Central Bedfordshire Council are the principal authorities in the area.

Advice has been sought from this Association on various occasions where the procedures and work of local councils has been disrupted by the behaviour and actions of individual councillors. This has led variously to the council's reputation suffering locally, increases to the precept, relations with employees breaking down, even the Clerk resigning. In each case the lack of meaningful sanctions for a breach of the code of conduct and the fact that the councils as corporate bodies had no measures to help them control the behaviour of individual members of the council has resulted in councils having to become more inward-looking spending a disproportionate amount of time on the disruption itself and being prevented from what they should be doing – providing services for the local community.

This Association is of the view that the code of conduct for parish councils can only be effective if it is given some teeth.

Please find below responses to the consultation questions from the Bedfordshire Association of Town & Parish Councils:

a) In the majority of cases yes, but for a significant and unfortunately growing minority no. The fact that each parish council may adopt a slightly different code with different requirements does not aid transparency as far as members of the public are concerned.

b) Lack of any sanctions. This has resulted in the code of conduct being breached all too often, without there being action that could curb the particular behaviour.

c) No. A single model to be adopted by all parish councils would be much more easily understood. While both principal authorities in our county offer code of conduct training from time to time, there is never an obligation for councillors to attend.

d) Principal authorities' lack of capacity has resulted in one area of the county in parish councillors completing an on-line members' register form leaving the parish clerk out of the loop. In both areas some members are slow to complete an entry in the register and the principal authorities do not have the capacity to chase the missing entries as efficiently as is desirable.

e) i Bedford Borough Council has the Monitoring Officer and a Standards Committee comprising 5 Borough Councillors, 3 independent members and three parish councillors with observer status. Central Bedfordshire has Monitoring Officer, Independent Persons and a Standards Sub -Committee. Where a case to answer against a parish councillor is found by the Monitoring Officer, local resolution of the complaint is the preferred solution ie the issue is referred back to the parish council for it to resolve, even though the parish council has no powers it can rely on to do so.

e) ii Should be sufficient

e) iii No, the presence of independent persons should balance any risk.

f) No, existing sanctions are not sufficient.

f. i. Sanctions for parish councillors are the requirement to make an apology or attend training. Such sanctions are in the main ineffectual.

f ii Yes. Suspension or disqualification.

g) i. It would be more transparent if a parish councillor had to declare any interest at a meeting, whether or not it was recorded in the member's register of interest entry. It would be preferable if applications for a dispensation were made to another body eg the principal authority, rather than to the parish council itself.

g) ii a parish council's standing orders sometimes requires councillors with a dpi or local interest to declare it at the meeting, even when it is already recorded in the register of members interests. This is much more helpful to those present at the meeting who may be unaware of what is recorded in the register of members' interests.

j) Central Government to introduce a model code with meaningful sanctions.

Louise Ashmore

County Officer

1.5.18



ETHICAL STANDARDS FRAMEWORK IN SCOTLAND

1. Introduction

- 1.1 The Standards Commission for Scotland (Standards Commission) welcomes the opportunity to submit evidence to the Committee on Standards in Public Life's review on ethical standards in local government in England. We hope the following submission is of assistance to the Committee for comparative purposes.
- 1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) provided a framework to encourage, and where necessary, enforce, high ethical standards in public life. The 2000 Act established the Standards Commission for Scotland and the post of Chief Investigating Officer.
- 1.3 The 2000 Act provided for the Councillors' Code of Conduct which contain the principles and rules governing the conduct of councillors across all Scotland's local authorities, and also a Model Code of Conduct for members of devolved public bodies upon which devolved public bodies base their individual Members' Codes. These Codes are based on nine key principles of public life, comprising of the seven principles identified by the Committee on Standards in Public Life (selflessness, integrity, objectivity, accountability, openness, honesty & leadership); and a further two identified by the Scottish Government (duty and respect).
- 1.4 The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 provided for the establishment of the Commission for Ethical Standards in Public Life (CESPLS) who now is responsible for the investigating functions previously undertaken by the Chief Investigating Officer.
- 1.5 The 2000 Act includes, at Schedule 3, a list of public bodies covered by the ethical standards framework. An up to date list of bodies covered by Schedule 3 can be found at: <https://www.legislation.gov.uk/asp/2000/7/contents>.
- 1.6 The Scottish Parliament approved one Code of Conduct which applies to all councillors elected to the 32 Local Authority areas within Scotland.
- 1.7 Each designated devolved public body is also obliged to have a Code of Conduct for their appointed members, to reflect the functions and characteristics of the individual body. These individual Codes are approved by Scottish Ministers and are adapted from the Model Code, which was approved by the Scottish Parliament.
- 1.8 Codes of Conduct currently apply to the following categories of public bodies:

- National Bodies e.g. the Scottish Legal Aid Board
- Regional Bodies e.g. Highlands and Islands Enterprise
- National Health Service Boards
- Health & Social Care Integration Joint Boards
- Further Education Colleges
- National Parks
- Regional Transport Partnerships
- Community Justice Authorities

- 1.9 The Standards Commission's remit is to encourage high standards of behaviour by councillors and those appointed to boards of devolved public bodies. We do that through the promotion and enforcement of the Codes of Conduct. Our work in terms of promotion involves:
- issuing guidance, advice notes and professional briefings;
 - conducting training events and workshops;
- which are aimed at improving awareness and understanding of the provisions within the Codes. We also answer queries on how the provision should be interpreted.
- 1.10 The Standards Commission's enforcement work involves adjudicating on alleged contraventions of the Codes of Conduct, and where a breach is found, applying a sanction.

2. Investigation and Adjudication Processes

- 2.1 Anyone can make a complaint that a councillor or member of a devolved public body has breached their respective Code of Conduct. Such complaints are investigated by the CESPLS and are adjudicated upon by the Standards Commission. The Standards Commission and CESPLS are separate and independent, with neither organisation having an oversight function in respect of the other. The reason for, and benefit of, the separation of functions between the two distinct organisations is to ensure impartiality, fairness and objectivity in the decision-making process.
- 2.2 The CESPLS is also responsible for investigating complaints that Members of the Scottish Parliament (MSPs) have breached their Code Conduct. Where appropriate, the CESPLS will report on the outcome of such an investigation to the Scottish Parliament.
- 2.3 In addition, the CESPLS regulates the way appointments are made to the boards of Scotland's public bodies by:
- publishing a code of practice to be followed when making non-executive appointments to the boards of public bodies;
 - examining the practices used during appointment rounds with a view to ensuring they comply with the code of practice;
 - investigating complaints about the public appointments process; and
 - monitoring appointments with a view to ensuring they are made fairly and openly and that everyone who may be interested in an appointment has the opportunity to apply.

- 2.4 If, following investigation of a complaint about a councillor or member of a devolved public body, the CESPLS considers there may have been a breach of a Code of Conduct, he will report on the outcome of his investigations to the Standards Commission. The Standards Commission does not have the power to investigate a complaint unless it has been referred by the CESPLS.
- 2.5 On receipt of a report from the CESPLS, the Standards Commission must, in terms of the 2000 Act, decide whether to:
- direct the CESPLS to carry out further investigations;
 - hold a Hearing; or
 - take no action.
- A policy outlining the factors the Standards Commission will consider when making such a decision on a report referred by the CESPLS can be found on our website and includes factors such as whether, in the circumstances, it is in the public interest and proportionate to hold a Hearing.
- 2.6 If the Standards Commission decides to hold a Hearing to determine whether a councillor or member (the Respondent) has breached their relevant Code of Conduct, the Standards Commission will usually do so in public and in the locality of where the Respondent is based in their capacity as a councillor or member.
- 2.7 Section 17 of the 2000 Act enables the Standards Commission to decide what procedures to follow at any Hearing. Members of the Standards Commission agreed the content of the Hearing Rules, which can be found at: <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The aim of the Hearing Rules is to ensure that Hearings are managed fairly, efficiently and in an open and transparent manner. The Hearing Rules state the actions the Standards Commission will take after a decision is made to hold a Hearing. They also outline the procedures to be followed by anyone who attends, or is a party to, a Hearing.
- 2.8 In terms of the Hearing Rules, the Hearing Panel can decide to hold a Hearing or part of it in private, if it is satisfied that a decision to exclude the public causes no prejudice or unfairness to either party; and the particular circumstances of the case outweigh the public interest in holding a public Hearing.
- 2.9 The Hearing Panel comprises of three members of the Standards Commission. The CESPLS will present evidence and/or make submissions at the Hearing about why he considers the Respondent has contravened the relevant Code. The Respondent is entitled to attend or be represented at the Hearing and can also present evidence and make submissions. Both parties can call witnesses who give evidence under oath or after making an affirmation. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the Respondent. If the Hearing Panel decides that a Respondent has breached the relevant Code of Conduct, it will then impose a sanction. The Hearing Panel's decision will normally be read out at the Hearing, with a more detailed written decision then

being issued to the parties and published on the Standards Commission's website within 14 days.

- 2.10 The 2000 Act obliges the Standards Commission to impose a sanction if a Hearing Panel has found there has been a contravention of a Code of Conduct. The sanctions available to the Hearing Panel are to censure, suspend (for up to one year) or disqualify the Respondent (for up to five years) from being a councillor or a member of the public body in question (disqualification can also be applied in respect of any other devolved public body of which the member is a member). The Hearing Panel, when imposing a suspension on a member of a devolved public body, can also direct that any remuneration or allowance is not paid or is reduced.
- 2.11 The Respondent, council and devolved public body concerned have the right to appeal to the Sheriff Court against a finding where a suspension or disqualification has been applied. Such an appeal can be made on the following grounds:
- that the finding was based on an error of law;
 - that there was procedural impropriety in the conduct of any Hearing held;
 - that the Standards Commission has acted unreasonably in the exercise of its discretion; or
 - that the finding was not supported by the facts found to be proved.
- An appeal can also be made that the sanction imposed was excessive; and (if the sanction was suspension) that the Standards Commission acted unreasonably in the exercise of its discretion.
- 2.12 The Standards Commission held 12 Hearings in 2017/18 (from 1 April 2017 to 31 March 2018). A summary of these Hearings is attached at Annex A. All 12 Hearings were held in public. In 2017/18, the average time from receipt of a report from the CESPLS to the issuing of written Hearing decision was 12 weeks.

3. The Codes of Conduct

- 3.1 The Codes of Conduct are based on the nine key principles, which are included within the Codes for guidance. Councillor and members of devolved public bodies should ensure that they have regard to, and follow, these principles. However, a breach of one or more of the key principles does not in itself constitute evidence of a breach of the Code of Conduct.
- 3.2 Both the Councillors' Code of Conduct and the Model Code of Conduct for Members of Devolved Public Bodies can be found on the Standards Commission's website at: <http://www.standardscommissionscotland.org.uk/codes-of-conduct>. The Codes contain provisions concerning:
- 1) General conduct. These include provisions:
 - obliging them to respect their colleagues, the public and officers;
 - obliging them to comply with rules concerning remuneration, allowances and expenses;
 - on the acceptance of gifts and hospitality;

- concerning confidentiality requirements;
 - on the use of the Council or devolved public bodies facilities;
 - on appointments to partner organisations; and
 - on dealings with and responsibilities to, the council or devolved public body.
- 2) The registration of interests. These include:
- Remuneration;
 - Related Undertakings;
 - Contracts;
 - Election Expenses;
 - Houses, Land and Buildings;
 - Gifts and Hospitality; and
 - Non-financial Interests.
- 3) The declaration of interests. These include:
- Financial Interests;
 - Non-Financial Interests; and
 - Financial Interests of Other Persons.
- 4) Lobbying and Access
- In addition, the Councillors' Code contains:
- 5) Provisions on Taking Decisions on Quasi-Judicial or Regulatory Applications and
- 6) A Protocol for Relations between Councillors and Employees of Councils.
- 3.3 The current Councillors' Code of Conduct was issued on 1 December 2010 and the current Model Code of Conduct was issued on 1 February 2014.
- 3.4 The provisions on the registration of interests are supplemented by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003, which state that any interests that require to be registered must be so registered within one month after the date of any declaration of acceptance or date of appointment. Any change must also be registered within one month of it taking effect.
- 3.5 The Standards Commission is provided with specific powers, under both Codes, to grant dispensations, on receipt of an application, in relation to the existence of financial and non-financial interests, which would otherwise prohibit the councillor or member from taking part and voting on a matter coming before them.
- 3.6 The Standards Commission has granted dispensations to both individuals and to categories of individuals. A recent example was one granted to councillors who are appointed by their Council to be a member of a Health & Social Care Integration Joint Board, which is established under the Public Bodies (Joint Working) (Scotland) Act 2014. This is so councillors, as voting members of the Integration Joint Board, do not have to declare their interest when discussions on general health and social care issues arise and can participate in discussions and voting on these issues. The Standards Commission has also granted a similar dispensation under the Model Code for voting members of Integration Joint Boards who are members of Health Boards.

- 3.7 When determining an application for a dispensation, the Standards Commission will consider whether it would be in accordance with both the spirit and intent of the Code to grant it; and whether sufficient reasons for the request have been provided, including what the effect or consequence would be if it was not granted.

4. Issues to Note

- 4.1 The following issues may be of interest to the Committee.
- 4.2 Private / Public Capacity: A councillor or member of a devolved public body must be acting in that capacity or be reasonably understood / perceived to be doing so to be covered by the ethical standards framework and Codes of Conduct. They would not be covered if they are clearly acting in a private capacity, no matter how egregious the conduct / even if it would clearly bring the council or body into disrepute. For example, if a councillor swore at a member of the public while attending a Council meeting, his or her conduct would be covered by the Code. If, however, they did so while using Council facilities (such as a gym) in a private capacity, it is unlikely the Code would apply.
- 4.3 This distinction can sometimes be difficult to draw; for example, if a councillor was disrespectful to a neighbour during a conversation about council services. In particular, the distinction can sometimes be blurred when councillors or members are using social media. The Standards Commission has found breaches of the Codes of Conduct in respect of social media postings where the Respondents concerned are clearly identifiable as councillors or members from the posting or from the social media account itself.
- 4.4 Right to Freedom of Expression: The Standards Commission has found the exercise of balancing the right to freedom of expression that councillors and members enjoy under Article 10 of the European Convention on Human Rights ECHR (particularly in light of the enhanced protection afforded to politicians), with provisions in the Codes of Conduct to be somewhat difficult (particularly those concerning confidentiality, respect and relations with officers). While the Standards Commission cannot and would not want to restrict robust political debate and scrutiny, it is mindful that the Codes contain provisions that are intended to protect officers from offensive and abusive verbal attacks or unwarranted comments that prevent them from performing their duties; to prevent the disclosure of information received in confidence; and to ensure public confidence in the council, devolved public body or democracy itself is not undermined.
- 4.5 In order to be as transparent and consistent as possible in its decision-making, the Standards Commission has produced advice notes on how it will deal with this balancing act at Hearings. The advice notes can be found at:
www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

- 4.6 Remit: The Standards Commission does not have any remit in respect of complaints made about MSPs (or MPs), who are subject to different Codes of Conduct and potential sanctions. This means that there can be very different outcomes for councillors / members and MSPs for analogous behaviour. It is arguable that this may inhibit understanding of, and confidence in, the overall ethical standards framework.
- 4.7 As noted above, a breach of one or more of the key principles does not in itself constitute evidence of a breach of a Code of Conduct. For a complaint to be investigated it has to contain an allegation of a contravention of a specific paragraph or paragraphs of a Code. Again, it is arguable that this may undermine confidence in the framework given that members of the public are entitled to have an expectation that councillors and members of devolved public bodies should act in accordance with the principles (and may assume they will face sanction if they fail to do so).
- 4.8 Complaint Motivation: The Standards Commission accepts that complaints can often be made purely for political purposes, which can lead to the perception that the ethical standards framework is being used for political advantage. We consider, however, that a breach of a Code is exactly that, regardless of the motives of the complainer.
- 4.9 Complex Provisions and Personal Responsibility: The Standards Commission is of the view that some of the provisions in the Codes (particularly ones in the Councillors' Code concerning the declarations of interests), are complex and difficult to understand. Councillors and members of devolved public bodies have a personal responsibility to comply with the Codes, which means that they can be found to be in breach, even if they have acted in accordance with advice provided by officers. The Standards Commission considers the fact that it is required to issue guidance and advice, and to answer queries from those covered by the Codes and senior officers on how to interpret provisions, is indicative of this. While training is normally provided by the Council or devolved public body as part of any induction process, the Standards Commission accepts that the sheer volume of other material and topics covered at induction may mean it is difficult for councillors and members to keep in mind all information provided.
- 4.10 In addition, recent changes to public sector landscape and the ways that decisions are made and implemented such as the introduction in Scotland of:
- Health & Social Care Integration Joint Boards (which allow NHS boards and local authorities to integrate health and social care services);
 - Regional transport partnerships (which aim to strengthen the planning and delivery of regional transport by bringing together local authorities and other key stakeholders to take a strategic approach to transport in each region of Scotland); and
 - City Region Deals (designed to stimulate economic growth and create jobs in certain geographic areas, primarily by investing fairly significant sums of money, mainly in large-scale infrastructure projects, by bringing together the UK and Scottish Governments, different local authorities and other stakeholders such as private sector partners)

can mean that councillors, in particular, are often appointed or nominated to outside bodies, which are covered by different Codes of Conduct. This gives rise to potential conflicts of interests, which are not easily resolved. For example, a councillor appointed by his or her local authority to a regional transport partnership is expected to act in the interests of the regional transport partnership when acting in that capacity. The councillor is then expected to return to the local authority and vote on planning or regulatory matters that are impacted by decisions taken by the regional transport partnership. Similarly, a councillor appointed by his or her local authority to the local Health & Social Care Integration Joint Board may be involved in budget discussions suggesting, for example, different reductions in services to that proposed by local authority. While, as noted above, the Standards Commission can issue dispensations in order to enable participation in discussions and voting on certain matters, doing so can add further complexity.

- 4.11 Deterrence / Compliance: The Standards Commission has held a disproportionately high number of Hearings about non-party affiliated councillors (compared to the overall number of such independent elected members). It is difficult to identify any specific reason for this, although the Standards Commission notes it could be because they are more likely to engage in disreputable behaviour as a means of seeking publicity. It could also be because party affiliation means that councillors are more likely to comply with the provisions in the Codes as a result of having ready access to advice or because they are held more accountable by colleagues.
- 4.12 Respondents do not have to attend or be represented at Hearings although they are entitled to submit written representations in respect of breach and / or mitigation. It may be that some choose not to attend in order to try to avoid, or reduce, the opportunity for any negative publicity. However, Hearing Panels can (and do) take into account whether a Respondent has engaged with the investigation and adjudication processes when determining any sanction to be imposed.
- 4.13 Reliance on Complaints: Neither the CESPLS nor the Standards Commission has the power to instigate an investigation. The process is, therefore, reliant on a complaint being received. So unless there is a complaint, the CESPLS cannot institute an investigation and the Standards Commission cannot hold a Hearing or impose a sanction even if poor conduct is suspected or publicly alleged. In Scotland, most complaints relate to councillors. In 2017, the CESPLS received 161 complaints of which 158 related to councillors, meaning that less than 1% concerned members of devolved public bodies. This may be due to the adversarial nature of politics, and the public nature of local authority decision-making. It could, however, also be the result of a lack of awareness that complaints can be made about members of devolved public bodies or the consequence of a reluctance make such a complaint.

5. Strengths and Weaknesses of Ethical Standards Framework

- 5.1 We consider the ethical standards framework in Scotland has a number of strength and weaknesses. In particular, the ones outlined below may be of interest to the Committee.

Strengths

- 5.2 Independence: We consider a strength of the ethical standards framework in Scotland is the independence of the CESPLS and Standards Commission from each other and from the Government. This helps give the public confidence that complaints will be dealt with in a fair and impartial manner.
- 5.3 Awareness: We are confident that there is a good awareness of the Councillors' Code and how to make a complaint amongst councillors and local authority officers. The Standards Commission's Hearings are normally held in public in the locality of where the councillor or member is based, and often attract a good deal of media coverage (particularly in the local press), which enables the public / electorate to have confidence that action is taken when individuals fail to meet the standards expected of them. It also increases awareness of the complaints process. This is particularly important at a time when the behaviour of those in public life is under increased scrutiny as a result of the publicity surrounding bullying and harassment claims and also about intimidatory behaviour on social media.
- 5.4 Expectations: We consider the fact that the Codes of Conduct outline the standards of conduct demanded of those in public life, means that those elected, appointed and nominated to public office can have a clear understanding of what is expected of them. It also means the public can have confidence that certain standards of conduct are expected of those elected or appointed to represent their interests, regardless of the local authority or nature of the devolved public body's business.
- 5.5 Hearings: We are confident that the Hearings process allows for the fair and efficient adjudication of complaints, in that both parties (the CESPLS and Respondent) are entitled to be represented; to make submissions; to call witnesses; and to lead any relevant evidence, before a determination is made. The average time taken by the Standards Commission from receipt of a report from the CESPLS to the issuing of the written Hearing decision was 12 weeks in 2017/18. We consider this length of time is reasonable as it affords the parties sufficient time to prepare their cases and to call witnesses, without drawing out the process unnecessarily. The Standards Commission has the power to determine its own Hearings procedures, meaning that adjustments can be made if it is considered fair and proportionate to do so (for example, a Hearing can be held partly in private if a witness is vulnerable).
- 5.6 Sanctions: In addition to potential adverse publicity resulting from the public nature of Hearings, the sanctions available to the Standards Commission should a breach be found can act as a deterrent as they can have a significant impact both professionally and financially on a Respondent. It can also have a substantial political impact given a suspension or disqualification can, for example, change the political composition of a local authority's administration.
- 5.7 In addition, the Standards Commission's power to impose a sanction means that there is less of a reliance on the electorate to be aware of, and vote out, local government councillors who fail to meet the expected standards. This can be of importance as, for

example, a councillor might breach the Code and, in doing so, may fail to act in the overall public interest but nevertheless be perceived as acting in the interests of constituents in his or her ward.

Weaknesses

- 5.8 Time taken to investigate a complaint: It can sometimes take quite a long time for a complaint to be investigated and referred to the Standards Commission which can, in some instances, mean a delay of a year or more between the behaviour in question taking place and a Hearing being held. This can have an impact on the quality of evidence (as it may no longer be available or a witness' recollection of events becomes less clear); as well as potentially having a detrimental impact on the Respondent and any complainer. Public confidence in the ethical standards framework may also be adversely affected.
- 5.9 There are a number of reasons why investigations can be lengthy; for example, if the CESPLS experiences difficulties in arranging interviews with witnesses or if witnesses are reluctant to co-operate or are slow to provide information and evidence required. It may be that the CESPLS is waiting for a court action or police investigation to conclude. In addition, the CESPLS will normally only investigate a complaint made within one year of the alleged breach occurring. This can mean that an individual making a complaint may decide to lodge a complaint in order for it to be investigated but then add to it as further instances of poor conduct occur (in order to try to establish a court of conduct), which again may delay the process.
- 5.10 The time taken to investigate and adjudicate on a complaint can also mean that the Respondent is no longer a councillor or member by the time the Hearing is held. In such cases, the Standards Commission only has the power to censure or disqualify the Respondent.
- 5.11 Sanctions: Any suspension ceases when a councillor is re-elected (so that a finding does not interfere with the democratic process), meaning that the actual length of a suspension can, in practice, be determined by factors others than ones the Hearing Panel will usually take into account, such as when the complaint was made, the length of time taken by the CESPLS to investigate and proximity of the conclusion of the Hearing to the date of the election. This does not, however, prevent a Hearing Panel from either imposing a period of suspension that leads up to the date of the election but noting the period would have been longer had it not been for the election; or from imposing a period of suspension of its choosing but noting the period would nevertheless cease on the date of election. These options enable the full period of suspension to be recorded, which might help act as a deterrent or to help avoid any perceptions of inconsistency in decision-making.
- 5.12 Under the 2000 Act, the Standards Commission must impose a sanction if a breach is found. Unlike the Scottish Parliament's Standards, Procedures and Public Appointments Committee (which considers alleged breaches of the MSPs Code), the Standards Commission does not have the option to admonish a Respondent or to

choose not to impose a sanction if a technical breach with no deliberate intent is found.

- 5.13 Reliance on Complaints: As noted above, the investigation and adjudication processes are reliant on complaints being made. Other councillors, members and officers are often in the best position to identify potential breaches of the Codes, but may be reluctant to do so out of fear of repercussions, embarrassment or because of political pressure (for example, if they are in the same political party as the potential Respondent). While the 2000 Act provides that investigations shall, so far as possible, be conducted confidentially, the CESPLS does not accept anonymous complaints on the grounds that the concept of natural justice means that the Respondent is entitled to know who has made the complaint and what it entails. The exception to this is whistleblowing complaints (see section 8 below). The Standards Commission will, however, redact the name of a complainer from the published written decision (unless they are a councillor, member of a devolved public body or MSP).

6. Changes under consideration

- 6.1 Scottish Ministers are currently considering proposals to strengthen both the Councillors' and Model Codes of Conduct to reinforce provisions that oblige councillors and members of devolved public bodies to treat colleagues, officers and member of the public with courtesy and respect (when acting as a councillor or member, when on council or public body business and when representing the council or public body), to make it clear they cover inappropriate behaviour such as harassment and bullying and that any such behaviour will not be tolerated.
- 6.2 In addition, consideration is being given to making more wholesale changes to the section of the Councillors' Code of Conduct concerning declarations of interests, in order to make these clearer and easier to understand. This is seen as of particular importance given the concerns that these provisions will become even more difficult to interpret as the public service delivery landscape becomes increasingly complex, with councillors being nominated or appointed to more and different external organisations.

7. Arrangements for Declaring Interests and Managing Conflicts

- 7.1 As noted under Section 3 above, the Codes of Conduct contain provisions about the types of interests that must be declared. These include financial and non-financial interests, along with the financial Interests of other persons. The Codes state that councillors and members must always comply with an objective test which is: 'whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision or decisions-making in your role'.

- 7.2 The provisions concerning declarations of interests apply not only to meetings or committee meetings of the Council or Devolved Public Body but to any dealings with officers, meetings with other councillors / members, party group meetings, Joint Boards or Committees, and any other formal or informal meetings where the councillor or member is representing the Council or Devolved Public Body.
- 7.3 Unless a specific exclusion or dispensation applies, the councillor or member is obliged to declare any interest as soon as is practicable at the meeting. They are also obliged to withdraw from the room until the discussion and voting on any relevant matter they have a declarable interest in has concluded.
- 7.4 Councillors and members must declare the financial interests of
- A spouse, civil partner or co-habitee;
 - A close relative, close friend or close associate;
 - An employer or partner in a firm;
 - A body (or subsidiary or parent of a body) of which they are a remunerated member or director;
 - A person from whom they have received a registrable gift or registrable hospitality;
 - A person from whom they have received a registrable gift or registrable hospitality or registrable election expenses.
- The Codes specifically state that 'relative', 'friend' or 'associate' is not defined and the objective test should be considered regardless of the precise nature of the relationship.
- 7.5 The Councillors' Code of Conduct contains general exclusions in respect of interests a councillor has as a tax payer or in relation to the Council's public services; in respect of the setting of Council tax; in respect of matters concerning a councillor's remuneration, allowances, expenses, support services and pension; and as a council house tenant. In addition, there are specific exclusions, which apply to councillors nominated or appointed by their Council to certain categories of outside body. In such circumstances, the councillor will still need to declare his or her interest in the outside body when matters relating to it are being discussed at Council, but can take part in the discussion or voting (provided it is not on a quasi-judicial or regulatory matter where the outside body is the applicant or has a material interest).
- 7.6 The Standards Commission has published guidance on the Codes, including detailed guidance on how to interpret the provisions concerning declarations of interests. The guidance can be found at:
www.standardscommissionscotland.org.uk/guidance/guidance-notes.
- 7.7 In addition, the Standards Commission has produced the following advice notes on the topic:
- Advice for Councillors on How to Declare Interests;
 - Advice for Members on How to Declare Interests;
 - Advice for Councillors on Arm's Length External Organisations; and
 - A Flowchart on Making Declarations of Interest.

These advice notes can be found at:

www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.

8. Whistleblowing Arrangements

- 8.1 The ethical standards legislation requires that complaints should be submitted in writing and signed. The CESPLS will not normally progress an anonymous complaint. However, the name of the complainer may be withheld in certain, limited circumstances.
- 8.2 The CESPLS is a prescribed person under the Public Interest Disclosure Act 1998, meaning protection is provided for employees who pass on information to him concerning wrongdoing, in the circumstances outlined in the Act. A complaint can only be accepted by the CESPLS if it relates to the conduct of a councillor or of a member of a public body within his remit. The CESPLS recommends that an employee follows their organisation's internal whistleblowing policy before contacting him, unless the individual has concerns that they may be victimised for raising their concern, or that it may be covered up. They can also contact the CESPLS if they believe their concern has not been dealt with properly through their employer's whistleblowing policy.
- 8.3 If the CESPLS decides to investigate the complaint, he is required to make the person about whom it is made aware of the conduct alleged. In whistleblowing cases, the identity of the complainer will not be disclosed but potential complainers are advised that there is a risk that circumstances of the complaint may allow someone to guess who they are. Potential complainers are also advised that it may not be possible to investigate their complaint in as thorough a manner as other complaints if doing so would mean their identity was disclosed. This means there is a risk that such a complaint cannot be established to the requisite standard.

ANNEX A

SUMMARY OF HEARINGS 2017/2018

Summaries of all Hearings conducted during the past year are set out below - the full written decisions can be accessed at:

<http://www.standardscommissionscotland.org.uk/cases/case-list>

A number of the cases referred to below raised issues concerning the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression. The Standards Commission for Scotland has produced Advice Notes for Councillors and Members of Devolved Public Bodies on the Application of Article 10 of the ECHR and the approach Hearing Panels will take when issues that concern the right to freedom of expression arise. These can be found at:

<http://www.standardscommissionscotland.org.uk/education-and-resources/advice-notes>

Case	LA/NL/1940 – North Lanarkshire Council
Complaint	The complaint alleged that the Respondent failed to register her remunerated employment, as an office manager with a MSP, within one month as required by the Councillors' Code of Conduct.
Decision	<ol style="list-style-type: none">1. Paragraph 4.3 of the Code requires councillors to register any remunerated employment. Paragraph 4.7 of the Code requires them to provide the name of the employer along with nature of the business and post held. Regulation 5 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 requires councillors to update their register of interests within one month of their circumstances changing.2. The Hearing Panel found, and it had had been admitted, that the Respondent failed to register her remunerated employment with the MSP within one month, as required.3. The Panel concluded that the Respondent had breached paragraphs 4.3 and 4.7 of the Code.
Sanction	<p>The Panel censured the Respondent. In reaching its decision, the Panel:</p> <ol style="list-style-type: none">1. Accepted the Respondent's written statement to the effect that she had not intended or tried to conceal her remunerated position. This was demonstrated by a post she had made on a social media site, soon after her appointment, indicating that she would be working for the MSP.2. The Panel also noted the Respondent's submission that she had not been offered training on the Councillors' Code of Conduct and that she had taken steps to rectify her failure to register the employment as soon as the matter was brought to her

	<p>attention.</p> <p>However, the Panel:</p> <p>3. Emphasised the registration of interests is a fundamental and absolute requirement of the Code. While the Panel noted there was no intent to conceal the employment, it nevertheless considered that failure to register remunerated employment in an official register of interests removed the opportunity for openness and transparency. This could deny a member of the public the opportunity to consider whether a councillor's interests may or may not influence their decision-making process.</p>
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Case	LA/E/1737 & LA/E/1751 – City of Edinburgh Council
Complaint	The complaints alleged that two councillors (the Respondents) behaved in a disrespectful manner towards officers by publicly identifying them in the context of inferred misconduct.
Decision	<p>1. The Hearing Panel found that the Respondents had been discourteous and disrespectful by publicly identifying five Council officials at a meeting of the Council's Governance, Risk and Best Value Committee in the context of a discussion about accountability for alleged failings in the management of a Community Centre building project. Although the names were disclosed without either Respondent making any critical comment, a clear inference could be drawn from the reading out of the names that those staff may have had some responsibility for any failures in respect of the Council's management of the project.</p> <p>2. However, the Panel found that the Respondents had legitimate grounds for concern about the project and for taking the view that the Committee would not commission further reports without being convinced there were still officials employed by the Council who could assist with inquiries. The rationale of identifying staff was to achieve that purpose.</p> <p>3. In the particular circumstances of this case, the Panel took the view that, as local politicians taking part in a discussion on matter of public concern, the Respondents should be afforded the enhanced protection of freedom of expression under Article 10 of the European Convention on Human Rights. The Panel also found that the Respondents' right to this enhanced protection when performing their scrutiny role in an open and transparent way was not outweighed by the benefit of protecting officers from the potential inference that they had been involved in any of the alleged failings.</p> <p>4. The Panel concluded that whilst it was regrettable that the five officers were named, this did not constitute a breach of the Councillors' Code of Conduct in light of the application of the enhanced protection enjoyed by the Respondents to the right to freedom of expression.</p>

Sanction	Not applicable.
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Case	LA/WL/1824 – West Lothian Council
Complaint	The complaint alleged that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct in terms of the requirements to register remunerated employment and also in respect of declaring her own non-financial interests, and the financial interests of others at Council meetings.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted that the Respondent acknowledged that she had failed to take steps to register her remunerated employment, as Manager of a private company limited by guarantee, until 2 months after her appointment. 2. The Panel noted that the Respondent accepted that she had not declared an interest at a meeting of the Council Executive where it was decided to divert funds to the Social Enterprise Network, despite her employer being a member of the Network and, therefore, a potential recipient of the additional funding. As such, the Panel considered the Respondent should have declared the financial interest of her employer and taken no further part in the discussions and decision-making. 3. The Panel further noted that it was not in dispute that the Respondent had not declared any interest at three meetings of the Council's Voluntary Organisations Policy Development and Scrutiny Panel during which reports were presented about voluntary organisations, including her employer, moving to a new accredited system of quality standards. The Panel noted that the Respondent's employer was specifically mentioned in reports considered by the Panel at the meetings in question and considered that the Respondent should have applied the objective test, declared a non-financial interest and taken no further part in the discussions and decision-making at the meetings. 4. The Panel concluded that the Respondent had breached paragraphs 4.2, 5.7 and 5.10 of the Code.
Sanction	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the submissions on behalf of the Respondent in mitigation and, in particular, that she was motivated by trying to act in the interests of her constituents and service users in respect of her work with the company concerned. 2. Noted that while it was a late notification, the Respondent had taken steps to rectify her register of interests within approximately one month of the required timescale. <p>However, the Panel:</p> <ol style="list-style-type: none"> 3. Emphasised the registration and declaration of interests are fundamental

	requirements of the Code and that a failure to register and declare interests appropriately removes the opportunity for openness and transparency in a councillor's role. This could deny a member of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.
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Case	LA/NL/1936 – North Lanarkshire Council
Complaint	The complaint alleged that the Respondent had contravened the requirement in the Councillors' Code of Conduct to register a right of ownership over a property.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel determined that the Respondent failed to include in her Register of Interests a property in Motherwell, despite having become a part owner of the property in 2012. The Respondent had previously indicated that she did not consider she had to register an interest in the property as there continued to be a life-rent over it in favour of the previous owners. 2. The Panel noted that paragraph 4.18 of the Councillors' Code of Conduct requires councillors to register any property ownership. Paragraph 4.19 of the Code requires them to provide the address of the property or to otherwise give a sufficient description to identify it. 3. The Panel determined that while the Respondent's interest in the property was limited until the end of the life-rent, the land register title nevertheless demonstrated that she had become a part owner in 2012. As such, the Respondent should have registered her interest in the property. 4. The Panel concluded that the Respondent had breached paragraphs 4.18 and 4.19 of the Code.
Sanction	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Accepted the Respondent's failure to register the interest may have been based on a misunderstanding of the legal position. <p>However, the Panel:</p> <ol style="list-style-type: none"> 2. Considered that the requirement to register ownership of property is an integral part, and absolute requirement, of the Councillors' Code of Conduct as it provides the opportunity for openness and transparency in a councillor's role and affords members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.

Case	LA/As/1963 & 1993 – Aberdeenshire Council
Complaint	The complaints alleged that the Respondent had contravened the provisions in the Councillors' Code of Conduct relating to using council facilities, seeking preferential treatment and lobbying other councillors, in relation to an application for planning

	permission submitted by his company.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel determined that the Respondent sent two emails from his Council email address, which were signed off by him as a councillor, to seven members of an area Planning Committee putting forward some points in favour of a planning application a firm he was a partner of had submitted. 2. The Panel found that the Respondent had acted inappropriately in using his council facilities to send the emails and determined that in doing so, he had contravened the provision in the Code which states that Council facilities should only be used for carrying out Council duties or for incidental personal use authorised by the Council. 3. The Panel further determined that members of the public would reasonably conclude that, in signing off his emails as a councillor, the Respondent was using his position to seek preferential treatment and, in making representations, outwith the Committee forum and the correct procedure, in favour of the application was also seeking to privately lobby other councillors about the planning application. 4. The Panel concluded that the Respondent had breached paragraphs 3.16, 3.19 and 7.10 of the Code.
Sanction	<p>The Panel suspended the Respondent for a period of six months, from all committees and sub-committees of the Council that make decisions on quasi-judicial or regulatory matters. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Acknowledged the Respondent's early acceptance that he had breached paragraph 3.16 of the Councillors' Code of Conduct and that he should have done things differently. 2. Took into account the Respondent's previously unblemished record. <p>However, the Panel:</p> <ol style="list-style-type: none"> 3. Found that the Respondent had disregarded advice from a senior officer warning him of the potential repercussions of not separating his personal interests from his role as a councillor in respect of the planning matter. 4. Was concerned that the Respondent had not seemed to accept that his actions in sending the emails amounted to seeking preferential treatment for his family business and also to the lobbying of other councillors. 5. Was concerned that the Respondent, who had been a councillor for 10 years, with experience including membership of quasi-judicial and regulatory committees had displayed such conduct and demonstrated a lack of knowledge and understanding of the requirements of the Code. 6. Found that there had been a serious breach by the Respondent of the Code in respect of using his position as a councillor to further his own personal interest in a

	planning matter. The Panel considered such conduct had the potential to result in decisions on planning matters being legally challenged and could erode public confidence and trust in local government and the democratic process itself.
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Case	LA/E/1924 – City of Edinburgh Council
Complaint	The complaint alleged that the Respondent had contravened the courtesy and respect provisions in the Councillors' Code of Conduct when he made serious allegations of wrongdoing by a fellow councillor in an online public blog.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel found that the Respondent had made a number of allegations and critical comments on his online blog about the complainer, a fellow councillor, which were of a personal and insulting nature. The Panel further found that the comments were clearly intended to impugn and demean the complainer in a public forum. 2. The Panel noted that the Respondent had subsequently proffered an unqualified apology to the complainer, in which he had accepted the allegations and imputations he had made in the blog were entirely false and without foundation. 3. In the particular circumstances of this case, the Panel took the view the comments in question did not amount to a value judgement and that the Respondent should not, therefore, be afforded the enhanced protection afforded under Article 10 of the European Convention on Human Rights for political expression. The Panel concluded that the Respondent's comments had been made without factual basis, were disrespectful and amounted to a personal attack. 4. The Panel determined that the Respondent had breached paragraphs 3.1 and 3.2 of the Councillors' Code of Conduct.
Sanction	<p>The Hearing Panel noted that, having found a breach of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available were censure or disqualification. The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Took account of the Respondent's submissions that he was attempting to act in the public interest, by putting his concerns into the public domain. 2. Acknowledged the Respondent's early acceptance that he had breached paragraph 3.1 and 3.2 of the Councillors' Code of Conduct and that he should not have used the language he did. <p>However, the Panel:</p> <ol style="list-style-type: none"> 3. Found that the Respondent's comments amounted to an unjustified personal attack on a fellow councillor. 4. Considered that the manner in which the Respondent had raised his concerns were

	inappropriate and, as such, could have undermined public confidence in local government.
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Case	LA/G/1942– Glasgow City Council
Complaint	The complaint alleged that the Respondent had contravened the courtesy and respect provisions in the Councillors' Code of Conduct by being disrespectful to a police officer during two telephone calls to a local Police Station.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel was satisfied from the evidence before it that the Respondent had made comments of an abusive, insulting and personal nature to the complainer, a police officer, and had made a number of unfounded allegations about him during two telephone calls to Maryhill Police Office. 2. The Panel further found that the Respondent made the telephone calls in his capacity as a ward councillor and concluded, therefore, that the provisions of the Code applied to him at the time of the events in question. 3. The Panel found that the comments made by the Respondent in the telephone conversations were gratuitous, offensive and abusive in nature and amounted to an unacceptable personal attack on the complainer. The Panel further found that the Respondent was aware that the accusations he made during the telephone calls were unfounded. 4. The Panel noted that the Respondent's comments had been made in one to one telephone conversations, as opposed to a public forum, and not taken place in a political context or in respect of a debate on a question of public interest. In the circumstances, the Panel was satisfied that the Respondent should not be afforded the enhanced protection under Article 10 for political expression. 5. The Hearing Panel concluded that the Respondent had breached paragraphs 3.1 and 3.2 of the Code.
Sanction	<p>The Panel noted that, having found a breach of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available were either censure or disqualification. The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Took account of the comments the Respondent made in a letter to the Standards Commission and, in particular, his commitment to serving his community. <p>However, the Panel:</p> <ol style="list-style-type: none"> 2. Found that the Respondent's comments amounted to a personal attack on a public servant. The Panel considered that public servants have a right to be protected from unwarranted personal attacks of this nature. 3. Noted that it would have considered imposing a suspension had the Respondent

	still been a councillor.
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Case	LA/ED/1863– East Dunbartonshire Council
Complaint	The complaint alleged that, over the course of some months, the Respondent had engaged in an inappropriate course of conduct towards a relatively junior officer of the Council. The Respondent was also alleged to have disclosed confidential information relating to the health of the officer to a third party.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel found that the Respondent had engaged in an inappropriate course of conduct towards a relatively junior officer of the Council which included trying to develop a personal friendship with her. This was despite being aware of the distinction between the officer's role and his own perceived position of power and influence as Convener of Education with budgetary oversight over the Service in which she was employed. 2. The Panel noted that the Respondent had continued to pursue a social relationship with the officer, despite his interest in doing so not being reciprocated and that the Respondent had, on occasions, resorted to subterfuge to secure meetings with the officer. The Panel determined that, in doing so, the Respondent failed to exercise caution and had failed to interact with the individual officer, and officers of the Council in general, in an atmosphere of mutual trust and respect. 3. The Panel further determined that the Respondent had disclosed information about the officer to the third party was private, personal and sensitive and that it was, by its very nature, confidential. 4. The Panel therefore determined that the Respondent had breached paragraphs 3.3, 3.5, 3.14 and 3.15 of the Code.
Sanction	<p>The Panel noted that, having found contraventions of the Code, it was obliged to impose a sanction. The Panel further noted that as the Respondent was no longer a councillor, the only options available to it were either censure or disqualification. The Panel censured the Respondent. The Panel confirmed that it would have imposed a suspension had that option been available to it. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the comments the Respondent's contention that the breach of confidentiality was inadvertent and also his early acceptance that he had contravened the Code. 2. Noted the Respondent's assertion that he had not intended to show disrespect, discourtesy or a lack of consideration to the officer and that he now accepted his actions had caused her distress. <p>However, the Panel:</p> <ol style="list-style-type: none"> 3. Noted the Respondent had continued with his course of conduct over a period of five months despite being advised by five officers that his behaviour was

	<p>inappropriate. The Panel was concerned that the Respondent had not recognised, at the time, that his conduct was disrespectful and had also not recognised the impact his behaviour would have on the officer and other officers.</p> <p>4. Did not accept the Respondent's behaviour was inadvertent. The Panel was particularly concerned that the Respondent had resorted to concealment and dishonesty as he sought to develop his relationship with the officer and representation of it to others.</p> <p>5. Was critical that the Respondent had disclosed confidential medical information about the officer, which he had only received by virtue of his role as a councillor.</p> <p>6. The Panel considered the Respondent's conduct amounted to a serious breach of the Code. It had the potential to undermine the relationship of mutual trust and respect between councillors and officers and could also have discredited the Council.</p>
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Case	LA/R/1946 &1973 – Renfrewshire Council
Complaint	The complaints alleged that the Respondent had failed to comply with the provisions of the Councillors' Code of Conduct by behaving in a disrespectful manner towards the Provost and other elected members at a meeting of Renfrewshire Council.
Decision	<p>1. The Hearing Panel watched excerpts of a webcast from the Council meeting and found that the Respondent had talked or shouted over the Provost, who was chairing the meeting, on several occasions in an aggressive manner, despite the Provost making it clear she wished him to stop (to the extent that she had been required to adjourn the meeting to restore order).</p> <p>2. The Panel concluded that the Respondent had failed to show respect to the Chair at the meeting of the Council by repeatedly ignoring her directions, by challenging her decisions and by speaking over her. The Respondent had also failed to comply with a ruling she had made.</p> <p>3. The Panel noted that, by his own admission, the Respondent used the meeting to indulge in the opportunity to air long held personal grievances and to obtain publicity. The Panel further found that the Respondent also directed a number of offensive and personal remarks towards individuals during the course of the meeting and also used the meeting to make a number of serious allegations.</p> <p>4. The Panel determined that while the Respondent had made his comments and accusations in a Council meeting, they did not directly relate to the agenda items being considered and were instead offensive, insulting and gratuitous personal asides and attacks. The Panel concluded, therefore, that his comments did not attract the enhanced protection of freedom of expression afforded to political expression under Article 10 of the ECHR.</p> <p>5. The Panel, having given careful consideration to the particular facts and specific circumstances of the case, determined that the Respondent had breached</p>

	paragraphs 3.1 and 3.2 of the Code.
Sanction	<p>The Panel suspended the Respondent's entitlement to attend all meetings of the Council, and of any committee or sub-committee thereof, for a period of seven months. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Considered it had been the Respondent's personal responsibility to comply with the Code at the time. The Panel noted that the Respondent had failed to do so, despite having signed a declaration confirming he would comply with its requirements. 2. The Panel noted that the Respondent had indicated that he refused, for 'theological reasons', to read the Code. The Panel found that the Respondent was entirely dismissive of the ethical standards framework, including the Code, the Commissioner for Ethical Standards and the Standards Commission. 3. The Panel was of the view that councillors should undertake a scrutiny role, represent the public and any constituents; and make political points in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and, or, unduly disruptive. 4. The Panel determined that the Respondent's behaviour was deliberate and serious in nature and was in furtherance of his own personal grievances. The Panel considered that the manner in which the Respondent had raised his views was unacceptable and, further, that his comments amounted to personal attacks on fellow councillors. As such, his behaviour could have undermined public confidence in local government. 5. The Panel found that the Respondent had been disrespectful towards the Provost, as chair of the meeting and had, on numerous occasions, failed to comply with her rulings and had disrupted proceedings. As such, his sustained conduct at the meeting inhibited the Council from functioning effectively and was a threat to reputation of the Council and the role of an elected member.

Case	LA/E/2028 – City of Edinburgh Council
Complaint	The complainant alleged that the Respondent failed to timeously register that he held shares in a business as required by the Councillors' Code of Conduct.
Decision	<ol style="list-style-type: none"> 1. The Hearing Panel noted the Respondent accepted that he had failed to include in his Register of Interests a shareholding in a company that owned a hotel until April 2017, despite having completed Notice of Registrable Interest forms on three previous occasions. 2. The Panel noted that paragraph 4.2 of the Code requires councillors to register any interests, while paragraph 4.20 of Code states that councillors have a registrable interest if they have an interest in shares comprised in the share

	<p>capital of a company, where the nominal value of the shares was greater than 1% of the issued share capital of the company.</p> <p>3. The Panel determined that the Respondent's shareholding should have been registered, regardless of whether or not the company was dormant.</p> <p>4. The Panel therefore concluded that the Respondent had breached paragraphs 4.2 and 4.20 of the Code.</p>
Sanction	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <p>1. Noted the Respondent's position was that when the company had become active in 2016 he had submitted details of his ownership so that this could be included in his Register of Interests.</p> <p>However, the Hearing Panel:</p> <p>2. Noted the Council had no record of having received such a submission and that the Respondent accepted he had not checked to confirm whether his Register of Interests had been updated to record the interest.</p> <p>3. Was concerned that the points made by the Respondent failed to recognise that the requirement under the Code to register a shareholding did not distinguish between an active and dormant company. The Respondent's submission also failed to recognise that the Code required an interest to be registered regardless of whether or not the company or any assets it owned was located in the Council area.</p> <p>4. Considered that the requirement to register a significant interest in an company, including a shareholding of more than 1% or of a value greater than £25,000 is an integral part, and absolute requirement, of the Code as it provides the opportunity for openness and transparency in a councillor's role and affords members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making.</p>

Case	LA/Fi/2044 - Fife Council
Complaint	The complaint alleged that the Respondent used his Council email account and computer to send an email asking for help in delivering party political campaign leaflets, in contravention of the Councillors' Code of Conduct.
Decision	<p>1. The Hearing Panel noted that the Respondent accepted that he had used his Council email identity, account and computer to send an email to the Chair of a Community Trust in April 2017 containing a request for assistance in delivering party political campaign leaflets.</p> <p>2. The Panel noted the Respondent had assisted the Community Trust with a number of issues and that the request had been sent within a chain of email</p>

	<p>correspondence about an existing issue, being the realignment of a public footpath. The Panel noted the Respondent's position was that he had made a 'serious albeit inadvertent mistake', in sending what was intended to be a personal note requesting assistance from the Chair of the Community as part of the chain.</p> <p>3. The Panel determined that the Respondent had breached the provision in the Code which prohibited the use Council facilities for party political or campaigning purposes.</p> <p>4. The Panel therefore concluded that the Respondent had breached paragraph 3.16 of the Code.</p>
Sanction	<p>The Panel censured the Respondent. In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the Respondent's early acceptance that he should have been more careful and should not have used his Council email identity, account and computer to seek assistance in distributing election literature; and his apology for doing so. 2. Acknowledged the Respondent's position that his actions were the result of an inadvertent lapse, as opposed to any deliberate attempt to exploit his relationship with the Community Trust. 3. Noted the Respondent's recognition and clear insight into the potential perception of his actions. <p>However, the Hearing Panel:</p> <ol style="list-style-type: none"> 4. Noted that the Council's Chief Executive issued guidance to all elected members on earlier in the year reminding them that Council facilities and resources should never be used for party political or campaigning purposes. The Hearing Panel considered this reminder and the proximity of the Local Government and General elections should have put the Respondent on notice that he was required to take extra care during the election period. 5. Considered that the prohibition on using Council facilities and resources for party political or campaigning purposes was an important part of the Code as it provided the public with confidence that public resources were being used appropriately. A breach of this provision had the potential to bring the Council into disrepute.

Case	LA/DG/1929 – Dumfries and Galloway Council
Complaint	The complaint alleged that the Respondent posted an inappropriate and offensive comment on the complainer's Facebook page and, in doing so, contravened the courtesy and respect provisions in the Councillors' Code of Conduct.

Decision	<ol style="list-style-type: none"> 1. The Hearing Panel determined, on the balance of probabilities, that the Respondent posted a comment on the complainer's Facebook page, below a photo of her and another individual (Mr A), which read 'thankfully you two deviants were dealt the blow you deserve by the decent people of Dumfries'. 2. The Panel noted the complainer was well known as having been the Chairperson of the Dumfries & Galloway LGBT + Group and considered that the use of the word 'deviants' was a reference to her sexuality and to Mr A's support for the local LGBT+ community. 3. The Panel considered that the Respondent had, by his own admission, not distinguished between his personal and public role when accessing the Facebook account. The Hearing Panel noted that the Respondent's only interaction with the complainer had been as a councillor and that they did not have a personal relationship. As such, the Hearing Panel concluded the Respondent was acting in the capacity of a councillor or would have been perceived as such when posting the comment. 4. The Panel determined that the common use of the word 'deviant' was as a derogatory reference in terms of an individual's sexuality. The Panel found that its use by the Respondent in the posting amounted to a personal attack on the complainer and Mr A, which were clearly intended to impugn and demean them. The Panel was therefore satisfied that the Respondent failed to observe the rules of good conduct by behaving in a disrespectful manner towards the complainer and Mr A. 6. The Panel found, therefore, that the Respondent's behaviour amounted to a contravention of paragraphs 3.1 and 3.2 of the Code. 7. The Panel did not accept the posting had been made in the context of commenting on a political matter and, as such, the Respondent did not benefit from the enhanced protection of freedom of expression afforded to politicians under Article 10 of the European Convention on Human Rights. The Panel concluded that the Respondent's comments were gratuitous, offensive and abusive in nature and amounted to a personal attack on the complainer and Mr A. As such, the Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient and proportionate. 8. The Panel further considered that the Respondent had breached the Council's Acceptable Use of ICT Facilities policy by using a Council issued mobile phone to post an inappropriate and offensive comment. As such, the Hearing Panel determined the Respondent had also contravened paragraph 3.16 of the Code. 9. The Panel therefore concluded that the Respondent had breached paragraphs 3.1, 3.2 and 3.16 of the Code.
Sanction	<p>The Panel noted that as the Respondent was no longer a councillor, the only options available were censure or disqualification. The Panel censured the Respondent but made it clear they would have imposed a suspension had that option been available.</p>

	<p>In reaching their decision, the Panel:</p> <ol style="list-style-type: none"> 1. Noted the contribution the Respondent had made to public life in approximately 30 years as a councillor. 2. Further noted the character references submitted by associates and former colleagues of the Respondent, including ones to the effect that he was not homophobic. <p>However, the Panel:</p> <ol style="list-style-type: none"> 3. Considered the language used in the posting was wholly unacceptable and unjustified and noted the complainer's position that she felt threatened by it. 4. Agreed with the Commissioner that those in public life must take steps to ensure their behaviour does not open the door for intimidation and that they must uphold high ethical standards. 5. Noted that the Respondent had not taken responsibility for his behaviour or demonstrated any insight into the potential impact of it.
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Review of Local Government Ethical Standards: Stakeholder Consultation

Name: Ann Marshall

Chair of Birstall Parish Council

Email: [REDACTED]

I am submitting this as a collective response from Birstall Parish Council, Leicestershire

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

The existing processes, structures and practices do not ensure high standards of conduct in practice. They are not robust enough. The level of conduct almost has to be criminal for it to be addressed. Code of Conduct and Nolan Principles are too open to interpretation and abuse.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Parish Council's are forced to use Monitoring Officers at District/Borough Council's to address issues. Monitoring Officers are often not fully cognisant with Parish Council functions and specific problems. Behaviour of Councillors is not addressed and for Parish Council's this is often the major problem. Monitoring Officers say they cannot act unless there is a specific code of conduct issue.

Parish Council's are made up of local residents who are unpaid and very often apolitical. It would be a great help to Parish Council's if the current ethical standards regime included behavioural issues, particularly social media/press abuse.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Our Parish Council has a Councillor handbook containing all information necessary for a new Councillor. They are loose leaved so can be added to as required. All new Councillors are asked to undertake new Councillor training. Codes do not cover behavioural issues adequately.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

The Code of Conduct is not robust enough and too easily open to misinterpretation. It is too much guiding principles rather than explicit requirements/actions. Registering Interests generally OK though Parish Councils should keep their own register and it not be left to District / Borough Councils.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

For Parish Councils investigative process is done to them by the Monitoring Officer. He appears 'God I ke'. Parish Councils should have their own Monitoring Officer who understands the complexity of Parish Councils and their particular needs.

The Independent Person always seems to be in agreement with the Monitoring Officer i.e. not truly independent. The Independent Person should receive complaints at the same time as the Monitoring Officer and not after the Monitoring Officer has made a decision.

Monitoring Officers should be independent of District/Borough Councils. It is unfair that Parish Councils do not have a voting voice on their member conduct committees which are made up of District/Borough Councillors. There should be a Member Conduct Committee solely for Parish Councils.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
 - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

These are not sufficient, rarely used and do not deter breaches. There is currently no way to enforce compliance at Parish Council level. Parish Councils are dictated to by Monitoring Officers employed by District/Borough Council's. Additional sanctions would only be useful if they were used and could be enforced. These could be to undertake training and also use of suspension from Committees or Full Council meetings. Currently District / Borough Councils advise or make recommendations only.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Register of Members Interests procedure is in place and fairly satisfactory but granting dispensations is still unclear. There is often conflicts of interest when Councillors are dual or treble hatted. This should not be allowed.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Our Parish Council has a policy in place.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

Monitoring Officers should be truly independent and should not make decisions in isolation.

Central Government should review Localism Act because this is where it all went wrong i.e. removal of Standards Boards

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?

Intimidation of local Councillors at Parish Council level is usually by District/Borough /County Councillors. They seem to view Parish Councillors as lower in the food chain.

Review of Local Government Ethical Standards: Stakeholder Consultation

Name: Sue Coulson
Clerk to Birstall Parish Council
Email [REDACTED]

I am submitting this form on my own behalf, because I believe it is high time that things were changed and that some fairness and normality is reintroduced to a weak and unfair regime for implementing standards of Councillors.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

I have serious concerns that behavioral issues of Councillors are not being addressed or dealt with by Monitoring Officers.

I have suffered appalling treatment by [REDACTED] to the point of where I have had to involve Unions representatives, I felt sorry for most of the Councillors who were as exasperated by the Behaviour of [REDACTED] but were unable to put any sanctions in place to stop it.

When a behavioral complaint of such nature is submitted to the Monitoring Officer it is immediately rejected by him on the grounds that he considers it to be a staff matter, and not within his remit and that it should be addressed internally by the Council. He does not even look at it to consider whether there is a breach of the Code of Conduct or not, it is just thrown back, surely, he should determine if the Behaviour is a breach of the code of conduct and deal with it accordingly, or does it stop being a code of conduct issue because it is against a member of staff? The Council can be as supportive to the complainant as they can be, but they have no teeth, or support, when it comes to disciplining or sanctioning a Councillor, consequently, staff complaints basically go unsolved and ignored or the member of staff leaves their job.

If the complaint was the other way around and it was a member of staff's bad behaviour towards a Councillor, there is a standard disciplinary process for the Council to follow which could result in the member of staff being dismissed from post. Sadly, there isn't a process for the other way around. How is this anywhere near fair.

In my opinion the current regime/system does not offer a fair process, and from personal experiences, I have considered whether it is a breach of my human rights to have to be in a position of accepting that I no alternative but to accept and tolerate this kind of treatment if I want to remain in post.

There is no opportunity for redress for officers, or indeed the other Councillors who agree with and want to support a member of staff. Rogue Councillors have a "and you'll do what" attitude when complaints are made about them. There is no deterrent for rogue Councillors and no protection for Officers. Where else would an individual get away with this kind of behaviour.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

In my opinion, I believe that one Monitoring Officer to cover a whole Borough or District is inadequate and that specific knowledge of how Parish/Town Council's work is not fully understood, appreciated or even cared about, by the Monitoring Officers and that training should be undertaken by them.

I believe the best way forward would be for a separate and independent panel to be set up to deal with complaints from Parish/Town Councils.

I get the impression that Parish/Town Councils are not taken seriously enough by the higher authorities and are somewhat looked down upon and are treated as a nuisance when they bother the Monitoring Officer with a complaint. Behavioural issues should be included as a Conduct issue.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

I think they are read once a Councillor is elected or co-opted and then left to collect dust.

I think there is a complete disregard and complacency for the code of conduct and this is due to the lack of any enforcement or sanctions that may affect them in their role as a Councillor. Councillors are aware that they can basically do what they want and never be brought to task or justice.

The code does not cover an appropriate range of behaviours? Behavioural issues being the major one that causes many a problem for Parish/Town Councils, however, even if that was included, the next hurdle is the Monitoring Officer's interpretation of the Code of Conduct and whether he agrees with the complainant's submission. This is largely subject to, apparently, whose Code of Conduct the Council has adopted, at a very recent meeting a Deputy Monitoring Officer stated that the Borough prefer that their Code of Conduct is adopted and not the NALC model, they state that they would be able to assist more. I have looked at both sets and cannot see how one model should be treated differently to the other.

The nature of some of the complaints that this Parish Council has submitted that have not been upheld are incred ble. I am at a loss to know just what a Councillor has to do to make the Monitoring Officer uphold a complaint.

This is not an adequate process, it is not a fair process, and in my opinion, it is open to bias, particularly if the complaint about a Councillor who is dual and/or treble hatted. It could be that the Councillor being complained about, is not only a Parish Councillor but is a Borough/District Councillor and/or a County Councillor and is likely to be closer to the Monitoring Officer who works at Borough/District level, i.e. does corridor talk take place? Do they have an unfair advantage of being known to the Monitoring Officer? In this event, I don't think that the complaint should be dealt with by the Monitoring Officer of the same authority that the Borough/District/County Councillor is a member of.

Example of Good Practice: The Parish Council that I am employed by have introduced Councillor Handbooks, when a Councillor is first elected/co-opted they are given the handbook which contains all of the Council Policies and Procedures and includes a copy of the Parish Council's adopted Code of Conduct.

All new Councillors must undertake Councillor Training which is paid for by the Council and the Council have just resolved that all Councillors should take this training course again in each election year, this is to ensure that they are all fully aware of the current legislation.

- d. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- e. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

The Code of Conduct is not robust enough or clear enough and is open to an individual's interpretation or misinterpretation whichever the case may be.

It is full of guiding principles but is not concise enough when it comes to explicit requirements/actions. It needs to be simplified and it needs to be more direct with a set of do's and don'ts and clear statements and explanations of "if you do this, this is what will happen". It needs some teeth.

The initial Registering of Members Interests is OK, this is because it is done with the new Councillor by

the Clerk at the induction meeting and the Clerk takes on the responsibility of ensuring that this is completed in time and sent to the Monitoring Officer within the stated deadline. However, because the declaring of interests or changes to their interests, is not the Clerk's responsibility, often this is not followed through and Councillors then could fall foul of the law. I am not suggesting that this should be made the Clerk's responsibility, far from it, but perhaps more in-depth training is required for Councillors on the importance of declaring interests, particularly Pecuniary Interests and perhaps this could be undertaken by the Monitoring Officer or the Monitoring Officers authority.

Investigations and decisions on allegations

f. Are allegations of councillor misconduct investigated and decided fairly and with due process?

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Who knows, in all of the 10 years that I have worked for this Parish Council, it is yet to have a complaint upheld by the Monitoring Officer.

The Parish Council submitted a complaint about a blatantly obvious code of conduct complaint which was not upheld, the Council appealed the decision, only to discover that the Borough Council did not have an appeal process! and that the word of the Monitoring Officer was to be final.

The Parish Council investigated this matter further because they couldn't believe that in this democratic era, that a decision was down to one officer and a local authority could get away with not having an appeal process in place. Eventually, one was put in place by the Borough Council and so I suppose you could say that this should be an additional safeguard naturally in place for all concerned.

I am aware that Charnwood Borough Council are making a suggestion through this consultation of being able to recharge the costs of receiving and investigating complaints back to the relevant Parish/Town Councils, even further, they are suggesting that they implement a £350 fee just for a Parish/Town Council to submit a complaint (returnable if it is not investigated). I listened to the recording of this Member Conduct Committee meeting which was held on 19 March 2018 and was enraged. How can they even suggest this when there is no alternative for Parish/Town Councils, there is no choice, we have to use the Monitoring Officer and I see this as profiteering. The role of the Monitoring Officer is a statutory role and if local authorities want to charge for this, then they must give us a choice.

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

When we receive the Independent Person's verdict, it clearly mirrors the decision of the Monitoring Officer, I therefore do not consider that this is carried out in a truly independent way and I don't see how they could evidence that it is, without some changes being made.

I most certainly think it should be strengthened, or better still changed completely.

I think it would be more appropriate for an independent panel to be formed which is made up of Parish/Town Councillors and Clerks, to act as the independent person when the Monitoring Officer receives and deals with complaints relating to Parish/Town Councillors, and that the complaint should be submitted to this panel at the same time as the Monitoring Officer and for the panel to submit an independent report on the complaint before seeing the Monitoring Officer's decision.

- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

I do believe that Monitoring Officers are often too close to the Borough/District/County Councillors and there could be a conflict of interest. Certainly, from experience a Borough Councillor has been

afforded time by the Monitoring Officer to speak about the complaint made against them, time which was not offered to the complainant, not only is this highly suspect, but unfair, because they are both 'on site' so to speak. It is my belief that there is a sense of comradery, hence my earlier comment about 'corridor talk'. Monitoring Officers could be protected from this risk by imposing a new sanction to Councillors, such as, If Councillors being complained about approach the Monitoring Officer without invitation to discuss the complaint, they shouldn't be afforded time or listened to by the Monitoring Officer, and the sanction could be that it would be seen as a 'black mark against them and could further escalate the complaint'.

Monitoring Officers could help to reduce the risk by telling Councillors being complained about that they will not discuss the matter with them without invitation and that if they do speak with them, there should be an independent witness / note taker of the conversation.

Sanctions

g. Are existing sanctions for councillor misconduct sufficient?

In a word, **No**. If a complaint made to the Monitoring Officer is upheld, the Monitoring Officer currently can only make recommendations of actions for the Council to implement. The Monitoring Officer cannot insist that a Councillor receives training or that he/she is suspended from Committees, and that is where the problem lies, because they are recommendations, the Councillor at fault can ignore it, they do not have to comply and the Parish/Town Council cannot force them to carry out the recommended actions from the Monitoring Officer, which begs the question of why take the time and trouble to submit a complaint at all.

- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Recommendations from the Monitoring Officer are not enforceable and are ignored by the offending Councillor and there is nothing that anyone can do about that.

The sanctions available to the Monitoring Officer are weak and don't go anywhere near acting as a deterrent, there should be more sanctions imposed and I blame the Localism Act for removing the old standards of being able to suspend or dismiss them from the Council due to their behaviour. We need to go back to the old

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

If a complaint is upheld, the Parish/Town Council should be informed by the Monitoring Officer of his decision and told what sanctions are available to them and for the Parish/Town Council to decide which, if any, they implement.

Maybe a scale of sanctions depending on the severity of the complaint should be introduced, for all Monitoring Officers to work with.

Declaring interests and conflicts of interest

h. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable

pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

As stated above, it is the Councillors legal duty to register any pecuniary interests, unfortunately, this does not happen, and when they are caught out, they blame the Clerk for not bringing it to their attention that they had an interest, it needs reinforcing that it is their responsibility and that it carries serious penalties

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

The Parish Council has this standing item on all Council and Committee agendas which reads: "*Disclosure of Pecuniary and/or Personal Interests/Requests for Dispensations/Notifications of changes to Register of Members' Interest's*" this should act as a prompt/reminder to all Councillors that they may need to action something, unfortunately, it does not always work, and I believe this is because there is a lack of understanding from Councillors about declaring interests and the serious consequences of not declaring them. Maybe further training is required for Councillors on this. It is also unclear of how to report that Councillors are not declaring interests that you know they have.

Whistleblowing

- i. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

I am not aware of any policies or procedures in place relating to this.

Improving standards

- j. What steps could *local authorities* take to improve local government ethical standards?

Review the whole system, and prevent matters being dealt with by just one person, i.e. the Monitoring Officer. In my opinion the Monitoring Officer should not make decisions in isolation, I feel it is a biased and unfair system and one that I do not consider adequate in its current form. It is not a one size fits all situation and that is how it is being dealt with.

- k. What steps could *central government* take to improve local government ethical standards?

Intimidation of local councillors

Revisit the Localism Act, this is where it all went wrong with the removal of the Standards Board.

- l. What is the nature, scale, and extent of intimidation towards local councillors?

My personal experience of Intimidation of Parish Councillors comes from above, it is the elected (paid) Borough and County Councillors, that are full of their own importance and have the impression that the Parish Council is inferior, until they need to use them for their own political gain leading up to elections. It is worse when the Borough/County Councillor is also a Parish Councillor and they use the Parish/Town Council as a political platform.

- i. What measures could be put in place to prevent and address this intimidation?

Councillor training should emphasize that the Borough and County Councillors have no due restriction over the Parish Council and they should mind their own business when it comes to Parish/Town Council decisions. I also think that if they are a member of a higher authority, they should not be allowed to sit as Parish/Town Councillors.

Review of Local Government Ethical Standards: Stakeholder Consultation

- l. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why. **No. The process is slow and difficult for members of the public to follow - there should be an option for assistance by an independent person in filling in the complaint forms and explaining what is and isn't allowable on request.**
- m. What, if any, are the most significant gaps in the current ethical standards regime for local government? **Lack of laid down time lines for stages of the process.**

Codes of conduct

- n. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist? **There is confusion about Councillors acting as individuals and as Councillors. Members of District and County Councils often have to differentiate between their "Hats". The Parish Council is the first line of contact for people lodging complaints such as a Councillor who they consider to be fly tipping or who has been rude to them when defending their personal planning application are prime examples over the last two years.**
- o. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why. **They are appropriate and should be made more prominent wherever possible, for example on websites. Best practice could be that the Annual Parish Council Meeting have "Review of Councillors' Interests" as a standard agenda item.**

Investigations and decisions on allegations

- p. Are allegations of councillor misconduct investigated and decided fairly and with due process? **No. They are too slow. Strict timelines need to be introduced. Councillors simply have to disqualify themselves by the six months absence then they can come back co opted or by election or to another Council with a "Clean Slate".**
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process? **This is patchy and the Monitoring officers are able to defer the investigation to do "more important" work slowing it down and making it less relevant - Whilst this process is going on, Councillors, Staff and members of the public are having to live with the stress and bad behaviour and often resign in frustration**
 - ii.
 - iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to

ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how? *I do have concerns about the independent person as often these can come from a "council" background with their history and relationships with officers in the background.*

iv.

- v. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk? *Yes from Councillors at their level that also know the Councillors against whom the allegation is made. Maybe the whole process needs to be "outsourced" to a neighbouring authority or a professional legal professional to investigate.*

Sanctions

- q. Are existing sanctions for councillor misconduct sufficient?
- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance? *No - they can walk away at any stage of the process as the process "stops". Number of Complaints needs to be kept on public record along with those dismissed or upheld at each stage. The Monitoring officer should have the power to suspend a Councillor until an investigation is complete to allow the rest of the Council to function normally.*
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be? *Yes - Disqualification from office and re-standing, compensation, loss of expenses/salary (for paid Councillors), Public apology.*

Declaring interests and conflicts of interest

- r. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why. *YES*
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand? *YES*
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why. *Annual review of registered interests be put into place.*

Whistleblowing

- s. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory? *These may be better serviced by an independent*

third party (such as a neighbouring Authority or Legal professional for security and integrity).

Improving standards

- t. What steps could *local authorities* take to improve local government ethical standards? Put into their code of conduct the suggestions made previously in this submission
- u. What steps could *central government* take to improve local government ethical standards? Introduce framework to control timescales and appropriate persons to deal with complaints.

Intimidation of local councillors

- v. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?
 - ii. Councillors are an easy target for disaffected public. They are also considered to abuse their position without good cause, then prevented from defending themselves for fear of contravening their Code of Conduct on private/day to day matters. Councillors should be offered (or even required to) have training and advice at regular intervals

Review of Local Government Ethical Standards: Stakeholder Consultation

By way of general introduction and context to the following responses, it should be appreciated that the Devon & Somerset Fire & Rescue Authority is a stand-alone combined authority, with membership not directly elected but rather appointed from four constituent authorities (Devon County Council, Somerset County Council, Plymouth City Council and Torbay Council). Each of the constituent authorities operate their own standards arrangements. This Authority is also required, by virtue of the Localism Act, to have its own standards arrangements. While efforts have been made to align the individual arrangements as much as possible (to promote transparency and understanding), the “de-centralised” nature of the current regime has meant that exact alignment has not been possible.

Consultation questions

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

While this Authority has not experienced a high number of complaints, it is felt that the ability to determine matters at a local level and to set the procedures by which complaints have to be managed has delivered benefits, particularly in allowing for the introduction of a robust assessment procedures to filter out genuine complaints from those which are clearly malicious, tit-for-tat or politically motivated.

The lack of consistency in Code content across local authorities, however, is an issue (given that our Authority Members also serve on at least one other local authority, with its own Code of Conduct) as is the ability to impose meaningful sanctions in the (albeit rare) instances where a breach of the Code has been established.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

As indicated above, it is felt that the significant gaps are:

- *The inability to apply meaningful sanctions for certain breaches of the Code of Conduct; and*
- *The lack of consistency with regards to the way a code should be worded and applied across all local authorities.*

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood?

The Localism Act 2011 only gives limited guidance on what should be in the Code of conduct that it is a requirement for each authority to adopt. Similarly, suggested Codes produced as examples by bodies such as the Local Government Association offered little other than to reiterate the requirements of the Act and associated Regulations on disclosable pecuniary interests.

When the new regime was introduced, this Authority held discussions with its appointing constituent authorities with a view to seeking to agree a consistent Code. For political reasons this was not possible and it is felt the variations in resulting Codes, while in some cases subtle, have nonetheless not aided in promoting either clarity or understanding for elected members and the public.

This Authority is of the view that, while there were undoubtedly problems in the previous regime, these were not rooted in the former Model Code which it is felt was robust, proportionate and easily understood. Consequently, the Authority would request that, as part of the review of ethical standards, consideration is given to the introduction of a national statutory Code based on that in use up until 2012.

Do the codes cover an appropriate range of behaviours?

Given the limited statutory requirements of what is to be in a Code and the limited guidance that has since been issued it is a matter of subjective interpretation as to whether the Code covers an appropriate range of behaviours.

This Authority has based its Code on the former statutory Code and in this respect feels that it does cover an appropriate range of behaviours.

What examples of good practice, including induction processes, exist?

This Authority features a session on its Code of Conduct in its induction process for newly appointed Members. As with other issues, however, securing attendance can be difficult. It is felt that consideration should be given to introducing a statutory requirement to attend Code of Conduct training at least once a year in support of the statutory duty to promote and maintain high standards of conduct.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

No. It is felt that the aspect of Codes including "...appropriate provision (as decided by the local authority) for registering and declaring councillors' interests" is too open to individual interpretation and has resulted in a diverse range of codes in England, to the detriment of clarity and understanding both by elected members and the public.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

As there is no set process it is for individual councils to interpret this as they consider appropriate. That having been said, this Authority has adopted procedures, which it considers are fit for purpose in ensuring that any complaints received are dealt with impartially and with consistency.

What processes do local authorities have in place for investigating and deciding upon allegations?

The procedures for assessing and dealing with complaints as adopted by this Authority are attached to this submission.

Do these processes meet requirements for due process?

This Authority considers that they do.

Should any additional safeguards be put in place to ensure due process?

This Authority would strongly support a robust 'filtering' process (as included in its procedures) for initial assessment of complaints to help prevent malicious, vexatious or tit for tat complaints which in the past have caused people to view the process a complainants charter.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

This Authority considers that it is.

Should this requirement be strengthened?

While the current requirement is that the views of the Independent Person must be sought prior to decisions being made on allegations that have been investigated, this Authority has also used the flexibility under the Act to seek the views of the Independent Person in other circumstances (e.g. at initial assessment stage).

If so, how?

Further guidance could be issued on the role of the Independent Person – perhaps based on "best practice" case studies of other authorities.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

Yes, this is possible and something this Authority has considered in developing its assessment procedures which currently allow for, amongst other things:

- initial assessments of sensitive allegations (for example, where the Monitoring Officer may previously have advised the Member concerned on the subject matter of the allegation) to be conducted by a small committee of Members; and*
- investigations to be undertaken by experienced staff external to this organisation.*

How could Monitoring Officers be protected from this risk?

This Authority is perhaps fortunate in that, to date, it has not faced a significant number of complaints. On this basis, the Authority considers the safeguards it currently has in place (see answer to [n] above) are probably sufficient and proportionate.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

The sanctions that are available for failing to register or act in accordance with the provisions of the Localism Act 2011 where a member has a disclosable pecuniary interest are considered to be sufficient. However, the method of employing these sanctions, referral to the police, a police investigation and a possible court hearing, are considered to be cumbersome and very costly to the public purse.

Even though (as previously indicated) this Authority has not had to deal with many complaints, it nonetheless feels – on the basis of the limited experience it has had – that those sanctions which would seem to be open, under the current legislative arrangements, for other breaches of the Code of Conduct (for example, failure to declare ‘interests other than disclosable pecuniary interests’) are very limited, particularly where a potentially serious “other” breach is concerned (e.g. bullying/harassment; complaints involving equalities issues).

What sanctions do local authorities use when councillors are found to have breached the code of conduct?

In line with the current legislative provisions, this Authority has agreed the following sanctions to apply for Code breaches other than those relating to disclosable pecuniary interests:

- reporting the finding to the Authority for information and publishing the finding in local media;*
- a recommendation to the Authority that the Member concerned be removed from any or all Committees or Sub-Committees of the Authority;*
- instructing the Monitoring Officer to arrange training for the Member;*
- removing the Member concerned from all outside appointments to which s/he has been appointed or nominated by the Authority;*
- withdrawing facilities provided to the Member by the Authority, such as e-mail and Internet access; or*
- Excluding the Member from the Authority’s offices or other premises, with the exception of meeting rooms as necessary for attending Authority, Committee and Sub-Committee meetings.*

Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

No. It is not considered that the sanctions as listed at [p] above (which would seem to be the only available sanctions under the current legislative provisions for Code breaches other than those relating to disclosable pecuniary interests) represent any real or effective sanctions for what might be more serious “other” breaches – certainly in terms of how these might be perceived by the public. This in turn weakens what is purported to be the underlying purpose of the current regime – to promote high standards of conduct in public life.

Should local authorities be given the ability to use additional sanctions?

Yes.

w. If so, what should these be?

There should be limited powers of suspensions up to six months as was exercised under the previous ethical standards regime. Suspensions should be issued only by a hearing panel of a Standards Committee in those instances where the proven “other” breach is considered to warrant such a sanction.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

No. As a minimum it should not be left to individual councils to have in their standing orders the requirement for a member to remove themselves if they have a disclosable pecuniary interest. It should be a statutory requirement for a member to always remove themselves if they have any interest, whether disclosable pecuniary interest or otherwise, where such an interest might reasonably be perceived as impacting upon the ability of the Member concerned to act in the public interest.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Whilst this Authority has no real practical experience of this aspect of the Code, it is of the view that these statutory duties are appropriate.

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

At present, this Authority's Code in essence replicates the provisions of the former Model Code in terms of the registration, declaration and management of interests other than disclosable pecuniary interests. As indicated in previous responses, while these are considered appropriate and proportionate in the context of upholding high standards of conduct in public office, consistency across the piste is lacking, given that not every local authority will necessarily have the same provisions. For this reason (and given that our Authority Members are also members of at least one other local authority), having a consistent set of rules, i.e. a Model Code, would be beneficial.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

The Authority's Constitutional Governance Framework includes a well-established whistleblowing policy which accords with existing legislation and best-practice. This policy is reviewed at least annually, along with other documents in the Authority's Constitutional Governance Framework, to ensure it remains fit for purpose. The Authority is of the view that these arrangements are satisfactory.

Improving standards

What steps could local authorities take to improve local government ethical standards?

As indicated in previous responses, general awareness raising during new Member induction is fundamental but securing attendance at such sessions can be problematic. Sharing best practice with neighbouring local authorities, including close working relationships between Monitoring Officers, is also beneficial.

It is felt that all Authority's should adopt annual training on the Code of Conduct, which this Authority is to introduce from this year.

What steps could *central government* take to improve local government ethical standards?

As indicated in previous responses, it is felt that the introduction of a standard Model Code (based on the previous Model Code), together with more meaningful sanctions for breaches other than disclosable pecuniary interests, would promote greater consistency and understanding for both elected Members and the public.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

This Authority has no real experience of this and as such does not feel in a position to comment.

What measures could be put in place to prevent and address this intimidation?

See response above.

Local Government Ethical Standards: Stakeholder Consultation

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors?

No

If not, please say why.

There is a lack of clarity about the processes. Complaints may get confused between Code of Conduct Issues and in some circumstances Employment Legislation and Code of Conduct procedures seem to take precedence yet have less sanctions. The code of conduct varies from one authority to another and is often so open to interpretation that often the complaint is dismissed. The Principal authority may have to carry out an expensive process if a case is pursued and with such budgetary pressures on Councils the Monitoring Officers tend to avoid following due process where any possible doubt is identified.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

The lack of any meaningful sanctions results in certain Councillors being repeat offenders, as they have no concerns about the consequences of their actions. Being sanctioned does not concern them nor does being requested to undergo training – there is still the question of how to ensure they do the training and what happens if they don't. Prevention from standing in committees is more effective but that only applies to a very small number of parishes that have councils large enough to have such a structure.

Another failing in the current regime is that parish Councils are only obliged to consider the findings of the Monitoring Officer they do not have to abide by them.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Codes of conduct vary in their style. Some are prescriptive and set out to deter bad behaviour; other are more positive and encourage good behaviour. Unfortunately, both styles can be drafted in such a way so that when a particular incident presents itself it is unclear whether it is a breach of the code.

Stratford on Avon District Council have recently reviewed their code of conduct and they had a series of consultation meetings while drafting it. It includes a separate sheet of examples of possible breaches of the

code which is a good example to follow as it helps to remove the ambiguity.

Parish Councils are not obliged to adopt the code of the Principal Authority. Some prefer to use the NALC Model. This can present difficulties for the Monitoring Officer who may not be so familiar with it.

Generally, most codes do cover an appropriate range of behaviours which link back to the Nolan Principles of Public Office.

It would be useful for there to be a nationally agreed induction checklist that every clerk would need to follow for every new Councillor and that it should be signed off by both the clerk and the Councillor once completed.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? **Yes**

If not, please say why.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

What processes do local authorities have in place for investigating and deciding upon allegations?

The Parish council should set up a working party to consider the allegations and if they feel it has validity the group can recommend to the Council that the complaint is taken to the monitoring officer of their principal authority if serious, or they could implement their own measures for more minor infringements.

Members of the public can by-pass the Parish Council and complain directly to the Principal authority. In that case the Monitoring Officer is likely to refer to the Parish in the first instance for their views.

Do these processes meet requirements for due process?

The weakness in the current requirements is that the Parish does not have to abide by the outcome

Should any additional safeguards be put in place to ensure due process?

If the complaint has progressed to the Monitoring Officer and the independent agent, then the Parish Councils should be obliged to act on the findings

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

The independent person is appointed by the monitoring officer and may be paid for their time. As the Principal Authority is under financial pressure there will be a desire to minimise the amount of time taken by the independent person.

If the independent person is not paid it may throw doubt on the quality of that investigation

Should this requirement be strengthened? If so, how?

The independent person should be fully independent without any outside pressures and ideally would be an aspect of the Local Councils Ombudsman office.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

Monitoring officers could be subject to conflicts of interest if a Parish Councillor being subject to investigation is also a District / Unitary level Councillor. There could also be financial pressures not to generate work for outside bodies.

How could Monitoring Officers be protected from this risk?

Reciprocal arrangements could be set up so that monitoring officers from different authorities will carry out the investigations into each other's complaints. It is important however that the "home" monitoring officer is interviewed as part of the process

Sanctions

Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct?

They can issue a formal reprimand and request that training is undertaken. The Parish has to consider the advice of the Monitoring Officer but does not have to abide by it.

Even if a parish Council carries out the recommendations of the Monitoring Officer they have no way of enforcing them. If for example, the recommendation is that the Councillor should have training on a particular topic, if the councillor refuses there is nothing the Parish Council can do.

Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

No

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

There should be a written warning system followed by suspension and ultimately disqualification for repeat offenders. Depending of the severity of the breach of standards immediate disqualification may be an option. Parishes should have to abide by the external advice wherever it comes from.

In the case of disqualification this should apply to any Council so that they can't become a parish councillor elsewhere in the country or try for a Principal Authority election.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

The arrangements are quite good but there is room for improvement. A consistent induction process, with timescales, for new Councillors should be established for all new Councillors. It should entail a formal checklist which should be signed by both the Clerk and the Councillor upon completion.

The clerk should be trained in this process and consideration to including this in the Clerk's CiLCA qualification should be given.

The Councillor should be able to seek the advice of the monitoring Officer regarding the content of the DPI form and whether the Councillor has completed it correctly if they are unsure. The Clerks should be excluded from this process that has implications for criminal law if infringed.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Yes

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Each individual Parish Council has its own standing orders and they should clearly state what "other interests" it expects councillors to declare.

The problem is that there is no enforceable obligation to make that declaration and in addition no other person can raise their concerns about an interest that a Councillor has not declared

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials?
Are these satisfactory?

We do not understand the concept of whistleblowing in the context of Parish Councils. Any action would seem to constitute a complaint and would trigger the processes referred to earlier in this consultation.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Parish Councils are unable to improve ethical standards on their own. They can only make request to central Government for legislative change.

What steps could *central government* take to improve local government ethical standards?

Central government could make it a compulsory requirement for all Councillors to undertake relevant training within stipulated timescales. This should apply to Councillors in all tiers of government and also to MPs

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?
What measures could be put in place to prevent and address this intimidation?

The level of intimidation towards local councils varies greatly and can be anything from being an annoyance through to forcing a councillor to resign.

Persistent harassment from a member of the public ultimately resulted in an entire Parish Council and their Clerk resigning “en masse” from a Parish Council in Warwickshire.

This type of intimidation is a deterrent for people wishing to stand as new Councillors

Extreme vexatious complaining should become a criminal offence in a similar way to anti-social behaviour.

It is also an issue on social media where people can hide behind anonymity. This is much more difficult to legislate against.



Wirral Council
GOVERNANCE AND
ASSURANCE

Dear Sir/Madam

Local government ethical standards: stakeholder consultation

1. Your current consultation on reviewing local government ethical standards has been considered by this Council's Standards and Constitutional Oversight Committee which has given the following consideration to the terms of reference of the review and the related consultation document. The Standards and Constitutional Oversight Committee is the Committee of the Council responsible for oversight of Wirral Council elected Member conduct issues, and the Committee considered it appropriate to respond to your consultation.
2. In giving their consideration, the Committee sought the advice and opinions of Wirral Council's Monitoring Officer and several of the Council's appointed Independent Persons.
3. The observations and recommendations of the Committee are presented under each set of questions as presented in the consultation document.
4. Questions –
 - a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*
 - b. *What, if any, are the most significant gaps in the current ethical standards regime for local government?*

Response -

- 4.1 The Committee considered that this Council's structures and procedures were working to ensure high standards of conduct though there were concerns about sanctions and timescales. Both these matters are considered further under later sections.
5. Questions -
 - c. *Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?*
 - d. *A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.*

Response –

- 5.1 The Committee considered that the current Wirral Council Code of Conduct, which follows the former Model Code of Conduct, was comprehensive. This arrangement, it was noted, was not necessarily the case elsewhere and that some local authorities had Codes of Conduct which contained little more than the Seven Principles of Public Life. The Committee, in agreeing that this Council's Code of Conduct was extensive, would **recommend** this Council's approach to the Code of Conduct as a model to be followed by all local authorities. The Wirral Council Code of Conduct is appended to this paper.
- 5.2 The Committee agreed that the Code of Conduct should be included in the Member induction process, but the way this was presented to new Members needed due consideration given the amount of material made available to new Members. It was further considered that refresher training for all Members should also be required on a periodic basis.
6. Questions -
- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*
What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Response -

- 6.1 In light of practical experience, the Committee considered that the investigation procedure required timescales which ensured prompt consideration and that could be applied rigorously, noting that timescales for dealing with a complaint became unreasonably long in instances where the subject member prevaricated or did not respond. However, noting that this was a complex area, it was also considered that a timescale should not be imposed which might allow some allegations to be ruled out of order because they were not dealt with. For example, if personal circumstances did not allow for a speedy consideration of a particular complaint, there should be flexibility to accommodate this.
- 6.2 It was noted that this Council's only timescale related to notifying the subject member of the receipt of a complaint. Thereafter, timescales were discretionary. It was suggested that deadlines for each stage of the investigation procedure should be permitted and specified, and that the process take no more than six months. Further, should a subject Member be not compliant with timescales, the Standards Panel should have the ability to proceed and to hear the case without them.
- 6.3 With regard to the role of the Independent Person, the Committee considered that their role had been invaluable in the consideration of complaints. With regard to the potential for voting rights to be accorded to Independent Persons, the Committee

agreed that the role of the Independent Person was valued and that Panels / the Committee should seek their opinions and take these into account. However, the Committee would not seek voting rights for the Independent Persons, and the Independent Persons consulted concurred on this point so long as their opinions were considered and taken into account.

- 6.4 With regard to the role of the Monitoring Officer, it was noted that conflicts of role could arise, particularly that the Monitoring Officer could not be investigator and advisor. It was considered that this Council had sufficient safeguards in this regard, for example in the appointment of a Deputy Monitoring Officer. It was acknowledged that undue pressure on Monitoring Officers had occurred at certain authorities, but it was considered that this Council had retained certain safeguards and also that Monitoring Officers retained a statutory right to demand appropriate resources to undertake their role. There were issues of job protection, it being noted that employment protection for the posts of Head of Paid Service, Chief Finance Officer and Monitoring Officer had been watered down by recent legislation. A Monitoring Officer Protocol that described the role of the Monitoring Officer and how they go about their role would give some assurance, and the Committee would **recommend** that all local authorities should adopt a Monitoring Officer Protocol.

7. Question -

f. *Are existing sanctions for councillor misconduct sufficient?*

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Response -

- 7.1 The Committee considered that existing sanctions had proved adequate for 'normal' cases, but that additional options were needed for the more serious breaches of the Code of Conduct or where a subject Member did not engage with the current sanctions applied.
- 7.2 Sanctions available in the current Wirral Code of Conduct comprise –
- a. *the Monitoring Officer to write a formal warning letter to the Member reminding him/her of the need to comply with the Members' Code of Conduct; and/or*
 - b. *require the Member(s) to apologise to the complainant (whether verbally or in writing) for breaching the Members' Code of Conduct. Should the Member in question fail or refuse to do so promptly, the Monitoring Officer shall report this fact to the Member's Political Group Leader*; and/or*
 - c. *report the Panel's decision to a public meeting of the Standards and Constitutional Oversight Committee for reference/consideration; and/or*
 - d. *recommend to the Member's Political Group Leader* that disciplinary action should be taken against the Member in question and/or that he/she be removed from all (or some) outside bodies to which the Member has been appointed; and/or*
 - e. *the Monitoring Officer arrange training for the Member in question who shall be required to attend. Should the Member fail to attend the training*

arranged, the Monitoring Officer shall report this fact to the Member's Political Group Leader.*

** In the event that the Member in question is the Political Group Leader, the recommendation shall be referred to the relevant Deputy Political Group Leader; in the event that the Members in question are both the Political Group Leader and Deputy Political Group Leader, the recommendation shall be referred to the next most relevant senior Political Group Official/Spokesperson.*

- 7.3 It was considered that additional options to either remove a subject Member from committees or outside bodies, or to suspend a Member, would give the process real teeth.
- 7.4 The Committee considered whether such additional powers should lie with the Standards Committee or with the full Council. It was noted that this Council's current Standards Panel had operated in a non-partisan manner and that the Panel had the benefit of advice from the Independent Person, which would not be the case should the decision on a complaint lie with the Council. The Committee considered that the decision should remain with the Panel.
8. Questions -
- g. *Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.*
A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Response –

- 8.1 The Committee considered that the Council's existing arrangements for declaration of councillors' interests and management of conflicts of interest were satisfactory.
- 8.2 This Council's arrangements cover both the statutory disclosure of pecuniary interests and a range of other interests, such as personal and prejudicial interests brought over from the previous standards regime, and which cover potential situations of bias or conflict of interest. It was noted that not all authorities had done so, and the Committee would **recommend** this Council's approach to the disclosure of interests and to the declaration of councillors' interests and management of conflicts of interest.
9. Questions -
- h. *What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?*

Response –

- 9.1 The Committee noted that much work had been done by this Council in respect of whistleblowing and considered that these arrangements were satisfactory.

10. Questions –

- i. *What steps could local authorities take to improve local government ethical standards?*
- j. *What steps could central government take to improve local government ethical standards?*

Response -

- 10.1 The importance of training to increase and improve knowledge on conduct and ethical issues was agreed, and the Committee would **recommend** that all local authorities include the Code of Conduct as part of Councillor induction processes, followed thereafter by two-yearly training or refresher sessions.
- 10.2 With regard to the contribution of central government, the Committee would wish to see local authorities being given the powers to deal with conduct issues appropriately, such as those powers of removal from positions on committees and outside bodies or of suspension as suggested in response to question f above.
11. Question -
- k. *What is the nature, scale, and extent of intimidation towards local councillors?*
 - l. *What measures could be put in place to prevent and address this intimidation?*

Response

- 11.1 The Committee considered there was a need for guidance around this issue as there appeared no route available for Councillors other than going to the Police with concerns. One Committee member commented that the Police might not necessarily view such referrals as a priority as Councillors voluntarily put themselves into the public domain.
- 11.2 It was noted that elected Members needed to be accessible, for example through the holding of surgeries, but that the use of personal phones and email and by having home addresses in the public domain could make Councillors and their families vulnerable. It was noted that, on occasion, such information being available had left Councillors open to abuse. The Committee considered that all local authorities needed to consider how this might be mitigated and what facilities might be provided by a local authority to address intimidation and identified concerns.
- 11.3 The Committee **recommended** that all local authorities should have the necessary powers and resources to address these concerns, including the provision of the equivalent legal, professional and emotional support that was available to Council employees.

On behalf of the Members of the Standards and Constitutional Oversight Committee I would like to thank you for the opportunity to contribute to this review, and the Committee looks

forward to receipt of your conclusions and recommendations in the area of local government ethical standards.

Yours faithfully

By email

Vicki Shaw
Deputy Monitoring Officer

CRANBROOK TOWN COUNCIL – CONSULTATION RESPONSE

Review of Local Government Ethical Standards: Stakeholder Consultation

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Cranbrook Town Council is of the view that existing processes are not working to ensure high standards of conduct. Apart from the requirement on local parish councillors to sign their authority's Code of Conduct and complete their Register of Interests, there are no other mandatory requirements and no compulsory and effective sanctions against councillors whose conduct fails to meet appropriate standards.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

The most significant gaps are:

- The lack of a mandatory requirement for training for parish councillors
- Ineffective sanctions against councillors whose conduct fails to meet appropriate standards. Sanctions such as a request for an apology cannot be enforced. There should be the ultimate sanction of the disqualification of a councillor where misconduct is proven and deemed to be of a serious nature

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

- ii. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
- iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to

- ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
- iv. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Sanctions

Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Existing sanctions such as censure, requesting an apology, attending training, recommending removal from a committee/sub-committee are not sufficient to deter breaches of the Code of Conduct. None of these sanctions are sufficient to deter a councillor where that councillor is personally convinced that their breach of the Code of Conduct is justified and none of the sanctions can enforce compliance.

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Improving standards

What steps could *local authorities* take to improve local government ethical standards?
What steps could *central government* take to improve local government ethical standards?

Central government should introduce mandatory training for all parish councillors who are volunteers, and may have no prior knowledge or experience of local government powers, duties and legislation. Local people are sometimes persuaded to join their parish council due to a particular issue. They then have to work in a highly structured and regulated system, including the management of local public finance and training to work within that structure would improve not only standards but understanding and effectiveness.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

Committee on Standards in Public Life – Consultation on Ethical Standards in Local Government

Response of the Standards Committee, Nottingham City Council

This is the response of Nottingham City Council's Standards Committee to the Committee on Standards in Public Life's consultation on ethical standards in local government. Nottingham City Council is a Unitary Authority and one of England's core cities. It has a population of approximately 320,000 represented by 55 councillors.

The response was agreed at the Standards Committee's meeting held on 22 March 2018. The Committee is responsible for promoting and maintaining high standards of conduct by Councillors and co-opted members. It deals with any complaints alleging that a councillor or co-opted member has breached the Code of Conduct and therefore has practical experience of the matters covered by the consultation. The terms of reference for the Committee are attached as an appendix to this response. Please direct any queries about the response to [REDACTED]

1. In response to Question a.

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

- 1.1 Existing structures, processes and practices are sufficient to manage the day to day conduct of councillors. Group discipline, in particular the role of the Group Whips, also plays a significant role in ensuring high standards of conduct. However, as outlined below, should a particularly serious breach of the Code of Conduct occur, the actions available to Councils are extremely limited and not sufficient to respond adequately.

2. In response to Question b.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

- 2.1 The lack of effective sanctions (see below).
Capacity for any independent assessment of the most serious cases beyond the role of the Independent Person. Councillors being responsible for hearing cases against their peers and colleagues can be effective in less serious cases but where serious allegations are being investigated natural justice would be better served through independent consideration of the case. This may avoid any perceptions of personal or political influences affecting the fairness of the hearing.

Codes of conduct

3. In response to Question c.

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

- 3.1 Our code of conduct is clear and easily understandable as far as possible given the relatively complex subject matter it is dealing with. The majority of questions raised by councillors relate to what interests need to be declared. Our experience is that councillors take these matters seriously and want to ensure they are making all necessary declarations and, often, those that are not required but might be regarded as good practice. Code of Conduct training is mandatory for all councillors when they take up office and is delivered shortly after an election (including by-elections).
- 3.2 As required, our code follows the Nolan Principles for Public Life which capture the fundamental principles for good ethical standards. In addition Nottingham has added standards relating to safeguarding and mandatory DBS checks and safeguarding training to our code of conduct to support the council's safeguarding agenda and Councillors' role in this. Should any Councillors not have a DBS check or if any risks are identified via the check the Councillor is disbarred from any offices and memberships of committees, etc and outside bodies.
- 3.3 We have a cross party Councillor Development Steering Group which develops a programme of training for councillors including a comprehensive induction programme including the mandatory training on safeguarding and on the Code of Conduct. We are also soon to be delivering mandatory training on the use of social media for councillors as this is an area where there is a risk of Code breaches occurring.
4. In response to Question d.
A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

- 4.1 See comments on declaring interests below.

Investigations and decisions on allegations

5. In response to Question e. i.
Are allegations of councillor misconduct investigated and decided fairly and with due process?
- What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?*
- 5.1 Our process for dealing with allegations of misconduct is available on our [website](#). We have a process for managing minor complaints (those not constituting a breach of the code of conduct) where the complaint is investigated by an officer and resolved informally. Where the minor complaint is a political or group matter it is dealt with by the Group Whip who reports it to the Monitoring Officer. The number and nature of these minor complaints is reported every six months to the Standards Committee. Where more significant fault is identified this would be escalated to, and managed in accordance with, the formal process. The process is designed to be fair, open and transparent and to date we have experienced no issues in operating it.

5.2 Where issues could arise is with perceptions of unfairness (whether it exists or not) with Councillors hearing and deciding on sanctions to take against fellow Councillors. Perceptions that political interests or personal relationships may prejudice the judgement of the Councillors conducting the hearing may result in the hearing not being seen to be fair. While the role of the Independent Person is valuable as it ensures an independent voice is considered as part of the process their role is limited. They only have one voice and have an influencing rather than a decision taking role. For these reasons we have made our comments on the need for an independent body to consider serious allegations of misconduct.

6. In response to Question e. ii.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

6.1 The role of the Independent Person ensures there is an independent voice in the consideration of allegations and their consultative role in relation to the subject of allegations and the Monitoring Officer can also help to bring about informal resolution. However, as outlined above, their role is limited and, in the most serious cases, to ensure hearings are and are seen to be objective and fair these should be considered by a body that is independent of the Council concerned. Possible mechanisms for establishing this body could include, for example, reciprocal arrangements with other local authorities or panels made up of Independent Persons from a number of local authorities in the area.

7. In response to Question e. iii.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

7.1 There is always the possibility that Monitoring Officers could find themselves in a position where they have a conflict of interest. This can, to some extent, be mitigated by ensuring that they appoint a deputy to act in circumstances where they cannot. As far as undue pressure is concerned, the only realistic protection mechanism would be to bring in a further statutory protection on top of the ones that already exist.

Sanctions

2. In response to Question f. i.

Are existing sanctions for councillor misconduct sufficient?

- *What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*

8.1 The sanctions currently available to Councils are not sufficient for the most serious cases and would not be a deterrent to any councillor who might knowingly breach the code. Sanctions identified in Nottingham's procedure include withdrawal of office and IT facilities, recommending that the councillor is removed from relevant positions or committees, and public censure at Council. While these may be appropriate in relation

to relatively minor breaches of the code they may not provide sufficient deterrent in the most serious cases and are unlikely to be seen as sufficient in the eyes of citizens. Where allegations of serious misconduct (for example, bullying, abusive behaviour etc) are found to be true the sanctions currently available seem an insufficient response. The lack of sanctions also risks the process stagnating when serious fault is found but there is little that can be done in response.

9. In response to Question f.ii.

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

- 9.1 Yes – additional sanctions for the most serious cases should include suspension/ withdrawal of allowances, and suspension/ removal from office. It may not be appropriate for a local authority to impose these sanctions on its own members. In these cases an independent body should consider the matter. If more severe sanctions are introduced nationally, to ensure consistency, national guidance should also be produced on the circumstances in which it would be appropriate for these sanctions to be applied.

10. In response to Question g. i.

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- *A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*

- 10.1 Applying the same requirements for registering and publication of Councillors' interests to co-optees can prove problematic and may put potential co-optees off taking up the role. We do not dispute the need for co-opted members to declare interests and not participate in discussions or votes where they have a DPI but we question whether it is necessary for them to have to publish their interests in the same way. Co-optees are usually appointed to one specific committee, often because of their professional occupations. Definitions of pecuniary interests which need to be registered are wide ranging and Council-centric and therefore are unlikely to be relevant to the business the co-optee is involved in and can potentially miss relevant conflicts. Moreover there is the question of whether it is proportionate for an individual who has not stood for public office to publish personal information about them and their spouse/ partner, particularly when the information recorded is largely irrelevant to the business they are involved in. Consideration should be given to amending the requirements applicable to co-opted members requiring them to register only those interests that are relevant to their role with the Monitoring Officer who holds this record but does not publish it. Co-optees would remain subject to the same requirements to declare interests publicly at meetings where relevant decisions are being taken and to withdraw from any further participation in that matter.

11. In response to Question g.ii.

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

- 11.1 Our arrangements comply with the legislative requirements.

Whistleblowing

12. In response to Question h.

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

- 12.1 The Council has a whistleblowing procedure which outlines the arrangements in place for dealing with concerns raised.

Improving standards

13. In response to Questions i. and j.

*What steps could local authorities take to improve local government ethical standards?
What steps could central government take to improve local government ethical standards?*

- 13.1 See above.

Intimidation of local councillors

14. In response to Question k.i.

What is the nature, scale, and extent of intimidation towards local councillors?

- *What measures could be put in place to prevent and address this intimidation?*

- 14.1 We are not aware of any serious intimidation of councillors having occurred locally but we do feel that there is an issue with managing difficult individuals such as vexatious complainants. We will be arranging training for Councillors on this matter.

SUBMISSION 115

Consultation on Ethical Standards in local government

I respond to the " Consultation on Ethical Standards in local government " as an Individual Town Councillor who has experience of the operation of the Principal Authority's (ERYC) Standards Committee etc. and the procedures followed.

I believe in the Seven Principles in Public Life and I hope that fairness in procedures and outcomes become paramount and appropriate sanctions are implemented.

I give my comments on the Consultation as follows:

- a. Apart from publishing results of cases considered by Hearings of the Principal Authority's Standards Committee, the processes do NOT allow for sufficient sanctions as appropriate.
- b. Sanctions are not sufficient in certain cases.
- c. The Town Council operates a Code of Conduct similar to the Principal Authority and these appear to be satisfactory. [However the Principal Authority has been reviewing the Code and parts of it may not be suitable to the Town Council e.g. clearing matters with the Monitoring Officer]
- d. Yes
- e. i. Yes generally, but the Councillor the subject of an alleged complaint should be notified about the complaint as soon as the Monitoring Officer (or other named position) receives it. In my opinion it is only fair so that he/she can prepare his/her response, including remembering the alleged incident and maybe obtaining evidence etc..
 - II. Yes
 - III. Declaring an interest and not being personally involved if relevant.
- f. No.
 - i. Asking for training to be undertaken, apology, not being appointed to Committees etc. Sanctions not sufficient in some cases.
 - ii. Additional sanctions should be considered.
- g. Yes
- h. Appear to be.
- i. Allow greater penalties as relevant. Regular reminders of Councillors' responsibilities and abiding by the 7 Principles of Public Life.
- j. Allow greater penalties to be given where very serious breaches of the Code are made.
- k. Varies. Measures depend on the nature etc. of the intimidation towards local councillors.

I hope the above is helpful in your review. Please do not hesitate to contact me if you think it is necessary.



Consultation questions and WCC's response

The Committee invites responses to the following consultation questions. Whilst the Committee understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

Much of the new system is better although initially it was not well understood. However, with the changes some aspects of the previous regime which worked very

well should be reintroduced. For example, there should be a requirement to have a Standards Committee, with some element of independent membership. One option would be to have the Standards Committee chaired by an Independent Person. The other option would be to reintroduce the Independent Members of the Standards Committee. If it is the former ie Independent Person chairing the Committee then consideration should be given to the relevant number of Independent Persons needed which should be three, with one being the Chairman. This structural change needs to be combined with appropriate sanctions as discussed later.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

As mentioned above the gaps are (1) not requiring a separate committee responsible for ethical standards (although WCC has retained this), (2) lack of independent membership of the Committee, (3) appropriate sanctions.

Also, consideration must be given to the new issue of cyber bullying by and towards councillors. Councillors are keen that consideration is given to ensuring that abuse given via social media is also regarded as misconduct, as should be cyber-bullying and online activity generally.

Further the advice previously provided by the Standards Board for England is missed and an alternative source for this would be welcomed, for example the LGA. A great deal of learning was gained by sharing this information.

Codes of conduct

c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

A template code with local flexibility to add provision is recommended. The DCLG suggested template works and perhaps should be reviewed following this consultation.

It is important that the Code is reviewed annually in the light of complaints and any learning from those. May be useful to have a requirement that each authorities full Council endorse their Code annually. This should be followed by a requirement for training to be offered annually.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

The Nolan Principles are very good and should continue to be embedded as a requirement in the Code.

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

See (a) above regarding the need for Independence. It is vitally important that those making complaints are satisfied that their complaint is considered fully and to some extent externally from the Council.

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**

To many it would appear very limited involvement. May be the requirement should include provision for the Independent Person's views to be published as part of the decision. However, see (iii) below.

- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

This has not been an issue for us locally, however, this does not mean that it might not be an issue in the future. The regulations around disciplinary and dismissal processes was changed recently. This is seen to have weakened the protection for Monitoring Officers. Therefore, there is a legitimate concern and this should be reviewed.

The suggestion in (a) above relating to independent input within the structure would also reinforce the protection for Monitoring Officer. Such a system – similar to the previous regime, would give the public much greater confidence that the process was independent.

Any conflict issues can easily be dealt with by delegating the investigation to another officer in the Council or to external lawyers.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**

The lack of serious sanctions is a major issue. The current sanctions are not sufficient in serious cases. These sanctions often do not justify the time and resources taken to investigate and report a complaint to the Committee.

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

Yes, the withdrawal of Special Responsibility Allowances are automatic when a removal from a relevant post has been applied by the appointing body or person. In certain circumstances the suspension of the Basic Allowance should be allowable, as a sanction, for a temporary period.

Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**

Yes.

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

The Council has some additional requirements relating to these ie declaring other significant interest. A set of requirements, standard across the sector would seem sensible.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

The Council has a whistleblowing policy, in addition to the member complaints process.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

The Council has recently decided to publish details of training undertaken by Members relating to their Councillor duties. This follows the introduction of a Member Development Programme. The Development Programme will lead to better informed Councillors. Members will need to attend and to some extent this is a matter for the parties but the recording and publication of attendance will provide some important data for the public.

There needs to be a greater emphasis in political leadership and an understanding that ethical standards is the responsibility of all not just the Monitoring Officer and the Standards Committee.

j. What steps could *central government* take to improve local government ethical standards?

Make the legislation changes required to bring the improvements suggested in this paper into force.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

The Council's experience of this has been largely online and of a political nature – not thankfully violent. Cyber bullying, slander/ libel by anonymous blogger and the like is a major source of intimidation. Some consideration should be given to tackling this. Otherwise this will prevent candidates from a diverse range of backgrounds coming forward to stand as councillors.

This submission is from Westminster City Council. Comments include those of the

- Members of the Standards Committee
- The Monitoring Officer
- Members who were surveyed



Review of Local Government Ethical Standards: Stakeholder Consultation

Who the submission is from

This is a response to the Committee on Standards in Public Life consultation on local government ethical standards on behalf of Gedling Borough Council. The content of the response is based on discussions with the Council's Standards Committee.

Brief introduction about the organisation

Gedling Borough Council is a district council to the north of the city of Nottingham covering 120km². It has 41 councillors representing 19 wards and operates under executive arrangements (Leader and Cabinet). The Council employs approximately 500 staff and manages an annual budget of £12 million.

There is a Standards Committee in place, which is not politically balanced, and includes co-opted members (2 parish councillors and 1 independent). An Independent Person is in post, together with a reserve that is able to act where there is conflict.

The Council has a Monitoring Officer, who is also a member of the Senior Leadership team, and a deputy. The Monitoring Officer deals with code of conduct complaints in relation to the behaviour of both borough councillors and parish councillors. There are 11 parish councils within the borough.

The Council is a stakeholder in the consultation and considers high standards of conduct in public office to be important.

Contact details

This submission is made on behalf of the Council by Helen Barrington, Monitoring Officer, email [REDACTED]

1. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**
 - 1.1 In general, it is considered that the existing structures, processes and practices work to ensure high standards of conduct by councillors.
2. **What, if any, are the most significant gaps in the current ethical standards regime for local government?**

- 2.1 The most significant gap is the lack of central guidance which can contribute to inconsistency in standards of behaviour across the country. Certainly from the Council's Monitoring Officer's perspective, whilst the loss of the guidance from Standards for England has given the Council freedom and flexibility, the lack of clear guidance and limited case law has created lack of clarity.

3. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

- 3.1 The Council has an adopted Code of Conduct which is predominantly based on the previous model code. Members were therefore familiar with the wording and already had a level of understanding of basic principles. It is however recognised that the wording of the Code is open to interpretation, which is a matter for individual Monitoring Officers when dealing with complaints.
- 3.2 The following good practice examples exist at Gedling Borough Council:
- The Borough Council's Code is reviewed on a regular basis by the Standards Committee.
 - Whilst Parish Councils determine their own Code, they have been encouraged to adopt the Borough Council's code in order to ensure some level of consistency for all elected members across the borough.
 - Following elections, a comprehensive Induction training programme is delivered, which includes code of conduct training. In addition to face to face training, Members are also provided with a written guide to the Code of Conduct. The training materials are sent to those Members who are unable to attend the training and one to one sessions are offered.
 - The Standards Committee is not politically balanced and includes co-opted members (parish councillors and independent).

4. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

- 4.1 The Localism Act sets out some basic requirements, but allows flexibility for each local authority to determine what should be included

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 - The Standards Committee is not politically balanced and includes co-opted members (parish councillors and independent).

4. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

- 4.1 The Localism Act sets out some basic requirements, but allows flexibility for each local authority to determine what should be included

in our arrangements to do so, which has worked extremely well. In particular it provides the Monitoring Officer with support where member – member complaints are made.

- 5.3 Specifically in relation to fairness in process, the Council recognises that there may be occasions where the Monitoring Officer is subject to conflict and unable to deal with a complaint. This has occurred in relation to 3 complaints made about the behaviour of parish councillors at a meeting attended by the Monitoring Officer. We therefore have a deputy Monitoring Officer in place to deal with complaints in such situations.

6. Are existing sanctions for councillor misconduct sufficient?

- 6.1 Following the removal of the ability to disqualify or suspend councillors, it is not considered that the existing sanctions are necessarily sufficient to deter breaches and encourage good behaviour. It is however the view of the Standards Committee that there must be a reasonable balance.
- 6.2 In relation to specific examples, the Monitoring Officer has had conversations with individuals about the standard of behaviour expected of elected members and it is clear that some do not consider the current sanctions as a deterrent.

7. Are existing arrangements to declare councillors' interest and manage conflicts of interest satisfactory? If not please say why.

- 7.1 The legislation which defines disclosable pecuniary interests is poorly worded and has given rise to doubt and ambiguity. This is of concern when a Member faces the possibility of criminal sanctions if they fail to comply with certain provisions relating to DPIs in the Localism Act. For example, Section 31 of the Act imposes a number of obligations on a Member who "has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting". However the non-statutory guidance "Openness and transparency on personal interests - A guide for councillors" assumes this is to be interpreted by adding additional words such as "which relates to any business that is or will be considered at a meeting" or "from which the councillor would stand to gain".
- 7.2 In addition, where a Member has a DPI in a matter to be considered at a meeting, the Localism Act does not require the Member to declare that DPI at the meeting if that interest is already entered in the

Council's register of interests. Nor does the Act require the Member to leave the room during consideration of that item. This does nothing to alert others present at the meeting, including members of the public, of the existence of a DPI.

8. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

- 8.1 The Council has an internal whistleblowing process in place for employees; however the whistleblowing arrangements are in need of review.

9. What steps could local authorities take to improve local government ethical standards?

- 9.1 No specific steps are recommended.

10. What steps could central government take to improve local government ethical standards?

- 10.1 Central government should introduce guidance which provides clarity and consistency without returning to the previous prescriptive and bureaucratic process. Central government should also support local authorities by ensuring all elected members maintain high ethical standards.

11. What is the nature, scale and extent of intimidation towards local councillors?

- 11.1 Councillors report that there has been a sharp increase in inappropriate comments made against elected officials by the public particularly on social media. Whilst councillors accept that there is a need for openness, scrutiny and accountability, there are instances of on line abuse and comments which seek to undermine the councillor's reputation. It is recognised that elected members have to put up with the "rough and tumble" of being a politician, but often comments do cross the line of what is considered appropriate. It is felt that individuals are able to post comments on social media which are not correct without being challenged. Councillors should be able to get on with the role they are elected to do without having to deal with such behaviour. Some councillors feel they are unable to do their job due to intimidation and as a result their constituents can lose out.

- 11.2 It is worth noting that councillors are required as part of the ethical standards regime to declare certain interests and the Monitoring Officer is required to publish that data (unless it is sensitive) on the Council's website. Other personal data about them (e.g. home address, contact details) is also routinely published on the internet. In some cases, this openness and transparency can make councillors feel exposed and vulnerable particularly when taking into account that much of the time they work alone.
- 11.3 Over recent months, there has been a lot of focus on intimidation and inappropriate behaviour towards MPs but very little coverage of similar behaviour towards local elected members.
- 11.4 Looking ahead, Councillors would appreciate guidance from the government about the support available to elected members to deal with intimidation and a robust and effective response from both the police and the government to such behaviour.

SUBMISSION 118

Consultation response from the Independent Group within East Riding of Yorkshire Council (ERYC)

a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No. The current system focuses on relatively minor social incidents, and does not address corruption or other serious impropriety. The culture of declaring every trivial matter at each council committee meeting, and punishing minor misdemeanours merely creates a veneer of respectability. At the same time, serious misuse of power goes unchallenged.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

The Monitoring Officer guides the standards committee members and independent persons in their interpretation of offenses. Cases involving anything other than 'failing to treat someone with respect' are very rare. These offenses are subjective, and, because the Monitoring Officer is a council employee, cases can be open to political or personal influence.

Codes of Conduct

c. Are local authority codes of conduct for councillors clear and easily understood?

No. Too much is subjective in its interpretation.

Do the codes cover an appropriate range of behaviours?

No. The codes actively encourage disability discrimination and cultural intolerance.

Any system that puts individuals on trial for social *faux pas* will undermine disability discrimination laws. This is particularly true of autism. There is no-one in the system qualified to diagnose an invisible disability, and the need for a diagnosis in mitigation for the alleged offence in itself could be an offence under the Equalities Act.

Elected members can and should come from many sectors of society, and it is only natural that some will disapprove of the normal language and behaviour of others. It is wrong to consider 'offences' that can be explained by variations in socio-economic background, but too often, 'political correctness' and 'polite society' dominate decisions and censure those who might 'call a spade a spade'. This culture contradicts the council's policies on equal opportunities.

What examples of good practice, including induction processes, exist?

In previous terms of office, the Monitoring Officer at ERYC provided regular training for members, with examples of situations (using Dickensian character names) to illustrate the various types of interest and whether a declaration was required. There has been no training in recent years.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand?

Yes.

If not, please say why.

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

No. See (c) regarding the range of behaviours. Serious allegations of malfeasance in public office have been ignored by the Monitoring Officer, causing ERYC to appear in Private Eye's Rotten Boroughs column on many occasions, thereby bringing the council into disrepute.

i. What processes do local authorities have in place for investigating and deciding upon allegations?

The ERYC procedures have been submitted with the Council's response.

ii. Do these processes meet requirements for due process?

No. There is no independent appeal process within ERYC, and some recent sanctions have been disproportionate, unrelated to the original complaint, or impractical. For example, a member found 'guilty' of an offence relating to confidential information given to him by a member of the public as evidence of breaches in security, has been banned from receiving any confidential information within the council. This, in theory, precludes him from taking part in budget setting, or otherwise fulfilling the duties of an elected member. It is also unworkable given that he shares an office with other members, who receive confidential draft document for consultation or internal reference material. Those council employees who are aware of this sanction are confused about how to apply it.

Should any additional safeguards be put in place to ensure due process?

Yes. The principle of Natural Justice requires a right of independent appeal at all stages of the process. We believe that this should also be extended to a right of independent appeal where allegations of serious misconduct by a councillor (or senior officer) are deemed unworthy of investigation by their authority.

iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

Mostly. The Independent Person also needs to have a good understanding of the context of any complaint, and an appreciation of the variety of 'normal' behaviour that is socially acceptable across the full spectrum of residents.

Selection of the Independent Person is very important. As the individual must be approved by the council, but without knowing their background, how can councillors be sure of their independence?

iv. Should this requirement be strengthened? If so, how?

Yes. Ideally, everyone standing in judgement should be independent of the person 'on trial'.

v. Monitoring Officers are involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

Yes. The Monitoring Officer, as an employee of the council knows that their career can be influenced by the goodwill (or otherwise) of their employer. Where senior

staff and members have worked together for many years, there will be impossible to remain impartial.

vi. How could Monitoring Officers be protected from this risk?

Investigations and decisions should not be made by the same authority as the accused. Cases involving a parish or town councillor could be dealt with by the district council, but cases involving district/county/unitary members should be undertaken by another local authority, or some new organisation.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

Yes. So long as they are fairly applied.

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct?

Within East Yorkshire, this ranges from requirement to write a letter of apology, to calls for a member to resign (after committing a social *faux pas* via facebook).

ii. Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

No. They keep some members in fear of expressing any opinions, whilst others are undeterred from committing serious breaches.

iii. Should local authorities be given the ability to use additional sanctions?

No. Members are elected by their residents, and a member's fate should be decided by their electorate, not their colleagues.

In cases where criminal activity (eg fraud) has been alleged, there should be a requirement to refer the matter to the police for investigation.

Sanctions are open to misuse for political purposes, particularly prior to an election, where timescales for appeal leave the member at an electoral disadvantage.

iv. If so, what should these be?

Declaring interests and conflicts of interest

g. Are existing arrangement to declare councillors' interests and manage conflicts of interest satisfactory?

In theory, yes. In practice, a councillor can choose not to declare a significant interest. ERYC's Standards Committee recently decided that failure to declare a significant interest was the member's choice and not a breach of standards.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take further steps in relation to that matter, although local authorities can grant dispensation under certain circumstances. Are these statutory duties appropriate as they stand?

Yes. Widening the declaration to include family members (as proposed by ERYC), is only appropriate in certain cases. It is not appropriate where adult family members are estranged, have different political affiliations and are economically unconnected. Declaration of close friendships would be more appropriate, but even less practical. Widening the scope for registration of pecuniary interests is impractical and likely to deter members of the public from standing for office, particularly at parish level.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements?

Members are given the opportunity to declare non-pecuniary interests voluntarily, as and when a conflict arises.

iii. Are these satisfactory? If not, please say why.

No. Double standards apply. For example, at ERYC planning committee meetings, members are actively encouraged to declare any contact, including simple receipt of correspondence. However, failure to declare (during their candidate selection period) that a speaker was also the political association chairman to half the committee was not considered relevant. We are aware of town/parish councillors failing to declare interests that directly benefit close relatives when making financial decisions.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials?

Are these satisfactory?

No. Attempts have been made by senior officers to bully an elected member into revealing the name of a whistle-blower, and refuse to deal with the serious concerns raised by that employee. Anecdotal evidence from former employees is that 'shooting the messenger' is commonly how concerns are dealt with.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

Recording and broadcast of public council meetings would protect members from false accusations based on what was said or not said during a meeting, and provide complete and impartial evidence for assessment by anyone dealing with improper behaviour. It would also allow the electorate to see how their representatives behave and remind members that they are acting on behalf of their residents. This should only apply to town or parish councils above a certain size. Recordings made by residents can be useful in demonstrating what happened at a meeting, but are open to creative editing and may be limited in what can be seen or heard from the filming position.

Senior council officers, to whom important decisions are delegated, should also make public their register of interests.

Chairmen and vice-chairmen of scrutiny (and planning committees) should be decided by secret ballot of other members, and not be appointments by the leadership that they are supposed to hold to account. Although opposition groups are able to call-in a controversial decision for scrutiny, this is a waste of time if the relevant committee is reluctant to ever find fault with the executive.

j. What steps could *central government* take to improve local government ethical standards?

Central Government could provide a mechanism, possibly via the ombudsman, to employ Monitoring Officers that are truly independent of the council they monitor. They should be regularly re-assigned to prevent complacency or comfortable relationships from undermining their role.

Alternatively, investigation and judgement of serious cases involving senior councillors (eg Cabinet, Chairmen & Vice-chairmen) should be undertaken by a

different local authority, but not a close neighbour where personal cross-border relationships may compromise independence.

The Localism Act 2011, and the Local Audit and Accountability Act 2014 both sought to 'throw open the doors of town halls' and allow the public to make more of their own decisions. The cost of filming and webcast has dropped enormously in recent years, and will surely require far less time or expense than is currently spent investigating trivial complaints. Central government decided against making broadcast compulsory when the right to record was introduced, but with easier and cheaper technology now available, may wish to revisit the idea.

Central government could insist that committee chairmen are elected by secret ballot in a manner similar to election of Parliamentary chairmen.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

In our experience, intimidation of councillors by the general public is very rare. What intimidation we do see comes from other elected members, prospective members and political activists. The threat of referral for breach of the code of conduct is a regular feature in this.

i. What measures could be put in place to prevent and address this intimidation?

Clear guidance is required in order to exclude subjective social faux pas from the standards system.



5-5-18

The Review Officer
The local government ethical standards Review
London SW1

Dear Sir, Re: Ethical Review of local Government in England.
Council

I was elected to Tower Town, 3 years ago in May 2015
and based on three years in an elected office I make these comments:

- 1) There appears to be no requirement to have disciplinary
procedures in place by a Town Council. A member of our
staff sent me a harassing letter but no disciplinary action taken as
staff not subject to any code of conduct! THIS MUST CHANGE!
- 2) The district monitoring officer has very limited powers and
seems to be indifferent to what is going on! THIS MUST CHANGE!
- 3) If financial regulations are broken there seems to be remedy
for such a breach. Numerous guidelines but no remedies for breaches!
- 4) The local government ombudsman does not deal with
Town or Parish Councils! This must change!

P.2

S-S-CP

(MALADMINISTRATION)

So there is nowhere to go with alleged maladministration!
Town and parish councils seem to be a law unto themselves! Some unethical people take advantage of this!

5) The government in the 2011 localism act abolished the standards boards but did not leave there was a better system in place before the old system ~~ABOLISHED!~~
~~regulated~~ This was a fundamental error! Not thought out!

6) Political correctness has and does restrict free speech and democracy and there should be safeguards on these key important British traditions!

7) Complaints against councillors and staff should be dealt with by an independent person or body E.G. Town Councils have an arrangement to deal with each others complaints!
E.G. In our D.A.C. ^{area} there are 3 Town Councils with virtually
— No mutual help or co-operation! This makes no sense!!

Yours faithfully

NOTE

Due to illness my
hand writing is affected!

no apology
concentration NOT
V. EASY! EW

G. WAINSTALL (CLL)

120

Review of Local Government Local Standards – Stakeholder Consultation

INTRODUCTION

1. My name is **Carol Bailey** and this is a personal submission. I am the full time **Town Clerk and Responsible Financial Officer for Hadleigh Town Council** in Suffolk, a post that I have held since September 2006 after having worked in the public sector for 28 years.
2. I am qualified to degree standard; having attained my BA (Hons) in Business Administration; in June 2000. In 2011/12 I also obtained the Clerks qualification of the Certificate in Local Council Administration (CiLCA) and am also a Principal Member of the Society of Local Council Clerks (PSLCC). Additionally I have undertaken extensive training in many areas and attend relevant conferences and seminars in a constant attempt to remain up to date with current legislation.
3. In recent years I have achieved many cost savings to the Council and consequently to the people of the town, Hadleigh has been held up as one of the most effective and efficient councils in Suffolk.
4. Hadleigh has a history stretching back to medieval times, fighting hard in recent years to retain its historic fabric. Of the 137 premises along its High Street some 90% are listed buildings.
5. **Section A:** The existing processes are woefully inadequate for ensuring high standards of conduct among Councillors. There seems to be a definite distinction between the behaviour and integrity of County, District and Town/Parish Councillors with research showing that the instances of grievances and complaints about Councillors occur with greater frequency among the Towns and Parishes than they do among Districts and County.

6. **Section B:** The most significant gap in the current system is a total lack of any mechanism to effectively deal with unethical behaviour such as bullying, harassment, intimidation, breaches of confidentiality and cases of bringing their Council into disrepute should offending Councillors choose to ignore any sanctions placed upon them by either an internal Grievance Panel or District Monitoring Officer. (An example based on first-hand experience is at paras 19-28)
7. **Section C:** There is a misconception amongst Town/Parish Councillors who fail to differentiate between 'Grievances' and 'Code of Conduct' complaints. Grievances are complaints made and heard internally with associated sanctions – staff v staff, or staff v Councillors – if upheld they can then be complaints under Code of Conduct. Code of Conduct issues are heard by the Monitoring Officer of the Principal District Authority. The significant gap in the system is that there is no methodology in place for dealing with Councillors who ignore sanctions be they imposed by either local grievance panels or Monitoring Officers.
8. **Section D:** Hadleigh Town Council is signed up to the Suffolk Code of Conduct
9. **Section E: (i)** There are two processes available as described under Section D. Grievances are internal matters heard and dealt with locally by a panel of appointed Councillors. Code of Conduct complaints are dealt with by the District Monitoring Officer. Neither meets the requirements of due process because of a total lack of any method of enforcing sanctions should the offending Councillor choose to ignore any penalty placed on them.

10. Section E: (ii) The 'Independent Person' scenario only comes into play with Code of Conduct issues heard by the District Monitoring Officer it does not apply to Town/Parish Council Grievance procedures.

11. Section E: (iii) The District Monitoring Officer needs to be a legally qualified official and be given legal powers to eject offending Town/Parish Councillors on a permanent basis should they habitually offend or fail to comply with Town/Parish grievance sanctions. They should furthermore be required to sit on and chair Town/Parish grievance panels and also be given the powers to stop offenders being allowed to stand for any Council at any time in the future.

12. Section F: (i). Again this question only addresses breaches of the Code of Conduct. It totally fails to acknowledge the Town/Parish Council grievance procedures. In Code of Conduct issues the District Monitoring Officer has limited sanctions available, the maximum sanction that can be imposed on a Town/Parish Councillor being a maximum three month period of suspension. Should the individual choose to ignore that sanction and continually attend meetings and refusing to leave there is absolutely nothing that can be done. In Town/Parish grievance cases the same sanctions can be imposed but again there is nothing that can be done to enforce sanctions should the offender choose to ignore them.

13. Section F: (ii) The District Monitoring Officer requires additional powers as described in paras 16-17. Additionally there is a requirement that any individual standing for election as a Councillor at any level of local government should be free of any criminal convictions. There is no mechanism for checking this, anyone can apply and the relevant council has no powers to check or verify the statement of declaration made. There needs

to be a legal requirement that anyone standing for Councillor at any level provides an up to date Criminal Records Bureau certificate to the District Monitoring Officer.

14. Section G: Declaring Interests – No comments for this submission.

15. Section H: Whistleblowing – No comments for this submission.

16. Section I: Local Authorities at all levels need to ensure that far better training is provided for Councillors. There needs to be a clearly defined process for dealing with grievances at Town/Parish Council level and training is the only way this will prevent the ambiguity that currently exists. The overall lack of clarity leads to claims that decisions and processes are unlawful, biased or have been made by individuals who are not acting in a proper and legal manner. Town/Parish Council grievance panels should only be made up of individuals who have undergone training in that particular process with the District Monitoring Officer acting as the panels chair. Investigations into Councillor misconduct need to be carried out by independent individuals preferably by people who have previous experience of investigating misconduct claims but are who are not members of the affected council.

17. Section J: Central Government needs to introduce legislation that checks the integrity of individuals hoping to be elected as Councillors at any level. They also need to introduce legislation that permits a District Monitoring Officer in liaison with the next highest council body to have a Councillor removed from office on a permanent basis. For Town/Parish Councillors that would be the Chief Executive of the District, for District Councillors the Chief Executive of the County Council and for County Councillors the Secretary of State or an appointed delegated Minister. Those found guilty should not be allowed to

stand for re-election within the term of that serving or subsequent Council (a period of between four and eight years).

18. Section K: Intimidation of local councillors – No comments for this submission.

CASE HISTORY

19.Hadleigh Town Council is comprised of 15 Councillors. During the period 2006 – 2016 the Council ran very effectively, naturally there were lively and often heated debates as healthy differences of opinion were aired. Whatever the subject or however deep feelings ran things always ended agreeably with the defeated minority accepting the democratic process with good humour and a determination to work together with the victors for the sake of the townspeople. The May 2015 Town Council elections saw a number of new Councillors elected replacing individuals of advancing years. Of the new Councillors a number aligned themselves to the Labour Party including Councillors 'A' 'B' & 'C'. Later in 2015 following the resignation on personal grounds of another individual, Councillor 'D' joined the Council, he was elected unopposed as the only candidate. Shortly after Councillor 'A' resigned citing irreconcilable differences with others. In April 2016 the Council had a solicitor's letter sent to him threatening legal action due to his continuing harassment and defamation of me on social media. Things still continued on a relatively happy note until after about six months Councillor 'D' started to query aspects of my work such as telling me how to write letters and word documents. Councillor 'D' is a retired non-practicing solicitor and uses his 'legal knowledge' in intimidatory legal diatribes to question everything the Council and myself do.

20. In 2017 Councillors 'B' & 'D' along with others were members of the Hadleigh Neighbourhood Plan Group. For a number of reasons including their lack of input and failure to carry out allotted tasks, three other Councillors resigned from the group. At the same time highly confidential information provided to me about the actions of certain members of the public attached to the group attempting to fraudulently gain information that would have brought Hadleigh Town Council into serious disrepute lead me to seek advice from a Local Government advisory body, their advice was to suspend the group until such times as it could be reformed legally and constitutionally. This I did. Immediately Councillors 'B', 'C' & 'D' started to question and criticise every aspect of my work irrespective of whether it was connected to the group's suspension or not.
21. Things became so bad that in October 2017 I took out a grievance against Councillor 'D' for bullying, harassment, intimidation and persecution. The Town Council grievance panel met and unanimously upheld my complaint. Councillor 'D' had sanctions imposed on him including issuing a public and written apology to me. Failure to do so would result in further sanctions being taken. Councillor 'D' then took out a 'grievance' against me, telling the grievance panel quite openly that he had done so as a 'tit-for-tat' measure. He also said that if I dropped my claim against him he would stop bullying me!
22. By this time Councillor 'C' had joined in the bullying and harassment in support of Councillor 'D'. She sent emails to all councillors and who knows where else accusing me of being 'misleading' 'dishonest' 'complicit' 'unfit to be Hadleigh's Clerk' 'manipulative' 'having no integrity' - she could produce no

evidence to support any of her claims which were not supported by any other Councillors except Councillor 'D'.

23. I initiated a grievance against her which again was heard by the grievance panel in February, she failed to attend the hearing declaring the panel unlawful. My grievance was again upheld, her sanction being to apologise and retract her accusations. This she has comprehensively failed to do and has indicated she will not do so under any circumstances.

24. By this time my doctor had signed me off work due to stress but I took some comfort in knowing that Councillor 'D' had had subsequent sanctions imposed because of his failure to apologise. These were that he was removed from all Council committees until September 2018. He declares this action is unlawful despite being advised otherwise by the District Monitoring Officer.

25. To date Councillor 'D' despite being removed from committees has on two occasions turned up to those meetings and refused to leave the table. The chair of both meetings has adjourned them with no business being conducted. Residents attending a planning meeting wishing to raise issues were asked to leave without their concerns being heard.

26. As a final measure Councillor 'B' resigned his post in January 2018, since then he has launched a vitriolic campaign by social media calling for the council to resign en-masse while at the same time accusing me of incompetence.

27. I find myself in a position where my reputation is in tatters, my health has suffered, my position is untenable and ultimately nothing has changed, both Councillors 'C' & 'D' carry on regardless. Both myself and the grievance panel members have made Code of Conduct complaints to the District Monitoring

Officer about them both as long ago as October 2017, as yet no action has been taken against either. One suspects yet again they will totally ignore any sanctions imposed.

28. The current system is so badly flawed that the only recourse available to me is external and costly legal action, nothing else can or will stop the offenders.

CONCLUSION

29. Bullying and harassment of Town Council Clerks is endemic. An internet search reveals in recent times cases being brought against Councillors in Peterlee, East Riding, Pembroke, Desborough, Liss, Burton, North Cowichan, Burlington, Ledbury, West Norfolk and Kempsey.

RECOMMENDATIONS

30. All of my recommendations are contained with the lettered sections A-K.

Respectfully submitted



Carol A Bailey BA (Hons) CILCA PSLCC

8 May 2018

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
The 'knee jerk' reaction by the incoming 2010 Coalition Government to abolish the Standards Board for England was a huge mistake, although seen by some to be overly bureaucratic. It was a useful body to oversee member conduct, with strong guidance and no attempt to criminalise Councillors for a minor oversight.
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?
The biggest gap is a total lack of proper statutory guidance to allow Monitoring Officers the luxury of consistency. Clarity needs to be given on the status of non-executive directorships of charitable [not for profit] organisations such as housing associations. More recent case law in Wiltshire confirmed that being a member of a housing association board as a Non-Executive Director was not a disclosable pecuniary interest as any allowances paid were linked to a service agreement and not employment as defined by the Localism Code of Conduct.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
There exists a lack of clarity in the understanding and application of the code and there is no indemnity when members follow Monitoring Officer advice.
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.
Councillors who are members of more than one Council have received competing guidance, dependent on the interpretation of the Code by the Monitoring Officer. There is no doubt that this has been caused by a lack of statutory guidance.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?
 - iv. ***Training for Monitoring Officers and a recognised knowledge base they can gain access to for additional professional guidance.***
The current code, as interpreted offers little between no sanctions or punishment applied to serious behavioural issues leading to the criminalisation of a councillor through the courts for a minor oversight in omitting to declare a Disclosable Pecuniary interest at a meeting, which has since been shown to have been a non-pecuniary interest.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
 - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?
Under the previous code the local Standards Committee was able to deal with minor breaches and apply proper sanction against misbehaviour by members, rather than the heavy hand of the law being applied by an ill- trained Police Force, the CPS and Magistrates who know little or nothing about the process of Local Government and understand even less.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant

dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

The lack of statutory guidance leaves the opportunity for 'over-declaration being seen as the safest option when the opposite is the case. Members had been actively encouraged to 'over-declare' resulting in non-pecuniary interest obtaining an inappropriate status. This can then lead to criminalisation of a member, even though there is no direct reference to the interest in the matters under debate.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

No they are not by any means, because there are no safeguards to against vexatious campaigns against members.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

None [j]

Prepare proper statutory guidance so that there is a consistency in the application of the law and remove the imposition of criminalisation of members for minor breaches of the code, ensuring that the local standards committees are given the authority to sanction a member and apply training to improve adherence rather than unnecessary levels of punishment through the criminal courts.

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?

It should be criminal offence to intimidate elected members who are carrying out their duties and responsibilities on behalf of the electorate

SUBMISSION 122

1) This submission is from Dr. Jonathan Sexton, Independent Chair of the Standards Committee, Thanet District Council. I have held this position since 2014. The consultation response is on my own account and does not represent Council policy. However some of the content is contained in my Annual Report to Council for the Municipal Year 2017/18 which was recently and formally noted by Members.

2) The Code of Conduct our Standards Committee oversees is that adopted under section 27(2) of the Localism Act 2011. I suggest that this is common practice; thus further significant changes such as urged in some responses below may require corresponding changes in legislation.

3) Response to Question A

Effective Member conduct relies on positive engagement, understanding and consent to Standards, specifically behaviour worthy of the office of Member. The existing system rightly stresses an ethos of positive engagement. Sadly a small minority of Members seem only to heed a sanctions focused ethos. They seem to view the existing framework to be weak and those with responsibility for leadership in the maintenance of good Member behaviour, largely powerless. There seems to be a perception that it is possible in the absence of robust sanctions, to breach Standards with only modest consequences.

4) Response to Question B

The previous tribunal based arrangements for the formal removal of Members for misconduct, abolished by the then Secretary of State was too drastic a step. It has left all local authorities with no robust power to manage those few individuals who do not understand or respect notions of discipline or restraint. In consequence, there is a lack of hard sanction to ultimately assure Member compliance with a Standards regime that accords with the Seven Principles of Public Life. Within the current legislative framework, no sanction can interfere with the elected Members duty to represent their ward. The sanctions available are confined to public censure, written warning and (where it exists) internal action by a political group. Accordingly the current system is overly reliant on the respect for and armour-propre of Independent Members and nominated Elected Members who sit on Standards Committees and with the Council's Monitoring Officer are responsible for providing leadership and direction for the Councils Standards Committee.

5) Response to Question C

The majority of complaints relate to the misuse by Members of social media (e.g. making adverse comments about senior officers on Facebook). Currently some accused Members have tried to deny the application of Standards, arguing that such comments were made (assuming that they are prepared to admit to authorship), as private citizens. Such dissembling is frequently overcome through the application of the 'but for' test (i.e. would anyone take much notice of social media content if they weren't Cllr X?). Nevertheless clarity from Central Government on the application of the Code in the context of social media would be helpful.

6) Response to Question D

There should be a nationally prescribed Standards process for all England for all local authorities, rather than one that is locally determined. Concurrent with such a publication should be the requirement of a standardised set of performance measures, with data collected and published annually, measuring the application of the Code and providing data comparisons on Member behaviour, authority by authority.

7) Response to Question F

For the majority of incidence where the Members Code of Conduct is breached, existing sanctions are sufficient to deter repetition of errant behaviour. However for a small minority, the existing sanctions are insufficient to assure or encourage compliance. A power of suspension and the power to remove Member allowances for up to six months, used sparingly, would be more effective. The unintended psychology of the existing Standards system, rewards bad behaviour, by virtue of the attention necessarily being given to such Members, in the absence of punitive sanction.

8) Response to Question H

Whistleblowing does not apply to Members as they are not 'workers' and are not protected by law. There are other methods for Members to raise concerns and the existing system is sufficient without adding Members to the category of Whistleblower. Indeed to afford the 'protection' of whistleblowing to Members would simply allow a further avenue of protection, where the Members Code of Conduct has palpably been breached through misbehaviour. Indeed such a 'defence' has already been attempted in the Council with whom I am associated with.

9) Conclusion

I want to stress that most Members operate effectively within established behaviours and conventions. Where breaches to the Members Code of Conduct occur the existing Standards provision is largely adequate. However for a small minority, the existing sanctions allowable to local authorities under existing legislation are not effective and more robust measures such as suggested in paragraph 7) of this response are much needed.

Dr Jonathan Sexton
Independent Chair Standards Committee Thanet District Council.

SUBMISSION TO THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

1. This submission is from Janet Seaton, former Councillor and Chair of Langport Town Council. I am making this submission because I believe that an issue that arose in our Council last year is a perfect illustration of the weaknesses of the current ethical standards regime at parish council level, and of the damage that can result.

The Langport Town Council case: a brief summary

2. A brief summary of the case:
 - 2.1. A Town (Parish) Councillor breached their Code of Conduct by leaking confidential information and leading a protest campaign to intimidate other Councillors.
 - 2.2. Formal complaints to the District Council's Monitoring Officer were not dealt with in a timely manner, preventing open discussion of them and allowing the public campaign to develop and damage the reputation of the Town Council without their being able to make an official defence. As a consequence 7 of the 11 Town Councillors resigned.
 - 2.3. The MO ruled that no breach of the Town Council's Code had occurred, despite the Town Trust having adopted it. The MO nevertheless recommended that the Trust should consider whether they should take their own action against the Councillor and listed the reasons why.
 - 2.4. The Town Trust, now chaired by the Councillor in question, considered the MO's Decision Notice but decided to take no action.
 - 2.5. The outcome is that a Councillor has been able to breach the Code of Conduct; conduct a social media campaign to intimidate other Councillors; damage the reputation of the Council, and become Chair – all with impunity. This issue has divided the community, damaged the reputation of the Council, and undermined many people's faith in local democracy, not least those former Councillors who had acted honourably.

The Langport Town Council case: details

3. On Tuesday 20 June 2017, I chaired a meeting of Langport Town Trust. The Trust is a registered charity (No. 242979) of which the Councillors of Langport Town Council collectively are the sole trustee. The Trust has adopted the Council's Code of Conduct and all Councillors were aware that they were bound by its conditions.
4. The Councillor in question had voted in favour of holding the item in private, but was in a minority of one when it came to a vote on the item (voting was 7 for, 1 abstention, 1 against, with 2 absent). Nevertheless, despite being advised by the Town Clerk that an item of business that had been taken in private could not be discussed outside the meeting, that Councillor deliberately leaked confidential information from that item, and put it into the public domain, thereby breaching both Standing Orders (SO 11) and our Code of Conduct para 5, ["He/she shall not disclose information which is confidential .."]
5. Having failed, working with a fellow Councillor, to secure the required number of Councillor signatures (5) to get the Council to revisit the item (SO 7.10-11), the

Councillor in question orchestrated a public campaign to try to force the Council/Trust to review the decision taken on that item. She was quoted in the media as saying: "I chose to be a whistleblower. All of this could have been put right if we had managed to get enough signatures on a letter asking the council to revisit this - but we couldn't get the signatures we needed." *Western Gazette*, 7.9.17, p5, <http://www.somersetlive.co.uk/news/somerset-news/future-hanging-chapel-decided-poll-421397>. Her actions included leaking information to a local blogger whose posts attacked me as Chair, other Councillors and the Town Clerk, thereby breaching Code of Conduct, para 1, ["He/she shall act in such a way that a reasonable person would regard as respectful"] and para 2 ["He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory"]

6. Working with others, she encouraged local electors to call for a parish meeting, knowing that fellow Councillors and the Town Clerk would be unable to defend or explain their decision because they were bound by the same confidentiality that she had broken, resulting in neither Councillors nor the Town Clerk being able to fully satisfy public questions on the issue from the audience (including the minority who were Langport electors), thereby breaching Code of Conduct para 1, ["He/she shall act in such a way that a reasonable person would regard as respectful"] and para 2 ["He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory"].
7. The fact that this case revolved around the leaking of confidential information put the Town Clerk and the other 7 Councillors who voted in favour of the item at the meeting in a Catch-22 situation. We were still bound by the Code of Conduct to keep the item confidential, and were therefore unable to defend ourselves, and the decision, without committing the same breach as the Councillor complained of. The item related to sensitive negotiations over a lease. The other party was unhappy that the details became public knowledge, which not only damaged the Council's relations with that particular tenant, but also its credibility and trustworthiness in relation to other present or potential future tenants.

The formal complaints to the Monitoring Officer

8. When details of the confidential item appeared on a local blog, the Town Clerk made a formal complaint about the actions of the Councillor in question to the Monitoring Officer of South Somerset District Council. The Town Clerk's complaint was received on 10 July 2017, but 30 working days later it had not even been acknowledged. On 18 August Councillor [REDACTED] submitted a separate complaint about the same issue to the SSDC Monitoring Officer. It was not acknowledged until 27 September.
9. The parish meeting took place on 29 August 2017. Out of over 120 attendees, fewer than 50 were Langport electors. The meeting atmosphere was hostile, and some aggressive and unpleasant criticisms were made of Councillors and the Town Council in general. Shortly thereafter the 7 Councillors who had voted in favour of the item in question at the June Town Trust meeting resigned, leaving the Council inquorate.
10. The Town Clerk then became aware that the MO was minded to rule that the Town Trust was not covered by the Councillors Code of Conduct (despite its formal adoption by the TT). After discussing this with the MO in person, the

Town Clerk withdrew his complaint, as it had become obvious that the Councillor in question would be elected as Chair at the next Council meeting, and he felt that he would be unable to perform his duties properly if there was a complaint from him outstanding against the Chairman. (She was elected Chair on 3 October 2017).

11. In view of the Town Clerk's complaint having been withdrawn, I submitted my own complaint to the Monitoring Officer on 17 September 2017. I received the MO's Decision Notice on 7 February 2018.
12. Langport Town Trust, now chaired by the Councillor who leaked the confidential information, considered the MO's Decision Notice on 20 February 2018 and decided unanimously 'not to implement the recommendations and to take no further action'. The Councillor in question left the meeting before this item was taken.

The issues raised

13. The oversight of the actions of councillors on Town Trusts needs to be clarified, particularly in Trusts such as Langport's, where all parish councillors act collectively as the sole trustee. Langport Town Councillors thought they were clear by adopting the Council's Code of Conduct and Standing Orders, but the Monitoring Officer's decision has cast doubt on that position.
14. The sanctions for breaching the Code of Conduct are ineffective. The actions of one Councillor can, as in this case, damage the reputation of other Councillors and a whole Council in general, with total impunity. The Town Trust's ability to ignore the Monitoring Officer's findings makes a mockery of the whole process.
15. The District Council's delay in sending an official acknowledgment of the complaints contributed to the lack of public debate about the misconduct. Their lack of priority in addressing the complaints may be due to the lack of effective penalties. Whatever the reason, we were advised that the existence of the complaints could not be reported to Council or Trust meetings in the absence of an official acknowledgement. The Councillor in question took the District Council's lack of action as confirmation that she had done nothing wrong.
16. In this case there was neither criticism nor penalty for a Councillor who ignored the rules and damaged the credibility and reputation, not only of the Council she was a member of, but of Councillors and elected representatives in general.

Recommendations

17. Councillors who are found to have breached the Code of Conduct should be removed from office and banned from serving as an elected representative for at least a year, depending on the severity of the breach. Sanctions for minor or unintentional breaches could include, as now, removal from Committee positions and special training.
18. Monitoring Officers should be given clear guidance on the applicability of a Council Code of Conduct to Councillors' actions on town trusts where the Council is the sole trustee.
19. Monitoring Officers should be given clear guidance on treating complaints against Councillors in a timely manner, and on how ongoing complaints should be officially made known.

A note on sources

20. All of the minutes of Langport Town Council and Town Trust are available on the community website: <http://langport.life/your-council/meetings/agendas-minutes/>. I can supply the Monitoring Officer's decision notice, a detailed timeline and other evidentiary documentation on request.

Janet Seaton, OBE
Former Chair of Langport Town Council



HEDON TOWN COUNCIL

- a) The sanctions that can be imposed are equivalent to a 'slap on the wrist' and do not discourage bad behaviour.
- b) Bullying behaviour does not appear to be dealt with seriously enough – that includes bullying of fellow Councillors and most definitely bullying of Council staff. Again, sanctions are not severe enough to discourage bad behaviour.
- c) The difference between 'interests' is a constant source of confusion – I don't know how you can make it any clearer but it is something that is raised constantly at meetings.
- d) Yes.
- f) NO.
 - i) Apologies, further training or removal from Committees – none of which is sufficient to deter bad behaviour.
 - ii) Absolutely they should. Removal of office is probably not something that would be considered but compulsory training should be. Perhaps a financial penalty.
- g) Yes.
- i) Try and take the confusion out of 'interest' declaration.
- j) Legislate for greater penalties in the event of misconduct.

J Macklin
Town Clerk
4.5.18



Hampshire Association of Local Councils

President: Professor John Denham FRSA

Chief Executive: Steven M Lugg PG Dip. CMgr FCMI FSLCC

Review of Local Government Ethical Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

4th May 2018

Dear Sir/Madam,

RE: Committee on Standards of Public life: Local Government Ethical Standards – Call for Evidence

In response to the above consultation, I make the following comments:

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No. Until there is a real threat of sanction or enforcement by an independent body outside of the Council, standards will continue to slip.
The system is also reliant on Councillors and staff being prepared to set up their own good practise, which is not the always the case.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

No consequences for misconduct or inappropriate behaviour.
Formal training and induction for all newly elected members should be compulsory not optional.
An independent person/body, such as the standards boards, should investigate allegations of misconduct, including bullying and harassment and be able to enforce penalties.
The lack of sanction and enforcement is the most significant gap. There is no threat to members choosing to bully, harass and abuse their position so they remain unaccountable.

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes exist?

There should be one standard format for the Code of Conduct, with enforceable punishment for misconduct.
Formal training and induction processes should be obligatory to ensure understanding of the role and the Councillor's obligations. Those Councils that do enforce training and provide induction do so as good practise and not because of the way the current system operates.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand, If not, please say why.

With the current process there is nothing in place to enforce the Code of the Conduct, therefore it is irrelevant.

The duty to declare an interest is upon the Councillor themselves, and there is no formal checking process to ensure that the declarations are accurate and does not purposely exclude particular interests.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

The current process is inadequate. It has often been found that Monitoring Officers are reluctant to become involved in Parish and Town Council disputes as they are unable to take an action against any proven wrongdoing.

Individual employees must have the opportunity to raise issues with an independent party should they feel that their case would be compromised by referral to an individual who may be the subject of their complaint. There is no such opportunity at present within parish councils leaving employees (often the Clerk is the only paid employee) at serious risk of continued abuse in the case of an allegation of bullying, harassment or sexual abuse. We need to keep in mind that many PC employees often work alone or from home and may therefore require additional protection.

Strict procedural requirements should be put in place to protect MOs from any allegation of unfairness or partiality even when they may have been approached by multiple parties within a Council on the same issue. This may mean it is appropriate for an independent observer to attend all meetings with the various parties. Or, with the creation of a standards boards, this removes the MO from being involved and can remain impartial and an advisory.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

Serious behavioural transgressions in the case of, for example, bullying and harassment require appropriate sanctions that should not be constrained by the need to protect electoral integrity. The individual has failed in their conduct and thus needs to be subject to suitable penalty. Until this is seen to be enforced against those who fail to behave appropriately, there will continue to be bad behaviour by those who think they are unaccountable.

Sanctions relating to Nolan Principle complaints – expanded to include bullying and harassment - if upheld, should include an individual being required to stand down from their councillor role and perhaps then barred from holding public office for a period of time, or indefinite depending on severity of actions. Also, fellow councillors should be empowered to vote by majority to remove an individual from a role such as Chairman, whether of Council, Sub Committee or working party, even if that person chooses to remain as a councillor.

In a case affecting a local council, a Councillor was found to have breached the Code of Conduct in several ways. Yet, since under the 2012 Act, there are no longer any sanctions that can be applied, the only way for the MO to conclude the case was to make a finding of "no action", thus appearing to exonerate the individual even though a complaint against that person was upheld.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

Members often have a lack of understanding as to whether they are to withdraw from either the discussion or meeting as a whole or whether they can provide factual information on a matter but refrain from the vote when discussing a declared interest subject matter.

There needs to be more stringent measures to ensure interests are formally declared and not cherry picked to suit the Councillor. Although Clerks can advise members accordingly on these matters, this advice can be ignored to suit the individual.

Although the District Council monitors and publicise the register of interests, there is nothing formal in place to check for inaccuracies or omissions.

Whistleblowing

There doesn't appear to be a formal procedure. As Town and Parish Councils are often small and rural, where everyone knows everyone and their business, this can leave whistle-blowers vulnerable and exposed, therefore reluctant to take action. Although Councils will have complaints procedures in place, these can be time consuming to implement and can also leave employees or fellow members defenceless.

Improving standards

Until the threat of penalty for misconduct is implemented, there will be no improvement to standards.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

This would be difficult to accurately measure. Every council will have differing levels of local interest, issues, contention, strengths and personalities that could be a root cause to invite or cause intimidation.

Councils can adopt policies to remove any members of the public causing intimidation to members at meetings, but, again, without any enforceable punishments, if intimidation is caused by a fellow member, they can continue to be unaccountable.

Yours sincerely,

Amy Taylor
Policy Officer

Local Government &
Social Care
OMBUDSMAN

Committee on Standards in Public Life (CSPL)
Local government ethical standards review
1 Horse Guards Road
London
SW1A 2HQ

By email to: public@public-standards.gov.uk

08 May 2018

Dear colleague,

Local Government and Social Care Ombudsman's response to CSPL's Local government ethical standards review

About the Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services.

We welcome the opportunity to respond to CSPL's consultation as part of its review of local government ethical standards. The committee's review provides an important opportunity to evaluate how the current standards framework is operating and identify areas where it may need to be strengthened. We are responding to this consultation due to our existing role in considering some complaints about standards and conduct issues, which we have set out below.

Summary of key points

- We support the view expressed in the consultation document that robust standards arrangements are needed to safeguard local democracy and maintain the high standards of conduct which the public expect.
- The committee's review provides a timely opportunity to consider the need to give members of the public who wish to complain about the conduct of a councillor, access to independent redress to an ombudsman, where it has not been possible for these issues to be resolved locally.

- A right to impartial, independent redress for complaints about allegations of misconduct by councillors already exists in both Wales and Northern Ireland. Creating an avenue of independent redress in England would bring greater alignment with the other devolved jurisdictions.
- Most complaints about local councils fall under our existing jurisdiction. We have the necessary expertise to investigate complaints about potential breaches of standards of conduct and could do so if our jurisdiction was extended and we were appropriately funded for this work.

Our existing role in considering complaints about standards and conduct

As our role currently stands, if a member of the public is dissatisfied with the council's handling of a complaint about alleged breaches of standards of conduct they can refer that issue to us. Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.

Only a relatively low number of complaints about standards and conduct issues reach us. Below we have provided details of the volume of complaints and investigations we have carried out since 2012:

Complaints about standards and conduct issues	2012-13	2013-14	2014-15	2015-16	2016-17
Number of complaints and enquiries received	124	111	123	123	174
Number of complaints and enquiries decided	121	119	124	120	169
Complaints closed after initial enquiries	71	69	76	68	99
Number of detailed investigations	16	28	9	11	19
Proportion of detailed investigations we upheld in favour of the complainant	19%	11%	22%	36%	32%

Some of the common issues we see in our investigations include:

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place.

If we find there has been fault in the way the council has dealt with a complaint, we can ask the council to carry out its investigation if there has been a delay, re-investigate a complaint if the investigation has not been carried out correctly in accordance with the council's own

procedures or improve its procedures to prevent the same problems from reoccurring in the future.

Examples of some recent complaints we have considered are outlined below. We publish all our decisions on [our website](#), unless we have concerns that to do so could compromise the anonymity of the people using our service. The case summaries referenced here include links to the full decision statements for further detail.

Unreasonable delay ([16 018 509](#)):

Mr B complained about the conduct of a councillor which he said was in breach of the code of conduct. Our investigation found fault as the council's response to Mr B's complaint about the councillor was significantly delayed without good reason. The council's complaints procedure stated a response should normally be provided within 28 days, but Mr. B had to wait over six months to receive a reply. There was nothing in the complaint or in the information provided by the council which explained why there was such a delay in dealing with Mr. B's complaint. The council agreed to apologise to Mr B for the fault.

Independent person ([16 002 617](#)):

Mr X complained to the council about a councillor who he believed broke the code of conduct. The Monitoring Officer and Independent person considered Mr X's complaint at the preliminary assessment stage and decided there was no evidence the councillor's conduct was a breach of the code of conduct. Mr X was unhappy with the way the council considered his complaint. He especially considered the Independent Person did not disclose to the council he had previously worked with Mr X and that they were not on good terms.

The Independent Person advised the Monitoring Officer they knew someone with the same name as Mr X and asked them to clarify if it was the same person. However, due to an error the council failed to follow up on this. We found that this was fault. The council offered to appoint a different officer and Independent Person to consider Mr X's complaint which we agreed was an appropriate remedy.

Under section 25(4)(a) of the Local Government Act 1974, we can also investigate particular actions taken by councillors – examples of such actions include:

- actions in committee meetings, e.g. failure to declare an interest or providing misleading information
- acting as an executive member with decision-making powers
- giving a decision on an admin function they do not have the authority to give
- speaking on behalf of the council, for example at a public meeting explaining proposals for a new road scheme

- agreeing to pass on an objection to a planning application or undertaking to present a petition to committee but failing to do so
- giving wrong information to a constituent about when a particular matter is being considered by the council and the constituent misses the deadline for representations/objections.

Access to independent redress for complaints about alleged breaches of standards of conduct

We believe there is merit to consider, within the scope of the current review, the need to give the public greater access to independent redress in relation to complaints about the conduct of councillors, where it is not possible to resolve such complaints at a local level. If it is perceived there is a gap in the current system, we would support extending our role to be able to investigate the substantive detail of complaints about whether there has been a breach of standards of conduct, not only about the complaint handling process.

For the public to trust the arrangements for investigating complaints that a councillor may have breached standards of conduct, they need to feel reassured the system is both fair and rigorous. We consider that an independent means of redress could help strengthen transparency and deliver public confidence in the system. This would also improve consistency in how standards complaints are dealt with by mirroring arrangements that already exist in the other devolved jurisdictions. Unlike Wales or Northern Ireland, no equivalent route of redress to an independent ombudsman for these complaints currently exists in England.

The question of whether to create a right to independent redress for complaints about standards of conduct issues will ultimately be a matter for government and parliament to consider. That decision should be informed by an assessment of the effectiveness of the current standards framework and whether it is delivering the requisite level of fairness and independence so that public confidence in the system is upheld. There is also a question of parity in terms of whether the current system for local government satisfies the same standards of independence and impartiality as arrangements in other aspects of public life.

In our discussions with council link officers, it is clear there are concerns that the current sanctions at councils' disposal are not sufficient for the most serious breaches of conduct. In addition, there is limited scope for independent assessment beyond the role of the independent person, who can only act in an advisory capacity and does not determine whether there has been a breach. This suggests that the system could be better served by having an independent body consider allegations about breaches of conduct, particularly where they are related to serious cases.

The experience in both Wales and Northern Ireland demonstrates the benefits of conferring this role to the ombudsman. The Public Services Ombudsman for Wales (PSOW) can investigate complaints about councillors who may have failed to comply with standards of conduct, while in Northern Ireland this falls to the Local Government Commissioner for Standards which sits within the Northern Ireland Public Services Ombudsman's (NIPSO) remit.

Both PSOW and NIPSO take into account factors such as whether it is proportionate and in the public interest to conduct an investigation into an alleged breach. This ensures that only complaints that pass this threshold are investigated. Indeed, of all the complaints received by both ombudsman schemes, only a small proportion make their way through the entire process and in only a handful of cases sanctions are imposed. Considerations about whether complaints may be driven by vexatious or frivolous reasons are already part of our work, while not preventing complainants who are raising genuine concerns from accessing redress. Therefore, we would be well placed to filter out complaints that lack sufficient information or appear to be malicious or politically-motivated as we already do across all areas within our jurisdiction.

If the CSPL review was to recommend a potential extension to our jurisdiction which the government committed to implementing, we believe there are a number of conditions which would need to be satisfied:

- **Legislative change:** We consider we would be best placed to provide independent redress for complaints about alleged breaches of standards of conduct. An extension of our remit would be in keeping with our role as the final stage for redress for most local government complaints, but our legislation would need to be changed.
- **Scope of jurisdiction:** Any extension of our jurisdiction in relation to complaints about standards of conduct should only be pursued in line with Part III of the Local Government Act 1974 which sets out the types of authorities which fall within our jurisdiction. Specifically, our current jurisdiction does not extend to town and parish councils. We consider it would be neither practical nor appropriate to extend our jurisdiction to cover parish and town councils in one area in isolation, such as in relation to conduct issues.
- **Funding:** We are already funded below the level of any other public service ombudsman scheme and any additional responsibilities that we would acquire in relation to standards complaints should be properly resourced. Costs associated with the additional volume of complaints would need to be determined through an impact assessment and a corresponding increase in funding.
- **Code of conduct:** We consider that if we were to take on additional responsibilities in relation to such complaints this would require the re-introduction of a national code, so that every councillor could be held against the same standards. The approach in Northern Ireland provides a useful potential model where the code setting out the conduct expected of councillors is developed by the Executive and requires approval by the Assembly. The role of the ombudsman is confined to investigating and adjudicating on complaints about alleged breaches of conduct against the provisions of the code.
- **Local routes of redress:** Our experience from across our jurisdiction is that a quick, appropriate response from the organisation the complaint is about is often the most effective and swift way to remedy concerns. We would expect the ombudsman to remain at the apex of the complaints system and for complaints about potential breaches of standards of conduct to be brought to the ombudsman only after local routes for resolution have been exhausted.

- **Approach to complaints:** If our remit was extended, we would wish to investigate allegations about breaches of standards of conduct in the same way as all other types of complaints within our existing jurisdiction. This would include broad discretion to determine whether or not a complaint merits investigation or to initiate an investigation. On completion of an investigation, we would also wish to see the current approach replicated where our findings are not legally binding on the council concerned. Where we are not satisfied with a response to one of our reports, we may issue a further report. If an authority fails to comply with recommendations in a further report, we can require the council to publish a statement drawing attention to that failure.

Conclusion

It is right that any decision about extending the right to independent redress is made within the context of the review's findings overall about how well the current framework for standards is working. We would be keen to work with the committee and government to further explore providing independent consideration of complaints about alleged breaches of standards where such complaints are not resolved locally, and would welcome the opportunity for further discussions.

We hope our submission is helpful and happy to further assist the committee with its review and provide any further information or clarification, as required.

Yours sincerely,



Mr Michael King
Local Government and Social Care Ombudsman

Review of Local Government Ethical Standards: Stakeholder Consultation

This is a response from Timothy Howes, the Director of Corporate Governance and Monitoring Officer at Thanet District Council.

I have had responsibility for the Members Code of Conduct and the standards regime at District, County and Unitary authorities during my career. My responses to the questions posed by this consultation, are principally linked to my present role at Thanet District Council.

My email address is [REDACTED]

Consultation questions

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Answer

Given our limited resources we do not have internal capacity to undertake investigations which means employing outside investigators at a cost of circa £3500 each time. This is disproportionate given the limited range of sanctions available. It is also challenging to find appropriate external individuals qualified or sufficiently experienced to undertake such investigations, this has contributed to the high cost of those investigations.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Answer

We would like further clarity on whether Charter Trustees need to be included in the requirement to have a code of conduct, or whether they are covered by a code through their membership of the parent Council.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Answer

Many of our complaints relate to the misuse of social media (e.g. making adverse comments about officers on Facebook). The Code needs to be updated to reflect modern life including the potential misuse of social media (trolling etc).

In relation to social media we are hamstrung by the need to decide whether the individual was acting as a councillor in making those comments and clarity on where the Code applies would be helpful.

We have included specific Members code of conduct sessions as well as social media training sessions within our Members Induction Programme.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that

it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Answer

It would be sensible to have a proscribed standard process (for England) which is common across all authorities, rather than being locally determined. Allowing each authority to determine their own code of conduct inherently allows for variations across the country. This subsequently allows Monitoring Officers to interpret conduct by councillors differently across the country, leading to different outcomes for potentially similar "poor behaviour".

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process?

Should
any additional safeguards be put in place to ensure due process?

Answer

The council appoints external consultants to investigate complaints because of our lack of capacity to manage investigations in-house. It also provides independence from the council and shows objectivity, which is important. This is especially the case where allegations of misconduct relate to a member's treatment of officers.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so how?

Answer

The requirement for the involvement of an Independent Person is useful as a sounding board for the Monitoring Officer and to provide objectivity and independence.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Answer

The investigation role can be separated through employing external investigators, this is an expensive but a valuable safeguard.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Answer

Some Councillors have been reluctant to implement the recommendations of Monitoring Officers regarding sanctions, particularly censure, this can potentially render the whole process pointless.

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Answer

The sanctions are wholly insufficient to ensure or encourage compliance. A power of suspension and/or a power to remove allowances for up to 6 months would be more effective. In the absence of improved sanctions the standards regime remains as a 'toothless tiger'.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Answer

The disclosable pecuniary interests legislation and form are drafted in a very legalistic language. For example, the requirement to disclose 'land' is rarely interpreted by Members as the home they occupy. This means that DPI forms regularly have to be sent back to Councillors for them to include their home address.

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Answer

We have a requirement to disclose 'significant' interests in addition to the statutory requirements. In my experience most authorities have similar provisions and it would be more sensible if these could form part of the legislative requirements too.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Answer

The provisions for whistleblowing by staff are satisfactory, however these do not apply to councillors or the public, since they are not 'workers' and are not protected by the law.

Councillors can still raise complaints with senior Officers, the Monitoring Officer, Section 151 Officer and the Head of Paid Service.

In addition, there are other methods for councillors and the public raising concerns through:

- The Council's complaints process*
- The Councillors' Code of Conduct*
- Through the Ombudsman*
- Through raising issues with the auditors*
- Through complaints of criminal behaviour to the Police*

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

Answer

There is nothing that we could do which would improve the process without new legislation.

j. What steps could *central government* take to improve local government ethical standards?

Answer

Introduce a standard code of conduct for all Councillors and allow for enhanced sanctions as referred to earlier (answer f) ii)

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors

Answer

When Councillors discuss contentious local issues, such as local plans, the general public can be extremely intimidating to those who do not share the same view. This can be expressed through social media and intimidating behaviour before and after Council meetings. This is a particular issue if members of the public are organised into local interest groups, as the intimidation can then be more efficiently organised and targeted on a much bigger scale.

l. What measures could be put in place to prevent and address this intimidation?

Answer

Removing the need of Councillors to have special reason to have their address and land answers in their register of interest form redacted by the Council's Monitoring Officer would help. There is no point to new legislation removing the requirement of candidates in local government elections to declare their address, if they are then (if successfully elected) required to put their address and any land they own on their register of interest form, which must then be placed on their Council's website. The only exception to this being redaction by the Council's Monitoring Officer on evidence of violence/intimidation.

Doing this, it would assist in "protecting" Councillors from some elements of intimidation.

Timothy Howes, solicitor
Director of Corporate Governance and Monitoring Officer
Thanet District Council
Margate
Kent

8 May 2018

Submission on behalf of Canvey Island Town Council

Canvey Island Town Council is within the borough of Castle Point. It is the only Town Council with 11 Councillors. It has chosen to respond to this consultation as it was felt that the changes in the standards regime are not robust enough to impose sanctions/penalties where necessary and there is no clear guidance for Town/Parish Councils.

Contact: Elaine De Can, Town Clerk [REDACTED]

Consultation questions

Canvey Island Town Council/Castle Point Borough Council

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Yes

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

There seems to be a lack of penalties allowed. Town/Parish Councils are now expected to decide how they wish to proceed should one of its members breach the code of conduct, however, are not provided with adequate guidance on penalties and we appear to have no powers to act.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

The current code of conduct is clear and covers the appropriate range of behaviours. All Town Councillors are given the code of conduct during induction and are offered training by the Monitoring Officer if required and training is provided by the Essex Association of Local Councils.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Yes they are appropriate.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

The Town Council has delegated the power to the Monitoring Officer to investigate allegations on behalf of the Town Council. Due process is followed, however, should a breach be found the Monitoring Officer's hands are tied as he can only make recommendations and these are usually informal or lacking adequate sanction due to the limited penalties allowed.

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

This should be strengthened during the application process as an independent person can still be biased and they are only allowed to make recommendations which may not be enforced. The appointed person should be someone from outside of the Town/Borough/District.

- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

This is certainly an issue and Monitoring Officers can find themselves under pressure from Leaders/Management. There should be clear guidelines to follow for breaches, therefore, the penalties are imposed by the act and not the individual. Or a neighbouring Monitoring Officer could be used if a conflict of interest is perceived.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

An informal approach seems to be the normal practice and there are limited powers to impose sanctions. Most complaints are not taken seriously due to this lack of enforcement.

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

There should be standard sanctions set by government depending on the breach, therefore, all authorities are acting under the same sanctions and it is clear to all members the penalties for breaching the code of conduct. Local Authorities should not be in the position where they are limited to act and sanctions should be clear to all.

Local Authorities should be given the power to suspend a member following a breach.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

Most members still do not understand when to declare their interest during meetings and the process is open to an individual's perception.

- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

The statutory duties are appropriate, however, it should be amended to state that any interest declared the member should be asked to leave the room in order to prevent discussion or participation. This will not only protect the individual but will also make the guidance clearer for members to understand and councils/officers to impose.

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

All members have to complete a register of interest and declare these in meetings, however, as officers and other individuals cannot tell a member they should declare an interest unless asked for advice there is no control over these arrangements. Clearer guidelines are required for members and officers.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Adequate complaints procedures.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?

- j. What steps could *central government* take to improve local government ethical standards?

Providing clearer guidelines on declaring interests and providing local authorities the power to impose sanctions which are generic across the local government sector which have been agreed by central government,

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
- i. What measures could be put in place to prevent and address this intimidation?

Social Media has provided an increased platform for intimidation and stricter regulations need to be imposed on the use of social media.

Review of Local Government Ethical Standards: Stakeholder Consultation

My response is based on my experience as a Councillor 'in opposition' . I give my details in confidence as I do not wish to be identified.

I served as a lone Green Councillor in 2006-10 and have been re-elected 2018-22, this time within a Group of 5 Green Councillors.

a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*

1. The Cabinet structure creates an additional tier in the hierarchy of power which tends to act as a hidden inner sanctum. It is not always transparent. Even members of the same party as those in the Cabinet tend to feel decisions are made behind locked doors and that it compromises democracy when the Leader of the Cabinet makes the selections or appointed Cabinet Members and decisions over their role and longevity.

2. The Whip system is openly about controlling members' voting preference so that votes are in accordance with a Party line. Therefore it's hard to whistleblow without expulsion and the Whip system can lead to blackmail and bullying.

3. Arms-length Management organisations may impede democracy in that residents in social housing have no redress via the ballot box. The Councillors are no longer responsible for repairs. When social housing is managed in-house; if it fails, residents can vote their councillors out.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

4. No independent scrutiny of Councils that are heavily dominated by a single party, other than by their own representatives so cannot be considered genuinely independent.

5. Independent redress if bullying occurs by Whips and cabinet 'Seniors'

6. The People's Audit and challenges on compliance to the Transparency Code (e.g. reporting of local authority land as required under section 36 to 37) highlight areas for improvement. The fact that errors are made is not uncommon in local authorities and is less worrying than a lack of self-awareness and duty to apologise. I have witnessed varying levels of owning up to mistakes. Whether overspends and failure to consult the public are the result of wilful ignorance or culpable neglect, I cannot say.

7. The Transparency Code contains a 1-5 star grading in the manner in which information is made public. The higher transparency the less likely are Council's to be deluged with Freedom of Information requests thus saving the taxpayer time and money in using officers time to respond to what should be in the public domain. I can accept that this may over-simplify the situation but broadly this should be the aim.

8. Positive to note is that Democratic Services and Legal Advisers provide informal

access, guidance and an invaluable induction for new councillors along with IT training in managing Member Enquiries. Before speeches Councillors declare their interests and their conduct within the Council Chamber is civil.

9. Councils with one dominant party scrutinise themselves in effect and back-benchers are reluctant to criticise Cabinet members. There is no independent process. Independence can be compromised and this could be overcome by having someone overseeing of an equivalent rank/experience. Perhaps boroughs could pair up e.g. Merton Council with Haringey Council (not near each other and with a different political party in power or the London Assembly could create a cross-party committee to oversee.

a. 10. It is excellent that councillors are reminded with the Code of conduct for councillors of the clear Seven Principles of Public Life:

- b. Selflessness
- c. Integrity
- d. Objectivity
- e. Accountability
- f. Openness
- g. Honesty
- h. Leadership

a. 11. "Championing the needs of residents – the whole community and in a special way my constituents including those who did not vote for me – and putting their interests first" is explicit. I have heard admissions that this is not the case and that, even outside of the election campaigning period, councillors are not always prepared to act on behalf of all sections of their ward.

b.

c. 12. Registering and declaring councillors' interests might be better done in a conversation with a member of the legal team. There was an episode where someone stood in a local byelection and had not recognised a conflict of interest and ineligibility to stand. They probably weren't deliberately trying to mislead but in this instance a conversation rather than simply being given a form might have avoided the embarrassment and saved a re-run of an election.

d.

1. 13. Members of the public can find it difficult to access information from Council officers without going via a Councillor, and preferably one of their ward Councillors by way of a Member Enquiry. This puts an obstacle and extra tier of bureaucracy between a resident and public servant. Albeit protecting the Council Officers' time initially, I am not convinced it saves time in the long run. Officers would be best placed to comment on this.

1. 14. "Making decisions on merit" is required of a councillor. Does this mean accepting budgeting constraints and prioritising on grounds of cost?

1. 15. "remaining objective" is easy to say. I would recommend training not unlike magistrates receive on how to come to a decision based on evidence, not personal impulse or prejudice.

2.

1. 16. Electronic voting which will include changes in a Motion depending on the voting on Amendments can make it hard to be clear of the wording one is voting on. We are accountable for decisions and sometimes I have opted to abstain when clever re-wording of a Motion has changed the thrust of the

original Motion. I appreciate that as a lone Green councillor this was more challenging compared to voting as a majority party with instructions on how to vote.

17. I have felt intimidated by constituents, particularly when they have contacted me on my home phone number or swearing on an email received at home. Texting, email and social media makes it easy for 'attacks' to feel close and personal.

SUBMISSION 130

In response to the consultation request, Redbourne Parish Council wish to submit:

Redbourne Parish Council find the current system satisfactory.

Redbourne Parish Council is a small parish council serving a community of around 300 residents and is a member of the district association ERNLLCA who publicised the review and encouraged local councils to respond. At the council meeting held on 1st May 2018, the Councillors resolved for me to submit the above as their response.

Thank you,

Neil

Neil Taylor-Matson

Clerk & RFO | Redbourne Parish Council

**Taunton Deane Borough Council
Review of Local Government Ethical Standards
Responses to the Consultation Questions**

- a. ***Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.***

Not in all cases, especially the potentially serious cases or instances whereby a particular councillor keeps breaching the code of conduct. This is a direct result of the available sanctions having no teeth to act as a deterrent.

- b. ***What, if any, are the most significant gaps in the current ethical standards regime for local government?***

- (i) Sanctions that would act as a deterrent including the power to suspend councillors for a limited time and, in those councils where a basic allowance is paid to councillors, the power to stop paying the allowance during the period of suspension. It is firmly believed that stronger deterrents would undoubtedly result in fewer complaints being received;
- (ii) Currently there are very limited powers in respect of town and parish councils where the majority of complaints raised seem to arise. At present, there is no independent body that people can go to if they are unhappy with the treatment/service provided by a town/parish council (like the Local Government Ombudsman for example). This means a range of issues come to the Monitoring Officer which are either completely outside the normal remit or, if they do relate to the code of conduct, there are no effective sanctions to adequately address the more serious issues;
- (iii) The involvement of the Police where there is an alleged non declaration of a Disposable Pecuniary Interest. Such referrals are treated as very low priority by the Police which, in turn, can lead to long delays in a complaint against a councillor being dealt with. This is very unfair on the councillor concerned.

- c. ***Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?***

Broadly yes at principal council level but not consistently across town and parish councils. It is very difficult to reach all councillors at parish level simply because of the sheer numbers involved even when we have offered free training sessions. Following the last local government elections in 2015 we were only able to reach about a third of parish/town councillors in our area.

In the past – and before budget cuts took hold – the council employed a Parish Liaison Officer who, amongst his other duties, was responsible for delivering

code of conduct training directly to all our parish/town councils at source. This was particularly effective and resulted in a very high proportion of councillors being in receipt of the training. Whether it was this or other factors as well, it was very noticeable just how few complaints this council received compared to neighbouring authorities.

- d. ***A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.***

The main issue is that since 2011 the wording does not have to be consistent in relation to declarations of interests and it would be much clearer if all codes of conduct had precisely the same wording. Using the three classifications of disclosable pecuniary, prejudicial and personal interests works well at our principal council level but this is not mirrored by all town and parish councils which has caused confusion and inconsistency.

- e. ***Are allegations of councillor misconduct investigated and decided fairly and with due process?***

(i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.

The requirement under the Localism Act 2011 for Standards Committees to reflect political proportionality means that when, on the rare occasions, a hearing has been held, it has been very evident that politics obstructs proper, objective investigation and the consideration of findings. This is something that simply did not happen when the Committee here at Taunton Deane comprised a majority of independent members and parish representatives.

It should be noted that hearings are held so infrequently because the current system does allow the Monitoring Officer a degree of flexibility whereby an informal resolution (normally an apology) is often sought to resolve a complaint.

Informal dispute resolution tends to be favoured as issues can often become entrenched if the current 'system' is brought to bear.

This flexibility is one part of the current standards regime that the Council would very much wish to be retained.

(ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The views of the Independent Person do provide a useful check and balance and a support to the Monitoring Officer. Members of the public do not always understand where/why they fit in (in relation to the Council, Monitoring Officers, Standards Committees etc.).

Unfortunately there are insufficient 'checks and balances' in place to stop 'tit for tat' complaints which often necessitate informal round the table discussions in an effort to mediate and find a suitable outcome for both parties.

(iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

The Monitoring Officer would always use someone else to undertake any formal investigation but this will take extra resource internally (which we often do not have) so it can cost additional funding that is difficult to budget for – a further deterrent to going down the formal investigation route – so we always look to deal with matters by the way of an informal resolution.

f. *Are existing sanctions for councillor misconduct sufficient?*

(i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

For less serious matters where some training or an apology is a proportionate mitigation, then the current sanctions are adequate – but for cases that require a formal investigation, then, it is the Council's view, that they do not offer a sufficient deterrent.

(ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

For more serious cases, sanctions including the suspension of a councillor for up to six months and, possibly stopping their councillor basic allowance during their suspension would have the potential to have a real impact and make people think more about their behaviours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the Police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them. As previously mentioned matters can take a long time and often end up being handed back to the council to deal with in any case.

- g. ***Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.***
(i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, not take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Broadly the arrangements work quite well. It is quite difficult from a Monitoring Officer perspective to get all register of interest forms completed by all parish and town councillors across our areas (can be hundreds of councillors) let alone keep them up to date.

(ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If no, please say why.

A declarations of interest item is on the agenda near the beginning of all formal decision making meetings; induction training is given on the code of conduct and as long as the member concerned brings to the Monitoring Officer's attention any potential conflict of interest in good time, then discussions can usually be held to ensure that potential conflicts of interest are satisfactorily managed.

- h. ***What arrangements are in place for whistleblowing by the public, councillors, and officials? Are these satisfactory?***

We have a Whistleblowing Policy, which has proved to be satisfactory to date.

- i. ***What steps could local authorities take to improve local government ethical standards?***

Provide more training especially to parish and town councillors. However, a means of ensuring that such training is provided to as many councillors as possible needs to be found. Should the clerks to the parish and town councils be required to undergo full training on ethical standards to enable them to dispense this to their members at source?

- j. ***What steps could Central Government take to improve local government ethical standards?***

Either give councils greater sanctions or remove the requirement to formally deal with complaints to give more freedom to focus on them on an informal basis. At present there is a statutory requirement to have to deal with complaints with nothing significant to back it up.

- k. ***What is the nature, scale and extent of intimidation towards local councillors?***

There are some rare examples of tit for tat and/or persistent complaints about a particular parish/town council who rather than try to sort out their own issues,

try to use the local Standards process to 'take sides' and sort things out for them. On occasion a particular councillor will be the subject of several complaints with other councillors ganging up on them.

I also have seen a lot of pressure put on councillors who sit on the Planning Committee. It does not feel appropriate that they have to sit and determine, say, a contentious large housing development, sat in front of sometimes hundreds of angry objectors who make it clear that they will not vote for them again unless they object, even if there are no valid planning reasons for doing so.

(i) What measures could be put in place to prevent and address this intimidation?

Adequate sanctions especially for more serious examples of bullying (councillor to councillor may help).

Controversially, perhaps do away with a formal and ineffective complaints system and then at least it cannot be abused by people trying to bully or put pressure on councillors.

Allow independent persons to sit as full voting members of a Standards Committee to demonstrate that this process is not political as it used to be before the introduction of the Localism Act. Since 2011, the role and status of Standards Committees has, from my experience, declined and I do not believe that is a good thing for local government ethics.

And finally....and perhaps controversially, whilst part of the Planning Committee should be held in public when information from officers and representations are being made, the Committee should then be allowed to debate and determine the application in private to avoid the in the moment intimidation and almost 'circus of booing and clapping' that can happen – a public record of the decisions made could still be recorded and made available subsequently.

This practice is already currently used in local government when Licensing Sub-Committees are requested to deal with particular matters. The councillors withdraw from the meeting once all the facts are presented to decide on the outcome. They then return to the meeting to announce the decision reached.

Should this practice be widened?

**West Somerset Council
Review of Local Government Ethical Standards
Responses to the Consultation Questions**

- g. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.***

Not in all cases, especially the potentially serious cases or instances whereby a particular councillor keeps breaching the code of conduct. This is a direct result of the available sanctions having no teeth to act as a deterrent.

- h. *What, if any, are the most significant gaps in the current ethical standards regime for local government?***

- (iv) Sanctions that would act as a deterrent including the power to suspend councillors for a limited time and, in those councils where a basic allowance is paid to councillors, the power to stop paying the allowance during the period of suspension. It is firmly believed that stronger deterrents would undoubtedly result in fewer complaints being received;
- (v) Currently there are very limited powers in respect of town and parish councils where the majority of complaints raised seem to arise. At present, there is no independent body that people can go to if they are unhappy with the treatment/service provided by a town/parish council (like the Local Government Ombudsman for example). This means a range of issues come to the Monitoring Officer which are either completely outside the normal remit or, if they do relate to the code of conduct, there are no effective sanctions to adequately address the more serious issues;
- (vi) The involvement of the Police where there is an alleged non declaration of a Disposable Pecuniary Interest. Such referrals are treated as very low priority by the Police which, in turn, can lead to long delays in a complaint against a councillor being dealt with. This is very unfair on the councillor concerned;
- (vii) The 'mantra' from the Government that sanctions were in the hands of voters who could prevent a councillor being re-elected if they had 'transgressed' should be de-bunked. Sanctions needed to be imposed immediately after a councillor had been found to have breached the code of conduct.

- i. *Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?***

Broadly yes at principal council level but not consistently across town and parish councils. It is very difficult to reach all councillors at parish level simply because of the sheer numbers involved even when we have offered free training sessions. Following the last local government elections in 2015 we were only able to reach about a third of parish/town councillors in our area.

The Government should devise a universal training leaflet alongside a standardised version of a code of conduct which could be issued to all councillors on being elected. Allied to 'at source' induction training which could perhaps be provided by the clerks to parish and town councils, this could result in a far higher proportion of councillors being trained.

- j. ***A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.***

The main issue is that since 2011 the wording does not have to be consistent in relation to declarations of interests and it would be much clearer if all codes of conduct had precisely the same wording. Using the three classifications of disclosable pecuniary, prejudicial and personal interests works well at our principal council level but this is not mirrored by all town and parish councils which has caused confusion and inconsistency.

It is not understood why a single, standardised version of the code of conduct was not produced back in 2012.

- k. ***Are allegations of councillor misconduct investigated and decided fairly and with due process?***

(i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.

The requirement under the Localism Act 2011 for Standards Committees to reflect political proportionality makes it very easy for politics to obstruct proper, objective investigation and the consideration of findings at a hearing. This is something that simply did not happen when the Committee here at West Somerset comprised a majority of independent members and parish representatives.

As a result of this politicalisation, West Somerset Council decided its Standards Committee should become an Advisory Committee to allow independent members and parish representatives to take a full and active part (including

being able to vote) in matters relating to complaints about Councillors. All decisions taken by the Advisory Committee are referred to Full Council for ratification.

It should be noted that hearings are held so infrequently because the current system does allow the Monitoring Officer a degree of flexibility whereby an informal resolution (normally an apology) is often sought to resolve a complaint.

Informal dispute resolution tends to be favoured as issues can often become entrenched if the current 'system' is brought to bear.

This flexibility is one part of the current standards regime that the Council would very much wish to be retained.

Overall, the process of dealing with a complaint needs to be seen as independent.

(ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The views of the Independent Person do provide a useful check and balance and a support to the Monitoring Officer. Members of the public do not always understand where/why they fit in (in relation to the Council, Monitoring Officers, Standards Committees etc.).

Normally, having consulted the Independent Person, informal meetings of the Council's Standards Advisory Committee are arranged to undertake an assessment of the complaint to decide whether it needed to be formally investigated.

Unfortunately there are insufficient 'checks and balances' in place to stop 'tit for tat' complaints which often necessitate informal round the table discussions in an effort to mediate and find a suitable outcome for both parties.

(iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

The Monitoring Officer would always use someone else to undertake any formal investigation but this will take extra resource internally (which we often do not have) so it can cost additional funding that is difficult to budget for – a further deterrent to going down the formal investigation route – so we always look to deal with matters by the way of an informal resolution.

I. *Are existing sanctions for councillor misconduct sufficient?*

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(ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

For more serious cases, sanctions including the suspension of a councillor for up to six months and, possibly stopping their councillor basic allowance during their suspension would have the potential to have a real impact and make people think more about their behaviours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the Police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them. As previously mentioned matters can take a long time and often end up being handed back to the council to deal with in any case.

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Broadly the arrangements work quite well. It is difficult from a Monitoring Officer perspective to get all register of interest forms completed by all parish and town councillors across our areas (can be hundreds of councillors) let alone keep them up to date.

There is a perceived need for the definitions of interests to be reviewed to simplify the understanding of the content.

(ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If no, please say why.

A declarations of interest item is on the agenda near the beginning of all formal decision making meetings; induction training is given on the code of conduct and as long as the member concerned brings to the Monitoring Officer's attention any potential conflict of interest in good time, then discussions can usually be held to ensure that potential conflicts of interest are satisfactorily managed.

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We have a Whistleblowing Policy which has proved to be satisfactory to date.

i. ***What steps could local authorities take to improve local government ethical standards?***

Provide more training especially to parish and town councillors. However, a means of ensuring that such training is provided to as many councillors as possible needs to be found. As mentioned in the foregoing should the clerks to the parish and town councils be required to undergo full training on ethical standards to enable them to dispense this to their members at source?

Whatever training is provided should be of a better quality than that provided at the moment and, although it could not be made mandatory, every effort should be made to encourage councillors to attend the training sessions provided.

j. ***What steps could Central Government take to improve local government ethical standards?***

Either give councils greater sanctions or remove the requirement to formally deal with complaints to give more freedom to focus on them on an informal basis. At present there is a statutory requirement to have to deal with complaints with nothing significant to back it up.

k. ***What is the nature, scale and extent of intimidation towards local councillors?***

There are some rare examples of tit for tat and/or persistent complaints about a particular parish/town council who rather than try to sort out their own issues, try to use the local Standards process to 'take sides' and sort things out for them. On occasion a particular councillor will be the subject of several complaints with other councillors ganging up on them.

There should be a means introduced of Monitoring Officers and Standards Committees being able to identify and handle in an appropriate way 'frivolous' complaints.

I also have seen a lot of pressure put on councillors who sit on the Planning Committee. It does not feel appropriate that they have to sit and determine, say, a contentious large housing development, sat in front of sometimes hundreds of angry objectors who make it clear that they will not vote for them again unless they object, even if there are no valid planning reasons for doing so.

(i) ***What measures could be put in place to prevent and address this intimidation?***

Adequate sanctions especially for more serious examples of bullying (councillor to councillor may help).

Controversially, perhaps do away with a formal and ineffective complaints system and then at least it cannot be abused by people trying to bully or put pressure on councillors.

Encourage Chairmen to act in a far stronger way to stop threats and intimidation.

Allow independent persons to sit as full voting members of a Standards Committee to demonstrate that this process is not political as it used to be before the introduction of the Localism Act. Since 2011, the role and status of Standards Committees has, from my experience, declined and I do not believe that is a good thing for local government ethics.

And finally....and perhaps controversially, whilst part of the Planning Committee should be held in public when information from officers and representations are being made, the Committee should then be allowed to debate and determine the application in private to avoid the in the moment intimidation and almost 'circus of booing and clapping' that can happen – a public record of the decisions made could still be recorded and made available subsequently.

This practice is already currently used in local government when Licensing Sub-Committees are requested to deal with particular matters. The councillors withdraw from the meeting once all the facts are presented to decide on the outcome. They then return to the meeting to announce the decision reached.

Should this practice be widened?

Review of Local Government Ethical Standards: Stakeholder Consultation.

Initial Thoughts of Councillor Andrew Tebbutt for discussion.

Tuesday 20th March 2018

Discussed at Morpeth Town Council Finance & General Purposes – 4th April 2018 – see addendum

My thoughts are based on my experiences of serving on the Northumberland County Council Standards Committee from 2010 to 2017, attending regional meetings regarding standards, and sitting on a number of standards hearings.

The stakeholder consultation paper sets out 8 different areas for potential comment. We may decide to comment on all, only some, or indeed none as a town council. As I indicated when the Working Group was established the consultation exercise will also be considered by the Northumberland Association of Local Councils (NALC) County Committee this coming Saturday (24 March) and by the County Council Standards Committee on 26 April. Each and every councillor also has the right to submit their own thoughts, should they so wish.

I have drafted my thoughts against each question asked in the consultation paper.

General Opening Statements:

- a) of the existing structures, processes and practices in place, working to ensure high standards of conduct by local councillors? If not, please say why.**
- b) What, if any, are the most significant gaps in the current ethical standards regime for local government?**

In my view, the answer to a) is “No”, and b) is answered by my reasons set out as follows:

- (1) the system relies too heavily on the co-operation of councils, individual councillors and, at times, officers to implement what is effectively a voluntary code.
- (2) the available sanctions are insufficient to deal with serious breaches of the code of conduct
- (3) investigations are frequently prolonged, convoluted and sometimes inconclusive
- (4) there is a lack of clarity as to when councillors are operating as councillors or as individuals

I will expand on all these points as we go through each section.

Codes of Conduct:

- c) Are local authority adopted codes of conduct for Councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes exist?** I think the Code of Conduct produced by Northumberland County Council, and indeed the one produced by NALC and adopted by a number of Northumberland parishes and town councils is clear. The difference between the 2 is marginal, although I think it is disappointing that

we have two codes being overseen by one Standards Committee. Personally, I would like to see more direction from MHCLG on a standard Code of Conduct, with the ability of local authorities to add to it, to cover local situations, but not take anything away from it.

For me the big issue about the Code of Conduct is when does it apply, and when doesn't it apply. An argument sometimes used by councillors who are accused of breaching the code, is that they were acting as an individual and not as a councillor. I would argue that it must always be about the perception of the other person, and not the councillor's own view of his/her position. Personally, I would argue that an elected councillor is almost always a councillor, and that there must be very few situations where that perception isn't the view of the vast majority of people that they associate with. Only perhaps on holiday, and away from their political area, could you have an exception. I would like to see the Code of Conduct require a councillor charged with a breach to have to prove that they weren't perceived as a councillor by the complainant, rather than the complainant, or indeed a Standards Panel Hearing having to prove they were acting in their councillor role.

I think there is an area of lack of clarity around the use of social media sites. I have seen numerous Facebook exchanges which could be interpreted as breaches of the code, but individuals argue they are not acting as a councillor when communicating on social media. Again it is the perceptions of others that counts.

I would like to see the whole area of when the code applies strengthened. Being a councillor is a very responsible and influential role, and the code should be taken very seriously. In a rural county like Northumberland, where many parish councils are never the subject of elections, the power and influence that local councillors can exercise can easily overstep lines of responsibility. I question whether the principal authority actually has evidence for all local councils that each and every councillor understands the code of conduct and applies it in all their actions.

See Addendum – 4.4.18

- d) A local authority has a statutory duty to ensure that its adopted codes of conduct for councillors is consistent with the Seven Principles of Public Life, and that includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

There is a system in place; it was negotiated by the principal authority, NCC and NALC back in 2012, so in theory the provisions are there. Both codes of conduct that operate in Northumberland are consistent with the 7 Principles. What I don't know is whether the principal authority has the resources to check that each and every parish or town council consistently applies the regulatory provisions. I am equally not sure what the principal authority could do if an individual parish or town Council declined to abide by the agreed code of conduct regulations. I am equally unaware of what MHCLG might do if that refusal was reported to them.

Investigations & decisions on allegations

e) Are allegations of councillor misconduct investigated and decided fairly and with due process?

- 1) what processes to local authorities have in place for investigating and deciding on allegations. Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

Northumberland County Council has an investigatory procedure, which it has reviewed on a couple of occasions since 2012. They do not employ specific individuals who are ready to carry out investigations, relying initially on the Monitoring Officer, then on volunteer staff and ultimately seeking an independent person to carry out the investigation, sometimes from another local authority. At times the procedure seems to be incredibly slow, but whether this is because of a lack of resources or a lack of cooperation from the person or persons under investigation, I am unable to say.

However, I do not think it is satisfactory to find it taking months to conclude a complaint. Perhaps MHCLG should introduce set time limits for dealing with complaints. At the moment parish and town councils do not contribute financially towards the standards process. Perhaps they should be required to make a statutory payment to the principal authority, so that there is an additional resource available to fund investigations.

- 2) Is the current requirement that the views of an Independent Person must be sought, and taken into account before deciding on allegations sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**

Purely based on Northumberland County Council's use of their Independent Person, I fully support this introduction since 2012. I certainly think it brings a quality of independence into the process. Whether other local authorities have had similar experiences I am unable to say. I do not think there is any need to strengthen the role, the independence of view is sufficient in itself, and is listened to.

- 3) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

Again my experience is limited to what has gone on in Northumberland, but that has included working with four Monitoring Officers during that period. There is always the danger that an individual can have pressure put upon them, either by senior councillors or by the Chief Executive. Perhaps there is an argument for saying that complaints against senior councillors from the principal authority should be handled by somebody from another authority. Perhaps reciprocal arrangements could be made between neighbouring councils.

The other area for potential conflict-of-interest is the relationship of the Monitoring Officer with individual Clerks of parish and town councils. Necessarily, at times they will have worked together on issues as fellow officers. If then a complaint is received, which involves the officer, it could be argued that the Monitoring Officer should step aside. The problem will be having somebody who should take over.

Sanctions.

f) Are existing sanctions for councillor misconduct sufficient?

1) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are the sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

For me, this is the area of the current Ethical Standards provisions that is the weakest. There are 3 main elements of the concern as far as I'm concerned:

- Enforcement. Currently Standards Committees can only recommend sanctions – it is up to the individual LA to implement. I believe recommendations should be enforceable
- I believe Standards Committees should have the power to suspend councillors for an agreed period, probably up to 12 months, where there have been serious breaches of the code of conduct. Suspension was possible under the previous code, but was removed in 2012.
- Code of conduct breaches in relation to planning; I think there are situations where councillors use their influence improperly on planning matters, that Standards Committees should have the power to recommend to MHCLG that a councillor should be disqualified for a period of time.

See Addendum – 4.4.18

2) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

As well as the 2 points listed in the previous section, I think there is also an argument that Standards Committees could have the power to impose financial penalties for breaches of the code. This might be most relevant for those principal authorities where councillors receive allowances.

See Addendum – 4.4.18

Declaring interests and conflicts of interests.

g) Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.

I have no evidence personally of any difficulties in relation to councillors registering their interests, particularly any pecuniary ones. However, given that we have nearly 150 councils in Northumberland. It is questionable as to whether we can be confident that every councillor on every authority has registered their interests correctly. I don't know if Northumberland County Council has the resources to check regularly that all declarations of interest are up-to-date from every local authority in Northumberland.

- 1) **A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner) and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensation in certain circumstances. Are the statutory duties appropriate as they stand?**

I think the regulations as they stand are satisfactory, at least in theory. It is the practical implications of implementation that will always be the concern, particularly in a rural county with lots of small parish councils. The influence that individuals can have on local affairs can be enormous. If they don't declare an interest, then it is a serious breach of the code.

- 2) **What arrangements to local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

Northumberland has a very clear process and I have no reason to believe that it doesn't work, always provided clerks of councils and individual councillors abide by the rules. Again, as previously said, my question is whether or not there are adequate resources to monitor this on an ongoing basis.

Whistleblowing.

- h) **What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?**

I am not sure what Northumberland County Council's current policy is, & I am equally not aware of how many parish & town councils have policies on whistle-blowing.

Improving standards.

- i) **What steps could local authorities take to improve local government ethical standards?**

Improved training opportunities – make them compulsory for all new councillors; & mandatory refresher training for existing councillors.

- j) **What steps should central government take to improve local government ethical standards?**

- a) Restore effective sanctions
- b) Have an over-arching National Board (as previously) to monitor LA compliance & practice; to issue good practice guidance. Offer training to Independent Persons so their role is enhanced.

Intimidation of local councillors.

- k) **What is the nature, scale and extent of intimidation towards local councillors?**

- 1) **What measures could be put in place to prevent an address this intimidation?**

This is a very individual thing; can cover a wide range of situations. Needs more discussion.

See Addendum – 4.4.18

Addendum – Discussion at Morpeth Town Council Finance & General Purposes Committee 4th April 2018

Members of the Committee focused their discussion on 3 main areas.

- The interpretation of the code as to when councillors were operating as individuals rather than as councillors;
- the impact of increased sanctions;
- what to do about intimidation of individual councillors.

There was a lively debate about whether the onus should be on an individual to demonstrate that he/she wasn't acting as a councillor, and that the presumption should be that the person was acting as an individual and not in their councillor role. It is fair to say there was no overall agreement, but that the whole area needed clearer guidance and clarification, because this was often where a complaint would start. Several members argued strongly that they were entitled to have personal views and to express them, and that this should be recognised in the Code of Conduct.

There was discussion around the use of social media; that statements made prior to people becoming councillors could be used against individuals once they became councillors and the fact that false information or fake news relating to individuals could not be removed easily. Several members reflected that they had to think more carefully since becoming councillors as to how they responded to issues on social media. There was agreement that this whole area needed much more clarity and guidance from MHCLG.

There was a general recognition and agreement that the current sanctions arrangements were less than satisfactory, but there was less agreement as to how they might be strengthened. Several members disagreed with my thoughts about suspension, although in discussion there seemed to be acceptance that suspension from committees, working groups, access to the office (as examples) was appropriate, but several members believed that once elected, a member should have the right to attend Full Council, and vote on budget matters. There was more agreement that councils should be obliged to implement recommendations from the Standards Committee, and that the latter should be given more teeth in that respect.

There was no support for my suggestion that Standards Committees could have the power to fine councillors from principal authorities who received allowances. There was however a recognition that if the Standards Committee imposed a recommendation that the particular councillor be excluded from committees and other activities which attracted a special responsibility allowance, they would in fact be financially penalised. It was never the intention to suggest that councillors who are not in receipt of allowances should be fined.

The committee recognised that where criminal proceedings were involved, the courts had added powers in relation to disqualification. There was no suggestion that this should be changed, or that Standards Committees should have additional powers over disqualification. This should remain a matter for the courts alone.

One area that we didn't look at particularly, was publicity once a Standards Committee decision had been reached. Reference was made to public humiliation being a powerful influence on how a councillor might behave, but we didn't discuss

the pros and cons of the Standards Committee issuing a press release. This is another area that needs much clearer guidance and clarification.

The last discussion in the committee was around intimidation of individual councillors. There was a recognition that this is an area fraught with difficulty, and often manifests itself through social media outlets. The committee reiterated its view that there should be much greater ability to have abusive or fake news comments deleted from social media sites. Being in the public eye inevitably means that some people will disagree with views that individual councillors express, whether through social media, written articles in the press or indeed in conversation. Sadly, there is a general perception for many people that individuals who become councillors are only interested in what they can take out of it, and therefore abusing councillors is, in their eyes, perfectly acceptable. The committee members agreed that integrity was a vital part of being a councillor, and there should be more emphasis on this. Not easy to see how we can change people's perceptions though.



5th April 2018

Dear Sir/Madam

Review of Local Government Ethical Standards: Stakeholder Consultation

We welcome the opportunity to respond to the stakeholder consultation on the Review of Local Government Ethical Standards.

Wakefield Council appointed a Standards Committee from 1 July 2012 as part of its local arrangements, aimed at ensuring that the Council met its duties under the Localism Act 2011 and promotes and maintains high standards of conduct amongst elected Members. The Standards Committee is also responsible for considering allegations of misconduct, and makes recommendations to full Council as necessary, following any investigations into Councillor misconduct.

The consultation questions were considered by the Standards Committee at its meeting held in March 2018. The attached response is submitted jointly by the Portfolio Holder, Corporate Services (Councillor Shaw) and Chair of the Council's Standards Committee (The Very Reverend George Nairn-Briggs).

The Council and Standards Committee look forward to the publication of the Committee on Standards in Public Life's review outcome and recommendations.

Yours faithfully,



Councillor Les Shaw

Portfolio Holder, Corporate Services



The Very Reverend George
Nairn-Briggs
Chair, Standards Committee

Review of Local Government Ethical Standards: Stakeholder Consultation

- 1 a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
Under the current standards regime for local government, the arrangements that have been put in place by Wakefield, work well to ensure high standards of conduct given the existing statutory requirements.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

The most significant gap in the current regime is the lack of significant sanctions available to local authorities in the event of a finding of a breach of the code of conduct.

2. Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Wakefield Council adopted a Code of Conduct, which in part was based on the former statutory Model Code of Conduct. It is considered that this Code, which is kept under constant review by the Standards Committee, is easily understood by Members. There is a full induction provided to all Members on election (re-election) which includes specific training on conduct issues and further training session and guidance is provided by the Monitoring Officer on a regular basis throughout each Municipal Year. The induction process and member training in general, is kept under constant review.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

These requirements are appropriate as they stand under existing legislation, but there can be significant differences between the requirements from one authority to another.

3. Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

The Council appointed a Standards Committee, with an independent chair, whose remit includes consideration of allegations of councillor misconduct and recommendations to full Council on allegations of Member misconduct. Allegations are considered, investigated and decided upon fairly and with due process.

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

The Standards Committee considers all written allegations of councillor misconduct through a sub-committee. The complainant and subject member are permitted to make written representations and provide evidence if required. If the allegation is referred for investigation then the Monitoring Officer appoints an independent investigator to undertake this task who will provide a written report to the Standards Committee for consideration. At each stage the views of the Council's "Independent Person" are sought. A final recommendation is then made to full Council on whether there has been a breach of the Code of Conduct and whether further action is required.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

It is considered that within a local (Wakefield) context this requirement is sufficient.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Locally, the Monitoring Officer provides guidance and advice to the Standards Committee when it is considering allegations of Member misconduct. The Monitoring Officer does not make any decisions on potential code breaches, and at the request of the Standards Committee (if required) appoints independent investigators.

4. Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

The view of the Standards Committee is that under the current standards regime, existing sanctions are not sufficient.

Additionally, there is no power to suspend a councillor who is the subject of an investigation or charged with a serious criminal offence. People do not understand why this is so, when in employment law people can be suspended, but not their local councillor in the same situation.

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Should a Member be found to have breached the Code of Conduct then the following sanctions are available to full Council (on recommendation from the Standards Committee):

- Publication of the findings of the Member(s) conduct;*
- Censure of the Member(s);*
- Removal of the Member from a position of special responsibility, committee, sub-committee, outside body etc.**
- Recommendation of training**

· *Withdrawal of facilities provided to the subject Member(s) (e.g. IT equipment) or restrict access to staff/council buildings*.*

**This may be referred to the relevant Group Leader (if applicable) on initial consideration of an allegation of misconduct.*

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

The Standards Committee consider that local authorities should have the ability to use additional sanctions as necessary, (e.g. at the least the ability to suspend in the most serious cases, as was available under the previous regime). Any sanctions would require suitable safeguards to be put in place to ensure fairness and consistency across the country and not just at a local level.

5. Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

Yes, within the existing standards regime, the arrangements in Wakefield are satisfactory.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

This is broadly considered to be satisfactory. Locally a Member declaring such an interest is also required to withdraw from the meeting room during consideration and voting on the matter. In relation to dispensation, the legislation should be amended to explicitly state matters that do not require a Member to request a dispensation (e.g. setting of the council tax). Whilst the government issued guidance suggesting that a dispensation was not required on this issue, it is not stated clearly in the legislation.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

The Council requires the disclosure of "personal" and "prejudicial" interests, broadly in line with the requirements of the former standards regime.

6. Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

The Council has in place a Whistleblowing Policy, which is regularly reviewed and is available on the Council's website. It is considered this arrangement is satisfactory.

7. Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?

Generally, a local authority could take steps to ensure that the Member Code of Conduct and their Councillor complaint processes are widely accessible. There can be large variances in how complaints are dealt with across local government, particularly around complaints

- j. What steps could *central government* take to improve local government ethical standards?

As previously stated there is an argument for more substantial sanctions to be made available for breaches of the code of conduct (which may in some cases act as sufficient deterrent). In addition it could be argued that there should be one (Model) Code of Conduct issued by central government ensuring that all Members are subject to the same requirements irrespective of the authority they represent.

8. Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?

- i. What measures could be put in place to prevent and address this intimidation?

Whilst it is acknowledged that local councillors may face intimidation, this is something that is best answered by individual members and liaison with the police. The Standards Committee is aware of the work already undertaken by the Committee on Standards in Public Life regarding intimidation in public life and the proposals put forward in relation to local government.

Consultation questions

	Questions	Responses
a	Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.	They are not working because although they are well thought out and meet the requirements they have no teeth and are difficult to enforce
b	What, if any, are the most significant gaps in the current ethical standards regime for local government?	The lack of suitable enforcement measures and criteria
Code of Conduct		
c	Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?	They are fine words but have little meaning WHEN SUBJECT TO SCRUTINY. Respect and good behaviour are laudable goals but open to individual interpretation.
d	A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.	They are appropriate but Local Authorities neither have the will or the staff to enforce these codes.
Investigations and decisions on allegations		
e	<p>Are allegations of councillor misconduct investigated and decided fairly and with due process?</p> <p>i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?</p> <p>ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision</p>	Allegations are investigated fairly but the process is not widely known or open and is thus subject to lack of authority

	<p>process? Should this requirement be strengthened? If so, how?</p> <p>iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?</p>	
Sanctions		
f.	<p>Are existing sanctions for councillor misconduct sufficient?</p> <p>i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?</p> <p>ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?</p>	<p>Very few sanctions available other than a 'slap on wrist' which demeans the whole process. Sanctions are not widely known or agreed.</p>
Declaring interests and conflicts of interest		
g.	<p>Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.</p> <p>i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?</p> <p>ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.</p>	<p>Councillors only have to declare an interest if they have one and some decide to say nothing as statement that they have no interests. This brings the system into disrepute. Everyone should have to declare whether they have any interests or state that they do not.</p>
Whistleblowing		

h.	What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?	Unsatisfactory. It is still the case that the whistleblower becomes the guilty party and is penalised.
Improving standards		
i.	What steps could local authorities take to improve local government ethical standards?	Better enforcement
j.	What steps could central government take to improve local government ethical standards?	As above
Intimidation of local councillors		
k.	<p>What is the nature, scale, and extent of intimidation towards local councillors?</p> <p>i. What measures could be put in place to prevent and address this intimidation?</p>	Very Little.

REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS;
RESPONSE FROM THE YORKSHIRE DALES NATIONAL PARK AUTHORITY

A.	<i>Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why</i>
A1	Yorkshire Dales National Park Authority (YDNPA) is established by legislation which states that the Authority has 25 Members. Fifteen are appointed by local authorities and the other ten by the Secretary of State. Of the Secretary of State appointed Members, four are Parish Members, appointed by the Secretary of State on the nomination of the parish councils within the National Park. There are notable differences from the way this Authority operates to other local authorities. This Authority does not have political groups. This means that the understanding of "collective responsibility" amongst members as it is understood within other local authorities is less evident. We are in the unusual position that our six Secretary of State members have an annual review of their performance and conduct through the Secretary of State review process, none of the other members do. Members are appointed, not directly elected so no facility of 'judgment by the ballot box' and the decision on who is appointed is at the sole discretion of the appointing body.
A2	The Authority has a duty to promote and maintain standards. We have achieved this through the existing structures, processes and practices we have in place which work well within this Authority. The Authority has based its corporate governance arrangements on the "Good Governance Standard" produced by the Independent Commission on Good Governance in Public Services, as customised for local government into the Framework "Delivering Good Governance in Local Government" by CIPFA (the Chartered Institute of Public Finance and Accountancy) and SOLACE (the Society of Local Authority Chief Executives) (updated in 2016). This framework defines the principles that should underpin the governance of each local government body, and provides a structure which should assist individual authorities with their governance arrangements.
A3	The Authority's Code of Local Governance explains how the Authority translates the governance principles into practice. All Members of the Authority are collectively and individually responsible for good governance. Primary responsibility rests with the Chair of the Authority who has a key role in ensuring there is a culture within the organisation which reflects its values. The Chair is supported in this role by all Members, but in particular the Deputy Chair, the Committee Chairs, and the Member Champion for Corporate Management.
A4	The Audit & Review Committee is responsible for advising the Authority on its corporate governance policies and agenda, and implementing and managing the Authority's agreed policies in this area. It receives an annual corporate governance report from the Monitoring Officer.
A5	The Standards Committee has an important role in the ethical governance of the Authority since it deals with complaints of breach of the Code of Conduct by a Member, and also with applications by Members for dispensations to speak, or to speak and vote, when they have a disclosable pecuniary interest. The Committee has the power to make recommendations to the Authority on issues of Member conduct, where these arise out of its consideration of complaints or

	applications for dispensations.
A6	The Local Governance Code contains the 2016 core principles: Principle A "Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law" is particularly relevant. This principle is supported by a suite of documents including the Member Code of Conduct and the Authority's Core Values.
A7	Whilst the governance arrangements are embedded and work well, issues will arise from time to time. These issues relate mainly to declarations of interests and behaviour at meetings and outside of meetings when decisions taken by the authority are sometimes challenged by individual members. The current process for dealing with allegations under the Member Code of Conduct has lost credibility because the sanctions in place are considered to be ineffectual to deal with serious allegations of Member conduct. The lack of teeth is the biggest problem; notwithstanding a lack of deterrent effect, it also suggests that standards are not taken seriously so why should people respect them. The public are aware that procedures have no teeth and this increasingly means that the good up front work we are doing is undermined and the whole system is called into question.
B .	<i>What, if any, are the most significant gaps in the current ethical standards regime for local government?</i>
B1	The current system could be improved upon in two respects: having one model code which applied to all local authorities would introduce a consistent approach and may in some cases drive standards up; secondly that code should be backed by higher sanctions than are in operation at present.
C.	<i>Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?</i>
C1	The Authority's Member Code of Conduct was reviewed in June 2016. As part of that review we looked at the Member Codes of Conduct adopted by our neighbouring authorities and other national park authorities to see if they pointed to areas for improvement
C2	We found that some local authorities had grouped together to adopt a common approach but this was not the case across all counties and districts and as a result there were slight variations in the approach taken
C3	For example: some Member Codes of Conduct include the Nolan principles in full as an Appendix, others give a brief mention of the principles in opening paragraphs. In relation to behaviours and in particular in relation to "respect", some Member Codes of Conduct mention courtesy and respect; others use a double negative "you must not treat others with disrespect; others " behave in such a way that a reasonable person would regard as respectful."
C4	This in practice means that those YDNPA Members who are also county, district, or parish members need to have an understanding of - and operate to - three different codes depending on which local authority meeting they are attending.
C5	The YDNPA Member Code of Conduct includes the Nolan principles in an Appendix. The Code is clear and is easily understood. It is proportionate to the Authority's business and is very clear on the standards of behaviour expected. One outcome of the review was to amend the requirement in the member code of conduct from, "you must treat others with courtesy" to "you must treat others with courtesy and respect".
C6	Our Member induction process includes an explanation of the governance framework including the ethical governance arrangements and the provisions

	of the Authority's Member Code of Conduct
D.	<i>A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why</i>
D1	The conclusion reached on review of the YDNPA's Member Code of Conduct was that there were many different codes in operation with slight variations in practice, for example the approach taken by different authorities to the Seven Principles of Public Life. There are also different approaches taken to the requirement for registering and declaring interests.
D2	Example . Our sample indicated that most codes clearly set out disclosable pecuniary interests, but some require that a Member must leave the room, some codes do not. Most codes explain the procedure for obtaining dispensations .On declaring a financial or wellbeing interest some codes adopt a light touch approach and state this is a personal interest, which means Members may remain and vote. Others have retained provisions in their code which are in line with the "old " personal and prejudicial test, requiring Members not to vote but they may stay in the room; some authorities have introduced a standing order requiring that Members must leave the room.
D3	A model code would assist consistency and clarity for Members, and may improve confidence and so assist in driving standards up.
E.	<i>Are allegations of councillor misconduct investigated and decided fairly and with due process?</i> <ul style="list-style-type: none"> <i>What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?</i> <i>Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?</i> <i>Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?</i>
E1	The Authority has reviewed its processes for dealing with investigating and deciding upon allegations of breaches of the Code.
E2	Based on the number of complaints this Authority deals with, there is no evidence to suggest that additional safeguards are required or that the requirement to seek the views of the Independent Person needs to change. The arrangements in place for dealing with allegations require that the views of the Independent Person are recorded, and if the decision taken differs from views of the Independent Person then the reasoning for this should be given.
E3	The procedures for assessing complaints are clear on when decisions are taken by the Monitoring Officer, when those decisions are taken in consultation with the Chair of Standards Committee, and when matters are referred to the Standards Committee for consideration. The Monitoring Officer is not involved in investigations, and acts as advisor to the Panel; so does not decide on code

	breaches. It is fair to say that we have not had to “road test” these procedures yet.
F.	<i>Are existing sanctions for councillor misconduct sufficient? What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance? Should local authorities be given the ability to use additional sanctions? If so, what should these be?</i>
F1	The main issue is that the current process for dealing with allegations under the Member Code of Conduct has lost credibility because the common law sanctions are considered to be ineffectual to deal with serious allegations of Member conduct.
F2	The sanctions the Authority has in place are censure; publication (in whatever way might be chosen) of the fact that the Member has been found to have breached the Code of Conduct; recommendation to the Authority to remove a Member from any Committee or outside body appointment(s); recommendation to the Authority to restrict the Member's access to Authority premises, facilities (so long as they are still able to perform their essential role); asking the Member to undertake training (with liberty to apply one of the other sanctions if they refuse to do so).
F3	The process works well in that there is flexibility to deal with complaints through informal resolution, where it is appropriate and proportionate to do so. Criminal proceedings may be taken in relation to a failure to declare a disclosable pecuniary interest. So the systems operate for both minor infringements and serious infringements, but what is lacking is the power local authorities had prior to the Localism Act 2011, to suspend/disqualify a Member for short period of up to 6 months in cases which are considered to be serious or persistent breaches.
G.	<i>Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.</i> <i>A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?</i> <i>What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.</i>
G1	We consider the arrangements are satisfactory
H	What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?
	We have recently reviewed the Whistleblowing Policy. Having regard to size of this Authority the word “whistleblowing” was considered to be negative and “offputting”. We changed the title of the policy to Confidential Reporting Policy and altered the style of the Policy but not the substance. In all other respects the arrangements were considered satisfactory.

I	What steps could <i>local authorities</i> take to improve local government ethical standards?
I1	Sharing resources may work for bigger authorities with a large number of complaints although size, distance and number of complaints at this Authority would not justify this particular approach.
J	What steps could <i>central government</i> take to improve local government ethical standards?
J1	Introduce legislation on a model code of conduct and penalties , suspension and disqualification. There needs to be some mechanism for sharing best practice and experience, and supporting monitoring officers so that they do not feel isolated and vulnerable. Reinstating the Standards Board might be the unrealistic ideal, but some independent central resource would be a start.
K	What is the nature, scale, and extent of intimidation towards local councillors? What measures could be put in place to prevent and address this intimidation?
	We have no comments

SUBMISSION 137

To whomever it may concern,

Please find below the responses to the aforementioned review on behalf of the Monitoring Officer and Deputies of the Isle of Wight Council (IWC).

The Isle of Wight Council is a Unitary Authority with 39 council wards covered by 40 councillors (one being a two member ward), in addition the Island is totally emparished and has 33 town or parish councils covering a wide range of different communities, each with different needs, priorities and issues. It is not the view that the Island is unique in regard to ethical standards, although we felt it was important that our views or experiences were considered as part of this review.

- a) In the main our response to this question would be positive. However, we have elsewhere in our responses below suggested how improvements or amendments could be made to further ensure high standards of conduct.
- b) I believe we have addressed this in the above response.

Codes of Conduct

- c) We have not experienced many problems with the adopted codes of conduct and whilst members do sometimes benefit from a degree of explanation, in the main they are easily understood and clear.
- d) We believe that the requirements as stated are sufficient. However, a key aspect of ensuring copies of any registers of interest are received in a timely manner is through maintaining a good relationship with the Town/Parish Clerks.

Investigations and decisions on allegations

- e) Yes we believe so, although it has fortunately been some time since a complaint has progressed to the investigation stage:
 - i) The Monitoring Officer maintains a relatively small budget should there be a need to incur any expense in relation to an investigation and the councils constitution makes it clear that the Monitoring Officer will be provided with sufficient resources to undertake their duties. As such this would include the

allocation of any investigation to a range of experienced officers from across the authority. We have no additional concerns to raise.

ii) We are happy with the current arrangements.

iii) As explained above, it would be very unusual for the Monitoring Officer or one of their deputies to become over involved in any investigation, due the reasons you raise within the question. We would always seek to appoint an investigating officer who was independent and therefore would not be subject to any conflict of interest. Such an approach by default protects the Monitoring Officer from any risk.

Sanctions

f) We do not believe the current sanctions are sufficient.

i) We have four sanctions that we can currently apply (1. Censure, 2. Refer to Group Leader for action, 3. Publish the findings, 4. Local Resolution, such as a letter of apology). We are of the view that whilst these sanctions have their place, they are not sufficient to deter breaches. The current sanctions could either deter a complainant from lodging a complaint as the sanctions are deemed too weak or elected members could choose to seek notoriety for "pushing the boundaries" of the Code safe in the knowledge the consequences are relatively tame.

ii) It is our view that further sanctions are necessary and we would suggest the addition of the ability to suspend a councillor(s) up to a maximum of three months, which would be used proportionality.

Declaring interests and conflicts of interest

g) We are satisfied that the current arrangements are satisfactory.

We have no further comment on the remaining questions contained within the survey and will maintain an open mind to suggestions or comments you may receive from other contributors.

I trust this submission meets your requirements. Should it not do please contact me and I will endeavour to make any necessary adjustments

Regards

Simon Wiggins (*PRINCE2® Registered Practitioner*)

Members Support Manager

Isle of Wight Council

Dear Sirs,

COMMITTEE ON STANDARDS IN PUBLIC LIFE CONSULTATION ON LOCAL GOVERNMENT ETHICAL STANDARDS

I set out below the Consultation Response on the above matter on behalf of Ashford Borough Council's Standards Committee:

General Questions

- l. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
- m. What, if any, are the most significant gaps in the current ethical standards regime for local government?

ABC Response

ABC currently has 43 members and operates the 'strong leader' model of executive government. Structures are determined locally, driven by the provisions of primary legislation. There is no longer a national body to oversee arrangements or provide guidance on ethical standards. In Ashford, a 'Kent Model' of Code of Conduct and Arrangements for Dealing with Complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations. The Council has also adopted – and recently reviewed – a Good Practice Protocol for councillors dealing with planning matters.

The Council's processes for receiving, considering and investigating complaints are therefore tried and tested and regarded as sound and effective. Although the level of complaint has been low since the new regime came into effect, during 2017 numbers of complaints did rise, principally on account of social media use/misuse by councillors.

Probity and Code of Conduct training is provided for all Members upon election and the Council has in place an experienced Independent Person to fulfil the statutory role required. The Council's Standards Committee is the principal forum for consideration of probity and ethical issues and receives and considers the Monitoring Officer's Annual Report each year on Code of Conduct, probity and Ombudsman complaint matters.

In relation to gaps in the local government regime the Council is aware of ongoing concerns nationally regarding (a) the effectiveness of the current range of sanctions available in the event of findings of breach of the Code of Conduct and (b) the legal scope of Disclosable Pecuniary Interests. These matters are picked up separately under the relevant questions below.

Codes of conduct

- n. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- o. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

ABC Response

The ABC Code follows a 'Kent Model' developed in line with the former national Code. It is very much based upon the Seven Principles of Public Life and it is considered to cover an appropriate range of conduct and declaration of a wider range of interests than just the statutory DPs. The 'Kent Model' requires declaration of 'Other Significant Interests' (OSIs) and non-participation in decisions where such interests arise. Having said this, Codes of Conduct must be kept up to date with social developments and changes in public perception and opinion. For this reason ABC recently agreed to promote amendments to its Code to better capture the risks inherent in the growing use of social media by councillors. Comprehensive induction programmes are provided for all borough councillors upon election, including code of conduct and probity training. Parish Councils are invited to participate where possible.

Investigations and decisions on allegations

- p. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could

Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

ABC Response

The 'Arrangements' adopted by the Council for dealing with Code breach complaints are comprehensive and were developed as a Kent-wide model based upon experience with earlier standards regimes. As such they are considered robust, proportionate and fair. The involvement of the Independent Person at appropriate stages is safeguarded in the adopted Arrangements. In general the arrangements under the new regime work better and in a more proportionate way by giving councils greater flexibility to manage complaints. It is considered important that the Monitoring Officer retains an ability to advise and guide Standards Committee and any Hearing Panels in the event of matters being referred for investigation. For this reason, investigations should be carried out independently either by suitably qualified staff or by external investigators.

Sanctions

- q. Are existing sanctions for councillor misconduct sufficient?
- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

ABC Response

Under the former national regime, a wider range of sanctions was available in the event of a breach of the Code of Conduct. In particular, it was possible in serious cases to suspend a councillor or even disqualify. Although these were rarely used, they did provide options in the most serious or persistent cases. Under the current regime, the range of sanctions is set out in the adopted Arrangements but is more limited and relies upon public censure as the principal sanction. Other possible sanctions are limiting access to resources, requiring training to be given or recommending removal from certain committees or roles. However, the latter requires co-operation from group leaders and full Council and so relies upon party discipline. Criminal prosecution for certain failures regarding pecuniary interest declaration is obviously available only in a very narrow context and is not a sanction available to Standards Committees.

Discussion about the appropriateness of the more limited range of sanctions has been ongoing nationally ever since the new regime was introduced in 2012. There is a school of thought that depriving councillors of their representative role – through suspension or

disqualification – is inappropriate for an elected office. On the other hand, having nothing stronger than censure in cases of serious or persistent misconduct is seen as equally inappropriate by many. The options of suspension, or perhaps some kind of ‘recall’ right (whereby a councillor would have to seek re-election) are therefore seen by some as necessary for use in the most serious cases, provided appropriate safeguards are put in place.

The Council is aware that in the past CSPL has itself expressed doubts about whether the new “slimmed down arrangements” would prove sufficient (for example in its publication “Standards Matter” in January 2013). Also in its Annual Report in September 2014 the Committee considered that:

“the effectiveness of the sanctions regime for non-adherence to local authority codes of conduct, which apart from criminal prosecution provides only for censure or suspension from a particular committee, remains an issue of concern. We are aware that there have been recent individual cases that illustrate this, in particular the lack of a sanction to suspend councillors who have seriously breached the Code of Conduct. In contrast to the recent public debate on parliamentary standards calling for greater sanctions, tightening of codes and a greater independent element, local government is now largely self-regulated with no systematic approach to conduct issues and limited sanctions. There remains in our view a significant risk under these arrangements that inappropriate conduct by local authority members will not be dealt with effectively, eroding public confidence and trust in local government”.

It is worth noting as well that in 2013 in Thanet an Independent Members Report to the Council identified that there had been occasions then where councillors had stated they did not intend to comply with standards hearing outcomes because of the absence of meaningful sanctions.

Whilst this Council has no experience of the problems alluded to in these other reports, it recognises there is a credible argument to consider the introduction of a more powerful sanction such as temporary or partial suspension provided appropriate safeguards and procedures are put in place to ensure its use only in the most serious cases. Other options for consideration include a possible “right of recall” for Local Councillors or the introduction of greater local discretion on the range of sanctions available.

Declaring interests and conflicts of interest

- r. Are existing arrangements to declare councillors’ interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in

relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

ABC Response

As already indicated, the Council's Code of Conduct does include a duty to declare interests – and withdraw from meetings – on a significantly wider basis than just the statutory DPIs. Indeed the Council has adopted very much best practice in this regard by ensuring each agenda for each public committee meeting has a first item under which members must declare interests in these categories or indeed other interests on a voluntary basis for transparency reasons. Each agenda includes a detailed explanation of the rules on declarations. This process helps promote an effective, open culture of declaration of interests.

However, there remains significant concern among practitioners and some members about the lack of clarity about the legal scope of the DPI regime in some circumstances. This is particularly unsatisfactory bearing in mind that criminal liability can arise from breaching the statutory DPI rules and it is imperative therefore that the rules are clear, clearly understood and consistently applied. At present this is not the case.

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI "in any matter to be considered at a meeting". Under the former regime, the situation was much clearer as an interest arose where a matter under consideration "relates to or is likely to affect" the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.

The problem is best illustrated by a simple and common situation from the standard planning application decision-making process. Example: A councillor who is a member of the Council's Planning Committee lives next to a development site. He owns his home and believes the development is likely to materially affect his amenity and value of his house. The application comes before the Committee for decision. Many Monitoring Officers would not regard the councillor's land interest as a DPI in this situation. This is because the councillor's land is not the subject of the decision, albeit that the decision would affect his land interest. However, some Monitoring Officers do regard the councillor's land interest as a DPI in the planning decision on the basis the interest could be said to be "in the matter to be considered" since it would be

affected by it and the public might have expected the legislation to apply in this way.

It is particularly unsatisfactory that such lack of clarity should surround a key part of the current ethical standards regime. It is imperative that the matter should be clarified and resolved in the public interest, especially since criminal liability may turn on the interpretation in a particular case.

Whistleblowing

- s. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

ABC Response

A whistleblowing policy is in place at the Council. It is primarily available to officers (and employees of contractors). Members of the public would normally be directed to the Council's complaints procedures or to statutory officers for specific areas of complaint. The Council has no experience of a councillor being unable to raise and pursue a concern through normal internal channels. The arrangements are considered satisfactory.

Improving standards

- t. What steps could *local authorities* take to improve local government ethical standards?
- u. What steps could *central government* take to improve local government ethical standards?

ABC Response

Increasing the visibility and accessibility of the code of conduct and complaint process as part of website redesign and digital transformation projects would raise awareness and make the system easier to use.

Also providing more structured guidance around the risk of misuse of social media could help reduce the incidence of complaints.

ABC is proposing to take steps on each of these matters.

In terms of central government, early consideration of the issue of sanctions, and the legal scope of the DPI regime would help raise confidence and provide greater clarity in the system.

Intimidation of local councillors

- v. What is the nature, scale, and extent of intimidation towards local councillors?

- i. What measures could be put in place to prevent and address this intimidation?

ABC Response

The personal contact details of members are generally in the public domain but in exceptional cases these can be removed if there is evidence of a risk of intimidation or violence. Details have been removed or withheld in a small number of cases at Ashford.

In December 2017 the CSPL published a report “Intimidation in Public Life”. This arose principally from the level of intimidation experienced by parliamentary candidates at the 2017 General Election. Widespread use of social media platforms were seen as the most significant factor driving intimidating behaviour. The report makes a number of recommendations relevant to the local government sector and in particular the following measures are supported:

- proposed legislation to shift some balance of liability for illegal content to social media companies and to ensure removal of intimidatory content.
- establishment of social media reporting teams during election campaigns to ensure swift action on intimidatory content
- political parties themselves setting clear expectations in a joint code of conduct about behaviour expected of their members prohibiting intimidatory behaviour.
- possible creation of new electoral offences on intimidating behaviour.
- better response mechanisms and training for police on intimidation in election campaigns.

Yours faithfully

A black rectangular box redacting the signature of the Corporate Director.

Corporate Director (Law and Governance)
& Monitoring Officer

Review of Local Government Ethical Standards: Stakeholder Consultation

Response of South Somerset District Council

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

The sanctions that can be applied are too limited; whilst for the majority of cases the available sanctions would be sufficient to address and correct the behaviour, there is no effective way of dealing with the most serious or persistent breaches.

The responsibility for town/parish council complaints resting with the district council monitoring officers represents a significant drain on district council resources, not least because much of what is referred is outside their jurisdiction in any event; an independent process for dealing with breaches at town/parish council level would ensure that such complaints were dealt with in a more timely way whilst ensuring that monitoring officers are able to focus on the other aspects of their role.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

As above, an appropriate level of sanction for the more serious and persistent cases, and an independent body to deal with complaints at town/parish level.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Generally yes, but because most principal councils have adopted very similar codes. Greater consistency could be achieved through a single code for principal authorities and a single code for town/parish councils and this would assist with clarity.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

There is a lack of clarity for some councillors around the distinctions between disclosable pecuniary, personal and personal & prejudicial interests, and this confusion is more evident at town/parish level. There is too much scope for local interpretation around disclosure, which is unhelpful given the criminal sanctions attached to disclosable pecuniary interests.

Investigations and decisions on allegations

- w. Are allegations of councillor misconduct investigated and decided fairly and with due process?

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

We have good processes in place for investigating and deciding allegations, however local authority meeting arrangements can make it difficult to run hearings in confidential session and this poses a risk to running a fair process. There is also the risk that member level panels will be subject to political influence. An independent panel would not be constrained by local authority meeting arrangements and would be outside of political influence.

However, the process is expensive and time consuming, especially given the limited sanctions available, and so is rarely used. Monitoring officers will try to resolve complaints informally rather than proceed to an investigation.

- i. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Yes, the existence of the Independent Person provides a helpful check for the monitoring officer and is a source of support.

- ii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

We would always use someone else to undertake any formal investigation so as to avoid such a conflict.

Sanctions

- x. Are existing sanctions for councillor misconduct sufficient?
What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Yes for the less serious breaches that we resolve informally, e.g. by apology or training.

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

The sanctions are adequate for less serious matters, but not for the more serious breaches. A power to withhold allowances and to suspend for a limited

period (i.e. up to 6 months) would be a powerful deterrent and appropriate for breaches that require a hearing.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Broadly yes in terms of registration, but the requirement to disclose is quite limited; it would provide greater clarity for the public if DPIs had to be disclosed at a meeting in the same way as personal and prejudicial interests.

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

We include an item for declarations on every agenda of all decision-making meetings. We provide training to councillors on the Code of Conduct, and the monitoring officer is available at any time to discuss with any individual member about a potential conflict of interest. However, the declaration of a personal or prejudicial interest is a matter for the individual member and requires judgment on their behalf, and so it is difficult to achieve consistency.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

We have a Whistleblowing Policy in place which appears to be satisfactory.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Provide more training to town and parish councils if resources allowed, and provide refresher training for district members on an annual or bi-annual basis.

What steps could *central government* take to improve local government ethical standards?

1. Give councils greater sanctions to deal with breaches.
2. Empower town and parish councils to deal with their own complaints or establish an independent body to deal with the same.

3. Empower Standards Committees to be able to “call in” individual councillors where there are concerns about behaviour, rather than relying on a formal complaint being made.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

Petty and/or persistent complaints, particularly at the town/parish level, aren't uncommon and the complainant will abuse the local standards process to try to sway matters in their favour.

Town/parish clerks have to deal with a lot of petty or spiteful behaviour and they may also, in frustration, refer matters to the monitoring officer because they feel they have no other avenue to deal with the complainant.

Greater clarity/power to identify a complaint as vexatious may help to limit (perceived or real) intimidation.

South Somerset District Council
11th May 2018

Consultation questions

The Committee invites responses to the following consultation questions.

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No. The absence of sanctions that standards committees or monitoring officers can apply to Members who are found to have breached the Code mean that the regime is effectively toothless. Members who are intent on engaging in abusive or bullying behaviour know that they can do so without any meaningful sanction such as suspension or disqualification from office being applied to them. This means there is no incentive on them to moderate their behaviour and those against whom the abusive or bullying behaviour is directed have to continue to live with that behaviour. The absence of sanctions also means that members of the public are sometimes reluctant to make complaints against Members who have breached the requirements of the code of conduct because they know that no meaningful sanctions can be applied against an elected Member.

For example a Member of East Riding of Yorkshire Council and Beverley Town Council was found to have breached the code of conduct due to an offensive remark placed on a social media platform. The Member posted a story relating to the fund set up in memory of the murdered MP Jo Cox. The story from the Guardian set out how much money had been raised for the fund. The Member posted a link to the story along with the comment 'I've donated the steam from my piss.' The post attracted numerous complaints from members of the public around the country. The Member was thrown out of their group on the Council and consequently was removed from all committees on which he sat. The Member was found to have breached the requirements of the code of conduct. The only sanction that could be imposed was a recommendation from the standards committee to each authority that they adopt a resolution calling on the Member to resign. This resolution was adopted by each Council but the Member has remained in post. The Council has had to explain to members of the public who quite rightly found the post highly offensive that they have no power to remove the Member from their post.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

The most significant gaps are –

- The lack of sanctions that can be applied against a Member who is found to have breached the requirements of an authorities code of conduct
- Independent and Town and Parish Council members of standards committees do not have a vote. Under the previous regime there was a requirement for standards committees to contain independent members and, for those principal councils who dealt with complaints relating to town and parish councillors, town and parish council representatives. It was also a requirement that standards committees be chaired by an independent representative. Under the current regime if a principal council choose to have a standards committee independent and town and parish council representatives on the committee are co-opted members and therefore cannot vote. It is important for a standards regime to contain proper oversight from those independent of any council in the area. It is also important that Members against whom allegations are made are judged by their peers. An absence of voting rights for independent and town and parish representatives hinders the effective working of standards committees.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood?

Yes.

Do the codes cover an appropriate range of behaviours?

Yes

What examples of good practice, including induction processes, exist?

East Riding of Yorkshire Council puts on annual training sessions on the Code of Conduct at venues throughout the area of the authority to which it invites representatives of town and parish councils in the area. The feedback from the training sessions is largely very positive and the sessions are valued by those who attend them.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand?

No.

If not, please say why.

See answer at g below.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

Yes

- i. What processes do local authorities have in place for investigating and deciding upon allegations?

East Riding of Yorkshire Council have largely continued with the processes and procedures adopted under the previous regime.

The process for dealing with complaints is attached.

- ii. Do these processes meet requirements for due process?

Yes

Should any additional safeguards be put in place to ensure due process?

Yes if the regime is amended to allow authorities to impose sanctions , see below.

- iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

It is sufficient for the purposes of the present regime. However if a decision is made to allow those deciding on complaints to impose

sanctions there will be a requirement to provide for a means of appeal against such decisions.

- iv. Should this requirement be strengthened? If so, how?

See above

- v. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

If a conflict of interest arose a Monitoring Officer could deal with it by handing the responsibility for dealing with an investigation to another senior officer. Monitoring Officers should be able to deal with attempts to exert undue pressure.

- vi. How could Monitoring Officers be protected from this risk?

The existing protections are sufficient.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

No

- vii. What sanctions do local authorities use when councillors are found to have breached the code of conduct?

Sanctions include –

Recommending the Member undertakes training
Recommending the Member apologises
Censuring the Member
Removing the Member from Committees
Removing a Members access to confidential material
A Council resolution calling upon the Member to resign

- viii. Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

No

- ix. Should local authorities be given the ability to use additional sanctions?

Yes

x. If so, what should these be?

- Restriction for a period not exceeding six months of that member's access to the premises of the authority of that member's use of the resources of the authority.
- Suspension of the member for a period not exceeding six months
- Partial suspension of the member for a period not exceeding six months
- Suspension of the member for a period not exceeding six months or until the member has either –
 - Submitted a written apology
 - Undertaken training
 - Participated in conciliation
- Partial suspension of the member for a period not exceeding six months or until the member has either –
 - Submitted a written apology
 - Undertaken training
 - Participated in conciliation
- Disqualification of the Member

If the above sanctions are allowed to be imposed then there should be a means of appeal (as referred to in e (iii) above) to a tribunal independent of the Council imposing the sanction. It is also submitted that such sanctions should only be available on the basis of the decision being made by a Standards Committee with an independent chair (see the second bullet point to b above).

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory?

No

If not please say why.

The prohibition on taking part in a debate and voting on a matter only applies to Members with a pecuniary interest in a matter and this only applies to interests held by the Member or their spouse or partner. There is no equivalent provision for close family members i.e. siblings , parents or children.

- xi. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

No.

- xii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements?

In common with most authorities the East Riding of Yorkshire Council requires Members to register and declare non-pecuniary interests.

- xiii. Are these satisfactory? If not, please say why.

Yes.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials?

The Council has a whistle blowing hotline and referral form details of which are contained on the Council's website. The whistleblowing process is administered by the audit team at the Council.

Are these satisfactory?

Yes

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

The steps that local authorities can take to improve local government ethical standards are limited by the extent to which central government gives local government the tools required to enforce ethical standards of behaviour i.e. the power to impose sanctions on members who breach the provisions of the code of conduct.

What steps could *central government* take to improve local government ethical standards?

Allow local authorities to impose meaningful sanctions on members who breach the provisions of the code of conduct.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

We are not aware that this is a particular problem in this area.

What measures could be put in place to prevent and address this intimidation?

Not applicable.

**Submission to the Review of Local Government Ethical Standards:
Stakeholder Consultation**

1. **Respondent:** [REDACTED] currently Independent Person for two local authorities, [REDACTED]
[REDACTED] NB I am not sure how many Independent Persons have been made aware of the Consultation – I have found out about it by chance a week before the closing date! I am responding as an individual Independent Person and not on behalf of any organisation. **I prefer my submission to be reported with anonymity.** I have good knowledge and experience of the current and previous ethical standards arrangements having previously worked as Investigator with Standards for England; I also have wide knowledge of complaints practice as adjudicator with OIA and NHS investigator. I was a Member of the Mental Health Act Commission for 11 years.

2. **Codes of Conduct** - there is a 'postcode lottery' of Codes of Conduct with large variations of scope, content and specificity. This can be problematic for complainants who need to be able to understand the scope of the Code and the complaints process and therefore how to frame their complaints. While many Parish Councils have adopted a Code based on a 'model code' or on the Principal Authority's Code, there are examples of Parish Councils failing to publish any Code, or adopting a Code which is not compliant with the requirement to reflect the 7 principles of public life. For example, one Parish Council has a Code which references some of the 7 principles under a heading of 'voluntary code' implying that compliance is optional. There is no mechanism for Parish Council Codes to be audited or reviewed so such issues do not get resolved.

The obvious solution would be for a standardised Code to be introduced which could be supported by local guidance.

3. **The Independent Person role** - the public may have concerns that the internal complaints process may be improperly influenced by political considerations or corporate protectionism. The Independent Person provides an important safeguard. The IP 'giving a view' is straightforward enough but the process of this being 'taken into account' could be strengthened and made more transparent by **making it a requirement for the Independent Person's view to be communicated to the parties**, not just to the authority, alongside the decision. As things stand, in the quite rare circumstance where there is a significant difference of view, this may be unknown to the parties; merely then to report that the Independent Person was consulted before the decision was made, may be misleading.

4. The IP role is used differently by different authorities. For example, some authorities encourage IP involvement in Standards Committees while others do not. The role is not currently supported by any network of IPs. Information

about good practice across authorities is not well disseminated. IP consultation may be reducible to 'ticking a procedural box' while with greater imagination and a little more central encouragement this potentially valuable resource could be used to greater effect in the local promotion of ethical standards.

The dual role whereby IPs offer a view to the authority while also available to give a view (or by implication support) to the subject member, is inherently problematic and is handled differently by different authorities. **Central guidance would be helpful to aid transparency and good practice.**

5. **Sanctions** - when a complaint is upheld, complainants (and the press) are sometimes surprised and disbelieving to find that there is no effective sanction. While in most cases 'naming and shaming' by reporting and censure can be an effective deterrent, for a minority it is not. **Reintroducing a power of suspension would bring the process more in line with public expectations of fairness.**

Review of Local Government Ethical Standards: Stakeholder Consultation

- a. Are the existing structures, process and practices in place working to ensure high standards of conduct by local councillors?

No, because there are no sanctions for parish councils to impose relating to conduct which is unrelated to declarations of interest. In the top two tiers of local government, political party rules and procedures help to ensure good standards of behaviour by elected members

- b. What if any, are the most significant gaps in the current ethical standards regime for local government?

The current code seems to be focussed on declarations of interest and does not address other issues which may hinder the work of parish councils, and there are no checks on declarations of interest.

Codes of conduct

- c. The code of conduct confuses people with regards to personal interests, and its focus is on pecuniary interest.
- d. The registering of councillors' interests is adequate but relies on members' honesty and is not easily verifiable.

Sanctions

- f. Existing sanctions for misconduct are insufficient inasmuch as the most that can be done is to bar a councillor from a meeting.

Parish Councils are reliant on the District Council Monitoring Officer to investigate and adjudicate, which take time. Again, the focus is on declaration of interest, but when relating to respect, integrity and conduct at meetings it appears that there is little that can be done.

Parish Councils should be able to carry out their own investigation and report and recommend a sanction to be verified by the District Council.

Declaring interests and conflicts of interest

- g. The duty is clear and fine as far as it goes but there is no way of verifying declarations of interests.

Also, there is no way to detect personation, ie to verify what a candidate states with regards to their address or other information. For parish councils, candidates have to live in the parish or within 5km of the boundary. When our parish queried a persons' address, the district council did not investigate. Although the Police were notified, they could not help without the district council's involvement.

Local knowledge can be very useful in this instance.

Improving standards

Local Authorities should be able to determine their own rules and impose minor sanctions (Eg barring from meetings for a fixed period, which if breached should be investigated by the Monitoring Officer.

Training should be mandatory for all councillors upon election or co-option, in standards of behaviour, standing orders, financial regulations, working with or managing staff, and the role of the clerk and RFO. If a councillor refuses to undertake training, they should be dismissed from office.

If a member's behaviour is so bad, and, if they refuse to leave when asked to leave by the chairman, the only recourse is to call the Police and they are much reduced in numbers and have more important things to do.

Local government ethical standards: stakeholder consultation

Introduction

Name: Fred Owen, aged 79, married with three daughters and eight grandchildren

I graduated in chemical engineering at Manchester University in 1962. My career was entirely in chemical manufacturing reaching Director of Technology level (CEng, FIChemE) with responsibility for HSE and Quality Assurance. Maintaining high standards of professionalism and integrity has been my lifetime motto. I took an active role in parish activities but after 7 years realised what was going on when a major issue arose in 2014.

I am an elector acting alone in what I believe to be the public interest, attempting to restore democracy, free speech, openness and honesty in local government. My submission is based on the experience of being involved in the detail of two major issues with Great Budworth Parish Council, in Cheshire West and Chester Borough. From both I have been dismayed at the lack of these key tenets in holding the PC to account for their decisions. I have found it unbelievably obstructive and lacking in fundamental principles of good conduct to the point of despair. Every answer I have been given has raised many new questions.

The first issue was about Communication, Consultation and Democracy in April 2014. I did not get answers to numerous questions so I gave up. The second was to ask two simple questions on 2 Nov 2016. **See Appendix 1 [not published]**.

It has become impossible to deal rationally with the PC and I have had no help, guidance or support other than resorting to the FOIA via the ICO, who have been brilliant. The issue is still ongoing where I have been forced to make a formal complaint to the CWAC CEO about a District Councillor. Most individuals would have given up long ago but my training prevents me. My trust in local governance has been shattered.

I make this submission out of principle with nothing to gain from correcting GBPC because we have moved. I feel for those in the community who are denied the truth by the Council's attitude to anyone who dares to ask them to account for their decisions. I think the C of C is not worth the paper it is written on. The Financial Regulations are either not understood or ignored. To them the FOIA may as well not exist. Breaches inferring gross misconduct are ignored. Complaints are deemed not to be complaints. Self interest prevails.

To explain the problem I faced, here are just a few simple facts which anyone can see without any in-depth investigation by an expensive investigator:

1. [REDACTED] refused to answer my initial enquiry for 11 weeks and have never raised it in a PC Meeting as requested. Why?
2. Four separate PC meetings' approved minutes on the website recorded 4 different values for the same item: so £2772.50=£2900=£3697=£3771.60 – a sure sign of something amiss. To this day no satisfactory explanation has been given. Why?
3. In Feb 2017 I received an offensive email from [REDACTED] who refused to apologise herself. (She did the same in 2014.)

4. [REDACTED] told the public they increased the 2016/17 precept by 4 p/m for a Band D property. The correct figure was 43p/m. [REDACTED] refused to tell the public the correct figure. They said the increase, (% not mentioned but was 11.1%) was due to rising costs in a zero inflation year. They changed their reason in the annual accounts.
5. Two finials were authorised for £1k each. The accounts recorded that the asset value had increased by £5200 because of the finials investment. In fact three were authorised, four were ordered by a resident, two have been installed and two remain in the Parish Hall loft.
6. Falsified minutes were sent to the investigating External Auditor, BDO. Three District Councillors were advised but did not even respond.

These prove there is a C of C compliance problem. I appealed for an independent investigation into all this but it has been refused by the Monitoring Officer and the External Auditor on grounds of expense to the PC.

The final straw is that I have recently discovered that [REDACTED] who said he had taken my complaint to the Monitoring Officer in early July 2017, and reported back to me that she could do nothing, had never actually met her. The Monitoring Officer has confirmed this. I wrote to the CEO to make a formal complaint about this deceit this week. **See Appendix 2 [not published]**.

These points demonstrate how impossible it is for an elector to get the truth if a Council is determined to cover its tracks. Not one Parish Councillor or District Councillor has stood up for the truth. There must be another motive to explain what is going on. There are no simple, effective procedures in place to stop this gross abuse of the C of C. Councillors are well aware of this and may play to it. In my submission I recommend actions which I believe will go some way to remedy this totally unacceptable situation, in a country proud of its democracy and free speech.

All of this could have been resolved in a short meeting to answer my two questions, which was repeatedly refused. Instead I experienced untold obstruction, false information, no transparency and absolutely no support or remedy after diligently following all the published procedures. I decided that complaining to the Monitoring Officer was so confusing and likely to be a waste of everyone's time. It has culminated in the public being denied accurate information and an appeal for an independent investigation direct to the CEO of CWAC.

Responses

My responses are numbered and given below to each question reproduced (**in bold**) in the order presented in the questionnaire.

- y. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

Response:

Absolutely not. There are no checks and balances to monitor or correct any failure to apply Standing Orders, the Members' Code of Conduct, Financial Regulations or the Complaints procedures at the basic level. The Clerk/RFO's role as the law and conduct monitor is not applied. The Monitoring Officer has no effective powers or sanctions which make it worthwhile a member of the public attempting to hold a Council or a Councillor to account. The whole system precludes any independent enquiry into their practices because of their prohibitive cost, which has to be paid by the Council from the Parish precept. Everything is stacked against an individual having any hearing or meaningful influence. It is far too easy for a council to cover up any issue they

wish to hide from the electorate unless it is taken to the media. Democracy, openness, transparency and objectivity are non-existent.

z. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Response:

b.1 the Clerk/RFO's authority is too weak. The Clerk/RFO is paid by the Council so is not inclined to criticise dominant Councillors. The Clerk must engage objectively (face-to-face if desired) with a complainant to discuss the issues.

b.2 There is nothing between a mild letter of rebuke from the Chairman of the Council and an expensive detailed investigation. In my experience councillors naturally tend to defend each other and objectivity vanishes

b.3 District Councillors do not hold parish councillors to account for breaches of the C of C .

b.4 there is absolutely no one to turn to for support for a resident who has a legitimate question to ask if the Council refuses to communicate with them. Their only remedy is to go to the ICO using the FOIA. That route is overloaded and painfully slow. I am still waiting for a decision on a case accepted in February –could take another 5/6 months.

b.5 the Monitoring Officer has no interest in the trivial matters arising within small parishes where a Councillor's conduct is dominant, but not in the public interest, compared to the major issues involved in Borough Councils.

b.6 Council's should treat residents, electors and tax payers as their customers and put them first, above self-interest.

b.7 there is no obligation for Clerks to copy complainants with the responses they give to the External Auditor. This has led to the auditor being hoodwinked with inaccurate or misleading information so the Auditor's report may be fatally flawed and closed without the complainant having any further say.

aa. Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood?

Response: I don't believe GBPC councillors knew what it was until I started asking questions and quoting it. It took the Monitoring Officer to get it onto the PCs website. It is not worth the paper it is written on unless it is enforced.

d.1 Do the codes cover an appropriate range of behaviours?

Response:

No. Expressions of interest are a large grey and open to wide interpretation, specially where planning permissions are sought, which might have a visual or near-neighbour impact on a particular councillor who opposes it without declaring an interest

d.2 What examples of good practice, including induction processes, exist?

Response: None known

bb. d.3 A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the

local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand?

Response: Yes. I believe they are adequate but there is absolutely no effective means of enforcing or monitoring their implementation.

cc. Investigations and decisions on allegations

e.1 Are allegations of councillor misconduct investigated and decided fairly and with due process?

Response: Not at all. They are ignored.

e.2 What processes do local authorities have in place for investigating and deciding upon allegations?

Response: None. They do everything possible to avoid an investigation. The processes in place are only implemented for serious cases of law breaking or involving large sums of money, say involving tens of thousands of pounds or criminal activity. An individual has to go through hoop after hoop and resort to applying the law to get anywhere. Persistence runs the risk of being accused of harassment, being vexatious or rude.

e.3 Do these processes meet requirements for due process?

Response: Definitely not.

e.4 Should any additional safeguards be put in place to ensure due process?

Response: Yes, urgently. A formal public warning letter from the Monitoring Officer to a Councillor for clear evidence of a breach of the C of C or Financial Regulations reported by an elector would be a big deterrent and reduce repeated failings. Three letters would make a Councillor ineligible for re-election. Many cases would not require an expensive legal investigation

e.5 Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

Response: This is too heavy handed for small Parish Councils. There is a whole spectrum of possible breaches of the C of C, many of which are clear cut and only need the scrutiny of an experienced investigator to substantiate the evidence. A short meeting with the complainant could often solve the issue. It would keep Councillors on their toes and raise standards by example.

e.6 Should this requirement be strengthened?

Response: See f.5 response. I believe the requirement needs to be tiered to suit the scale of the breach both in terms of seriousness and size of the small authority.

e.7 If so, how?

Response: Appointing independent investigators experienced in dealing with less serious breaches of the C of C which will prevent breaches becoming endemic and aid training to prevent recurrences.

e.7 Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

Response: Monitoring Officers will only get involved in small authority breaches of the C of C if they are serious and involve large sums of money because investigations are very expensive. In my case the MO declined to even raise the issue and said they had little power with sanctions over PCs any way, I was always referred to the PC's complaints Procedure which was a waste of time too because it is all too cosy in a small village community where everyone has to try to live together in harmony. There is no mechanism for complaining about a whole Council.

e.8 How could Monitoring Officers be protected from this risk?

Response: No experience so no comment.

f. Sanctions

f.1 Are existing sanctions for councillor misconduct sufficient?

Response: No.

f.2 What sanctions do local authorities use when councillors are found to have breached the code of conduct?

Response: I have found it impossible to find anyone to initiate an investigation into clear breaches of the Code and then they say in any case they have no sanctions to take even if the case is proven. The time and cost of the investigation inhibits any action. What price do you put on preserving the Nolan principles?

f.3 Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Response: Not at all. Unless value and resources are put on preserving the Nolan principles it will never change.

f.4 Should local authorities be given the ability to use additional sanctions?

Response: Definitely.

f.5 If so, what should these be?

Response: Tiered warning letter, depending on seriousness, describing the misconduct and the steps that will be taken in the event of further non-compliance. It should be mandatory for other enforcing agencies, eg the External Auditor and the ICO, to inform the Monitoring Officer of any breaches it finds in cases reported to them as prima facie evidence of breaches. and to enforce publication of breaches and sanctions in the local community. The misconduct of councillors should be made public to inform voters before they vote at next elections.

g. Declaring interests and conflicts of interest

g.1 Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory?

Response: No.

g.2 If not please say why.

Response: There should be an opportunity for the public to question the declarations.

g.3 and g.4 Response: No experience.

h Whistleblowing

h.1 What arrangements are in place for whistleblowing, by the public, councillors, and officials?

Response: There are none for the public.

h.2 Are these satisfactory?

Response: No. This is a major gap that leads to folk being fearful of repercussions in a small community so they keep quiet.

I Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Response: Put a value on, and commit resources to, preserving the Nolan Principles. Make it clear to prospective councillors before being elected that this is a prime duty in their role as councillor. Set up a simple hierarchy of investigators, starting with the Parish Clerk, whose role would be the eyes, ears and voice of the electors to interpret and enforce the C of C at local level without fear or favour. The Clerk would escalate the investigation to the next appropriate level. The Clerk should be obliged to engage in face-to-face discussion with the complainant if he/she wishes, to examine the evidence. An experienced District Councillor from another Borough Council would be the next level and the Monitoring Officer the third level as now. These two new levels would keep matters local and in the public eye. A hierarchy of sanctions would be generated for the two new levels along the lines mentioned in *Sanctions f.5*

J What steps could *central government* take to improve local government ethical standards?

Response: Appoint a Small Authority Ombudsman who can be contacted by any elector for advice, or who has followed due process but remains dissatisfied with the outcome.

k. Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors? What measures could be put in place to prevent and address this intimidation?

Response: None known and no experience.

i.

Recommendations

I recommend these areas of action:

1. Prospective councillors should be required to commit to uphold the Nolan Principles and sign acceptance of the C of C before presenting themselves for election. This should be a prime duty for all elected persons and Clerks.
2. Put a 'value' on and commit resources to preserving the Nolan Principles.
3. Strengthen conduct scrutiny by Clerk/RFOs and their powers to correct breaches by Councillors
4. Devise and implement a tiered level of sanctions as described in f.5
5. Make it mandatory for other agencies, eg the ICO, External Auditor, independent investigators etc, to share breaches of the C of C coming to their attention for their spheres of scrutiny to the Monitoring Officer, who will collate them for each small authority. The evidence provided to them would be included in the consideration of the case from the complainant.
6. Devise a protocol for monitoring the conduct of the Clerk/RFO.
7. Insist on early resolution of issues by face-to-face meetings with the complainant if so requested.

8. Define acceptable response times to queries for Clerks and Chairmen to adhere to..

Fred Owen
13 May 2018

SUBMISSION 146

Committee on Standards in Public Life: Consultation Questions

	Question	Response
a.	Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.	In general, yes but see comments below.
b.	What, if any, are the most significant gaps in the current ethical standards regime for local government?	Lack of meaningful and enforceable sanctions for breach of the Code of Conduct; inevitable inconsistency in the provisions of Codes between different councils.
Codes of conduct		
c.	Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?	The Council can only comment on its own Code of Conduct as these vary from council to council. Generally, the Code is clear and easily understood. However, the parts which deal with disclosable pecuniary interests are complicated and less well understood. This reflects the complicated and, to a certain extent, unsatisfactory, drafting of the definitions of DPIs in the Regulations and the Localism Act. (see g below)
d.	A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.	Yes.
Investigations and decisions on allegations		
e.	Are allegations of councillor misconduct investigated and decided fairly and with due process?	

	i	What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?	The Council operates a two stage process for investigation and determining complaints under its Code of Conduct. This allows complaints which are without merit, or where an informal resolution is possible, to be dealt with without a formal and lengthy investigation. Formal investigations are reserved for the most serious cases and are usually carried by an independent investigator. Occasionally the Monitoring Officer (or Deputy) has carried out the investigation but has then taken no part in the hearing process except as the investigating officer.
	ii	Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?	<p>The Council understands that the intention of the changes introduced in 2012 was to ensure that complaints against councillors were determined by their peers, i.e. other councillors. However, holding a hearing where the panel is entirely made up of other councillors can be perceived, rightly or wrongly, by the public and by the media as lacking in objectivity. In particular there may be a perception that the panel will be biased in favour of councillors who are members of the same political group or biased against opposition group councillors.</p> <p>Under the pre-2012 regime, hearing panels usually included at least one independent Standards Committee member. While the Independent Person's advice and views are taken into account, and greatly valued, by the hearings panel, they are not formal members of that panel and cannot participate in the hearings process in the same way that independent members could before 2012. Having fully independent members of the standards committee who could participate in hearings might assist in raising the public perception that such hearings are fair and objective.</p>
	iii	Monitoring Officers are often involved in the process of	If the Monitoring Officer identifies the potential for there to be perceived or

		<p>investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?</p>	<p>potential conflicts of interest then there should be the ability (or requirement) for the matter to be dealt with by the deputy Monitoring Officer or via external investigation by a Monitoring Officer from another Council or another “independent” person.</p> <p>At Coventry, because we have four Independent Persons, the Monitoring Officer is able to consult informally with one IP where there may be a conflict of interest or an issue is open to interpretation while retaining the impartiality of the other IPs to participate in any formal hearings process.</p>
Sanctions			
f.	Are existing sanctions for councillor misconduct sufficient?		No.
	i	<p>What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?</p>	<p>The Council has a limited range of sanctions available to it in law. These include censuring the member who has been found to have breached the Code of Conduct; requiring the member to undertake training or to make a written apology or recommending their removal from committees or cabinet. However, the Council has no powers of enforcement so if a councillor chooses not to apologise, for example, then there is little more it can do. In particular, the decision to remove a councillor from a committee or cabinet lies with the councillor’s political group, not the Council. The ability for the Council to enforce sanctions is almost non-existent where the councillor is not a member of a formal political group as there is no party disciplinary process to encourage compliance.</p> <p>The lack of sanctions is proving to be a serious issue for some councils, particularly those with “rogue” councillors who are only too aware of the insufficiency of sanctions.</p>
	ii	Should local authorities be given	Councils should be able to impose a

	the ability to use additional sanctions? If so, what should these be?	short period of suspension (up to 3 or 6 months) for councillors who have committed particularly serious breaches of the Code or who have failed to comply with previously imposed sanctions. Councils ought to be able to withhold members' allowances for a short period from councillors who have committed serious breaches or refused to co-operate in the process. These are not draconian, but would allow the Council the opportunity to impose sanctions which should offer a better chance of breaches not being repeated and for the public to perceive "real" action being taken.
Declaring interests and conflicts of interest		
g.	Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.	
i	A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?	<p>The question of whether an interest amounts to a DPI is unnecessarily complicated in some areas and can lead to councillors having to undertake quite extensive research and to understand quite technical definitions of DPIs. For example, housing associations (registered social landlords) may operate under a number of different legal entities; any councillor who is appointed to the board of a housing association has to establish whether he or she is in fact a director and then whether the RSL has an ongoing contract with the Council or rents premises from the Council in order to determine whether they have a DPI which needs to be registered. Likewise where they are appointed to the governing body of an academy trust, where they may also have director status.</p> <p>The situation is further complicated by the fact that there is uncertainty as to when a DPI is engaged by an item of business because of the imprecise drafting in the relevant sections of the Localism Act. Given that criminal sanctions may apply, members are entitled to have better and clearer</p>

			guidance from the Government on when DPs must be declared in meetings than that contained in the 2012 guidance.
	ii	What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.	The Council introduced the concept of "other relevant interests" into its Code of Conduct in 2012. This was based largely on the definition of a personal and prejudicial interest under the old regime. The Council introduced this extended requirement to declare interests other than DPs because it was concerned that the very narrow definition of DPs left many areas of a councillor's interests outside the regime, leaving both the councillor and the Council open to criticism and challenge.
Whistleblowing			
	h.	What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?	The Council has a Whistleblowing Policy which was reviewed and extensively revised and updated in 2017.
Improving standards			
	i.	What steps could <i>local authorities</i> take to improve local government ethical standards?	We consider that the Council has indicated above the steps it had taken , which may be of assistance to others
	j.	What steps could <i>central government</i> take to improve local government ethical standards?	We have set out in our responses above the steps which central government could take to improve local government ethical standards.
Intimidation of local councillors			
	k.	What is the nature, scale, and extent of intimidation towards local councillors?	Coventry councillors have occasionally experienced threatening behaviour and intimidation from members of the public who have found out where the councillor lives. Councillors are unhappy that they are required by law to disclose their home address when standing for election

			(unlike parliamentary candidates). In addition the requirement to declare their home address on their register of disclosable pecuniary interests increases the risk of such unwanted and frightening visits. For the MO to be able to exclude the home address from the public register, he or she has to be satisfied that disclosure of the details of the interest could lead to the member or others being subject to violence or intimidation. By the time this evidence is available, it is often too late to prevent violence or intimidation because the councillor's address is already in the public domain.
	i	What measures could be put in place to prevent and address this intimidation?	Give candidates the option of withholding their home address from publication when standing for election; remove the requirement for the address of the councillor's only or main residence to be published on the register of DPIs.

Review of Local Government Ethical Standards: Stakeholder Consultation

Consultation questions

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

A1. It is not considered that the existing structures are working as effectively as they could.

A2. The ability to determine matters at a local level and to set the procedures by which complaints against local councillors have to be managed have been a real benefit to the ethical standards regime.

A3. Cornwall Council has, using these powers, introduced robust assessment procedures designed to prevent the ethical standards regime from becoming a 'complainant's charter' whilst ensuring that all genuine complaints are dealt with. This has result in approximately 60% of complaints made against local councillors being rejected when the complaint is initially considered, allowing only those complaints that do demonstrate a potential breach of the Code of Conduct to go forward for assessment.

A4. However, whilst this is a positive aspect of the new regime, the inability to apply meaningful sanctions for a breach of the Code has resulted in frustration from elected members, who have to continue working alongside a councillor who has exhibited less than perfect conduct, and from members of the public who have difficulty in understanding that there is an expected standard of behaviour which a local councillor has not adhered to, but it cannot be adequately enforced.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

The significant gaps are;

B1. The inability to apply meaningful sanctions for certain breaches of the Code of Conduct;

B2. The lack of consistency with regards to what sanctions can be applied and when;

B3. The lack of consistency with regards to the way a Code of Conduct should be worded,

B4. The inability of co-opted members of the Standards Committee to vote on matters before Standards Committee, despite representing important local views on the operation of the ethical standards regime.

All these points are considered below.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood?

C1. The Localism Act 2011 only gives limited guidance on what should be in the Code of Conduct and the Act also only sets out in outline what each authority is required to have in their code. As a result there are large variations on the way the Code looks and operates depending on where you are in the country and how the Localism act has been interpreted. .

C2. In Cornwall we have the support of the Cornwall Association of Local Councils (CALC) in setting the format of the Code across Cornwall. This is based on the statutory Code that was in place until 2012 and it is believed the Code is clear and understood. Generally, it is considered that it was not the Code that was the problem with the previous ethical standards regime, in force until 2012, but the way that local authorities were required to administer it .

C3. Currently, due to the way the Localism Act 2011 places the onus on each individual council to adopt a Code of Conduct. Without the support of CALC in Cornwall we could have ended up with 214 different Codes across the county and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the Code which falls to Cornwall Council to administer.

C4. We would therefore request that as part of the review of ethical standards that consideration is given to the introduction of a national statutory Code and the basis for this could be the Code that was in use up until 2012.

- d. Do the codes cover an appropriate range of behaviours?

D1. Given the limited statutory requirements of what is to be in a Code and the brief guidance that has since been issued it is a matter of subjective interpretation as to whether the Code covers an appropriate range of behaviours.

D2. In Cornwall we consider that by basing our Code on the old statutory Code we do cover an appropriate range of behaviours.

- e. What examples of good practice, including induction processes, exist?

E1. Councils now have included in their Codes a mandatory requirement to attend Code training within 6 months of taking up office.

E2. Whilst this is helpful we consider that this should be made a statutory requirement as there is no ability to sanction a member that does not undertake training on the Code and there is not the ability to prevent them from attending meetings of their respective Councils.

- f. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

F1. No. This is too open to individual interpretation and has resulted in a diverse range of Codes in England though in Cornwall we have endeavoured to provide consistency by seeking to have the same Code across the county.

Investigations and decisions on allegations

- g. Are allegations of councillor misconduct investigated and decided fairly and with due process?

F2. As there is no set process, it is for individual councils to interpret these requirements as they consider appropriate.

F3. Whilst Cornwall Council has sought to ensure that we deal with all complaints in an impartial manner, as we process a high volume of complaints each year (143 for the year 2017- 2018) challenges, which are a natural result of dealing with this number of complaints, have helped to refine our procedures. As a result Cornwall Council consider its complaints processes is fair, with complaints decided impartially and in accordance with our adopted process.

- h. What processes do local authorities have in place for investigating and deciding upon allegations?

H1. The procedures for assessing and dealing with complaints, as adopted by Cornwall Council, are as attached as an appendix to his submission.

- i. Do these processes meet requirements for due process?

I1. Cornwall Council considers that they do. We offer a right of review for the complainant, if their complaint has not been upheld and for the subject member if they are found in breach of the Code. Instances where a member of the public does not have their complaint further processed can be reviewed by the Local Government Ombudsman to consider if the member of the public has been subject to maladministration or injustice.

- j. Should any additional safeguards be put in place to ensure due process?

J1. Cornwall Council would strongly support a robust 'filtering' process (as included in our procedures) when complaints are initially made to ensure that complainants that do not demonstrate a breach of the Code are not processed, complaints over 12 months old are not processed (this helps to prevent the 'banking' of complaints with them only being used prior to an election. The procedures also help prevent

malicious, vexatious or tit for tat complaints from being processed which in the past have caused people to view the process a complainants charter.

- k. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?

K1. The introduction of the Independent Persons as part of the ethical standards regime brought in via the Localism Act 2011 is something that has been welcomed on all sides. Cornwall Council has appointed 3 Independent Persons and our adopted assessment procedures require that the Independent Persons views are sought for all complaints that are processed and not just those that are referred for investigation. This ensures that even for an assessment of a complaint the Independent Persons views can be considered.

K2. Nearly all members who have complaints made about them use one of the three Independent Persons to gain their views and feed back on the system has been mostly complimentary, though some do see the role as an advocate.

K3. Some members of the public have raised concerns that such a person is not available for them to speak to however; it is not felt that this would be an appropriate use of resources.

- l. Should this requirement be strengthened?

L1. The requirement to seek an Independent Persons views could be extended to all complaints that are processed and not just those that are to be investigated.

L2. Cornwall Council has already adopted this approach and local councillors are very supportive of service offered by the Independent Persons.

- m. If so, how?

M1. Further guidance could be issued on the role of the Independent Person or, if statutory changes are to be made to the ethical standards regime then the expansion of this role could be included within these changes.

- n. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?

N1. Yes, this is possible and something that Cornwall Council has considered in developing our assessment procedures.

N2. Despite the number of complaints received by Cornwall Council undue pressure is not something that arises often but when it does arise challenge on conflicts and impartiality come from complainants seeking to discredit an officer who may not have upheld their views.

Q7. *That the Subject Member be requested to apologise*

Q8. *Mediation*

Q9. *That there is a breach of the Code of Conduct but it is recommended that no further action needs to be taken*

- r. Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

R1. *No. There is no deterrent in the sanctions that can be imposed for any breaches of the Code other than for failing to register or declare a disclosable pecuniary interest.*

R2. *The argument that the ballot box will decide is a moot point when over 50% of the Town and Parish Councils in Cornwall do not have elections and these local councillors are returned unopposed.*

R3. *The inability to impose a meaningful sanction for some breaches of the Code have resulted in frustration on the part of members of the public when a breach of the Code is found and nothing happens to the member, and frustration on the part of other councillors who ensure they adhere to the Code whilst others taint their Council's, which are often at the heart of the community, with poor conduct.*

- s. Should local authorities be given the ability to use additional sanctions?

S1. *Yes.*

- t. If so, what should these be?

T2. *There should be limited powers of suspensions up to six months as was exercised under the previous ethical standards regime. Suspensions should be only issued by a hearing panel of a Standards Committee with such a Panel only required to meet to impose the sanction of censure, leaving local flexibility as to who imposes any other sanctions, of a combination of sanctions, should a breach of the Code be found.*

T2. *There will be a need if suspensions are introduced for there to be a right of appeal to a separate body against such a sanction.*

Declaring interests and conflicts of interest

- u. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

U1. *No. As a minimum it should not be left to individual councils to have in their standing orders the requirement for a member to remove themselves if they have a disclosable pecuniary interest. It should be a statutory requirement for a member to always remove themselves if they have an interest, whether this is a disclosable pecuniary interest or an interest other than a disclosable pecuniary interest.*

- v. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

V1. As the following example demonstrates it is not considered that these are appropriate.

V2. At the moment if a councillors' spouse or partner has a planning application that is to be considered by the local authority and the councillor fails to declare an interest then, as this interest is classed as a disclosable pecuniary interest, the councillor could be subject to an investigation by the police and a fine of up to £5,000 and disqualification from holding public office for 5 years can be awarded as a penalty.

V3. If the same application was submitted by the councillors' daughter or brother, even if this person lives with them, this is classed as an interest other than a disclosable pecuniary interest and the stiffest sanction that can be imposed is a censure.

- w. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

W1. At Cornwall Council we have in place the same procedures for interests other than disclosable pecuniary interests as we do for disclosable pecuniary interest, that is a member should declare the interest, take no part in the discussion (unless a dispensation has been granted) and leave the chamber. What is lacking is the ability to enforce this via meaningful sanctions.

Whistleblowing

- x. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

X1. The Council has a well established whistleblowing policy that is reviewed by both the Standards Committee and the Audit Committee. As a result it is considered that the current arrangements are satisfactory, if the guidance is correctly followed.

Improving standards

- y. What steps could local authorities take to improve local government ethical standards?

Y1. Cornwall Council considers that by having a Standards Committee consisting of Cornwall Councillors, Town and Parish Councillors, members of the public and a currently serving clerk it is already pro active in ensuring that a diverse range of opinion is considered when dealing with ethical standards matters. Training on ethical standards is delivered on an annual basis and has been delivered to nearly 1,000

Councillors across Cornwall in the last 12 months and regular bulletins and regular updates are given to Town and Parish Councils.

Y2. In addition to a large number of complaints the team dealing with ethical standards receives in excess of 1,000 enquiries in a year about the Code of Conduct mostly from Councillors seeking to avoid breaching the code asking for advice on interests (for example) prior to a meeting.

- z. *What steps could central government take to improve local government ethical standards?*

Z1. In addition to this the measures as set out in the above submission the follow should be put in place via statute, with specific official guidance; that is;

- The ability of the Standards Committee to applying meaningful sanctions in some circumstances;*
- The reinstatement of the ability for co-opted members onto the Standards Committee to vote;*
- The reinstatement of a national statutory Code of Conduct; and*
- The requirement to involved Group Leaders as part of the ethical standards regime.*

Z2. Cornwall Council do not consider that the proposals set out in this submission are a return to the ethical standards regime that existed pre 2012 and was dubbed a complainants charter.

Z3. Whilst no system is perfect we believe we can demonstrate, by the procedures that have been adopted for dealing with ethical standards matters in Cornwall, which have now been in place for nearly 4 years, that an ethical standards regime can be fair an equitable. It does not need to be something that is overly burdensome on the authority, or overly bureaucratic for the local councillors who may be subject to a complaint, or for those wishing to make a complaint, but can be something that can be administered in an open and transparent way that allows genuine concerns to be dealt with.

Z4. This has been achieved within the constraints of the current statute and guidance.

Z5. What is lacking is the ability to deal with the few who have no regard for the Code of Conduct and know that at the moment, they cannot be sanctioned. They are often returned unopposed at elections and therefore are never taken to task for their misconduct.

Z6. If some moves were made back to a regime similar to that adopted by Cornwall Council, without the cumbersome arrangements that used to involved Standards for England, there could be a robust ethical standards regime in place that could be enforced.

Intimidation of local councillors

- aa. *What is the nature, scale, and extent of intimidation towards local councillors?*

AA1. *This is becoming a growing problem: There is the attempt to make complaints personal to a member, persistent emails and phone calls (in one case referred to the police) some of which can be abusive, abusive and designed to intimidate, postings on social media and on other online blogs singling out members who may have voted a certain way that a person or group may not agree with.*

bb. What measures could be put in place to prevent and address this intimidation?

BB1. *There should be changes to the law to allow legal actions to be taken to prevent such intimidation and in particular there should be the ability to have posts removed from social media or to shut down blogs and web sites that are hosted offshore. Consideration should also be given to councils being allowed to treat home addresses of Councillors as a sensitive interest.*

Dear Sir or Madam

Review of Local Government Ethical Standards: Stakeholder Consultation Response

This response has been agreed by Colchester Borough Council's Governance and Audit Committee following a consultation of all Borough Councillors.

a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

1. It is broadly considered that the existing structures, processes and practices in place within the Borough Council do ensure that high standards of conduct are maintained by councillors. However there remains the concerns that there are no real consequences in relation to breaches of the Code of Conduct as the legislation does not permit the use of sanctions – only recommendations.
2. The Borough Council's process is administered by the Monitoring Officer, who will always advise and who will measure any situation against the Borough Council's agreed Localism Act 2011 Arrangements.
3. Concerns had been raised about the need for "member to member" protocols. Some so called "political banter" is actually bullying. Occasionally there appears to be very little respect shown by some councillors to others in opposing parties which makes it very difficult to have a meaningful and constructive dialogue.
4. Overall councillors of Colchester Borough Council behave well and in our experience any misdemeanours have not been so serious that they cannot be dealt with by the current system.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

5. It is considered that one of the most significant gaps is in relation to councillor to councillor respect for each other this especially online which can amount to bullying. It is felt that there can be too much emphasis on gaining political points at the expense of another member, trying to belittle other councillors.
6. The Borough Council is aware of the changing role of social media and is delivering press and social media training for councillors. This is important to ensure all councillors are aware that they not only represent their residents, their political party but also the council 'corporate'. Social media should be used carefully to ensure ethical standards are not breached and action taken against those who publish inappropriate comments.
7. The most significant gap is the lack of the ability to apply any binding sanctions of a member that has found to have breached the Code of Conduct. This is particularly true of more serious allegations; for example bullying where a

sanction is required i.e. suspension for an appropriate period of time to act as a form of a deterrent. This is true where a political groups does not deal with it.

Codes of Conduct

c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

8. It is felt that the Borough Council's code of conduct is clear and is easily understood but councillors should have regular reminders. The code of conduct could be extended to specially cover conduct in the Council Chamber. Again concerns are raised regarding the fact that the code has no binding sanctions to deal with inappropriate behaviours especially in relation to the use of social media. It is felt that there needs to be clarity around the use of social media in councillor's private lives and how it can impact on their role as a councillor.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

9. The Borough Council has adopted a Code of Conduct which is consistent with the seven principles of public life. The code also includes appropriate provisions for registering and declaring Disclosable Pecuniary Interests and pecuniary and non-pecuniary interests which broadly seem to be understood and work in practice. However (apart from Disclosable pecuniary Interests) there are no binding sanctions for failing to declare pecuniary and non-pecuniary interests.

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

10. The Borough Council in accordance with the Localism Act 2011 has adopted "Arrangements" for dealing with councillor complaints and keeps this under annual review. However due to the abolition of the former statutory Standards Committee by the Localism Act 2011 regime, the process has the danger of becoming political.

11. However it is felt that allegations of councillor misconduct investigated in accordance with the Borough Council's Arrangements are decided fairly and with due process by both the Borough Councils' Monitoring Officer and the Governance and Audit Committee which deals with complaints. However again despite the robustness of the process the lack of binding sanctions can cause an issue.

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due

process? Should any additional safeguards be put in place to ensure due process?

12. The Borough Council, in accordance with the Localism Act 2011 adopted "Arrangements" for dealing with councillor complaints. This process is published on the Borough Council's website and is transparent and visible which is its strength. It is generally felt that any referral follows a clear process which ensures everyone is aware of the procedures. Concerns have been raised regarding the lack of independence input in the current regime unlike under the pre Localism Act arrangements which ensured that there was much more emphasis on independence by having Independent Members in the majority on the Standards Committee.
13. We do not believe that any further safeguards are required. However as mentioned above more information and guidance regarding the use of social media would be beneficial.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

14. The Borough Council's Independent Persons work very closely with the Monitoring Officer particularly in the initial assessment stage of any allegation and their opinions are respected. However their role could be strengthened by them having a stronger role at any hearings. The current legislation only provides for them to be consulted but not able to vote. Under the previous statutory Standards Committee which had an independent chair, the independent members were able to vote and also brought impartiality to the proceedings.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

15. It is considered that Monitoring Officers need to be independent and apolitical and should be protected by their terms and conditions. The Borough Council has an agreed Monitoring Officer protocol in its Constitution which affords this.
16. In a situation where a Monitoring Officer was under a conflict of interest, we would expect him/her to raise it with the Chief Executive, who may take other action for example involve a Monitoring Officer from another Council via a reciprocal arrangement

Sanctions

f.

f. Are existing sanctions for councillor misconduct sufficient?

17. The Localism Act 2011 when it repealed the Local Government Act 2000 councillor conduct provisions repealed the ability for binding sanctions to be imposed. This included the ability to suspend a councillor from office for up to 6

weeks. This provision was used sparingly and only in the most serious of allegations of misconduct.

18. It is considered that the current level of recommendations (as opposed to sanctions) are not sufficient to deal with the more serious allegations of misconduct. This is partly true regarding recommendations made to Parish Council's who can simply choose to ignore any recommendations made to them.
19. The lack of proper sanctions also causes concerns to the public who see that there are no real consequences to a breach of the code of conduct and that it is not worth them making a complaint because at the end of the process nothing of significance will happen to the councillor.

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

20. As mentioned above there are no binding sanctions imposed on councillors who are found to have breached the code of conduct. It is generally not considered that these are sufficient to deter breaches and where relevant to enforce compliance. At the Borough Council these recommendations would be made by a Hearings Sub-Committee of the Governance and Audit Committee which the relevant full council may or may not agree to endorse. Any actions recommended should be proportionate and commensurate with the circumstances of the particular case.
21. The current actions available under the Borough Councils "Arrangements" are:
 - (a) Report its findings to Council (or to the Parish Council) for information;
 - (b) Recommend to Council (or to the Parish Council) that the councillor be issued with a formal censure or be reprimanded
 - (c) Recommend to the councillor's Group Leader (or in the case of un-grouped councillors, recommend to Council or to Committees) that the councillor be removed from any or all Committees or Panels of the Council;
 - (d) Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the councillor;
 - (f) Recommend to Council to remove (or recommend to the Parish Council that the councillor be removed) from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish Council);
 - (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the councillor by the Council, such as a computer, website and/or email and internet access; or
 - (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

22. Further to above it is submitted that local authorities should be able to suspend councillors for a maximum period in specified circumstances which could be set out in legislation. This could be supplemented by an appropriate appeal process.

Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

23. It is considered that the existing arrangements regarding the declaration of councillors interests and manage conflicts of interests are broadly satisfactory. The register of councillor's interests is published on the Borough Council's website and is transparent. The DCLG guidance has also been provided to all councillors and the Monitoring Officer and Democratic Services officers will always provide advice to councillors where any concerns are raised.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

24. Councillors are required by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 to register and declare Disclosable Pecuniary Interests of both themselves and their spouse and/ or partner. It is considered that these are statutory duties are appropriate as they stand.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

25. It is councillor's responsibility to ensure that their register of interests is up to date. The Monitoring Officer will ensure that all new councillors receive as part of their induction training on registering and declaring interests. It is not the role of the Monitoring Officer to police the register of interests but to provide advice to councillors when issues or concerns arise. An annual reminder is considered sufficient for this purpose.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

26. The Borough Council has an agreed Whistleblowing Policy which is reviewed annually by the Borough Council's Governance and Audit Committee and is considered fit for purpose. The Policy is published on the Borough Council's website and the process and protections are clearly stated.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

27. Local Authorities themselves should ensure that their councillors are adequately trained on ethical standards and that their policies are regularly reviewed. The Borough Council's Governance and Audit Committee undertakes an annual review of the Code of Conduct and the "Arrangements" to ensure that both are fit for purpose and will recommend changes where appropriate.
28. Local Authorities need to ensure that all of their councillors are regularly trained on ethical standards issues.
29. Social media will continue to have an impact on ethical standards and it is an area that Local Authorities need to ensure that their councillors are adequately trained in and the implications it can have on the reputation of the office of councillor but also their political party and Authority.

j. What steps could *central government* take to improve local government ethical standards?

30. The Local Government Act 2000 standards regime required councillors to sign up and agreed to be bound by the code of conduct. The Localism Act 2011 regime does not require a member to sign up and agree to be bound by the code of conduct and by implication the seven Nolan Principles. If the law was changed to require councillors to do this it may assist their understanding of the importance of ethical standards,

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors


31. Intimidation can take various forms. However one area where it seems to be increasing is via social media. Twitter in particular can sometimes incite 'keyboard warriors' which is often generated by a minority of residents some of whom see it as a game with no consequences as a degree of anonymity is provided or borderline incidents from other councillors.
32. Councillors have the ability to block persons on social media but experience shows that people tend to be politer in person than on line. Prevalent on social media and unpleasant is where councillors are subject to constant hounding including verbal abuse, threatening behaviour, constant emails bordering on harassment (with no protection for councillors), being accused of being corrupt taking bribes, late night phone calls and physical violence.
33. Public life in general has got angrier and councillors are subject to this anger as are others in public life. Some of the intimidation comes for a lacking of understanding of what a member does. Apathy and lack of interest in voting is common until a particular issue arises which affects them.

i. What measures could be put in place to prevent and address this intimidation?

34. In order to address intimidation issues the law would require strengthening and particularly around social media. However this has to be balanced with the right to freedom of expression. There is push to make social media companies nationally take more of a role in monitoring and limiting intimidatory behaviour on line which would be of benefit to both councillors and the public.
35. As a start political parties need to encourage their activists to consider their behaviour and language used on social media particularly towards councillors of opposing parties. The political parties should work together to try and eliminate this and to have arrangements in place to deal with it if and when it occurs.
36. If the intimidation amounts to harassment then the matter needs referring to the police who can deal with it appropriately. There should be protocols in place between the Local Authorities and the police for referring these types of cases easily and consistently which provides adequate protection.

We hope that these comments will be of assistance to the Committee in its work and look forward to reading its findings in due course.

Yours sincerely,

A black rectangular box used to redact the signature of Andrew Weavers.

Andrew Weavers

Strategic Governance Manager & Monitoring Officer

SUBMISSION 149

Review of Local Government Ethical standards by the Committee on Standards in Public Life: Stakeholder Consultation

Response from Horsham District Council Standards Committee

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local Councillors? If not, please say why.

Response

The Standards Committee felt that the existing structures, processes and procedures adopted by the Council for dealing with standards of conduct of Members at Parish and District level were satisfactory and fit for purpose. The difficulty was Members particularly at Parish level in understanding the requirements for declaring and registering interests. It was accepted that this was a training matter and not relevant to the remit of the Consultation

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Response

No response.

Codes of Conduct

- c. Are local authority adopted Codes of Conduct for Councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Response

The Standards Committee considered the Horsham District Council (HDC) Code of Conduct to be clear and satisfactory. The multiplicity of local authority codes often confused issues, especially if a Councillor was a member of different tier authorities. Several members were triple hatters (being a member at County, District and Parish level), there was some variation in Codes of Conduct across the District. There was recognition that there should be one Code across the County to ensure clarity and consistency.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for Councillors is consistent with the Seven Principles of Public Life

and that it includes appropriate provision (as decided by the local authority) for registering and declaring Councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Response

The Committee felt that the requirements were appropriate. It has pointed out that the onus was on the particular Council to maintain a register and for Members to declare interests; this particular point was made with reference to Parishes within the District of which HDC has 32 in number.

Investigations and Decisions on Allegations

- e. Are allegations of Councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Response (i), (ii) and (iii)

HDC current published procedures for dealing with Code of Conduct complaints including investigations, were considered to be satisfactory, follow due process, complaints are dealt with fairly.

It was considered that the appointment of two independent persons provided sufficient fairness and objectivity to avoid any perceived conflict of interest.

It was acknowledged that Monitoring Officers may be the subject of conflict of interest or under pressure in dealing with Code of Conduct complaints including investigations, but there is a Deputy Monitoring Officer at the Council or a Monitoring Officer from another authority could be used if such a situation was to occur.

Sanctions

- f. Are existing sanctions for Councillor Misconduct sufficient?
- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Response

The current sanctions that HDC could impose on a Councillor who was found to have been in breach of the Code of Conduct following an Investigation are as follows:

- Issue of a formal letter.
- Formal reprimand of the Member.
- Removal of Member from a Committee/Sub-Committee.
- Restriction of Member's use of Council resources.
- Publication of findings.
- A written apology.
- To undertake training.
- To participate in conciliation

These sanctions reflect what is currently available through common law.

The Standards Committee considered these sanctions to be insufficient, stronger sanctions that were available prior to the introduction of the Localism Act in 2012 should be re-instated. The Committee wishes to see strong sanctions such as the ability to suspend a Member, banning a Member from Council premises, or the withdrawal of a Member's allowance or remuneration.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Response

There is a need for clarity regarding personal, prejudicial and pecuniary interests, particularly at Parish level, the Committee accepted that this is a training matter and not relevant to this Consultation.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Response

The Council had a satisfactory Whistleblowing Policy and arrangements. This Policy was available to Members to raise concerns.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?

Response

There was an acceptance by the Committee that there was a need for good training at District and Parish level. This was available through the Association of Local Councils (HALC) and through SALC as well as at the District Council.

- j. **What steps could *central government* take to improve local government ethical standards?**

Response

It was considered whether there could be a statutory requirement or it to be compulsory for all Councillors to attend training.

It was recommended that all Councillors should have refresher training at the end of the second year of their term of office. Training and refresher on-line training should be readily available for all levels in local government.

Intimidation of local Councillors

k. What is the nature, scale, and extent of intimidation towards local Councillors?

i. What measures could be put in place to prevent and address this intimidation?

Response

The Committee is aware of the 17th Report of the Committee on Standards in Public Life on "Intimidation in Public Life". The increasing use of social media did allow the public and others to intimidate Members and post offensive material without impunity. Although it was acknowledged that some Horsham District Councillors had experienced some on-line abuse, intimidation per se was not an issue at HDC.

With regards to the conduct of candidates during an election campaign, the Committee recommended that all candidates, whether they have held office before or not, should have access to training and guidance on the Code of Conduct to maintain standards during elections.

Horsham District Council Standards Committee

Monitoring Officer:
Sharon Evans

Review of Local Government Ethical Standards: Stakeholder Consultation

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Yes - Lincolnshire County Council South Kesteven County Council and our Parish Council publish expected codes of Conduct for Councillors and Employees. The codes clearly embed the 7 principals of public service as specified in the Nolan report. This evidenced by:
LCC - <https://www.lincolnshire.gov.uk/local-democracy/how-the-council-works/standards/code-of-conduct/60953.article> .
SKDC - <http://www.southkesteven.gov.uk/CHttpHandler.ashx?id=13989&p=0>
Thurlby Parish Council - <http://www.thurlbyparishcouncil.co.uk/procedure%20docs/CodeofConduct2012.pdf>

What, if any, are the most significant gaps in the current ethical standards regime for local government?

The main breaches in the current ethical standards can be summarised as follows:

Openness Leadership and Respect for those served

- It is becoming more difficult to discuss local issues with local councillors and council officers especially now as budgets are being constrained. As an example LCC have instructed their Highways employees not to talk directly to local Parish Councils or to give their contact details.
- As Local and District Councils move towards framework contracts, secured with service providers, the Council experts are becoming commissioners of services and becoming distance from the grass roots issues. Value for money is falling and the whip hand rests with the contractors. Local Council experts are becoming greater experts at managing expectations than managing the issues at hand.

Enforcement of the Ethical Standards

It is becoming more difficult to enforce a specific change of attitude with either a Councillor or an Employee when standards fall. Why:

- Current public service employment legislation prohibits the ultimate sanction of termination of employment unless for corruption. Termination for incompetence is becoming more difficult to establish in a reasonable time frame.
- Where Councillors breach the ethics code then there are limited sanctions available. The monitoring officers will only advise Councils and Clerks about modest sanctions. It is not possible to dismiss a Councillor for breach. Whether those modest sanctions (i.e Banned for meetings for a specific period) can be upheld actually rests with the offender. i.e If he/she will comply.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

All Councillors undertake an induction process and advised on the specific codes of conduct expected. The 7 principals of Nolan are clear and easily understood. Can Nolan be enforced or can it be enforceable by a Council or for that matter a Political Party?

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

All Councils do enforce the registration and declaration of Councillors interests. The question remains – how are they enforced?

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

- ii. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
- iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
- iv. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

When a Parish Council receives a complaint about the unacceptable behaviour of a Councillor it is investigated confidentially by the Clerk together with the Chair of the Parish Council. Advice is sought from the district Councils Monitoring Officer as appropriate through all stages of the process. In some instances the referral comes from the Monitoring Officer. Recent experience suggests that Monitoring officers can help with advice and managing expectations surrounding a complaint but neither the Monitoring officer nor the Council has the ultimate right of enforcement.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

- v. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
- vi. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

The simple answer is none. Most situations have to be handled, relying on the moral conscious of the offender. Hopefully the threat of making public unacceptable issues may convince the offender to resign prior to making such issues public.

For Council employees, following the public Service terms of employment conditions may take years unless the offence was for corruption. It is not in the offenders interest to terminate employment given the excellent pension and benefit conditions. Along the path could come allegations of bullying and constructive dismissal? Public service conditions protect the employee better than similar provisions in the private sector. It would take a change in legislation to cap such liabilities for the employer.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- vii. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
- viii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

It is believed the existing arrangements are satisfactory.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

It is believed the existing arrangements are satisfactory.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Improve enforcement penalties for a breach of the codes.

What steps could *central government* take to improve local government ethical standards?

- Improve enforcement penalties for a breach of the codes.
- Show leadership and Accountability by operating to the Ethical Code. i.e Power or loyalty cannot be retained by buying support through the use of the public purse.
- Bring the unsustainable Public Service pension provisions and conditions in line with the private sector conditions.
- Enforce Honesty and Transparency served in the public interest. Recognise the power of the Internet. Its ability to rapidly expose practices contrary to the ethics codes.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

- ix. What measures could be put in place to prevent and address this intimidation?

It is hard to believe that Councillors are actually reporting intimidation if following the Nolan principals which are part of their terms of reference. It suggests another agenda lies at the heart.

There has been and will always be criticism of local councillors as it goes with the job. Criticism becomes more acute for those Councillors serving Party Ideological interests or personal interest whilst at the same time disregarding Community issues. The internet, computers and mobile phones are providing residents with personal choices and comparisons at local and national and international levels. The UK (including Lincolnshire) has a better level of personal communications and transparency than 10 or 20 years ago. Spin over substance is easier to detect.

Most Parish Councillors receive no income for the work they perform. All provide their time freely as a service and put their local knowledge in the service of their community. The Clerk is the only paid employee in a Parish Council.

In Lincolnshire it would be reasonable to say the average age of most of Lincolnshire Councillors is well above the state pension threshold. That includes the Executive. Many Councillors hold both District and County Council portfolio's thereby obtaining allowances and expenses from both. Some have their allowances significantly boosted through chairing or vice chairing of committees. Some take such roles for both SKDC and LCC councils.

Some District and County Councillor's hold in parallel paid Clerk positions for Parish Councils.

Does Lincolnshire have a dynamic problem solving set of Councillors – perhaps more could be done here. It is not enough to just manage expectations. More money is needed for social care, fixing the roads and maintaining creaking 1950's drainage infrastructures and most other public services.

Re: Review of Local Government Ethical Standards: Stakeholder Consultation

I write in response to the above consultation in my capacity as Monitoring Officer of the London Borough of Camden. The following response has been drafted in consultation with (but not formally agreed by) Camden's Standards Committee, and builds on both Camden's experience of local government standards since the introduction of the Localism Act 2011 and on cases and issues in local government standards brought to our Standards Committee's attention more generally during that period.

- 1. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**
 - 1.1. Since the introduction of the Localism Act 2011, there have been relatively few complaints made about councillors in Camden with none being taken to the hearing stage. We would however note that this is in large part down to the long-standing culture of high standards and that many authorities appear to have a different experience in recent years.
- 2. What, if any, are the most significant gaps in the current ethical standards regime for local government?**
 - 2.1. We consider that the most significant gaps relate to sanctions and requirements such as training within the Code of Conduct; these are covered in more detail below.
- 3. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**
 - 3.1. Broadly, we find that Members, officers and the public have a good grasp of Camden's code of conduct. However we find the term 'pecuniary' less accessible than it might be, since it has fallen out of common parlance, and suggest 'financial' with an associated definition instead. We also consider some of the categories of disclosable interest difficult to understand e.g. what beneficial interest in land amounts to and interests in securities of relevant bodies. We more generally find that there where there are misunderstandings these often relate to the role of the councillor and how the code governs their behaviour in and outside of their official roles.
 - 3.2. Camden's local code of conduct is relatively wide-ranging covering matters such as bullying, handling confidential information and misuse of office, and we consider this to cover an appropriate range of behaviours.
 - 3.3. We regularly review our code of conduct and associated guidance at Camden's cross-party Standards Committee to ensure best practice is being adhered to and relevant case law and learning are being picked up on, and reissue these to all Members on a rolling basis. Our induction processes mandate compulsory sessions for new Members to cover the standards framework and

the duties placed on Members, but existing Members are strongly encouraged to come to such sessions. We regularly remind all Members of particular requirements in the code.

4. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

- 4.1. While Camden's code contains a section on non-pecuniary interests, we note that many local codes of conduct limit requirements on registering and declaring interests to the statutory provisions on pecuniary interests; this we have concerns about. For example, we expect that the public would consider that a Member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the Council to the charity entirely fairly and objectively. While the Localism Act prescribes that codes must cover "interests other than pecuniary interests", the discretion of local authorities to decide this has created marked inconsistency in the approaches to registering and declaring interests. We would recommend that codes are required to include provisions covering non-pecuniary interest registration and declaration.

5. Are allegations of councillor misconduct investigated and decided fairly and with due process?

- 5.1. Where we have had complaints made against councillors, we consider that these have been examined fairly and promptly in line with due process with parties thereto generally satisfied with the responses given. As these have been few and resulted in no conduct hearings it is difficult for us to offer any strong views on this area. However, on two occasions our decisions not to investigate matters have been referred to the Local Government Ombudsman and they have in turn declined to investigate.

dd. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

- 5.2. Camden has a detailed process for addressing complaints which is in summary:

- i) The Monitoring Officer decides in consultation with an Independent Person whether an allegation merits investigation;
- ii) If yes, an investigating officer is appointed to look into the allegation in detail;
- iii) If the investigating officer's report concludes that a breach of the code is likely to have occurred then a Standards Committee hearing is convened to make a determination.

- 5.3. We consider that our complaints process is robust, fair and transparent, providing a clear and detailed procedure that adheres to good practice in terms of quasi-judicial decision-making.

ee. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

5.4. Camden has appointed two Independent Persons and consider that this offers a more robust process than having a single Independent Person. This allows one Independent Person to consider a complaint prior to an investigation and the second to consider the matter after the investigation providing greater objectivity. Should the Monitoring Officer and Independent Person have differing views over the validity of an allegation it also allows for another opinion to be expressed. We recommend that all authorities be required to have two Independent Persons rather than just one.

5.5. We note that committees hearing complaints can disagree with the views of the Independent Person and come to differing conclusions. A duty could be placed on committees hearing complaints to set out why they have diverged from the opinion of the Independent Person and for the Independent Person to have the option to comment on the committee's reasons for coming to a different conclusion.

5.6. More broadly, while determinations on complaints are made by councillors there are always likely to be concerns on objectivity and fairness. Camden has decided to disapply proportionality for its Standards Committee as a way of mitigating for perceived partiality in decision-making, but recognise that this is not possible in many authorities and does not eliminate the wider perception of councillors' behaviour being decided by their colleagues regardless of party grouping.

5.7. We would suggest that greater independence in determinations could be provided either through a reversion to Standards Committees being required to have independent members, or through oversight by an independent, small-scale regulator to whom any party could refer a decision if they considered it unfair. It might be appropriate for that regulator to consider those cases in full where the alleged misconduct has met a high threshold, to remove the pressures on councillors and Monitoring Officers.

ff. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

5.8. There is potential for Monitoring Officers to be subject to conflicts of interest or undue pressure in the complaints process, particularly if the councillor who is a subject of the complaint is a leading member of the executive or if the complaint is particularly serious. This is not our experience in Camden but it must be an ongoing risk.

5.9. One option would be for a formal mechanism for consulting Monitoring Officers at other authorities, noting that Monitoring Officers have in the past been instructed to investigate cases for other authorities. Again, a small-scope regulatory body would be welcome so that the Monitoring Officer could refer

matters to them if they feel that they are not in a position to investigate and decide code breaches objectively.

6. Are existing sanctions for councillor misconduct sufficient?

6.1. While we have not had to issue any sanctions since the Localism Act came into force in Camden we do not consider the range of sanctions available sufficient. While noting the Government's intention to give the electorate the final say over councillors' conduct through the ballot box, we note cases elsewhere in the country where the public perception of councils has been adversely impacted by a seeming inability to do anything meaningful about councillors seriously misconducting themselves. The simple fact remains that councillors who have been found to have breached the code in extremely serious ways, even if they have the whip removed can, depending on the electoral cycle, remain in office for a number of years. We think this does nothing for public confidence.

i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

6.2. The highest sanction formally available to a standards committee is censure and while for some councillors this is a deterrent we note cases from across the country where the behaviour of councillors has not been affected by a censure. While noting the case of *Taylor v Honiton Town Council*, which confirmed the ability to impose a training requirement, such a requirement is difficult to enforce. Any councillor who will not attend training is unlikely to be fazed by a censure at a council meeting in relation to that non-attendance.

6.3. In cases from other authorities, we note the creative and informal sanctions imposed by standards committees. We have concerns about the lawfulness of sanctions that have been used elsewhere in relation to limiting access to Council facilities and buildings as they can be perceived to amount to a suspension.

6.4. The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.

ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

6.5. Our view is that the ability to suspend councillors should be reintroduced. This could take different forms to be proportionate to the misconduct e.g. suspension from particular committee or from the Council as a whole. This could be capped at a period of, for example two weeks, with an independent small-scale regulator empowered to extend any suspension if the circumstances merit it.

7. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

7.1. Camden is satisfied with its local arrangements.

- i) **A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**

7.2. We consider that the duties for registering and declaring interests should be extended to cover relevant non-pecuniary interests. Please see section 4.1 for more detail.

7.3. Further to that, we would note that the oddity of councillors having to declare their spouse or partners interests as their own but not other close family such as siblings or children. The rules should be amended to give greater consistency on this point.

7.4. We consider the rules around dispensations to be acceptable as they stand, but note a lack of clarity around these that necessitated government guidance specifically on the issue of whether a dispensation was needed for councillors to vote on council tax setting.

- ii) **What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

7.5. Please see earlier points regarding non-pecuniary interests. In addition to those points, it is worth stressing that Camden's code requires councillors to leave the room when a significant non-pecuniary interest is engaged. We also have robust arrangements for decisions to be taken by other Cabinet members where the relevant Cabinet member has a conflict of interest. We consider our arrangements appropriate, but again note our comprehensive approach was locally decided.

8. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

8.1. Camden has a robust whistleblowing process in place, which follows ACAS guidance, and allows parties to confidentially call either Internal Audit or an independent external organisation. Oversight is maintained by the Camden's Audit and Corporate Governance Committee, which receives regular updates and is satisfied with the procedures in place.

9. What steps could local authorities take to improve local government ethical standards?

9.1. We have highlighted ways above in which we consider that Camden has achieved a robust local government framework that could be replicated by other authorities e.g. non-pecuniary interest requirements, disapplying

proportionality on standards committees and mandatory standards training, which can all be achieved within the current legislative framework.

- 9.2. There are also opportunities for local authorities to work together through bodies such as the Local Government Association or London Councils to achieve greater consistency in the local government standards framework. We have suggested a mechanism for Monitoring Officers to formally consult their peers and there are also opportunities for peer review of councils' codes of conduct and associated processes.

10. What steps could central government take to improve local government ethical standards?

- 10.1. In summary, we would welcome changes to legislation to address some of the concerns and deficiencies raised above and emphasise the suggestion for a small-scale national regulator to take the more serious cases away from authorities. By limiting the scope of the regulator to the most serious cases it should ensure that cases are addressed within a reasonable timescale.

- 10.2. We also note a lack of guidance on local government standards since the abolition of Standards for England and accordingly have welcomed occasional court judgments that provide clarity on local government standards. Again a small-scale regulator of some sort – so not a direct replacement for Standards for England, which was not efficient – could be established to issue such advice while not excessively adding bureaucratic layers. This would hopefully lead to greater consistency in local government standards.

11. What is the nature, scale, and extent of intimidation towards local councillors?

- 11.1. While there is only a very low-level of intimidation in Camden, what intimidation there has been has been keenly felt by those councillors suffering it with the Police involved where necessary. The bulk of that intimidation consists of abuse and threats through electronic messages – both email and social media – and letters posted to home addresses. The intimidation appears to be disproportionately directed at female councillors.

- 11.2. We regularly exercise the sensitive interests provision in the Localism Act, but our interpretation has been that we cannot do so until there is some evidence of a risk of violence or intimidation, which is often after the event.

i) What measures could be put in place to prevent and address this intimidation?

- 11.3. While we welcome the recent recommendations and Government response to the Committee on Standards in Public Life's report on intimidation on parliamentary candidates, we strongly feel that further steps could be taken respect of publication of addresses on Members' registers of interests. Our view is the law should be changed so that home addresses are not published on councillors' registers in line with MPs' registers.

Yours faithfully,

A solid black rectangular box used to redact the signature of Andrew Maughan.

Andrew Maughan
Borough Solicitor

COMMITTEE ON STANDARDS IN PUBLIC LIFE: CONSULTATION

I am responding to this consultation in my role as an Independent Person (IP), covering a number of Principal Authorities. I am also (and have been since 1999) a Co-opted Independent Member of a Standards Committee in a Unitary Authority. In these roles I have been through the many iterations of Standards Regimes.

In general terms I have to say that the existing structures etc. are working. The level of observance of the Codes of Conduct is very high and most Councillors know what is required of them. This has come about from a desire by the then Government to install a locally controlled regime with little or no central governing guiding hand. The variation in regimes is sometimes quite stark and does give me some concern. For example, in some LAs there is no Appeal mechanism in place whatsoever, apart from Judicial Review.

Having said that, the role of the IP is to bring an independent element to the process and is the nearest that the local community has to someone apart from the existing structure who is there to see that the community's interests are always paramount.

I deal with a large number of different Code of Conduct, but most are based on the Model Code which is satisfactory. There is one LA which has removed the disrepute clause from its Code and, despite my requesting that it is reinstated, has so far refused to do so. In consequence I do not feel I can act as IP to that particular Authority, as to do so could be interpreted as endorsing a significant and deliberate lacuna in the local regime.

It does concern me that the previous significant role played by the Independent Co-opted members, including the chairing of standards committees, has been lost. This reassurance to the community was a vital part of the democratic process, providing as it did the eyes and ears within the Council for that community.

In terms of investigation of allegations of breaches, the practice varies very considerably. Some Monitoring Officers will filter out not only those complaints, which are unrelated to standards but also those which they consider to be trivial. This concerns me. What may be trivial to one may be of considerable importance to another and could lead to allegations being summarily dismissed for the sake of convenience. The IP should be consulted on all matters in order to provide that outside view.

When an IP is consulted, then in general the MO listens to that advice and it is included in the decision as to whether or not the matter should proceed. I have never so far had my advice rejected or countered by any of the MOs with whom I have dealt. What happens to the allegation after that does vary quite a lot, with some MOs reporting all allegations, even if not proceeded with, to the Standards Committee, in some cases merely for noting but in some for endorsing of the MO's decision.

In my experience the MO is requested to investigate the matter further (if it is to proceed) but rarely does the MO actually handle that investigation, usually allocating it to a member of the LA's legal team or using (at considerable expense) an outside investigator. I have never heard of an MO being put under undue pressure when conducting an investigation.

Turning to the issue of sanctions, this is completely inadequate. The previous opportunity, which Standards Committees had to suspend Councillors found to have breached the Code has been lost and all we are left with is Public Censure, or possible removal from various committees which are within the gift of group leaders. This lack of teeth sends entirely the wrong message to the community, i.e. that Standards are not taken seriously. I would like to see the issue of sanctions strengthened, including suspension, withholding of allowances, public censure, naming in full Council. The decision as to which sanctions should be applied should be up to the Independent Members of the Standards Committee (if these were mandatory) and following the advice of the IP.

Declarations of Interest (and dispensations) seem to work well and Councillors understand their obligations in this area and appreciate being able to consult the MO if in doubt.

Regular reports back to the Standards Committee on Whistleblowing indicate that although a rarely used facility, it is appreciated and assuring that it exists.

In summary,

- The Code of Conduct should require the inclusion of the disrepute clause.
- The independent element (through co-opted independent members), in place before the Localism Act, should be reinstated to provide assurance to the public that Councillors are not just looking after themselves.
- Sanctions must be improved, without which there is a real danger that confidence would be eroded and the progress, which has been made over the past twenty years could evaporate.

John Jones
Independent Person



**Response by the Public Services Ombudsman for Wales to the
Committee on Standards in Public Life: Ethical Standards in Local Government**

I am pleased to have the opportunity to submit evidence to the Committee on Standards in Public Life's review of Ethical Standards in Local Government.

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially are all those organisations responsible for delivering public services devolved to Wales, these include:

- local government (both county and community councils);
- the National Health Service (including GPs and dentists);
- registered social landlords (housing associations); and
- the Welsh Government, together with its sponsored bodies.

In addition, I consider and investigate complaints that members of local government bodies have broken their authority's Code of Conduct for Members. I am independent of all government bodies.

I can only respond to a consultation based on evidence from PSOW casework; therefore, rather than answer the specific consultation questions I will provide general comments based on PSOW's experience which may be helpful to the Committee on Standards in Public Life's consideration of ethical standards in local government.

Members and co-opted members of relevant authorities to whom the Model Code applies are subject to Model Code of Conduct prescribed by the Local Authorities (Model Code of Conduct) (Wales) Order 2008.¹

My ability to investigate such complaints is set out in the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.²

Where I decide that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which then I can arrive at:

(a) that there is no evidence that there has been a breach of the authority's code of conduct;

¹ as amended by Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014 – (No. 2014/1815) ("the 2014 Regulations") – effective from 1 August 2014 and Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008 (No. 2016/84) – effective from 1 April 2016.

² Public Services Ombudsman for Wales (Standards Investigations) Order 2006 SI No. 949.

- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales ("APW") for adjudication by a tribunal.

In the circumstances of (c) and (d) above, I am required to submit the investigation report to the standards committee or a tribunal of the APW and it is for them to consider the evidence found together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what sanction should be imposed (if any).

The powers and sanctions available to a local authority's standards committee are detailed in Local Government Investigations (Functions of Monitoring officers and Standards Committees) (Wales) Regulations 2013.³

Those relating to the APW are detailed in Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 / 22882.⁴ The APW uses published guidance when considering referrals made by my office or appeals against decisions of a standards committee. I have the relevant included links below:

Referrals: <https://gov.wales/docs/dsjlg/publications/apw/apw-guidance-booklet-apw04-en.pdf>

Appeals: <https://gov.wales/docs/dsjlg/publications/apw/apw-sanctions-booklet-apw08-en.pdf>

I understand that this guidance is currently subject to review and further information relating to this should be obtained from the President to the APW

In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code I will use a two-stage test. At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the APW is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

Public interest factors include:

- the seriousness of the breach

³ As amended by The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016

⁴ As amended by The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 / 2578

- whether the member deliberately sought personal gain for themselves or another person
- at the public expense
- whether the circumstances of the breach are such that a member has misused a position
- of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's
- ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender
- identity
- whether there is evidence of previous similar behaviour on the part of the member
- whether the investigation or referral to a standards committee or the APW is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the APW is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the APW would be regarded as excessive when weighed against any likely sanction.

I have a wide discretion as to whether to begin or continue an investigation. A precis of my current Code of Conduct Complaints Process is attached [here](#) for your information. This process is currently under review and it is anticipated that the new process will be implemented later this year.

Most local authorities across Wales have implemented local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code.

Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the Council's Monitoring Officer for consideration under this process. In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage to avoid the unnecessary escalation of the situation which may damage personal relationships within

the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

I have also seen evidence over the last 18 months of a similar approach being adopted by some town and community councils who are attempting a form of informal resolution before cases are referred to my office. Overall, I am encouraged that some of these councils taking ownership of low level complaints and attempting to resolve these on a local level, meaning that my office's time and resources are being used for only the more serious cases. I anticipate that this will continue to be something we will focus on and encourage going forward. However, whilst I am fully supportive of this approach, it is still important that the more serious allegations of breach of the Code of Conduct are brought to me for investigation and, where appropriate, referred to the Standards Committee or APW remembering that the authority to make a determination of breach and/or sanction rests solely with them.

I believe that the introduction of local resolution for county councils is having an impact on the numbers of complaints I have received and investigated in recent years. I am satisfied also that the outcomes achieved following referrals to both a standards committee and APW in the last two years shows that that only the most appropriate and serious cases are being referred, and demonstrates that the consideration of the public interest test continues to be an effective means of using 'common sense for common good'. I have included below a link to two recent decisions taken by the case tribunal of the APW.

<http://apw.gov.wales/decision/refs1-decisions/ref-apr17-mar18/?lang=en>

The Model Code sets out for members and co-opted members the arrangements for declaring interests and managing conflicts of interest. My published guidance to both Local Authorities and Town and Community Councils also seeks to provide advice and assistance for them in meeting these obligations. I include below links to the published documents for your information.

[Code of Conduct Guidance for members of community councils](#)

[Code of Conduct Guidance for members of county and county borough councils. Fire and rescue authorities and national park authorities](#)

Public Services Ombudsman for Wales
May 2018

Review of Local Government Ethical Standards

Salehurst & Robertsbridge Parish Council wishes to submit the following comments to questions a, b, c, h, i and j of the above consultation:

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

RESPONSE:

The Code adopted by the Parish Council in 2012 follows templates used by other parishes throughout England. It does not refer specifically to the overseeing role that the local district council (Rother District Council) has, nor to the fact that complaints about purported breaches to the Code should be reported to Rother District Council. Salehurst & Robertsbridge Parish Council is not alone in this and it is suggested that this aspect of the application of the Code of Conduct is referenced.

The Code covers all appropriate relevant behaviours. It is suggested that standardised training and refreshers are organised at District Council level for parishes to participate. None such exist at present within Rother District.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

RESPONSE:

It would appear that sanctions are much less than they were under the Standards Board for England regimes. The sanctions set out in Rother District Council's procedure (para 39 of the Hearing Procedure) are particularly anodyne in respect of any serious breach.

Having seen Rother District Council's own submissions to this consultation, we strongly oppose their suggestion that a district council should be able to reclaim the costs of handling a complaint. Their spurious reason that having the threat of a financial 'penalty' to a Parish Council would somehow have a deterrent effect on an aberrant councillor is clearly a nonsense.

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

RESPONSE:

No. It is always difficult, particularly at parish level, to fully understand and appreciate what personal and/or prejudicial interests are, and the smaller the parish, the more difficult this becomes.

hWhat arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

RESPONSE:

This appears to be a layer of ethical standards monitoring which is used only by district councils and above, although Rother District Council's policy does not refer to parishes and seems more aimed at fraud rather than other aspects of reprehensible conduct by its members, officers or contractors.

What steps could *local authorities* take to improve local government ethical standards?

What steps could *central government* take to improve local government ethical standards?

RESPONSE:

A national code and guidance would be a great help to both parishes and district councils. There is a feeling that the effort under the Localism Act to localise ethical standards, means that such standards have been devalued in importance.



Karen Ripley (Mrs)
Clerk to the Council

SUBMISSION 155

Consultation questions

Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to give evidence about only one local authority, several local authorities, or local government in England as a whole. Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

The replies relate to Sevenoaks District Council except where stated.

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No. Complaints are rarely validated and if they are then they are also rarely taken forward. Complaints are not sent to the subject member when not taken forward. Cllrs avoid declaring prejudicial interests as individual dispensations granted are not required to be declared. No appeal procedure.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

Not giving the person complained about a copy of the complaint if the complaint is not taken forward for investigation. The subject member should always receive a copy of the complaint particularly in regard to repeated complaints.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

It isn't a deterrent to bad behaviour as councillors know nothing can be done. Additional codes should include on the submission form signed confirmation that the complaint and all documents are to remain confidential until concluded. At the moment well timed complaints and the relevant documents can be made public as being 'dealt with' by the M.O. for political advantage or personal malice. Standards and Monitoring Officers' should not be able to be used in this way.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

At town council and parish level, Councillors just ask prior to a meeting, and are granted, a disposition to speak without declaring an interest, even at DC

on their neighbour's planning application, this is the case even when a councillor is not on the DC committee. This is totally wrong, the provision of a dispensation is being abused. A dispensation should be declared at the meeting concerned. Also there should be clear reasons for granting a dispensation which should be made known. At present nothing is declared or said in this regard and the public are unaware when a councillor speaks that he has a personal prejudicial interest.

If a complaint is not validated the complaint is not given to the subject member, this is wrong and the complaint should be sent to the subject member for the reasons above.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Not correct or sufficient A copy of the complaint should be made available to the person complained about when received by the MO and Independent Person.

At present the subject member can be told by another party before they are informed by the M.O. office. A subject member should be informed before a decision has been made whether to validate it or a decision whether it will go forward for assessment. As it stands repeated complaints can be made about a councillor but the councillor is not allowed to know the complaints if they aren't progressed but these complaints can be quoted by the complainant and anyone else and documents attributed to being dealt with by the M.O. shown or even published. This allows and even encourages harassment of a councillor. The process makes councillors vulnerable to vexatious complaints, to be able to quote a councillor has x number of complaints in x number of months. This can be used for political gain particularly before elections or party selection times. Certainly a complaint should be available to the subject member after the MO has decided not to accept the complaint but preferably before.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how? No. The Independent Person discusses the complaint at length with the complainant, which encourages the complainant, even if the complaint is nonsense. Also an Independent Person has no experience of being a councillor.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk? Yes. Council's could be twinned to allow a complaint to be dealt with by another council.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance? **Not known. Obviously sufficient because not known.**

Should local authorities be given the ability to use additional sanctions? If so, what should these be? **Yes, also it would be more helpful to have a wider scope for the MO to consider for validation, as it is far too narrow at present.**

The relevant political party should be made aware and invited to comment and suggest sanctions to show that they take bad behaviour seriously. This could be removal of the whip, removal of office if held or suspension. If the councillor is not a party member or the party fail to confirm they will take action the MO should consider a period of suspension for the councillor.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand? **No. A councillor doesn't have to state at a meeting that he has a dispensation; it seems to residents that councillors can speak and act at meetings on whatever they wish. A dispensation is requested to avoid declaring an interest. It may well be that the councillor has informed the MO or the Town/Parish Clerk that they have a disclosable pecuniary interest and that seems to be sufficient but it really shouldn't be the case.**

The officer should state this at the beginning of the meeting for everyone to know. Also the reason/s why a dispensation was given to a councillor should be stated and recorded in the minutes. This has caused a lot of discontent from residents and councillors.

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why. **No. Conflicts of interest are not managed so they are not satisfactory.**

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory? **None known.**

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Inform the subject member not only that a complaint has been made but send a copy of the complaint.
Make the political party aware of a complaint about one of their members. If repeated complaints are made then the MO or the CEO need to call the complainant and the subject member to a meeting to try to address the issues causing the complaints.
Also make all SB complaint documents confidential until concluded and take action when this is not the case.
Ensure dispensation procedures are confirmed by the M.O. with reasons prior to a meeting and made known to avoid prejudicial interests being disregarded.
Take intimidation and harassment of women councillors seriously.

What steps could *central government* take to improve local government ethical standards? Put measures in place to prevent intimidation or abuse of councillors on social media particularly prior to elections.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation? Significant intimidation, particularly to women. Social media sites should not be allowed to publish SB allegations about a councillor until concluded. Political party websites would be understood to be biased but public sites are often hijacked by a party to intimidate a councillor, particularly members of small parties or independent councillors. Women councillors seem to be more vulnerable on social media than male councillors.

Committee on Standards in Public Life

Review of Local Government Ethical Standards: Stakeholder Consultation

Response submitted on behalf of the London Borough of Tower Hamlets Standards (Advisory) Committee

1. This submission is made on behalf of the Standards (Advisory) Committee of the London Borough of Tower Hamlets.

2. As part of its constitutional and governance arrangements the London Borough of Tower Hamlets has established the Standards (Advisory) Committee. The Committee is made up of members of the Council (not including the Mayor or more than one Cabinet member), appointed by the Council in accordance with the requirements of political proportionality; and up to seven persons who are not members or officers of the Council or any other local authority (i.e. co-opted independent members). The Committee is chaired by a co-opted member. There are currently two vacancies for independent co-opted members. The Council has also appointed two 'independent persons' under the Localism Act 2011, who are invited to attend meetings of the Committee as observers and contribute to discussions as appropriate.

3. The Standards (Advisory) Committee welcomes the opportunity to respond to the stakeholder consultation. This response has been agreed with the Council's appointed independent persons, Elizabeth Hall and Rachel Tiffen.

Questions a and b:

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

4. Since the statutory requirement to establish a standards committee was removed the profile of ethical standards has become less prominent. In order to address this it would be worth considering a new statutory requirement that does not reintroduce a stand-alone statutory committee, but which requires authorities to include responsibility for standards and ethics in the terms of reference of a non-executive committee; this could be an existing committee for example Audit, General Purposes, Governance or Risk committees, which are established by some authorities.

5. The disqualification provisions contained in section 80 (1) (d) of the Local Government Act 1972 relating to criminal convictions of imprisonment for 3 months

or longer (whether suspended or not) are insufficient and should be updated to include less serious and other types of convictions.

6. There is a potential gap in the investigation and management of alleged breaches of the Code of Conduct. Is the purpose to ensure remediation or to apply sanctions? In most cases, the process should be about remediation. However, where a breach of the code of conduct has occurred there will be circumstances where an element of sanction is necessary to reflect the seriousness of the breach and to deter others from similar conduct. The processes and range of sanctions should fully reflect these dual purposes.

Questions c and d Codes of Conduct:

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

7. The Council has adopted mandatory ethics and probity training for all members and co-opted members of the authority. Flexibility to adopt additional Code provisions inevitably results in differential requirements in authorities across England, which can lead to inconsistencies and potential confusion for members of the public. In addition an issue arises as to how to deal with politically significant incidents where a member or co-opted member is potentially in breach of the Code of Conduct, but no complaint is made to trigger consideration or investigation of the matter.

Question e Investigations and decisions on allegations:

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - (i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - (ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - (iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to

conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

8. The investigatory and decision making roles of the Monitoring Officer should be separated. Complaints should be referred to and monitored by a constituted forum (i.e. a committee or sub-committee) and decision makers should be drawn from a big enough pool to ensure a balanced decision (for example co-opted members and independent persons working across authorities). The Monitoring Officer is generally able to manage minor conflicts that arise using existing arrangements by separating advice roles, delegating decisions/investigations, where appropriate by using independent investigators and by appointing a deputy or second independent person.

Question f Sanctions:

- f. Are existing sanctions for councillor misconduct sufficient?
- (i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - (ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

9. With the exception of criminal sanctions for failure to register/declare a disclosable pecuniary interest, existing sanctions are weak and inconsistently applied. Most frequently a member or co-opted member is reprimanded or required to apologise or agree to training where there is a minor or technical breach of the Code. In more serious cases access to Council facilities may be withdrawn and ultimately the Council has inherent power to remove a member/co-opted member from a committee/sub-committee or outside body. The use of these existing sanctions can be seen as a reward/punishment arrangement and can lead to unintended consequences (for example impeding a councillor from carrying out their democratic role without achieving the desired outcome of improving behaviour). An additional power of suspension or partial suspension would assist in deterring breaches and enforcing compliance with the Code. One of the Council's appointed independent persons has suggested that sanctions issues should be decided by a committee formed only of independent co-optees which could ensure that an appropriate balance and proportionality is brought into decision making taking into account the views of councillors, complainants and the members of the public.

Question g Declaring interests and conflicts of interest:

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- (i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
- (ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

10. The statutory definition of a disclosable pecuniary interest and the requirements for declaration require clarification and have been open to varying interpretations. The local flexibility to adopt additional code provisions inevitably results in differential requirements in authorities across England which can lead to inconsistencies and potential confusion for members of the public.

Question h Whistleblowing:

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

11. The public interest disclosure protections contained in the Employment Act 1996 apply to employees and in specified circumstances former employees but not to councillors, members of the public or other officials. The Council's Whistleblowing Policy requires all concerns to be reported to the Monitoring Officer who will determine if a complaint is within the scope of the policy. The policy does not apply to the general public or councillors but they are able to complain as individuals using the Council's Corporate Complaints Procedure. Also the Monitoring Officer will consider and take action on a complaint made by a member of the public or a councillor in appropriate circumstances, for example in respect of allegations of financial impropriety, even if the matter has not been raised as a corporate complaint or whistle blow.

Questions i and j Improving standards:

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

12. Self-regulation by local authorities has resulted in inconsistencies and fragmentation. Central government should consider appropriate amendments to the Localism Act 2011 to ensure that complaints are referred to and monitored by a constituted forum (i.e. a committee or sub-committee) and that decision makers are drawn from a big enough pool to ensure a balanced decision (for example co-opted

members and independent persons working across authorities). Sanctions should be used to achieve outcomes and be applied proportionately and consistently.

13. Sharing good practice to support the embedding of ethical standards across local authorities may be beneficial. For example, Tower Hamlets has begun to implement a detailed programme of induction, training and ongoing awareness raising and monitoring to support the effective embedding of standards, conduct and behaviour. Perhaps central government could play a role in identifying and sharing case studies and examples of good practice that could be disseminated locally perhaps as part of a thematic review – identifying what good looks like in this area that all could learn from.

Question k Intimidation of local councillors:

- k. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. (i) What measures could be put in place to prevent and address this intimidation?

14. Incidences are rare but when they do arise give serious cause for concern. The Council has recently agreed an up dated Personal Safety Protocol for members.

END

Dear Sir/Madam

Review of Local Government Ethical Standards: Stakeholder Consultation – Response on behalf of Worcestershire County Council

Thank you for giving Worcestershire County Council the opportunity to respond to your consultation on ethical standards. The Council's Standards and Ethics Committee has met to consider a response on behalf of the Council.

Addressing the questions raised, our response is as follows:

- a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*
- b. *What, if any, are the most significant gaps in the current ethical standards regime for local government?*

Response:

The existing local Code of Conduct has worked well since its introduction to ensure high standards of conduct by Worcestershire county councillors. To date no complaints have been sufficiently strong to warrant a formal finding of a breach of the Code. Possible gaps in the regime are addressed below.

Codes of conduct

- c. *Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?*
- d. *A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.*

Response:

The Council's locally adopted Code of Conduct for councillors was considered clear and easily understood and covered an appropriate range of behaviours. In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the 8 principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all 8, and we understand a majority of town and parish councils in the county as well. This seems a very good practice particularly in 2 (and 3) tier areas. It also meant that training at one authority was deemed equally good for another authority, reducing the resource demands of induction and simplifying 'the message'. County induction included real-life examples, which made it equally 'real' for councillors and was appreciated.

The current requirements for registering and declaring councillors' interests are considered satisfactory in that they set out the expectations clearly, did not unnecessarily or disproportionately interfere with the workings of democracy -

although by their nature largely relied on the honesty and integrity of individual councillors and indeed their knowledge of the potential interest.

Investigations and decisions on allegations

- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*
 - i. *What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?*
 - ii. *Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?*
 - iii. *Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?*

Response:

The Council has adopted clear and fair processes for investigating and deciding conduct complaints. The Committee was confident that allegations of councillor misconduct would be investigated and decided fairly and with due process as set out in the local processes.

The role of the Independent Person was considered sufficient to ensure the objectivity and fairness of the decision process in ensuring a completely independent viewpoint would be heard. The Monitoring Officer is authorised to 'filter' complaints and often consults with the Chairman, Independent Person or independent member of the committee before deciding on the best approach, and this access was very useful.

The Council has a satisfactory process in place should the Monitoring Officer be subject to a conflict of interest or undue pressure. Should such a situation arise he/she would consult the Chairman of the Standards and Ethics Committee and if necessary delegate functions to the deputy Monitoring Officer or engage external support.

Sanctions

- f. *Are existing sanctions for councillor misconduct sufficient?*
 - i. *What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*
 - ii. *Should local authorities be given the ability to use additional sanctions? If so, what should these be?*

Response:

Some concern was expressed over the lack of any sanction, and the Committee came to a majority view that there should be additional sanctions short of disqualification but there was no clear consensus on the nature of those sanctions. A minority felt status quo was appropriate. Current practice

here is to attempt informal resolution of complaints where possible, and this was seen as positive.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.*
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*
- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.*

Response:

The existing arrangements to declare councillors' interests and manage conflicts of interest were satisfactory. In addition to the DPI restrictions, the Worcestershire Code provides for other situations where declarations of interest are required, and in some cases withdrawal is needed, and this is considered a proportionate balance. The training was seen as effective. [The MO would personally prefer slightly clearer phrasing in the legislation about how DPIs are engaged!]

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?*

Response:

The local arrangements that are in place at the County Council for whistleblowing by the public, councillors, and officials were seen as satisfactory.

Improving standards

- i. What steps could local authorities take to improve local government ethical standards?*
- j. What steps could central government take to improve local government ethical standards?*

Response:

The local arrangements adopted by Worcestershire County Council worked effectively and the Council would encourage other local authorities to adopt a similar approach.

The Government should re-instate the status and voting rights of Independent Members on Standards Committees. The Council has chosen to continue with 3 independent co-opted members of the committee as it values outside views.

Intimidation of local councillors

- k. *What is the nature, scale, and extent of intimidation towards local councillors?*
i. *What measures could be put in place to prevent and address this intimidation?*

Response:

The nature, scale, and extent of intimidation towards local councillors had not been assessed locally. The Council was proposing to undertake a survey of all councillors to gauge the extent of the problem.

It was acknowledged that the Council had very limited measures available to it to prevent and address intimidation by the public. It has occasionally removed private addresses from the member contact details to deal with particular situations, but that has not been common.

Yours faithfully

Simon Mallinson
Head of Legal and Democratic Services
Monitoring Officer

Review of Local Government Ethical Standards: Stakeholder Consultation

Submission on behalf of Gloucestershire County Council. I am the Council's Monitoring Officer. This has cross-party support from the Audit and Governance Committee and the Group Leaders.

Gloucestershire County Councillors are covered by the existing standards regime so have direct experience of the current regime.

Submitted by Jane Burns, Director: Strategy and Challenge and Monitoring Officer

Answers to consultation questions shown in bold text

The Committee invites responses to the following consultation questions. Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Response: The arrangements are suitable for minor or moderate breaches of standards which can be resolved informally, usually by way of training or an apology.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

Response: The current arrangements leave a significant gap between criminal behaviour and everything else. The arrangements do not allow local authorities to address persistent or recurrent unacceptable behaviour. There is a reliance on political groups to take remedial action which is not always appropriate or available, for example where an independent Member is concerned. The ultimate sanction of the ballot box can take up to 4 years to take effect.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Response: The current system allows individual local authorities to determine their local codes. Whilst this brings the advantages of flexibility in local standards, it can create confusion for those councillors who are elected across two or three tiers of local government (county, district/borough and or town/parish councils). For example "triple-hatters" will need to operate to three separate codes of conduct. It also causes confusion for complainants. We would support a single code.

In terms of good practice, in Gloucestershire CC, the Monitoring Officer had an individual conversation about the Code, the requirements and declarations of interest with all 53 elected Members after the May 2017

elections, including returning Members. This was supplemented by induction workshops covering vital information for Members, which will be repeated annually.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Response: Disclosable Pecuniary Interests are generally clear, although clarifications have been required in terms of dispensation, e.g setting Council Tax. Personal and other interests are less clear, particularly where Members elected before 2011 were used to other definitions of interest (pecuniary, non-pecuniary, personal, sensitive etc). Some Members will err on the side of caution, others won't. Furthermore, as mentioned in c) above, different codes have different arrangements for declaration. Some are voluntary, some are required. Again consistency would be helpful here.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

- (i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Response: The processes and arrangements allow for due process to be followed. One of the most controversial issues is whether hearings should be held in private or public. It is left to individual authorities to determine. At least one case went to Judicial Review to resolve which is time consuming and expensive. More clarity would be helpful here.

- (ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Response: The Independent Persons have been very effective. They can and do give independent advice, unfettered by any formal links to the council. Because the roles are voluntary and unremunerated, we rely on our ability to attract and retain suitable volunteers and for them to want to continue with the role.

- (iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Response: Monitoring Officers have legal responsibilities in respect of matters of concern regarding any legal, ethical standards, probity, or propriety issues that are likely to (or do) arise. They must do this without

fear or favour. There may be instances where they have a conflict of interest, for example, if they are part of the allegation. In these cases, there is also a nominated Deputy Monitoring Officer who could step in or a Monitoring Officer from another authority could be asked to take the lead. The employment protections on MOs (and the other Statutory Officer posts of Head of Paid Service and S151 Officer) have recently been revoked. Evidence was provided at the time to DCLG about the benefit of the protections and the risks of them being removed. The Committee may wish to revisit this evidence in the context of this consultation.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

- (i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
- (ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Response: the main sanctions are training or an apology or some removal of facilities. These are sufficient for minor breaches. The sanctions probably do not deter breaches. Bad publicity probably does, although for some it is seen as a 'badge of honour'.

Response: additional sanctions need to be proportionate to the breach.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- (i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Response: GCC has not granted any dispensations.

- (ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Response: the only area where Gloucestershire County Council goes beyond statutory requirements is in respect of planning committee, where bias is a specific issue. Members of planning committee are trained annually on the issue of common law of bias and the difference between bias and the statutory requirements i.e. that bias interests go beyond that of just the member and their spouse. Members are also advised to seek clarification on any potential issue of bias prior to any planning committee meeting. All Members are briefed on bias and predetermination..

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Response: Yes. Gloucestershire CC has recently reviewed its whistleblowing arrangements with the help of Public Concern at Work, the national Whistleblowing Charity.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

What steps could *central government* take to improve local government ethical standards?

Response: Local authorities are best placed to provide training and awareness for their Members. Whilst standards training cannot be a requirement of office, it should be strongly encouraged for all councillors.. This might need external input if the behavioural issues are cultural or widespread. It is important that Monitoring Officers can share learning from practices and breaches elsewhere and draw on legal expertise where appropriate.

Response: Central government should consider the Committee on Standards in Public Life's report and any recommendations from this consultation, particularly in respect of sanctions, and whether hearings should be held in public or private.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

(i) What measures could be put in place to prevent and address this intimidation?

Response: Social media has made this more likely and more visible. We provide guidance on personal safety, including reporting to police, but in all but the most serious cases, they will struggle to have the capacity to respond.

SUBMISSION 159

Dear Sirs,

The Northumberland Association of Local Councils represents nearly all the parish town and community councils in Newcastle upon Tyne and Northumberland.

Your consultation paper was considered by our County Committee at its last meeting when it was assisted by the attached report from Cllr Andrew Tebbutt who sits on the Committee. One of our member councils had also made a direct submission and this is also attached.

The Committee made the following points (based on experiences of Members of the Committee)

- Sadly, a number of the complaints could have been dealt with by an apology at an early stage
- The lack of effective sanctions against a Councillor for extreme conduct was very much regretted, particularly when officers were the subject of bullying
- The different enforcement regimes for breaching disclosable pecuniary interest rules (the police and CPS to investigate) and non-pecuniary interests (the monitoring officer to investigate) – The Chief Officer was asked to enquire in the police had received any complaints in this area.

I now have the information from the police who have investigated three offences under the localism Act since 2013. Their records do not extend further back.

Stephen

Stephen Rickitt

Chief Officer

Local Govt. Ethical Standards - response from one Council to the Northumberland Association of Local Councils

- a) Yes. The threshold for declaring receipt of a gift should be updated regularly, perhaps with reference to an index
- b) It appears to be relatively easy for a politician at our County level to give misleading & even incorrect information without any form of redress
- c) Yes. There are lots of training opportunities. We recommend that all new Councillors should attend the basic training opportunities, including Ethics, & that a register be kept of relevant courses attended. In the professional environment this is normally referred to as CPD.
- d) Yes
- e) i) The processes are weighted in favour of the complainant. We have experienced investigations that have been very lengthy & as a result unfair on the person being investigated. This was disproportionate to the seriousness of the allegation
ii) We agree that an Independent Person should be part of the process
iii) We are unable to comment
- f) We are unable to comment
- g) The existing arrangements are satisfactory for the operation of our Parish Council
- h) We do not consider it appropriate to have a specific whistleblowing policy because such an action would normally be outwith the organisation. We only have one, part time, employee & we are confident that person is fully aware of where to raise an issue if necessary. We are equally confident that Councillors would know where & how to raise an issue. In the case of the public it would very much depend on the nature of the issue & we are confident that individual members of the public would be able to decide the best course of action for example the County Council, their MP or the Police.
- i) We are unable to comment
- j) We are unable to comment
- k) The Parish Council has experienced significant levels of intimidation, including legal action, from a very small group of local residents over a period of many years. This necessitated considerable financial expenditure by the Parish Council in defending its position. In pursuit of its own vested interests the group used the complaints procedures as part of a process of intimidation against Councillors who resisted its actions. We created & subsequently invoked a Vexatious Correspondence Policy, which was effective after a year or two to reduce the intimidation. On several occasions we reported inappropriate behaviour to the Police. We consider that an effective working relationship with the Police is beneficial when the behaviour of members of the public becomes unacceptable.

SUBMISSION 160

The Institute of Local Government Studies (INLOGOV) is part of The University of Birmingham and has over 50 years of experience working within local government and the public sector.

INLOGOV has been involved in ethics and standards of councillors within local government since inception of the first standards regime under the Local Government Act 2000. During the period until 2011, we were involved in the training of councillors and research conducted on behalf of the former Standards Board. Since the Localism Act 2011, we have continued to take an interest in standards with at least two academics providing support to a local authority on standards and ethics. This submission assesses the strengths and weaknesses of standards processes within local government since 2011 but does refer back to some aspects following the 2000 Act under the former 'standards regime'.

1. Codes of Conduct

- 1.1 There is no official or standardised code-of-conduct across local governments. Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from authority to another. At worst some councils may only see them as symbolic. We recommend that model codes of conduct be developed for use by authorities.
- 1.2 Whilst the inclusion of the Nolan principles is an eminently sensible approach, we question whether local authorities have sufficiently enforced those principles or have the wherewithal to impose sanctions when required. We considered and agreed that the Nolan principles require clout within local government to ensure compliance.
- 1.3 We have observed from Worcestershire that a single code of conduct applied across district and county councils can provide a consistency of understanding amongst councillors, monitoring officers, clerks and other relevant stakeholders. It is common place elsewhere for councillors having sign up to three or even four variants. It is possible that variants may also confuse the public.
- 1.4 Codes of conduct should reflect the increasing use of social media. The 2011 Act failed to address social media and the potential for councillors to use this medium inappropriately. This needs to be addressed.
- 1.5 Guidance is required for councillors on how to handle social media abuse produced by other users and to avoid tit-for-tat exchanges that could result in a diminution of standards and ethical behaviour. We know from evidence presented to the recent inquiry undertaken for the Committee that politicians are also subject to social media bullying. Anecdotal evidence from trade media suggests that councillors are equally subjected to abuse.
- 1.6 Codes of conduct on member and officer relations are not always in-place within local authorities and if they are, they may be dated or rarely promoted.

We feel that codes that deal with inappropriate behaviour by councillors against officers needs to be applied more robustly and included into councillor codes of conduct.

- 1.7 We considered whether Standards Committees should implement codes of conduct related to council officers similar to the principles contained within the Civil Service Code. We decided that Standards Committees would not be an appropriate location for such a code, as this should remain with the Head of Paid Service. However, councils should have Standards Committees in place to observe that good corporate governance is placed into practice in terms of standards and ethical behaviour, and to ensure that systems are in place amongst the officer cohort without having to prescribe or judge upon cases of ethical misconduct.

2. Standards Committees

- 2.1 Many local authorities have dropped their standards committees or amalgamated them into other standing committees resulting thus diluting focus. We suggest that this problem requires dilution requires attention to ensure that the public have confidence in the robustness of the local authority standards process.
- 2.2 Independent voting members should provide public confidence to the independence of the standard process. However this requirement was abandoned in 2011 and it contrasts strongly to audit committees which still require independent voting members. We feel that the role of independent non-partisan voting members including chairperson should be reinstated.

3. Role of Monitoring Officers

- 3.1 Monitoring Officers may be subject to less scrutiny within the current system in terms of their handling of cases. There is insufficient protection against monitoring officers suppressing cases of complaints made against councillors, although we acknowledge that there is a fine balance against pragmatic decisions on resolving vexatious or irrelevant complaints before full referral to the independent persons. We consider that monitoring officers should be more transparent in the receipt and management of complaints from the outset, through the provision of periodic reports to their standards committee or equivalent.
- 3.2 Not all monitoring officers are legally trained. In that situation we feel that they should be supported and trained to handle complaints in an appropriate fashion that could be regarded as independent and legally robust.

4. Independent Persons

- 4.1 The role of an 'independent person' is to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code. We feel that independent persons should be fully trained and inducted on this process given that their role is akin to quasi-judicial in approach.

5. Induction and Training

- 5.1 Town and parish and councils do not always appear to universally induct or train councillors on the requirements to maintain high standards in public office. Analysis of council minutes will often reveal a motion on councillors 'noting' their standards code without any realisation on whether councillors actually understand their responsibilities. Councils should be mandated to

ensure that members are fully trained and educated on standards in public office.

6. Sanctions

- 6.1 The loss of effective sanctions is a cause for concern since the removal of powers after the 2011 Act. Whilst some councils may include soft-sanctions within their codes and anecdotal data suggest that some apply these sanctions in cases of poor standards, many are fairly ineffective.
- 6.2 The inclusion of the Nolan principles post 2011 was a positive move, yet sanctions or clarity on infringements are unclear. We have concerns that the Nolan principles may not be applied with vigour.
- 6.3 The previous 'standards regime' was bureaucratic and unwieldy but its demise removed effective hard sanctions against councillors. We do not believe that the old regime should be reinvented but there is a clear need to for effective hard sanctions including disqualification from office over and above disqualification through criminal prosecution related to DPs. We feel that new mechanisms for hard sanctions such as suspension and disqualification should be revisited.

7. Lack of evidential data

- 7.1 The former regulator, *Standards for England* gathered a large amount of intelligence on the extent of cases and application of standards by authorities. Today, there is no such evidential base. In the absence of any data, we recommend that a mechanism be created for the collection of data on standards and that research be conducted on the extent and causes of poor standards.
- 7.2 We welcome this consultation on Standards, as it will help to highlight and gather important evidence on the current standards process.

8. Whistleblowing

- 8.1 We know from the Francis Inquiry on the Mid-Staffordshire NHS Trust that public sector workers require protection when whistleblowing. We believe that standards committees may be key to setting up such a framework within authorities.

9. Local Councils

- 9.1 We considered whether the inclusion of parish and town councils was too burdensome due to the propensity of vexatious complaints and number of cases raised with their principal authorities. We concluded that whilst small in size, these councils have to command public trust and are high risk compared to their larger counterparts. Furthermore, parish and town councils have a close relationship with their population and trust in councillors must be assured for public confidence.

10. Regulating standards

- 10.1 We considered whether a regulator should be reintroduced in England similar to the *Standards Board for England* and latterly *Standards for England* as abolished in 2011. We concluded that there would be little appetite given the negative coverage that this body received during its existence. Yet despite its many problems, it did fulfil important functions such as promoting standards and gathering intelligence on cases of misconduct.
- 10.2 Whilst not directly responsible for standards, we should not the *Audit Commission* which fulfilled the function of inspecting good corporate governance and its ability to identify poor political behaviours within troubled authorities. The abolition of both *Standards for England* and the *Audit Commission* means that little intelligence is gathered and few interventions. Cases are only identified in the rare instances of police investigations and direct central government interventions are made as in the case of Tower Hamlets LBC.
- 10.3 Whilst we do not willingly wish to advocate a replication of the previous standards regulatory process, we do feel that the current absence of any regulatory approach is not ideal and that an alternative approach should be considered.

Contributors

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SUBMISSION 161

**Committee on Standards in Public
Local Government Ethical Standards: Stakeholder Consultation
Response from Standards Committee - Northumberland County Council
April 2018**

The Standards Committee was asked to consider what representations, if any, it wished to make in response to the Committee on Standards in Public Life's current consultation on the review of local government ethical standards.

Members discussed the following questions which were asked as part of the consultation process:-

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

Members felt that it was difficult to apply sanctions against a Councillor who had been found to be in breach of the code of conduct. There was not a penalty to fit the seriousness of some offences. The system worked on the basis of acceptance and if the subject member did not share the same values as those reflected in the ethical framework, then the system could do nothing, and if the subject member's behaviour did not change, then there were no further more serious sanctions available.

Members agreed that the lack of effective sanctions available to the Standards Committee was the most significant gap in the current regime.

Codes of Conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

It was generally felt that the code of conduct was clear and understandable, however, there would always be councillors who chose to ignore it.

The use of social media was an area, which required some training and it was often an area of difficulty for new councillors to decide whether they were acting as a councillor or as a private individual. Improved training, including online training, may result in making councillors more aware of their responsibilities under the code of conduct and prevent them making mistakes.

This was an area, which should be dealt locally rather than at a national level.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Members agreed that the code of conduct was consistent with the Seven Principles of Public Life. There were also satisfactory mechanisms in place for the registration and declaration of councillors' interests.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

(i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Members agreed that investigations met the requirements and no additional safeguards were required.

The Monitoring Officer conceded that there could be delays in the progress of investigations due to difficulties in contacting the subject member or other parties. While there could sometimes be mitigating circumstances for such delays it was suggested that if an investigation was taking longer than expected to progress, the Standards Committee should be informed and asked to consider whether it should issue any advice or guidance in respect of any likely or ongoing delay

(ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Members agreed that it was important to have an Independent Person as part of the process but that the current role was sufficient to ensure the objectivity and fairness of the decision process .

(iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Members noted that most Monitoring Officers avoided undertaking investigations themselves, however, there was no conflict of interest in deciding whether an investigation was necessary or not at the initial assessment stage. It was considered that where any conflict did arise that assistance might be sought on a reciprocal basis from a neighbouring authority.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

(i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

(ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Members had previously discussed the issue of sanctions and agreed that the ability to suspend a councillor should be afforded to local authorities with a maximum term of suspension of six months recommended.

Declaring interests and conflicts of interests

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.

(i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Members felt that the system was appropriately and successfully used.

It was reported that under the previous ethical framework regime, it had been possible for a councillor with an interest which would otherwise require them to withdraw from participation in a meeting to speak at that meeting but only if members of the public were also allowed to attend and speak in like manner. It was recommended that this provision be reintroduced.

(ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Reference was made to the "other interests" category within the members' code of conduct which was additional to the statutory disclosable pecuniary interests which covered membership of outside bodies both in a private capacity and through appointments made by members' parent authority. The members' code of conduct also included the "non-registrable" category of interests, which had been included in the former Model Code issued under the Local Government Act 2000. These interests covered the interests of family members and close associates of elected members.

It was noted that Northumberland County Council had also recently adopted a Gifts and Hospitality policy for Councillors, which provided members with detailed guidance in relation to this are of the ethical framework.

Improving Standards

What steps could local authorities take to improve local government ethical standards?

These had been identified elsewhere in the Committee's discussion.

What steps could central government take to improve local government ethical standards?

In addition to the need for more effective sanctions, the Chair commented that the Parish/Town councillors who sat on the Standards Committee should be able to vote.

Both he and the previous chair had written to the then DCLG to request this, but without success.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

(i) What measures could be put in place to prevent and address this intimidation?

Members acknowledged that perception of intimidation and tolerance levels could vary greatly amongst councillors and that a certain amount of 'thick skin' was required. It was difficult to prescribe exactly at what point such behaviour became unacceptable. It was noted that Northumberland County councillors could seek advice from the Health & Safety team.

This was an area that could be dealt with at a local level.

Mr J Jackson

**Chair
Standards Committee**

Review of Local Government Ethical Standards: Stakeholder Consultation Response to the Committee on Standards in Public Life Review of Local Government Ethical Standards from the Basingstoke and Deane Borough Council Standards Committee 2017/18.

We are a cross party committee of the Basingstoke and Deane Borough Council. We are concerned to improve the arrangements for promoting high standards in local government. We wish to share our approach which uses independent standards assessors to strengthen the independent role of the Committee and the Monitoring Officer/ Deputy Monitoring Officer. We comprise four independent members, four parish council representatives, and four borough councillors.

Independent Members: Liz Morris, Keith Bastin; Chris Evans, Peter Moore OBE (Chair)

Parish Council representatives: Councillor Jo Slimin, Councillor Lesley Fryer, Councillor Linda Agnew, 1 vacant seat.

Borough Councillors: Councillor Dan Putty, Councillor Michael Westbrook, Councillor Stuart Parker, 1 vacant seat.

Consultation questions and responses:

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
 1. **The existing structures, processes, and practices work towards ensuring high standards of conduct by councillors. However we believe it is important that Standards Committee are encouraged to adopt a higher profile than they currently do in order to promote high standards and create awareness of the conduct regime with the public and the councillor community. We believe that the current system established by the Localism Act 2011 lacks a national support framework ; gives too much local discretion and risks creating an environment where councillors and the public do not have the same confidence in the standards regime as before. We believe giving local committees more regulatory powers will help achieve higher standards of conduct by all councillors.**
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?
 2. **Significant gaps are the ineffective sanctions available to us in cases of breaches of the Code and the need to strengthen the profile of local committees in order to increase public awareness of their work.**

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
 3. **Yes, we believe our code of conduct is clear and comprehensively understood. It might benefit however from the inclusion of reference to modern social media practice such as, trolling, use of Facebook and Twitter, where conduct/behaviour issues can arise and which are increasing. We include training on the Code of Conduct as part of mandatory Member Induction and offer a session on the Code as part of the annual Member Development programme.**
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and

declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

4. Yes, our Code of Conduct (enclosed) is detailed both on the Nolan Principles and Councillors' interests.

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

5. Yes, allegations are conducted and decided fairly and with due process.

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

6. Yes, our Arrangements for dealing with allegations (enclosed) have been recently updated and adopted.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

7. In addition to the views of the Independent Person; at Basingstoke & Deane Borough Council (BDBC), there are four co-opted independent members to examine complaints. They are known as Independent Standards Assessors (ISAs). These roles are a throwback to the previous Standards Committee system, the independent co-optees were retained by BDBC after the Localism Act 2011 for their experience and expertise. In addition, as well as providing another layer of independent scrutiny of complaints and this demonstrates a strengthened sense of fairness and independence. We believe we are unique in these arrangements. It works well and has increased confidence in our process.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

8. As mentioned above, the role of the ISA brings additional protection for the Monitoring and Deputy Monitoring officers.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

9. No, existing sanctions are not sufficient to deal with councillor misconduct.

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

10. Please see section 6.6 of our Arrangements listing the sanctions. As stated above, we believe that the existing sanctions are not sufficient as they are difficult to enforce and are largely ineffective both as a sanction and as a deterrent.

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

11. Yes. Currently, there is no recourse if a sanction is ignored or if the breach is a level of seriousness that requires more than a formal apology. The sanctions that are available should be more punitive.

12. We would like the sanction to suspend from office for up to a maximum of a month. Suspension could be used in one of two ways: (1) where a sanction such as training or an apology has been ignored or (2) if the breach is serious enough that it warrants a stronger sanction than an

apology but is not a criminal offence. These might include racist or derogatory comments and behaviours.

Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

13. The issue of councillors' interests and managing conflicts of interests is a standing item on each meeting agenda. Although detailed in our Code of Conduct, differentiating between the two types of interests can be difficult and there needs to be a national statement providing assistance to local councils on this matter.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

14. Yes, however, as already stated, there is an issue of how councillors' interests and conflict of interests are defined.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

15. The Monitoring Officer provides advice. However, the main problem with this is that there are over 250 Monitoring Officers in the country with their own individual understanding and definitions. Therefore, there needs to be standardisation of guidance at a national level.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

16. Whistleblowing is not explicitly covered by the Code of Conduct for Councillors. As such whistleblowing procedures and policy fall outside the scope of our Committee. Because of this, it is hard to know if the arrangements for whistleblowing are satisfactory. We suggest that there needs to be standard guidance on a national level that can be promulgated as necessary.

Improving standards

i. What steps could local authorities take to improve local government ethical standards?

17. Local government ethical standards could be improved through more transparency by the use of webcasting meetings, ensuring independence, and sharing best practice between councils. It has been noticed that when meetings have been webcasted, there has been a significant impact on member behaviour. Independence from party politics is essential on the Standards Committee and in dealing with complaints of alleged misconduct by councillors to ensure transparency in order to increase public confidence. Liaison with other councils to discuss and share experience, ideas, and case studies might also assist with improving ethical standards.

j. What steps could central government take to improve local government ethical standards?

18. There are three steps that could be taken. Firstly, by reinforcing the need to maintain independence in these matters. Secondly, granting of additional powers to Standards Committees to increase the range of sanctions based on central guidance. Thirdly, agreeing to give co-opted independent members on the Standards Committee voting rights.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

19. We are not aware of any but would be supportive of steps to eliminate such conduct.

i. What measures could be put in place to prevent and address this intimidation?

20. We are not aware of any but would be supportive of steps to eliminate such conduct.

Peter Moore OBE
Chair of the Standards Committee
Basingstoke and Deane Borough Council

Bhupinder Gill
Monitoring Officer
Basingstoke and Deane Borough Council

Dated 14 May 2018

[Redacted signature]

Dear Sir/Madam,

Review of Local Government Ethical Standards Committee On Public Life

This submission is made on behalf of the Audit and Governance Committee of the Cleveland Fire Authority which met to consider this stakeholder consultation on 23 February, 2018. The Fire Authority was established through The Cleveland Fire Services (Combination Scheme) Order 1995, and its Brigade exercises core and other functions under the Fire and Rescue Services Act, 2004. The members and co-opted members of the Fire Authority are bound by a Code of Conduct which fully complies with the requirements under the Localism Act, 2011.

The responses of the Committee are set out below:

- a. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

As a preliminary, it is important to state that the Committee has no issue with the high standards of conduct within the Fire Authority; however, it is not convinced that the existing standards, processes and practices are in themselves adequate to ensure this. Whilst the Committee notes; the 'duty to promote and maintain high standards of conduct' under Section 27 of the Localism Act, 2011, the minimum requirements through a citation of the principles of conduct in public life within the terms of a Code of Conduct and the involvement of Independent Persons within the 'arrangements' for dealing with complaints, the fundamental issue was the lack of sanctions within the present regime.

For its part, the Fire Authority have incorporated many of the features of good ethical governance that was initially introduced through the provisions of the Local Government Act, 2000 (Part III refers) and regulations made thereunder as well as guidance issued by the

then Standards Board for England (which offered some oversight of the ethical conduct system), such as the retention of the references to personal and prejudicial interests as well as the term 'disclosable pecuniary interests' as introduced under the 2012 Regulations, the obligation to declare 'gifts and hospitality' and encompassing all the 'general principles of public life' including: 'respect for others' and 'duty to uphold the law' which are not mentioned within Section 28 of the 2011 Act, but appreciating how an Authority could 'craft' its own Code. Members of the Committee would welcome the universal application of these elements.

The Committee formed the unanimous view that the public expected the highest standards in the ethical behaviour and conduct of its members. This could be seriously undermined and indeed eroded, where available 'sanctions' could be inadequate to deal with to any misconduct in public office. Although, the 'offence provision' within Section 34 of the 2011 Act was noted, prosecutions had been few and it did not appear to be the case that the DPP (whether for evidential or resource implications or a mixture of both) had entertained the taking of such proceedings in the overall context of criminal proceedings. Where prosecutions had arisen, the penalty was invariably to the lower end of the sentencing scale and without disqualification from office (the case of 'Cllr Spencer Flower' being a case in point).

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

As indicated above, the Committee felt that the most 'significant gap' in the present system was an inert and passive system of available sanctions, particularly when assessed against those sanctions that were previously available under the Local Government Act, 2000. Errant behaviour of an elected member might well come within a proportionate remedy of training or the issuing of an apology, but it might also require consideration of suspension or disqualification: sanctions which would only presently be available following the outcome of a successful prosecution under Section 34 of the 2011 Act.

The Committee noted the consultation through the then Department for Communities and Local Government (DCLG) on the 'Disqualification Criteria' for Councillors and Elected Mayors, but this was only a consideration in regard to their election to office (Section 80 of the Local Government Act, 1972 refers). Members believed that without a forceful system of available sanctions the present system had been seriously undermined. Although a basis for change had been so-called 'ill-founded and malicious complaints' being made, it was considered that the system for investigation of complaints was sufficiently robust to detect such contentions. It was further mentioned that any party political influences as the drivers for any complaint would also be detected.

Generally the 'arrangements' for dealing with complaints were sound, through experienced officers (often those exercising their Monitoring Officer role) with the assistance of competent Independent Persons. It should be noted that the Independent Persons within the Fire Authority take a full participatory role within the work of the Audit and Governance Committee and their views are accommodated within this response.

Codes of conduct

- c. **Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**

The Fire Authority's Code of Conduct is clear in its language and has been supplemented through DCLG and LGA guidance issued in connection with the provisions in the Localism Act, 2011. In addition the regulations covering 'disclosable pecuniary interests' has been annexed.

Protocols exist between the Monitoring Officer of the Fire Authority and his colleagues within the local authorities constituting the Cleveland Fire Area to ensure some degree of uniformity in the Codes of Conducts and approaches to training, induction programmes etc., Good practice exists through the Lawyers in Local Government (LLG) and particularly through the discussion and dissemination of good practice through the Fire Lawyers Network.

- d. **A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

The consistency with the 'Seven Principles of Public Life' is justifiably seen as the minimum requirements for a Code of Conduct but should ideally include all the ten 'General Principles' as most notably absent is the 'duty to uphold the law' together with 'respect for others' (see above). The provisions for the registration and declaration of interests of Councillors (and co-opted members) are adequate.

Investigations and decisions on allegations

- e. **Are allegations of councillor misconduct investigated and decided fairly and with due process?**

- (i) **What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

Local authorities need to have in place 'arrangements' under which 'allegations' of member misconduct can be investigated (Section 28(6) of the 2011 Act refers). The Fire Authority has published guidance, in unison with most public bodies, on the processes to be followed, together with the procedures for hearing complaints, following the outcome of an investigation. These details can be accessed through the Authority's Constitution and are referenced through the Authority's website and are available in hard copy format.

As indicated, the Authority engages with its Independent Persons from the receipt of a complaint rather than seeking their views before a decision is taken on a matter that has led to an investigation (Section 28 (7) of the 2011 Act refers). Conscious of Human Rights implications (Articles 6 and 8 primarily) the Authority's procedures allow for representation, and protocols have been developed within the Tees Valley to deal with conflicts of interest

amongst other matters. It is therefore considered that the procedures in place are sufficiently robust and have been refined since the introduction of the ethical standards regime under the Local Government Act, 2000.

- (ii) **Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**

Please see above.

- (iii) **Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

As indicated, the Tees Valley Monitoring Officers Group have established protocols for dealing with conflicts of interest as well as the provision for mutual support and assistance. There are indemnity provisions available that would seek to protect Monitoring Officers and that would be accessible under an officer's contract of employment and guidance through such organisations as 'Lawyers in Local Government' although it is appreciated that in some cases this may not be sufficient to protect some officers in certain organisations who have not sufficiently embedded a culture of good ethical conduct within their own organisations. There might therefore be benefit from formalising arrangements to provide such protection by means of a national standard.

Sanctions

- f. **Are existing sanctions for councillor misconduct sufficient?**

- (i) **What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**

Existing sanctions are insufficient and therefore not always proportionate to any finding of fault to adhere to the provisions of a Code of Conduct. Available sanctions are the issuing of an apology, undergoing training and removal of facilities (provided this does not affect their role as councillor within their community). Such actions could to some degree militate against a repetition of such behaviour as the adverse publicity behind a finding of fault might still persist in the minds of the electorate and this may temper the behaviour of a councillor subject to a sanction. However, such evidence of this as exists is purely anecdotal.

Clearly, a more robust regime of sanctions would restore and instil better public confidence in the present system and also hopefully act as a restraint upon a councillor who might contemplate engaging in behaviour which would generally be considered as being unacceptable.

- (ii) **Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

Disqualification and suspension, as was previously the case, with a limitation on the period of any disqualification/sanction with the most serious cases (see Section 34 examples) being reserved to the courts or potentially through a First Tier Tribunal system.

Declaring interests and conflicts of interest

- g. **Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.**
- (i) **A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**

Existing arrangements over the declaration of interests are satisfactory. However, 'disclosable pecuniary interests' and their application should extend beyond 'spouse/partner' and should cover immediate members of the councillor's family (ie. sons and daughters). Consequently, many public authorities have required such declarations as a provision within their Codes of Conduct and protocols, particularly, by way of example, in the exercise of the discharge of functions associated with acting as a Local Planning Authority. In the granting of permissions/consents and the award of contracts, as outlined in the DCLG guidance to accompany the 2011 Act, there is a need to ensure propriety in the acts of public bodies. There is a consequent need for such guidance to be 'up-dated' and refreshed, which is singularly absent at present with a lack of clear direction. A void persists in the absence of the former Standards Board for England. Dispensations are a necessary feature and are used sparingly and in line with the limited application for any consideration of their use.

- (ii) **What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

The Fire Authority still requires declarations that go beyond the stated requirements under the 2011 Act with the obligation to declare prejudicial interests which may go beyond pecuniary matters and involve other close members of a councillor's family (not simply a spouse/family) to ensure and instil public confidence. To do otherwise would seriously undermine the reputation of an organisation. Such provisions should be made mandatory.

Whistleblowing

- h. **What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?**

Arrangements for whistleblowing within the Fire Authority are reflective of the Public Interest Disclosure provisions and the existing statutory framework. Individuals are encouraged to make disclosures without fear of victimisation and/or harassment. Further, it is an important consideration that a disclosure can be made to the Authority or to a number of bodies as indicated in its own accessible policies and procedures document. The more an ethical

culture is embedded in an organisation the more likely an individual will utilise such procedures where they need to make a disclosure in the public interest.

Improving standards

- i. **What steps could *local authorities* take to improve local government ethical standards?**

The Fire Authority regularly reviews its ethical framework and provides training to its membership in addition to member development conducted through a councillor's constituent authority. Any 'improvement' must be led by government through legislation and guidance (both statutory and non-statutory) as ultimately it is through such measures that parameters are then set out in which public bodies should operate.

- j. **What steps could *central government* take to improve local government ethical standards?**

Introduction of a more robust sanctions regime (see generally above).

Intimidation of local councillors

- k. **What is the nature, scale, and extent of intimidation towards local councillors? What measures could be put in place to prevent and address this intimidation?**

It is noted the recent investigation by the Committee on Standards in Public Life into intimidation of candidates at the last Parliamentary General Election and the measures that have followed i.e. anonymity of address details etc., Intimidation of Councillors is a present and serious factor. It can arise through a variety of incidents, such as local issues of controversy and emotion, political pressures, unrealistic expectations of the public and misinformation. There has been a discernible trend of hostility to local politicians. Health/Safety and Well-being training have become standard within induction and continuing development programmes for councillors. In cases, there has been reference to other agencies to offer mutual support and assistance. However, it appears this unfortunate face of 'public life' may be set to continue and again where legislation could be needed as a safeguard.

General observations

The Report to the Committee drew Members' attention to the founding purpose of the Committee on Standards in Public Life as being "*to examine current concerns about standards of conduct of all holders of public office...*" Members have previously expressed concern about the segmentation of standards; they would wish to see a consistent code applied to Elected, and Co-opted representatives and senior executives in all fields of public life.

Members are aware of the expansion of the seven 'Nolan Principles' to ten, through the addition of respect for others, duty to uphold the law and stewardship. Members have queried whether there needs to be a further expansion to address the wider issue of conduct that might bring a public authority into disrepute, Members would welcome the Committee on Standards in Public Life giving consideration to these issues, perhaps under the broad heading of 'Probity'.

I trust these representations are of assistance.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Councillor Norah Cooney
Chair - Audit & Governance Committee
Cleveland Fire Authority

SUBMISSION 164

Committee on Standards in Public Life: Intimidation of candidates:

Additional submission from Sussex PCC Katy Bourne.

I made my original submission to the CoSIPL in November 2017, eight months after securing a civil injunction against a local man for a five year campaign of harassment and stalking.

The terms of the injunction forbade further information to be posted online or shared, and required offending material to be removed.

Over a year on from that injunction and also a Police First Warning Notice, the individual concerned continued to post information and had not removed the offending material, and his campaign grew to involve several other people too.

In March 2018 I made a decision to share my experience with the media to highlight the lack of awareness about stalking behaviours and the need for our police and other criminal justice partners to spot the signs and join the dots between behaviours in order to protect victims and secure prosecutions. Now that my experience has been reported upon, my previous submission can be made public- (subject to some updating as attached).

I did not name the individual, and because of very recent police activity and live investigations, I am unable to go into more detail at the moment.

I feel further victimised by what I see as a system paralysed with inertia and confusion. I am now enduring a sixth year with false and malicious information and images remaining on the web and being reposted, as well the impact of recent activity subject to the latest police investigation.

It leads me to propose that we need much more accessible and flexible preventative measures to disrupt stalking and harassment activity, (and the Stalking Protection Order Private member's Bill currently before Parliament is a good start).

We must train police officers to understand that if a pattern of behaviour feels like stalking to a victim, and it is fixated, obsessive, unwanted and repeated.... it probably is stalking.

We most definitely need guidance for prosecutors to show that in the absence of a defined offence of stalking, there is other available relevant legislation to intervene on behalf of victims, and the cumulative impact over long periods must be a determining factor.

Since talking about my experience I have received a huge amount of support from other prominent figures and members of the public with similar or worse experiences. They deserve better.

I would like to be able to report to the Committee that victims of harassment, intimidation and stalking are well served by our current legal processes and infrastructure but we still have a long way to go.

9th May 2018

Committee on Standards in Public Life review:

Intimidation of Parliamentary Candidates:

Updated Submission from Katy Bourne, Sussex Police and Crime

Commissioner.

Other public positions:

- Board Director - College of Policing
- Chair of the Police ICT Company
- Principal Lead of the APCC Police Technology & Digital Group
- Chair of the Sussex Criminal Justice Board
- APCC Standing Group Member for Policing Delivery and Criminal Justice & Victims
- Member of the National Oversight Group on Domestic Abuse chaired by Home Secretary
- Advisor to editorial board of the Guardian Public Leaders Network for 12 month tenure 2015/16.

Introduction:

I was first elected to the role of Police & Crime Commissioner (PCC) in November 2012

and was re-elected in May 2016 to serve another four-year term. The reason for making

this submission is to draw upon my own experience of abuse and intimidation both as a

candidate for elected office (during two election campaigns) and as a high profile public

figure since 2012.

A local Sussex man, Mr X, conducted a relentless, five year campaign against me, including my family and members of my office. To get this to stop and to attempt to have offending online material removed, I applied in the High Court for a Civil Injunction

against Mr X in 2017.

I believe it would be helpful to the Committee to share my experience of the abuse and

stalking, the manipulation of legal processes and organisations by the offender, and the

difficulties I continue to experience dealing with social media, online news and internet

platforms to have offensive and damaging false news and images taken down.

Background:**PCC role and profile:**

1. My role is to hold the Chief Constable of Sussex Police to account for the performance of the police force. I am responsible for setting the strategic direction and priorities for Sussex police through the police and crime plan.
2. This includes setting the police budget (approx. £260m) and the local police precept (the amount residents pay for policing in their council tax).
3. I represent the views and priorities of 1.6 million people in Sussex, engaging with 15 local authorities, 400 parish and town councils and 16 MPs.
4. I have a high profile, appearing on radio and television at least every two weeks so I am well recognised. I also conduct several public engagements each week.
5. My first experience of intimidation as a PCC candidate was during the protracted 2012 summer election campaign. A Sussex man, (Mr X) was also promoting himself for the Sussex PCC role and, although he never eventually paid the £5,000 deposit required, he attended hustings organised for genuine candidates.
6. At one particular husting he was publicly disparaging about my ability to perform the PCC role because I was a woman.
7. Shortly after my successful election, Mr X began posting a series of videos about me, the former Chief constable and my Chief Executive on his blog site including bizarre comments and doctored photographs.
8. The frequency and nature of these postings escalated into a sustained campaign to damage my reputation (professionally and personally) and to undermine public confidence in my role.
9. My office collated a file of over 300 postings which started at 2nd December 2012 and ran to March 2017, (much of which is still online in 2018).
10. At first I tried to ignore the online abuse and not respond. I blocked Mr X from my

personal Facebook and Twitter accounts but not my official ones. Later, at a public event he attended, colleagues from my office asked him to desist but this had no effect.

11. Over five years, I was subjected to a tidal wave of false, offensive, malicious and defamatory accusations. These included that I was responsible for the cover up of a murder in 1996; that I was behind the attempted murder of a local man; that I was involved in child abuse and elder abuse; that I was a drug dealer and a paedophile; I enjoyed domestic violence; I aided and abetted serious and organised crime, and that I was a Nazi sympathiser.

12. Mr X often posted doctored images using official logos and photographs. Two examples that were particularly offensive were a picture of the impact of the crash at the Shoreham Air Show disaster overlaid with pictures of me and the Chief Constable laughing with a caption '#Humanbarbecue'

13 . Another was an official campaign photograph of me edited with the words "Ensuring Paedophiles and Masons are all safer in Sussex".

14. Mr X joined private police discussion forums to besmirch my character. He wrote to the Police ICT board (of which I am Chair) to make false allegations against me to get me removed.

15. Mr X also exploited the media coverage of the 'Panama papers' by emailing mainstream UK media alleging my involvement in massive fraud, which resulted in national broadcasters calling me for comment on this false news.

16. Mr X posted many videos which demonstrated his volatility and aggression towards me and other local officials, including one, disturbing video in which he stalked me to an evening engagement, secretly filmed me and subsequently posted it online.

17. Mr X had several online associates who shared posts in which vile and false allegations were made against me and others (including the parents of Madeline McCann). This online, shared behaviour became real a year ago when Mr X sent an associate to film me abseiling for charity down a 120' sea cliff.

18. The next day I saw that the video of me abseiling had been published online,

showing they had filmed the empty climbing harnesses at the cliff top before I had used them. One of the comments posted under the video said the cameraman “should have slit her rope.” Mr X has since admitted publicly that he made that comment.

19. I found this physical manifestation of the online obsession really sinister and threatening. I upgraded my home security, and limited publication of my whereabouts which was counter to the accessibility I prided myself on in public life.

20. I began to permanently carry a TecSOS phone, a device given by the police to abuse victims who are at high risk.

21. The escalation of the abuse and intimidation in 2016 became almost too much to bear so I sought civil legal advice to get court protection.

22. On 25th April last year, I was awarded a civil injunction against Mr X in the County Court at Central London. This ordered him to cease his online campaign and prohibited him from being in proximity to me and my home address, and remove the hundreds of blogs and videos from several platforms.

23. I declined to seek substantial damages due to Mr X's financial situation and out of concern for his estranged family. However, the Court awarded us costs which are yet to be recovered. Some of the blogsites were taken down but much of the offending material remains online and has been shared and reposted by others.

24. My legal representatives have repeatedly approached Youtube and Google to have the remaining offensive and false material removed from the web, thus far to no avail.

25: **Manipulation of process:** Mr X made a complaint against me that I had sought to gain electoral advantage during the 2016 PCC elections by making a statement in a Facebook discussion thread regarding my expenses. He was the only person to make this complaint and, despite my office pointing out that he was the person behind the five year campaign for harassment and abuse, the complaint was

escalated through various agencies to the Independent Police Complaints Commission (IPCC) to investigate.

26. Bearing in mind that I had actually saved the taxpayer around £23k by largely paying for my own travel expenses, it was sadly ironic that Mr X was able to bring about a costly six month investigation.

27. To add insult to injury, Mr X then spent the next six months blogging and Tweeting about the IPCC investigation against me, whilst, at the same time, the IPCC protected his identity.

28. The IPCC passed their file to the Crown Prosecution Service (CPS) at the end of January this year and CPS subsequently decided there were no grounds for any action.

29. Whilst I fully acknowledge and accept the paramount importance of transparency in public office, I am disheartened and concerned that the legal system was facilitating my further victimisation by the very person who had spent five years harassing and intimidating me.

30. Common sense did not prevail, and for six months, my stalker was able to boast about his campaign to “take down Katy Bourne”. The ‘public interest’ was more important to the IPCC than my personal safety.

31. Since the court hearing, Mr X continues to post obliquely about me. He is the subject of a criminal investigation into a separate, serious matter by Surrey Police and is due in court in the Summer of 2018.

1. What is the nature and degree of intimidation experienced by Parliamentary candidates in particular at the 2017 General Election?

Answer: My personal experience (detailed above) relates to being a candidate in the 2016 PCC election. However, as a close colleague of three Sussex Parliamentary candidates (including the former Home Secretary) I was able to see the distress and anxiety caused by graffiti, malicious correspondence, online intimidation and threatening behaviour, including one man threatening to stab the Eastbourne candidate in her home.

2. Does the issue of the intimidation of Parliamentary candidates reflect a wider change in the relationship and discourse between public officer holder and the public?

Answer: I believe it does. It is one manifestation of the frustration that many disenfranchised people feel about the lack of positive change achieved by politicians.

There appears to be a growing boredom with the conventional democratic process because, by its very design and application, it makes incremental adjustments to most aspects of daily life, rather than revolutionary change.

As we saw in the American Presidential election, there was very visceral opposition to the political elite and state establishments, who many saw as gravy-train,

jobs for life “experts” with no understanding of life outside Washington.

In Britain, MPs, Ministers and Councillors are shown debating miniscule points of order, often in gilded surroundings, and the sum total of their political efforts is invisible or meaningless to many people on low incomes or unemployed.

3. Has the media or social media significantly changed the nature, scale or effect of intimidation of Parliamentary candidates? If so, what measures would you suggest to help address these issues?

Answer: Yes; technology and information sharing platforms provide the means *and* the motivation for people to be self publishers of humorous memes, false news and abuse. Mainstream news has an increasingly, web-sourced proportion of content.

Even the most respected broadsheets now feature reader comments on articles and, despite the best efforts of moderators, they attract extreme reactions that are either deliberately provocative or based on ignorance.

Our parliamentary and other candidates (PCCs included) need to utilise social media to be accessible to potential voters and constituents. In many cases, our interactions by social media like Twitter or Facebook are with reasonable people with genuine ideas and concerns, but there are always a significant proportion of people, many anonymous, whose starting point is that all politicians are greedy,

incompetent and over-paid.

Just as millions of *normal*, law-abiding people are delighted to see a selfie liked by their online friends, those seeking to embarrass and intimidate are driven by the attention their postings receive and the outrage and upset caused.

Much of the online abuse I have experienced has a sexual undertone which questions my competence because I am female or threatens sexual violence.

I think there are two areas we need to explore: the providers and the offenders:

- Better automated moderation and blocking of extreme language and images by mainstream social media providers;
- Encouraging responsible and respectful use of platforms through the deterrent effective of harsher user-management and including closing accounts.
- Training and guidance for candidates on spotting online trolls and help to judge which are more likely to develop negatively.
- Guidance for police and prosecutors on how to identify and disrupt intimidation/harassment and assemble evidence that can secure convictions.
- Education for children and rehabilitation for older, online offenders who have yet to move towards physical intimidation.

4: Is existing legislation sufficient to address intimidation of Parliamentary candidates?

Answer: Where intimidation is in the real world, existing legislation may well be adequate - although more police forces need a greater understanding of stalking and harassment.

- What *is* needed is better awareness of the many forms of intimidation and a culture change away from simply accepting that public figures should expect abuse or that intimidation comes with the territory.
- Where legislation *may* need to follow, is if tech providers do not step up to their responsibilities.
- We may also need to consider a *specific* offence of intimidation against genuine candidates because we recognise their increased likelihood of being targeted.

5. What role should political parties play in preventing the intimidation of Parliamentary candidates and encouraging constructive debate?

Answer: the adversarial nature of the Commons Chamber makes good theatre

but, as many new women MPs have discovered, it encourages boorish behaviour. If we wish our constituents to respect us as candidates and potential representatives we should lead by example and conduct our debates in the chamber and in the media in a more respectful and civil manner.

6. What other measures might be effective in addressing the intimidation of Parliamentary candidates and candidates for public offices more broadly?

Answer: We need to demonstrate that we value democratic public representation and provide potential candidates with the confidence that false news, extremist comment and intimidation will not be tolerated. That could mean ensuring there is adequate security at local hustings and providing better mechanisms and channels for people to identify and report intimidation to the police and their respective political organisation.

7. Could the experience of intimidation of Parliamentary candidates discourage people from standing for elected or appointed offices?

Answer: Undoubtedly. We have seen how dictatorships deal with fledgling democracies with intimidation at the ballot box and suppressing dissent and alternative views. Those committing the intimidation also believe they can shout louder and achieve their aims through fear. We cannot permit them to exploit technology and social media to compete for attention.

During my experience, I seriously reconsidered whether the role was worth the risk and the distress and I have always been someone that gets involved so this whole experience has surprised me.

8. Has the intimidation of Parliamentary candidates led to a change in the way in which public office holders interact with the public in correspondence, on social media or at in-person events?

Answer: Sadly yes. I have received death and rape threats and we have passed these to police to investigate.

In many cases, they come from people with serious mental health issues who may be distressed and lead chaotic lives and whose behaviour is unpredictable. It is very hard to assess who we should be really wary of, and this uncertainty makes me, and my PCC colleagues, think twice about open access public engagement.

Unless I can see and talk to the public and they can see and talk to me, I feel that I am not fulfilling my role properly.

Please note: I would be very happy to share more details about my experience with the Committee including the extensive involvement of solicitors, Sussex and Surrey Police, The Sussex Police and Crime Panel, the IPCC and the CPS, as well the impact on my office of monitoring the online abuse.

SUBMISSION 165

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

AVDC Response

- a. **This response has been prepared in consultation with all members of AVDC, the Council's Independent persons and Parish representatives appointed by the Aylesbury Vale Association of Local Councils, to provide advice on Parish/Town Council issues in relation to standards and ethics.**

AVDC comprises 59 Members and operates a strong Leader model. The Council decided to retain a Standards Committee and has a three stage approach to the consideration of complaints, both against District Councillors and Town/Parish Councillors. The complaints process itself works very well, but it is felt that the sanctions available lack any real bite and do not have the degree of deterrent effect that perhaps they should have.

The Committee on Standards in Public Life has already acknowledged this as far back as 2013, stating that the effectiveness of the sanctions regime for non adherence to local authority codes of conduct, apart from criminal prosecution in relation to Disclosable Pecuniary Interests, provides only for censure or suspension from a particular committee or committees. Naming and shaming by way of press release and publication of the findings of investigations in cases where it has been determined that a breach has occurred, does not seem to be sufficient. There has been at least one case within this District where a Parish Council was recommended to report a formal censure of two councillors and they continue to serve on the Parish Council. Whilst it might be hoped that their future might be determined through the ballot box in due course, this is not always the case.

In contrast to recent debates on Parliamentary standards which have called for greater sanctions, tightening of the codes of conduct and a greater independent involvement, local government is largely self regulated with limited sanctions. There is a significant risk under the current arrangements that inappropriate conduct by local authority members will not be dealt with effectively, thus eroding public confidence and trust in local government.

The ability to suspend individuals from participating in all local authority matters or even removing allowances might be seen to have a greater deterrent effect.

Some members have commented that interest in a business exceeding the value of £25,000 or 10% of the share capital is perhaps too high and that all interests, statutory or non statutory should be declared.

- b. This Council provides training in the Code of Conduct, but there may be an argument for making Standards/ethics training mandatory i.e. preventing participation in local authority business (following election) until this has been completed. Perhaps there should be a timescale similar to that applied for the completion of Registers of Interest during which the relevant authority should provide, and the Member attend, training. Refresher training should perhaps thereafter be provided at yearly intervals. There may be an argument for the development of a standard national training tool kit to ensure consistency of approach.**

AVDC has two Independent Persons in place and the Cabinet Member for Finance, Governance and Compliance chairs the Standards Committee. In reality there are few cases involving breaches of the Code of Conduct by District Councillors. The vast majority of the cases dealt with involve Town/Parish Councils but it should be appreciated that the District, largely rural in nature, has a large number of Parishes.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

AVDC Response

- c. The Council has adopted the national model Code of Conduct and this has recently been reviewed with a view to simplifying the language and adding basic advice, including a flow chart. However, there is still some confusion around statutory and non statutory interests. The Council supports the use of the seven principles of public life.**

There are a large number of Town/Parish Councils in the Vale and whilst some have adopted the same Code as AVDC, others have adopted the NALC model Code. A number of Members also sit on Parish Councils and they have to keep track of differing Codes. It may be more appropriate to have a uniform Code applied across all forms of local government which would make it easier for twin hatters to understand fully their responsibility.

- d. Consistency of approach nationally would be of benefit, i.e. Codes and Register Forms being uniform. Members still need to be reminded at regular intervals of the need to review their Registers of Interest to ensure that they are up to date. The Council provides advice on**

completion of registers but there appears still to be some confusion around DPLs and non statutory interests. The arrangements for declaring interests are considered adequate, with the Monitoring Officer and Deputy Monitoring Officer always being available to give advice. There are however occasions when members wait until the meeting itself to seek advice about the nature of an interest and it is difficult to respond adequately without the benefit of all the facts.

Training in the Code of Conduct and standards generally should recognise the direct linkages with on-line and social media communications. The latter have increasingly become a source of perceived or actual misconduct. It is important therefore for members to be aware of best practice in the use of social media.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

- ii. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
- iii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
- iv. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

AVDC Response

- e. **The Council has a three stage approach. Stage one is to explore whether there is scope to resolve the complaint locally. Stage two involves an examination by the Monitoring Officer of the detail of a complaint in conjunction with the Chairman of the Standards Committee and an Independent person. A decision will be made at that stage as to whether the complaint should be referred for independent investigation. Stage two occasionally finds that there has been a breach of the Code but that the nature and extent is such that it would not be an efficient use of resources to refer the matter for independent investigation. The sanctions that might be imposed include training and a written report made publically available on the Council's web site. Because of the number of Parish Councils within the District, there are two non voting members of the Standards Committee appointed by the local association of Parish Councils. Their advice is invaluable in determining complaints against Parish/Town Councillors.**

The subject member is always referred to one of the Independent Persons for advice and the other Independent Person is involved in all

other stages. It is clear however, that subject members do not always seek advice from the Independent person. The established procedures are fair and afford the complainant and subject member with access to assistance and advice from the Monitoring Officer. All the circumstances of a complaint are investigated thoroughly with all parties being afforded access to all the information available.

There is no evidence that the Monitoring Officer has been the subject of undue pressure or indeed any other officer involved in the standards regime. An annual report is prepared for full Council on the number and nature of the complaints dealt with during the year. Having a Deputy Monitoring Officer in place helps guard against the risk of any conflicts of interest.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

- v. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
- vi. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

AVDC Response

- f. This has been dealt with in part in response to questions a and b above. There was under the pre Localism Act regime a wider range of sanctions available to local authorities' Standards Committees and the most serious complaints could be the subject of suspension. As mentioned previously, the strongest sanctions are now based around a naming and shaming regime, i.e. censure, publication of findings etc. Whilst they can be removed from certain responsibilities, this has to be with the agreement of the Leader of the Council. Arguably, this could be viewed as a limited set of options for serious misconduct which rely upon party political agreement. This also could be said to undermine the public's confidence in the integrity of investigations as the perception generally is that potentially every breach of the Code of Conduct is a serious matter and should be dealt with appropriately.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- vii. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
- viii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.
- ix.

AVDC Response

- g. The Council maintains registers on its website these include DPs and non statutory Interests. The latter are basically personal interests and gives an indication of a greater range of issues in which members have an interest. The Council also holds the registers for all Parish/Town Councillors (which are also viewable on the Council's web site).**

All meeting agendas include an item on the declaration of interests. This acts as a prompt should members feel the need to seek advice in advance of a particular meeting. As previously indicated this is important within the context of understanding the nature and extent of the interest to enable the most appropriate advice to be given by the Monitoring Officer.

As also previously referred to, the Code of Conduct is currently under review with a view to making it easier to follow by members. There is a need to remind members of the need to keep their Register of Interests under regular review and to notify the Monitoring Officer of any changes.

There has only been one complaint upheld in relation to the non declaration of a personal non statutory interest (since the inception of the Authority in 1974) which is illustrative of the attention paid by members to standards and ethics and the standard of advice available from the relevant officers.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

AVDC Response

- h. The Council has a whistleblowing policy in place and also an anti fraud and corruption strategy. The whistleblowing policy includes a disclosure form and explains how and to whom any concerns should be referred. There is also an FAQ section. Members are able to raise issues with**

officers openly or confidentially. These arrangements are considered to be satisfactory.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

What steps could *central government* take to improve local government ethical standards?

AVDC Response

- i. Local authorities need to increase and link their Code of Conduct training in relation to the use of social media where a number of potential risks exist. This Council has issued advice to members but this needs to be followed up at reasonably regular intervals.**
- j. Central Government could examine the feasibility of mandatory training for all Members before taking up their duties as a councillor. Also the development of a standard training toolkit might be useful in ensuring a consistent approach nationally. The use of a single model Code would be helpful and avoid inconsistency of understanding.**

With the continuing reductions in central government funding for the delivery of council services, an increasingly large number of local authorities are developing or have established companies as a means of generating additional income. The Cabinet Office have previously issued guidance for the directors of companies either fully or partly owned by the public sector, but this does not appear to have been linked to ethics and standards regimes. There appears to be uncertainty around potential conflicts of interests. Perhaps an equivalent set of principles to those developed by Nolan for use in relation to public sector companies, should be examined.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

AVDC Response

- k. The Council maintains personal contact details for all members on its web site, but will remove them based on requests from members that they might be subject to intimidation. The induction programme for members after election includes an externally facilitated training session on how to deal with potentially intimidating situations. The Council has also issued personal safety guidance to all members. There have been very few incidents of this nature, and the more serious would of course be reported to the police.**

**Committee on Standards in Public Life (CSPL) Stakeholder Consultation:
Review of Local Government Ethical Standards**

These are the comments of the Ethics Committee of the London Borough of Croydon. The comments contained in this response include comments from the Council's Independent Persons (IP). Where the views of the IP differ from the views of the Ethics Committee then the views are expressed to be those of the Independent Person only.

Questions:

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Generally the operation of the existing structures and processes have not caused difficulty at our Council. However, the lack of sanctions and an independent body to undertake investigations and impartially impose such sanctions (such as operates currently in Wales) has caused members of the public to complain that the process is not fit for purpose. That said, there are still far too many trivial, or politically motivated complaints being made against Councillors and there needs to be a balance between being able to deal appropriately with serious allegations, backed by appropriate sanctions and being able to dispose of the trivial matters quickly and efficiently.

It was felt by the Council's Independent Person that the matter of ethics should be outside the normal political balance of other committees. She felt to be conducive to the maintenance of high standards, as a minimum the number of elected members on the ethics committee should be equal from each main party

What, if any, are the most significant gaps in the current ethical standards regime for local government?

The Independent Person felt that there should be a statutory requirement to have more than one Independent Person, since it would be impossible to undertake the statutory consultation if there were only one, and that one was incapacitated. (although it was noted that this authority does currently appoint more than one Independent Person). It was suggested that one of the duties of the Independent Person could be to undertake an annual full register check of the declarations of interest to ensure not only that all elected members had signed but that the declarations had been fully filled in according to the instructions.

As set out above, the most significant gaps in the current regime relate to the lack of appropriate sanctions in the event of a serious complaint and the lack of independent oversight such as is in place in Wales.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

As part of the Committee's work programme, the Council's Code of Conduct is reviewed annually by the Ethics Committee, which makes recommendations for any proposed amendments to Full Council for adoption which allows for an assessment of the appropriateness or otherwise of the current Code and has included recommendations to clarify and strengthen the Code where it has been considered necessary.

Advice and guidance in relation to the Code is included within the Councillors handbook which forms part of the Member induction and members can (and do) see advice from the Monitoring Officer regarding the Code and declarations. The Independent Person suggested that Members should formally sign up to the Code following a specific presentation on the code of conduct as part of their induction.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

There is no overarching Code of Conduct for authorities and whilst that means that councils can tailor the Code so that it is appropriate for their local area, it means inconsistency across the country in terms of what might be regarded as acceptable conduct. This can cause difficulties with councillors who are dual hatted being subject to different codes of conduct.

The seven principles of public life are expressed in aspirational terms and in order to seek to enforce them as part of a Code it would be more appropriate if there was clear wording which translated into obligations/duties otherwise the application is invariably more subjective than objective. Translating the principles into scenarios can make giving advice very difficult.

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

- x. **What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

In accordance with the Localism Act 2011, the Council has adopted Arrangements for considering complaints about members' conduct and failures to comply with the Council's Code of Conduct. These arrangements include how a complaint can be made about a member's conduct, how the complaint will be assessed and the circumstances in which the complaint may be referred for investigation and to the Ethics Committee for consideration.

Given the lack of sanctions, the nature of the arrangements are significantly more burdensome than is appropriate in the circumstances.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The Independent Person indicated that it would be sensible and would support the Monitoring Officer if all complaints were taken to the Independent Person in all cases before the decision was made to escalate the matter further or to discount it as not to be pursued.

By contrast, if sanctions were increased then it is considered that a process similar to Wales may be more appropriate as it allows for a referral to an independent tribunal.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

As above, suggest an approach similar to that adopted in Wales, making provision for serious matters to be investigated by an independent body and determinations made by an independent tribunal.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

- xi. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**

The view of the Independent Person was that where sanctions are imposed, these are invariably by the political parties of the councillors involved in any breach of the code – so for example censure and withdrawing of the whip. It was the Independent Person's view that it would be better to give more power to the Ethics Committee to avoid the imputation of party political bias. There seems to be no consequences for a councillor who refuses to comply with a sanction; this means the work of the Ethics Committee can be seen as essentially a surface bow to the importance of ethical behaviour. Lack of the ability to enforce compliance effectively, robs the Ethics Committee of teeth. This would lead the Council into disrepute with consequent reputational damage were a serious breach to be reported.

As previously indicated, the sanctions are not representative were a serious complaint to be received and do not reflect the seriousness which some matters ought to be dealt with.

xii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

xiii.

There is definitely a need to ensure that sanctions are appropriate to the nature of the breaches of the Code. However this may cause political pressure to be placed on Monitoring Officers and for serious cases an element of greater independence in relation to the investigation and ultimate hearings would be of benefit.

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the Code of Conduct although it is dealt with at common law and there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond the DPI's.

xiv. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Councillors are required to disclose Disclosable Pecuniary Interests rather than “any” pecuniary interest as the question states. As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent. Whether further categories of DPI would be appropriate to deal with this depends entirely on how effective and impartial the dispensation process is. It would be helpful, if the process is to be revised, if the dispensation process had an independent decision maker rather than Councillors or Officers of the authority undertaking a decision. This comes back to the earlier point about seeking to avoid placing MO’s in compromising situations in relation to decision making in this regard and also seeks to eliminate the actual or perceived party political decision making in relation to such decision making.

What arrangements do local authorities have in place to declare councillors’ interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

The current Code includes additional provisions in relation to the declaration of gifts and hospitality. The degree to which a regime is effective is dependent on the appropriateness of the sanctions and to a large degree, the respect for the process by the stakeholders. It is not considered that either of these criteria are met on the current regime both because of the lack of efficient sanctions but also due to the lack of impartiality of the process from a public perception perspective.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

“Whistleblowing” is a statutory requirement in place for employees of the Council therefore it is assumed that this is not what is anticipated by this question but rather that it relates to the ability of parties to raise concerns in relation to ethics matters?

There is a dedicated mechanism for making complaints under the Localism Act 2011 but as set out above that is only as effective as the sanctions and the degree to which stakeholders buy into and consider that the process is appropriate.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Assuming there are no proposed statutory changes, make greater use of Independent Persons' expertise and impartiality in decision making. The issue with this approach is obviously that due to the current lack of profile of the Independent Persons in this regime, there is a lack of willingness of such people to step forward and undertake the role. Having the process dealt with as part of an internal check and balance is great in theory but in much the same way as Scrutiny, it is often hijacked as a platform for the most vocal rather than as a truly effective mechanism for holding elected officials to account.

What steps could *central government* take to improve local government ethical standards?

Improve the sanctions, have a single process and Code across the country, have independent decision-making body in respect of dispensations and make arrangements for independent investigation and tribunal hearings.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

xv. What measures could be put in place to prevent and address this intimidation?

This is not an issue, which our members have highlighted as an area of concern.

Finally the Independent Person noted that in section 6 of the consultation document, stakeholders are listed, but the Independent Person is not given as a stakeholder. Since he/she has an interest or expertise in local government this seems an omission, which should be rectified.

Review of Local Government Ethical Standards: Stakeholder Consultation

Response on behalf of the myself Dennis Brian Marchant as an individual Parish Councillor.

Consultation questions with responses in 'Brown'

The Committee invites responses to the following consultation questions.

Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to give evidence about only one local authority, several local authorities, or local government in England as a whole. Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No – There are no **mandatory** minimum standards in place for Parish Council Codes of Conduct and Standing Orders and as there are no **mandatory** requirement for Parish Councillors to undergo initial/induction or continuation training this means that there is a relative high level of complaints raise about Parish Councillors.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Although, training modules and induction courses are available from various sources for Parish Councillors there is no **mandated** requirement for councillors to attend these. I believe that in the modern world of local government with ever increasing workloads, responsibilities and regulations to comply with, training should be a basic requirement before taking office or within a specified timeframe.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Comments as per a/ and b. above.

Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

The principle authority considers conduct complaints for parish councils and makes recommendations to the relevant Parish Council to initiate any resulting corrective actions. This means that even though a misdemeanour may have been identified and actions required by the principle authority they have no power to ensure appropriate actions are taken. I would recommend that appropriate powers should be vested in the principle authority and that funding is provided from central government for this activity.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

The current level of sanctions available for dealing with situations where a breach of a Code of Conduct by a Councillor is found to have occurred is inadequate, particularly in more serious cases.

An option of suspending a Councillor for a period of up to six months should be available as was previously the case.

There should be an option to compel a Councillor to undertake relevant training where that is identified as being required in response to any misdemeanour.

Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner) and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

There are arrangements in place to complain about councillor conduct but there is no guarantee that the complaint will be confidential. This can discourage complainants coming forward because the very nature of Parish Councils is that they are small units and means that complainants maybe intimidated so therefore, are reluctant to report misdemeanours.

It is recommended that a system of confidential reporting should be introduced. Possibly administered by an independent body as is the case in some industries.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

j. What steps could *central government* take to improve local government ethical standards?

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?

My experience is that intimidation (in the form of bullying) of Parish Councillors and staff within the Parish Councils is higher than I personally have experienced in any work place.

As stated above, a system of confidential reporting possibly administered by an independent body may help.

Submission from Association of Democratic Services Officers (ADSO) to the Review of Local Government Ethical Standards: Stakeholder Consultation

ADSO is a professional organisation established in 2009 to support those working in the democratic and governance roles within local authorities in England. We provide a range of benefits to our members, including professional qualifications and training. We operate regionally and have a national board elected annually. With over 950 members we have become an established voice for the sector. We encourage shared learning and building on best practice.

We welcome the opportunity to submit our comments, as set out below, and would be more than happy to discuss further should you require any further information or clarification.

a) Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Whilst we were surprised by the dilution to the standards code brought in by the Localism Act 2011, they are generally working well in the majority of local authorities. We believe that the most councillors adhere to high standards of conduct. As in other areas of society, it is the few that cause the problems.

b) What, if any, are the most significant gaps in the current ethical standards regime for local government?

There are two main areas that we think could be improved. Firstly, local Standards Committees need stronger sanctions available to them. Under the previous regime, disqualification and suspension were effective deterrents. Since their removal, local Committees can only impose sanctions such as censure, requests to attend training and/or requests for removal from holding certain posts. These are not effective, particularly in the most severe cases.

Secondly, we would like further guidance to local authorities on the definition of disclosable pecuniary interests (DPI) and when councillors should exclude themselves from participation in a discussion and voting. In our experience, interpretation of what a DPI is and how it is applied is mixed. The DCLG Guidance entitled "Openness and transparency on personal interests" is helpful but more is required. That guidance states that if you have a DPI relating to any business that is or will be discussed at the meeting, you must not participate and vote. There is a lack of clarity about how widely this should be drawn. For example, what should happen if the matter under discussion is felt to be affected by an interest that has previously been registered or declared but not specifically related to it? A case in point could be where a member has registered an interest in land and a planning application is subsequently submitted in relation to an adjacent site. Clearly, the member would have a DPI in the determination of that application. Would that still be the case however, if the application site crossed two local authority boundaries and there was a discussion as to whether it should be determined by both authorities or just the one with the largest portion of the site within its boundary? Does the DPI relating to the

interest in the adjacent land automatically span across to who determines the application?

There is a lack of case law or definitive legal opinion to guide this discussion.

We accept that councils should be allowed to agree their own codes of conduct to suit their particular circumstances, but we would like to see more clarity through national guidance and more consistency in interpretation. For example, in some Councils, members with a DPI can speak before leaving the meeting. In others, they can't. In some, siblings and close friends are included in a DPI but not in others.

Code of conduct

- c) Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**

We believe that the majority of codes are clear and easy to understand. Many Councils now adopt good practice in pre-election induction for candidates including the standards and conduct expected of them should they be elected.

- d) A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

See our comments in (a) and (b) above.

Investigations and decisions on allegations

- e) Are allegations of councillor misconduct investigated and decided fairly and with due process?**

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

See our comments in (b) above relating to the need for greater sanctions.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Consideration could be given to reinstating the Independent Member(s) as formal members of Standards Committees and for local authorities to have the option of appointing them as chairs.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could

Monitoring Officers be protected from this risk?

Monitoring Officers already have the option of using independent investigators in such circumstances.

Sanctions

f) Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

See our comments in (b) above.

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Yes. See our comments in (b) above. The return of the sanctions of suspension and disqualification would be welcome.

Declaring interests and conflicts of interest

g) Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

See our comments in (b) above relating to DPIs.

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Generally, we find that Monitoring Officers manage these situations well and that members will seek advice. The key is to encourage them to seek that advice as soon as possible before the meeting so proper consideration can be given to their situation. Guidance to members in relation to the rules in registering and declaring interests is clear (subject to our comments on DPIs above) and they generally adhere to them. In fact, the tendency is to be over cautious and for members to 'play safe'.

Whistleblowing

h) What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Our experience is that Councils have clear and satisfactory whistleblowing policies in place. However, publicity and awareness is patchy.

Improving standards

i) What steps could *local authorities* take to improve local government ethical standards?

By being as open and transparent as possible in their decision making.

j) What steps could *central government* take to improve local government ethical standards?

Give local government the options of stronger sanctions; strengthen the role of Independent Members and to follow the same standards.

Intimidation of local councillors

k) What is the nature, scale, and extent of intimidation towards local councillors?

It is difficult to comment on the level of scale of intimidation. Anecdotally, it does seem to have increased in recent years. We have witnessed a rise in protests and in some instances, acts of intimidation towards local councillors as well as staff. Social media, whilst positive, has made this easier. There is a balance to be struck. No one is suggesting that people should be prevented from raising their objections, which can sometimes be passionate and vociferous; nor should local authorities be anything other than open to their citizens. But there is a line. When it comes to threats to the individual and their families, or where physical violence is used or threatened, that is totally unacceptable. It is important that everyone should be free from intimidation. This should be backed up by the law.

It is therefore important that local authorities have procedures in place to support their elected representatives. This should be complimented by training. A number of local authorities already undertake risk assessments for councillor surgeries and meetings. This involves assessing venues, times and ensuring procedures are in place to ensure that in the case of councillor surgeries, they are safe. Similar procedures have been followed for meetings with high public interest. Venues are assessed, entrance determined by capacity for high demand meetings, by controlling numbers and to ensure a steady flow of people into venues. Evacuation procedures are also tested prior to the meeting and understood by those present. This highlights the potential benefit of having webcam although we appreciate the cost which may be prohibitive. Most authorities already work closely with the local Police to help address problems before they occur. We suggest this becomes common practice and would hope the situation is monitored nationally.

John Austin
Chair of Association of Democratic
Services Officers

Dave Burn
Vice Chair of Association of
Democratic Services Officers

Ethical Governance – Government Consultation

I am Martin Keith Kilbane, a retired management consultant, and ex-Parish Councillor. I offer my contribution to the consultation based on experiences in a small Parish Council – suffering because of lack of censure for repeated misdemeanour by a Councillor.

Introduction

Fundamental differences exist between District/town/parish councils.

- a. These are mainly based on scale.
- b. They derive from difference in numbers of Councillors.
 - i. The difference creates consequent differences in balances and checks
- c. A council with (say) 15 Councillors is easier to subvert than one of 25, but more difficult than one of only 5 Councillors.
 - i. In the latter case, if two Councillors are absent for a significant period (illness or domestic care issues) the quorum of 3 is neither robust nor intrinsically safe without exterior safeguards.
2. In the case of smaller Parish Councils, it is sometimes the case that the Clerk is the least able and shrewd individual involved. Such individuals are often virtually unqualified in the matter of Local Authority legislation.
 - a. If that individual has a long term friendship with a strong-willed Councillor, then impartiality is seriously at risk.
3. Although having a Code of Conduct in place should offer significant protection to the residents served by a Council, this protection is merely theoretical, since the Localism Act 2012 removed the only sanction of significance.
 - a. As a consequence, even when there is conclusive proof of breach of Code of Conduct – significantly against the interests of electors – the only sanctions available to the superior authority offer no redress to the electors.
 - i. Such sanction is limited to mediation or training.
 - ii. It is dependant upon the agreement and goodwill of the miscreant.
 - iii. It depends upon the miscreant responding in good faith – which is improbable.
4. Although more often seen in television and theatrical parody, the pompous and self-important Councillor can still be found in Parish Councils.
 - a. It is not unknown for such individuals to see their “position” as one of status rather than serving the community or civic responsibility.
 - b. It is also not unknown for such individuals to act on the unconscious basis of self-aggrandisement.

Examples of the problem

Actions witnessed within a single Parish council (all with documented evidence available) that breached the Code of Conduct, yet received no sanction proportionate to the breach, or its effects, include:

5. A councillor taking actions that almost amount to disenfranchisement of the electorate, in so far as attempting to prevent their clearly stated wishes from being recognised, much less delivered. [See appendix 1](#)
6. A Councillor actively trying to prevent another Councillor's (valid) work from being considered in Council. [App 1](#)
7. Secretly trying to get a report that was legally supported by resolution from being received by the higher authority that requested it – with insupportable claims that it was seriously flawed and unauthorised. [App 2/2A](#)
8. A Councillor conspiring with the Clerk to the Council to mislead other Councillors. [App 3](#)
9. A Parish Councillor expressing to a District Council the hope that a report received late from a Parish Council was “too late to be considered” – when that Councillor was the cause of the late receipt. This is a documented example of a Councillor taking specific action against the interests of the parishioners – especially the 100 who voluntarily expressed their concerns. They expected – indeed relied upon – their Councillors to represent the parishioner concerns, not defeat them. [App 2](#)
10. Councillor's attempt to overturn a valid resolution from a previous Council – for which she had voted - and attempting (unsuccessfully) to have the Chairman's defence of the resolution declared as illegal. [App 4](#)
11. One Councillor defaming other Councillors in emails to the entire Council – and to individuals not serving as Councillors – even though the minutes of Council proved the defamation. [App 5](#)
 - a. A personal, private consultation with a specialist libel solicitor established the following:
 - i. There was a case to answer for defamation/libel;
 - ii. Legal action would become very expensive/messy very quickly;
 - iii. If the perpetrator of the defamation was still a Councillor, legal action would make conducting the business of the PC very difficult;
 - iv. It would be better to pursue redress/solution within the procedures of the Council. This sound advice was followed, but with ineffective results, as referred to earlier.

The above is but a sample of the conduct of a Councillor who acts as though no sanction can be applied – yet takes great offence if any individual dares to disagree, criticise or question such conduct.

The same Councillor **mis-represented the District Council's Ethical Governance Committee's verdict**. On a background of falsehoods in published minutes it was claimed publicly, and inferred on the PC's website via claims that:

12. The written notification of the findings of the Ethical Governance Committee confirmed "that there no grounds for complaint". **App 6 (17-50 para 2)**
 - a. In fact the document said no such thing.
 - i. The document invoked the only sanctions currently available to the district Council.
 - ii. That such sanctions were invoked confirmed not only that there were grounds for complaint, but that a breach of the Code of Conduct was recognised. It was unfortunate that the form of words used by the Ethical Governance Committee did not explicitly confirm that a breach of the Code of Conduct had been their verdict.

Even in the face of documented rebuttal this representation has been maintained steadfastly, even to three Councillors newly elected without a vote (other potential candidates having refused to stand if the suspect Councillor was still serving). **App 7**

Two of the three new Councillors are entirely new to any public office. None of the new Councillors was in office at the time of the worst breaches of Code of Conduct, or the fall-out from them. There is the naïve belief that they can therefore distance themselves from all involvement in addressing the consequences. Effectively they are leaving all decisions on such matters to the perpetrator of the breaches – who was the Chairman until standing down on 1 May 2018. However, she now occupies the post of Vice Chairman. Ominously (perhaps) since May 2017 the Clerk to the Council has been related to her.

Further, the same Councillor has demonstrated a habit of not only finding offence where none was intended – usually via applying a distorted meaning to actions/words – but **"taking offence by proxy"**. I have examples of:

13. Claims that a third party has been insulted, even though clarification with the 3rd party in question confirmed that no insult or offence was recognised. Indeed, the 3rd party actually agreed with the statement that was (falsely) described as insulting. **App 8/8a**
14. Making apology to participants of a meeting, at which the Councillor was absent, for statements by other Councillors to the meeting, even though there was justification for such statements and no offence had been recognised. **App 9/9A**
15. Claiming that complaints relating to actions/decisions of the PC were actually personal attacks on an individual Councillor – even though the opposite had been confirmed by the Head of Legal Services of the District Council. The Councillor in question even persuaded the PC to accept this wilful mis-representation. **App 10/10A/10B/10C**
16. Using the Chairman's report at the AGM to state that the refusal of a parishioner to accept the Parish Council's response to several complaints was wasting the time and effort of the Council and incurring unnecessary costs.
 - a. As the parishioner concerned I can state that no official response has been made to at least two complaints.
 - b. A third complaint has been dealt with in a particularly contrived manner, claiming legal advice that makes no sense, and claiming existence of a document (from the District Council) that does not exist.
 - i. This matter has led to the ICO opening an investigation [REDACTED] into the PC's handling of an FoIA request intended to scrutinise the manner of requesting, receiving and applying the advice claimed.
17. It is now inevitable that the refusal to deal with lies in the minutes of a PC session (I have the evidence to support this somewhat undiplomatic statement) will lead to a formal appeal to the Local Government Ombudsman for an investigation into the matter.

Summary

It has become evident that currently the sanctions available are insufficient to protect the interests of the electors against breaches of the Code of Conduct. Cases exist where the inadequate sanction for proven breaches of Code of Conduct are represented to the electorate as condoning (or at least accepting) the actions of proven miscreants.

This is particularly the case in smaller Parish Councils, where the potential for breaches, and their effect is, greater than in larger Councils. This is because the smaller number of Councillors is more susceptible to unethical conduct via failure to recognise unethical blandishments from another Councillor. It needs only one or two to be unduly influenced.

Put at its most simple - the safeguards are too fragile.

I refer you to www.cpalc.org.uk/complaints-complaining-code-of-conduct-and-town-or-parish-councillors which outlines the situation succinctly.

**LGA response to the Committee on Standards in
Public Life consultation - Review of local
government ethical standards**
May 2018



About us

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross-party organisation, which works on behalf of councils to ensure local government has a strong, credible voice with national government.
2. We aim to influence and set the political agenda on issues that matter most to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Key messages

3. The LGA believes the existing, locally led approach to standards is the correct approach and must be maintained. It is right that there is an overarching national framework – set by the seven Nolan principles of standards in public life – but that local areas determine the structure for applying these locally. It would be a backward step to reverse this, and local flexibility should be retained. Any future changes to the framework should have the full involvement of the sector rather than being imposed upon it.
4. The LGA and its members support the objective of ensuring the highest standards of integrity among local councillors and elected Mayors. As the representative organisation for local government, the LGA works with councils and councillors to promote conduct and leadership that is in line with the Nolan principles.
5. While we are not complacent about this issue, it should be recognised that ethical standards across local government are very high. Out of a total of more than 19,000 elected councillors in England and Wales, there are very few instances of serious wrongdoing.
6. It is vital that the public have confidence in the high standards of local government, and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of codes of conduct. Equally, it is vital that councillors themselves have confidence in these mechanisms, and that individuals who are subject to investigations are treated under the rules of natural justice.

Submission

7. While the way that councillors behave and conduct themselves is important, the way they are treated as holders of elective office is equally important. Worryingly, there is a growing issue of intimidation and harassment of councillors. This is completely unacceptable, and must be dealt with robustly at all levels – by councils, corporately; by the police and, where relevant, by the social media companies which provide platforms for specific forms of abuse.

Further information

Standards framework

8. The LGA supports the locally led approach to standards and conduct introduced by the Localism Act 2011. The previous centralised Standards Board regime was costly and ineffective, with resources devoted to investigating ill-founded or petty complaints in a system that helped fuel further tit for tat complaints.
9. Reversing the locally-led approach to standards and conduct would be a backward step. We believe that any future changes to the current framework should be at the discretion of local authorities to introduce and shape in a way that is suitable for their areas.
10. The framework has as a backstop a number of sanctions for dealing with the most serious conduct and performance issues. For example, councillors who receive a prison sentence of three months or more must stand down¹; if a councillor fails to attend meetings for a period of six months they cease to be a member; and criminal sanctions apply in relation to the failure to declare pecuniary interests.
11. Beyond these, and the sanctions available for failures to comply with local codes, we must be extremely careful about the suggestion of introducing additional sanctions to the current regime. The rights to stand for, and hold, elective office are fundamental parts of the democratic values that our country holds dear, and the need to maintain public confidence in the standards of local government must be carefully balanced with the need to avoid measures which interfere with the democratic process.
12. We have some concern that the current framework creates expectations which cannot be met about principal councils' ability to resolve complaints and standards issues at parish and town council level. Anecdotal evidence suggests that parish and town council complaints account for a disproportionate number of the complaints that some principal councils deal with, but that some of the complaints – perhaps personal in nature, dealing with hyper-local issues or the culture of the council – will never be solvable within the complaints mechanism, where Monitoring Officers are parish Monitoring Officers for codes of conduct issues only.
13. Consideration should be given to how this issue can be addressed. This could include giving principal councils the power to charge town and parish councils where they are repeatedly dealing with complaints and undertaking investigations.

¹ The equivalent provision for MPs relates to a much more substantial yearlong prison sentence.

Investigations

14. It is important that local mechanisms for handling complaints are well managed, with both complainants and councillors satisfied that the issue has been considered in an appropriate way. These mechanisms should include a tiered approach to enable councils to screen out vexatious complaints, or able to deal with lower level complaints informally, while still being able to properly investigate substantive complaints.
15. Where a councillor is the subject of a complaint or under investigation for an alleged breach of the code of conduct, it is vital that they are treated under the rules of natural justice and that there is seen to be a fair process.
16. It is a concern that some councillors have reported that they do not feel that this is always the case. Unless an individual councillor is able to draw on their own private resources to provide legal advice, there may be a serious imbalance between the support and resources available to a council undertaking an investigation when compared to the individual who is under investigation, something that goes against the principles of natural justice.
17. To address this, councils should consider what support there could be for individuals being investigated. One option is to make greater use of the role of the Independent Person, but some councils have reported challenges in attracting people to this role.
18. With very limited exceptions, there should be transparency about the nature of the complaint and who has made it. Investigations should take place as quickly as possible, with individuals kept informed about progress and expected timescales.
19. The LGA would welcome the opportunity as a result of this review to promote examples of best practice in this area identified by the Committee.
20. The criminal sanctions introduced by the Localism Act in relation to failing to declare a pecuniary interest are an important legal backstop within the local standards framework. However, we have some concern in practice about the role of the police in investigating breaches, with some recent investigations taking an extremely long time, creating reputational issues for both local government and the police if conclusions are not reached quickly, or at all.
21. Following the creation of the elected Police and Crime Commissioner role since the Localism Act was introduced, there are concerns about the risk of police investigations into councils and councillors being perceived to be politically motivated. Consideration could be given to whether allegations against councillors which are referred to the police should be investigated by a neighbouring police force.

Harassment of councillors

22. We welcome the fact the Committee is looking specifically at the issue of harassment of councillors following its recent review of Intimidation in Public Life. Many of the conclusions and recommendations from that review apply equally in relation to harassment of councillors, and we hope that they will be taken forward as soon as possible.
23. Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts. In order to better understand this problem, the LGA will be including this issue in its 2018 councillor census.
24. It is unacceptable that councillors should be subjected to personal attacks and a robust response to all forms of abuse is required at every level – from council officers; councils corporately; the police and Crown Prosecution Service (CPS). Additionally, internet and social media providers who provide platforms for much of this abuse should also be required to take action to address this.
25. However, there appears currently to be a mixed response to this issue in different places. While some councils have reported that their local police forces take this very seriously, in other areas there seems almost to be a view that such abuse is part and parcel of being an elected official. Additionally, we are aware that the CPS has declined to take forward some cases relating to the harassment of councillors.
26. The LGA believes there is a need for clear and consistent guidance on what is reasonable protest and comment versus what crosses a line into abuse and harassment, and how the latter will be tackled. Councils should look at their own corporate response to harassment and the support they provide to members who have experienced it. Again, we would welcome the opportunity as a result of this review to promote examples of best practice identified by the Committee.
27. There is also a case for the CPS to produce specific guidance for prosecutors and the police on cases where public servants are victims of crime as a result of their role as a public servant. Both the police and CPS should consistently take the issue seriously and bring forward prosecutions to try to tackle it.

Further information

28. For further information, please contact [REDACTED]

SUBMISSION 171

Dear sir/madam,

The Standards Committee of Staffordshire Moorlands District Council has considered the consultation documentation issued with regards to Local Government ethical standards. Please find below a response submitted on behalf of the Council:

"The review could consider provisions which assist Parish Councils, particularly in understanding when to disclose interests. Sanctions for breaches of the code of conduct could be increased. A provision could be included to ensure that Members have read and understood the code of conduct. Councillors should be 'whiter than white' and it would make sense to have some kind of audit which confirms that they understand their responsibilities. Social media needs attention under the ethical standards framework to ensure it is used appropriately and that the public can differentiate between Council and non council business."

Regards

Linden Vernon

Senior Officer - Governance & Member Support

Democratic and Community Services

Staffordshire Moorlands District Council

SUBMISSION 172

Dear sir/madam,

The Standards Committee of High Peak Borough Council has considered the consultation documentation issued with regards to Local Government ethical standards. Please find below a response submitted on behalf of the Council:

"Sanctions for breaches of the code of conduct could be increased. The Borough Council could have more power of sanctions in relation to Parish matters. There might be an opportunity for the Parish Council's to initially assess Parish conduct complaints rather than the Borough council which could free time for the Borough Council to give more attention to training Parish Councils. It was considered that a more phased approach to conduct issues could be considered similar to the private sector with initial warnings that increase proportionately in accordance with the seriousness and number of complaints. Could there be a 'conflict of loyalty', test pitched somewhere less than a 'conflict of interest' test and which enables an elected Member to participate in a matter relating to another public body if members of that public body agree. The rule that Members should leave the room after declaring an interest should be revisited as it can place them in a position which is more disadvantageous than participating as a member of the public."

Regards

Linden Vernon

Senior Officer - Governance & Member Support

Democratic and Community Services

High Peak Borough Council

To: Committee on Standards in Public Life
From: Cllr EPJ Harvey Town Councillor and Unitary Authority Councillor, Ledbury (North) Ward, Herefordshire
Ref: Public Consultation: Local Government Ethical Standards
Date: 1 June 2018

Personal Statement

I was elected as a County and Town Councillor for Ledbury in 2011, representing a small independent local party (It's Our County[Herefordshire]) which according to its formal registration with the Electoral Commission, only exists within the boundary of the county of Herefordshire.

Since then I have campaigned for greater openness and transparency in local decision making. I have encouraged greater public engagement in the democratic process. As a direct consequence of my work, in 2015 there was a full election for all seats on the town council for the first time in over 20 years.

On the parish council I have chaired the development of the new Town Plan, which was adopted in 2016, and have been the chairman of the Town Council's Economic Development & Planning Committee.

On the county council I have been deputy chairman of the council's Scrutiny Committee and am currently a member of the Audit & Governance Committee.

My professional background is 25 years spent in science and engineering specializing in security and defence. Originally at the Royal Signals & Radar Establishment in Malvern and latterly in QinetiQ, where I led a team of Technology Forecasters advising UK MoD on the balance of investment across the research budget to deliver capability on a short, medium, and long-term timescale (40+ years) to meet evolving and emerging future threats.

In addition, I have an MSc (with Distinction) in Manager and Organisational Development, I have been a qualified ISO9001 auditor and I also have qualifications in banking and finance.

I am logical and organized. I am used to founding decisions based on evidence and working in an efficient, effective and professional manner. I consider it is important to have processes and procedures that are sound, are founded on legal requirements and are consistently applied.

I have recently taken my parish council to Judicial Review concerning its mishandling of complaints made against me by staff and councillors following my identification of maladministration and misconduct in public office.

I have been given dispensation to delay making this submission to the committee's consultation to await the release of the judgement on the Judicial Review. This has now happened: <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>

The judgement of Mrs Justice Cockerill does not make new law, however it does make case law, which confirms the primacy of the arrangements set out in section 28 of the Localism Act 2011. It is particularly worrying that both Herefordshire Association of Local Councils (HALC) and the National Association of Local Councils (NALC) appear to have provided supposedly professional advice which has directly

contradicted this intuitively obvious interpretation of the will of Parliament, thereby necessitating this expensive and very upsetting legal process.

Below I have endeavoured to answer the questions set out by the committee's consultation. Not all of what I would have liked to say on this matter has fallen within the scope of your question set.

I am in contact with a number of other councillors throughout the country who have faced similarly unlawful and harassing action taken against them by elected colleagues and sometimes by senior officers using a variety of other processes, e.g. audit or staff grievance, to investigate their conduct and sanction them outside of the provisions of the Localism Act.

I would be most grateful if the committee would consider whether I might give evidence in person, should this be thought useful.

Consultation Questions

Structures

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

No, certainly not at parish level and often not at higher levels in local government either.

At parish level the absence of any formal body made responsible for governance means that the only route by which to challenge misconduct in office is via the code of conduct process. With no-one responsible for governance at parish level it is possible for councils to get away with having very poor procedural frameworks, which then allow maladministration without a route to challenge.

Many Monitoring Officers make a distinction between a councillor's actions in office – often taken in conjunction with others – and their personal conduct. This is a very foggy line, but my personal experience is that it can be used to avoid calling several councillors to account on a joint code of conduct complaint for their collusion to mislead colleagues or to withhold information from a committee, working group or the full council.

It is also the case that councillors are prevented from ensuring that the public record (meeting minutes) properly record key points or disagreements. Clerks are advised by county associations or their professional body (SLCC) that minimal minutes are acceptable. I have experience of key matters or concerns raised by councillors in meetings having been omitted from the public record. When challenged, the clerk has refused to accept amendments, saying that councillors are only entitled to challenge the accuracy of what has been minuted and that an omission is not an inaccuracy.

In the event that a councillor's conduct is found to have fallen short of that expected, the sanctions available to a Monitoring Officer offer no disincentive and Monitoring Officers have no authority to ensure that even their minimal recommendations are complied with.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

Governance oversight of parish councils

Weak/toothless sanctions

Lack of authority granted to Monitoring Officers to enforce their recommendations

No sanction for councils or political group leaders who refuse to support Monitoring Officer recommendations.

'Quality' of Monitoring Officer decisions – no requirement for scrutiny/oversight of the MO role as regards the handling of code of conduct complaints

Ability for MOs to withhold the publication of upheld complaints thereby preventing the public from even knowing that a councillor has breached the code of conduct.

Ability for councils and Monitoring Officers to deal with complaints against councillors by other means than by the Standards process as set out by the Localism Act 2011; e.g. through audit, by use of grievance procedures, by 'informal' resolution.

Lack of 'Independent Persons' and no recognition or remuneration for people prepared to undertake this role.

Codes of conduct

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

There is no standard across the country. How can it be that codes governing councillor conduct are able to be varied from one place to another? There should be an agreed minimum which authorities can choose to increase/strengthen.

Parish councils have the option to create their own codes of conduct which leads to all sorts of problems if they are badly written or unclear in their interpretation. There is no requirement for the senior authority's code to be adopted by all parishes under their jurisdiction. This variation in expectation makes it additionally onerous for MOs to regulate and rule on conduct which can be within the code in one parish and without it in another, or at senior authority level.

Councillors who are multi-hatted – i.e. may be elected at several levels of local government can be subject to a number of different codes. It can then be difficult to determine which code applies to the person in any particular situation.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes

appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

No these are not appropriate. Just look at my own authority – Herefordshire Council. Currently it does not require the publication of upheld complaints which have been determined by the MO rather than by a Standards Panel – the outcomes of which are published publicly and discussed at Audit & Governance. I have been assured that an MO resolution is just as robust as that undertaken by a panel. We have just had a refresh of our constitution and I have tried to get this changed, but the rulling group support no change, and the MO says that the current practice is not at variance to the Nolan Principles. How can this be?!?!?

As a result, there is now an online petition asking for the council to rethink its position, but it's shameful that it comes to this.

1. <https://www.change.org/p/leader-of-herefordshire-council-herefordshire-council-must-not-keep-misconduct-hidden>
2. https://www.herefordtimes.com/news/16234509.Almost_1_000_residents_sign_petition_calling_for_more_council_transparency/?action=success#comments-feedback-anchor
3. https://www.herefordtimes.com/news/16213649.Tories_vote_to_keep_Herefordshire_Council_misconduct_hidden

Investigations and decisions on allegations

Are allegations of councillor misconduct investigated and decided fairly and with due process?

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

It took more than 15 months for an external investigation into my conduct to report back. This meant my personal reputation was under question for all this time. When the investigation concluded – clearing me on all counts - the MO refused to issue the investigation report, even just to me under FOI or DPA.

When all complaints were dismissed, the MO did not require that sanctions previously issued against me by the parish were lifted, and did nothing to defend her authority on the matter in the face of the disregard of the parish. I have had to go to JR to clear my name, at a personal cost of close to £100,000.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the

objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The MO can consider and then disregard the view of the IP and is not required even to make clear that they have done so in making their judgement. There are not enough IP and the role is not always remunerated, or even expenses reimbursed.

'If you pay peanuts, you get monkeys' so the saying goes. If this role is central to the Standards Process it is untenable for it to be able to be treated so disrespectfully and for there to be no centrally held budget to independently remunerate those fulfilling the role.

There should be training and sharing of best practice and possibly pooling of IP across authorities so you can be assigned an IP from out of area, as appropriate.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Mo can be put in conflict – particularly when they are actually sometimes quite junior members of staff.

For example – in my case, [REDACTED] [REDACTED] was closely involved in misadvising my parish council in the handling of complaints against me. [REDACTED] is also the Chairman of my county association (HALC) and also the chairman of the NALC Committee of English County Associations. The County Council Chairman is also a prominent Freemason.

I do not believe the MO in my case has acted inappropriately, but I do believe that she has chosen not to act on some aspects of my case due to the seniority and position of some of the people involved.

Difficult to 'protect' the MO. Need to ensure that they are sufficiently strong, competent as individuals. Perhaps have a 'whistleblowing' facility for them into Govt or to allow an MO from another authority to handle a case at the owning MO's request. Really the authority's Chief Executive should protect/back-up the MO ... but there's no guarantee that will happen.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

Sort of actions taken: Apology. Training. Name & Shame.
Removal from Committees/outside bodies/Cabinet positions.
Exclusion from council premises. Refer to police.

Not sufficient to deter bad behaviour ... especially when
'rewards' for inappropriate/corrupt behaviour can be significant.

Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Could bar from future public office. Require public apology.
Enforce recommendations made so even toothless sanctions
are actually complied with. Financial fine. Community
service(?!). Stocks (joke!).

Declaring interests and conflicts of interest

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

My county council requires officers to declare even just their membership of closed organisations, organisations which require an oath of allegiance, organisations which expect their members to act to the benefit of one another, organisations which are not open to the general public, organisations with charitable objects, eg: Golf Clubs, Soroptimists, Rotary, Freemansons, private clubs, etc. Whereas, councillors only need to declare membership of such organisations if they are 'in a position of general management or control'. There is no explanation as to what such a position might involve, this is left to the judgement of the individual.

I have attempted to bring councillor declarations on a par with those required of officers and, again, the ruling group have resisted making this change.

It is wholly unacceptable for this distinction in declarable membership to be drawn for councillors. Many of these closed organisations have a mentoring or pupil-master model of tutillage for junior members which means that you certainly do

not need to be 'in a position of general management or control' to be placed in a position where you could be influenced or in conflict with your obligations as a councillor.

Also as a councillor you should be happy to openly declare your membership of any organisation. If you are uncomfortable about doing so, then perhaps you shouldn't be a member?!?

I think councillors should be required to make full declaration of their membership of all organisations of which they are a member – for the confidence of the public and to demonstrate adherence to the Nolan Principles.

Whistleblowing

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

At county level my authority has a whistle blowing policy, but it was not tight enough to protect the identity of the whistle-blower if they were a member of staff. Neither was it designed to ensure that if, a staff whistle-blower subsequently faced victimisation at work, they could report this without disclosing that they were the previous whistle-blower.

These weaknesses have very recently been addressed – but not before having a very serious effect on the health and employment of a staff whistle-blower.

At parish level there is no requirement to have whistleblowing procedures/arrangements. I was effectively a whistle-blower when I uncovered maladministration and misconduct in office within my parish. I received no protection and had no access to independent advice.

The staff and councillors involved colluded to raise staff complaints against me which the councillors then handled locally as grievances. Subsequently sanctioning me, naming me publicly as a bully and harasser of staff and effectively preventing me from having any meaningful involvement in parish council business for more than half of my current period in office.

I have had three years of hell trying to clear my name and bring the individuals concerned to justice. Yesterday (18 May) I received notice that the outcome of my Judicial Review of their actions had been handed down and the judgement upheld my claim on all grounds (ultra vires, procedural unfairness, substantive unfairness).

<http://www.bailii.org/ew/cases/EWHC/Admin/2018/> Harvey v Ledbury Town Council (16 May)

All the staff involved have now left the council and the majority of the councillors involved have recently resigned. The bad/unlawful advice received from our county association (HALC) and from NALC has resulted in the council incurring £100,000 of its own costs in defending the JR and becoming liable for my costs of close to that figure. Ledbury Town Council may need to be put into special measures while new staff are recruited and a third of the councillor seats are filled through a proper election process.

Much of the above would have been avoided if the organisations put in place to advise councils and to oversee the standards process had each done their jobs properly.

I could have been spared the stress and expense of this publicly funded private witch-hunt if my parish council had a whistleblowing policy in place to protect me as a councillor from the self-interested and potentially corrupt actions of staff and colleague councillors.

Improving standards

What steps could *local authorities* take to improve local government ethical standards?

Local Authorities could improve matters by having greater access to Independent Persons, or by sharing Independent Persons with adjacent authorities.

Independent Persons should be competent and properly remunerated for their services possibly via a separate organisation which then charges the Local Authority for the service – thereby creating distance between the IP and the Authority; having a body responsible for the oversight and advice/judgement standards for IPs; and enabling the IPs to have access to third party IPs for advice and guidance, as necessary.

Authorities and their senior officers should behave on a daily basis in a manner which demonstrates their commitment to the Nolan Principles – including exemplifying the requirements for Openness and Transparency in their publication and access to information; holding their own officers and councillors to account; ensuring they have a means by which to scrutinise and review decisions taken on Standards and Complaints by their MOs so as to provide assurance as regards consistency, competence, fairness and independence

Ensure that all councillors attend training on code of conduct, communications and use social media, declarations of interest,

standards in public life at least once in every 4 year election cycle and within 3 months of being elected for the first time.

Ensure that all councils have procedures in place to enable councillors as well as staff to receive protection and support as whistleblowers within their own authority.

What steps could *central government* take to improve local government ethical standards?

Broaden the remit of the contract for External Auditors to ensure that auditors are responsible for auditing against non-financial as well as financial aspects of an authority's operation and particularly as regards failures of governance.

Legislate to prevent compromise agreements with staff which gag them and prevent them from commenting on maladministration committed by themselves or others.

Widen the remit of the LGO to cover the activities of authorities with precepts below £1m

Require that NALC be responsible for ensuring the quality of the advice given and competence of the staff employed by their delegated local bodies – e.g. County Associations. Currently there is no responsibility taken by NALC for the quality and competence of the services provided by County Associations. However, NALC require communication from parishes to come through these bodies and advice to be primarily provided by these 'Associations', which are effectively granted a geographical monopoly.

There should be a third party organisation to which councils and councillors can refer if they are concerned about the quality/competence of the service being provided by county associations and third party consultants on matters of local government.

Intimidation of local councillors

What is the nature, scale, and extent of intimidation towards local councillors?

I have received sex pest anonymous phone calls, been threatened in the street, been verbally abused by other councillors and members of public in public meetings, had my car damaged, had things thrown at my windows. My partner and daughter have both been verbally abused in the street and my partner's car has also had abusive messages written on it. I have received death threats by email, social media and Twitter. The local press has repeatedly refused to report in a balanced manner and has repeatedly printed allegations made

against me, despite these allegations being totally dismissed after a full and independent investigation.

What measures could be put in place to prevent and address this intimidation?

Perhaps extend the scope of Anti-Social Behaviour Orders to include this sort of behaviour directed towards elected representatives.

Submission from Gerry Woodhouse

Suggestions for improvement to Monitoring Officer's (MO) role.

Ethical standards vary considerably at parish council level. The existing facilities for independent assessment of ethical standards are effectively zero.

I refer to ethical standards of individual members, a group of members and also the parish clerk.

I wish to suggest that the role of the MO should be increased (possibly via a revision to the Localism Act) to include the following points;

1. The MO should be empowered/obligated to **'offer advice' to members**, where the MO receives substantiated evidence of poor ethical standards. This is an entirely separate issue from potential breaches to the Code of Conduct, which is currently (except for Registration of Interests) the only time a MO can become involved at parish level.
2. The MO should also be empowered/obligated to **'offer advice' to the clerk**, where the MO receives substantiated evidence of poor ethical standards.
3. The MO should be empowered/obligated to oversee the formation a **Grievance Panel**, when the MO receives substantiated evidence of poor ethical standards at a council. This Panel should be comprised of volunteer members from parish councils in the local area to the affected council. The Panel would have the power, overseen by the MO, to look into the evidence of poor ethical standards and scrutinise the business of the affected council. The Panel should report publicly and to the MO. The MO could then determine if ethical standards have been improved and, if not, the MO should forward the evidence to the affected council's external auditor.
It is noted that NALC occasionally form a Grievance Panel as described above, so this suggestion is only a development of an existing informal procedure.
4. The MO should be empowered to **suspend** any council member, including the clerk, if misconduct is persistent and exceeds certain published criteria.

Suggestions for improvement to MHCLG (ex DCLG) role.

Ethical standards vary considerably at parish council level. The existing facilities for independent assessment of ethical standards are effectively zero.

I refer to ethical standards of individual members, a group of members and also the parish clerk.

Clarity of records

Some good work has been carried out by DCLG (eg, Eric Pickles MP) regarding new legislation for Transparency and Openness.

Currently, a rogue council can, however, comply with the letter of the law, whilst breaching the intent of the law. For example, meeting minutes can comply, but be written with an 'inappropriately brief and meaningless' set of records, see extract below;

This is a real example from a parish council's meeting in March 2018. It is, arguably, lawful (just). It refers to a council's remedial action plan, produced following a year

long audit investigation. However the words are entirely meaningless and subject to endless interpretation. Morally, this dire quality of official record making is plain wrong.

I suggest that the Committee could recommend to MHCLG that S7 of the Openness Regulations 2014 be enhanced to state that '*clarity and meaningful, unambiguous detail*' must be used to describe and record decisions. It's a simple and straightforward upgrade that would have a real beneficial effect to Ethical Standards.

Role of Minister

I understand that the Minister has powers to appoint an independent inspector to investigate rogue councils. This is good. However, the criteria for such intervention appears non-existent - I've asked! Some guidance and benchmarking would be most useful for councils and electors alike.

I suggest that such intervention is extremely useful and that it should be extended, perhaps in a reduced scope, to smaller councils. I refer to the recent inspection report for Northamptonshire Council by Max Caller CBE, which was superb.

Ombudsman

Currently, this role only extends as far as larger councils. I am aware that consultations have taken place and the role was unfortunately not extended to all councils. This outcome was flawed, as financial considerations are immaterial to ethical standards.

I believe, as do many other electors, that we do need an Ombudsman at parish level.

JPAG

This committee is apparently responsible for the content of Annual Return proformas (now AGAR) and similar policies. Unfortunately, this committee appear to be very difficult to contact and correspond with effectively. However, they must be responsible to somebody - possibly the Minister.

I suggest that JPAG should be far more open and transparent, including with member contact email addresses, their meeting schedule and a JPAG website.

MHCLG

The staff and organisational structure are opaque, impenetrable and appear to be remote from external influence. This is not good.

I suggest that the MHCLG website page has a family tree or organogram showing the various teams, together with their responsibilities and a point of email contact (eg the admin staff for each team). This would be a huge step forward to openness and clarity.

Suggestions for improvement to internal auditor (IA) role.

Ethical standards vary considerably at parish council level. The existing facilities for independent assessment of ethical standards are effectively zero.

I refer to ethical standards of individual members, a group of members and also the parish clerk.

Auditor

Presently, it seems that almost anyone can be appointed as a parish council's internal auditor. The guidance and criteria for suitable applicants appear vague to say the least. The appointment process is equally vague. It appears that a council can appoint a 'best mate' who can be relied upon not to look too closely at various aspects of a rogue council's business and who can just 'tick the boxes'.

I suggest that the whole aspect of the IA should be clarified and formalised. Only then will ethical standards rise.

Audit scope

Small councils are subject to an 'internal audit' once a year. The scope of this IA remit is far too restricted. For example, where a council receives substantiated Objections to their AR for consecutive years, produces remedial action plans, collects ICO Decision Notices confirming unlawful activity, receives a barrage of substantiated complaints etc, the council MUST ensure (by Law) that the IA has been made aware of these 'weaknesses'.

The internal audit scope then needs to be commensurately increased, so as to scrutinise the ethical standards that result in these 'weaknesses'.

Audit role

Currently, internal auditors appear to be able to write anything into an audit report and don't seem to be accountable for the content.

Ethical standards will be increased significantly by producing guidance documents describing accountability.

If your Committee could consider these suggestions and make the NAO and/or MHCLG aware, ethical standards will be raised in a more timely and effective manner.

Suggestions for improvement to NAO role.

Ethical standards vary considerably at parish council level. The existing facilities for independent assessment of ethical standards are effectively zero.

I refer to ethical standards of individual members, a group of members and also the parish clerk.

Financial status/Turnover

The current position appears to be that the smaller the turnover of a council, the less audit scrutiny is required. This is over simplistic and is too broad a policy for determination of level of audit input.

It is notable that ethical standards are entirely irrelevant to turnover. A tiny parish council can wreck havoc without spending a penny. For example, where a parish council decides to supply biased and incomplete responses/feedback to the District Council Planning team, this can sway a planning decision worth £m's. But such action is disconnected entirely from the parish council's turnover.

I suggest that the level of audit scrutiny be proportional to the likelihood of maladministration. I acknowledge that smaller councils can have a smaller opportunity for maladministration.

But, and it's a big BUT, there must be a facility to increase the audit scope, of any size council, where continuous and substantiated maladministration is shown to be persistent and ongoing. This should include increasing the audit scope from a 'limited assurance' audit to a 'full' audit, perhaps after three years of substantiated Objections to the AR/AGAR.

I think the NAO should include this point in their Auditor Guidance Notes, eg AGN-04.

Suggestions for improvement to external auditor (EA) role.

Ethical standards vary considerably at parish council level. The existing facilities for independent assessment of ethical standards are effectively zero.

I refer to ethical standards of individual members, a group of members and also the parish clerk.

Audit scope

Small councils are subject to a 'limited assurance audit' once a year. Even this minimal scrutiny may no longer be necessary if certain conditions are met. I acknowledge that where everything is running smoothly, audit input should, commensurately, be reduced. This is a sensible balance for risk vs costs.

However, where a council receives substantiated Objections to their AR for consecutive years, produces remedial action plans, collects ICO Decision Notices confirming unlawful activity, receives a barrage of substantiated complaints etc, the audit input needs to be commensurately increased. Limited assurance audits just will not do.

I suggest that a full audit becomes both necessary and appropriate in these rare cases.

A 'full audit' means verification of all aspects of a council's business, including the ethical standards of its members; not just the assertions in the AR, which comprise the scope of a limited assurance audit.

Audit role

Currently, auditors are loath to provide 'feedback' or guidance to councils, even when auditors acknowledge that standards of probity and openness are dire. There are too many opportunities and excuses to prevaricate, whereas a concise email to the clerk may well provide the impetus for meaningful change. For example, where a council's minutes are persistently censored to hide the inconvenient truths becoming a matter of public record (eg hiding ICO Decision Notices stating breaches of FOIA), the auditor should be encouraged to email the clerk and demand an explanation. Such action is quick, cheap and effective.

I suggest that the NAO's AGN documents should be revised to state that this sort of feedback is both appropriate and encouraged. This will raise ethical standards.

If your Committee could consider these two suggestions and make the NAO and/or MHCLG aware, ethical standards will be raised in a more timely and effective manner.

Bridgnorth Town Council's submission to The Committee on Standards in Public Life
Review of Local Government Ethical Standards: Stakeholder Consultation

Bridgnorth is a town in Shropshire, and Bridgnorth Town Council is a parish council. The county has a Unitary Local Authority system, with Shropshire Council being the Principal Local Authority.

There are two main themes in this submission. The first involves concerns about the interpretation of the Councillors' Code of Conduct; in particular when is it considered to apply, and when does it not apply, to a councillor? The second is the lack of a mandatory Code of Conduct for senior council staff.

Councillors' Code of Conduct

1. In England the laws relating to ethical standards in Local Authorities are set out in The Localism Act 2011.

Section 27 Duty to promote and maintain high standards of conduct.

(1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority ***when they are acting in that capacity.***

(2) In discharging its duty under sub section (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority ***when they are acting in that capacity.***

Note: the last seven words of sub sections (1) and (2) have been highlighted in italics, as the interpretation of these words will be a major theme of this submission.

2. In the Localism Act 2011, Section 28 Code of Conduct, sub section (6) states that parish councils are precluded from having their own arrangements to investigate allegations. As a parish council, Bridgnorth Town Council has no power to investigate allegations of breaches of its Code of Conduct by its members. Any allegations must be made to the Monitoring Officer at Shropshire Council.

3. Within the last year a Bridgnorth Town Councillor deliberately made a significant malicious phone call involving council business and implicating an innocent organisation. This could have led to very serious consequences for that organisation and for the Town Council. When the matter was reported to the Monitoring Officer, the surprising and unexpected response was that the Code of Conduct would not have applied to the councillor because that councillor had not called or given the impression that he was calling as a councillor. Any decision made by the Monitoring Officer is final; there is no procedure that permits an appeal. Full details of this particular incident are given in Appendix A.

4. Rather surprisingly, there is no power for a local authority to regulate the conduct of its members ***when they are not acting in the capacity of a councillor.*** This is information from a legal source actively involved in this area of work.

5. Councillors are expected to engage with the community which they represent, understand the needs and interests of various groups, and be well informed. This implies that members should make themselves known as councillors, and that when

communicating with their residents and electors, they are clearly identifiable as councillors. This could include writing a letter published in the local press, or posting a comment on social media.

6. Members will also post comments on social media without specifically mentioning that they are a councillor, but clearly the public perception is that they are councillors. Members will also meet people at different times and locations, and could talk about anything involving council business; it could be a complaint, an issue of concern, a suggestion to do something, and so on. When members are engaging in any of these activities most people would logically think that they were acting as councillors, even though they were not at some formal council function.

7. Apart from a few constraints imposed by adherence to a council's standing orders and financial regulations, and technically being an employer, members have the same rights as any other member of the public to Freedom of Expression. This means that as long as no laws are broken, a councillor can speak and write about anything, including being controversial and having views opposing fellow members or even council policies. All that the Code of Conduct requires is that a councillor is always honest and truthful, never deliberately tells lies or tries to deceive, is reasonably polite and treats people with respect.

8. In many respects councillors are similar to Members of Parliament in that they represent their constituents. Nobody would expect an MP to say that when they posted something on social media, wrote a particular letter, etc., that on that occasion they were not acting as a MP, but as a member of the public. The same should apply to councillors. The public perception is that when a member speaks, writes or undertakes any other activity, it is a councillor doing this. In general the public are totally unaware of the legal contortions that enable a councillor to choose between being a councillor or a member of the public when outside formal council occasions.

9. There have been occasions when members, on being challenged about an action taken, have claimed that on those occasions they were not acting as a councillor, but as a member of the public. Members should not be given the opportunity to opt out of being a councillor when it suits them, in order to undertake actions which possibly could be considered to have breached the Code of Conduct.

10. At the present time there is no known or readily available national guidance in England on the interpretation and implementation of the Code of Conduct for councillors.

11. In Scotland there is such a guide: Councillors' Code of Conduct Guidance, published by the Standards Commission for Scotland, and ready available to view on the internet.

Code of Conduct for Senior Local Authority Staff

12. This section is based on experiences and concerns in parish councils, where the number of members is relatively small and often there is only one senior officer, the Proper Officer, usually known as the Parish or Town Clerk. Unfortunately there have been occasions when conflict has arisen between a Clerk and one or more councillors, and even between a Clerk and contractors or members of the public. Sometimes the full council has fallen out with their Clerk, which has happened in Bridgnorth and other councils in Shropshire and England.

13. New councillors are quickly made aware of their obligations under the Code of Conduct which applies to them, but over a period of time it becomes obvious in some councils that there is no similar Code of Conduct for staff.

14. The main business of a council is transacted in meetings open to the public. This can put severe constraints on a member who may wish to raise an issue which could be considered to be critical of a senior officer. It is not considered appropriate to raise such issues in public as the senior officer should have the right to respond, but more importantly are significant consequences which could arise under employment laws.

15. The Parish or Town Clerk, an employee of a parish or town council, has significant legal powers including responsibility for preparation of agendas. What is included or left off an agenda, and possible rejection of a proposed motion, could be sources of friction with members. Other areas of contention could be the insistence of the Clerk that they undertake any investigation and preparation of papers on council matters, and how they deal with a member who wants to delve in some depth into an aspect of council business.

16. The Clerk is the gate keeper for information coming into and going out from a council, which gives the Clerk significant powers of control. Apart from the chairman of a council, other councillors have no authority to seek advice by directly contacting organisations such as the local Association of Local Councils or the National Association of Local Councils (NALC). All contact must be made via the Clerk.

17. To avoid conflict, there should be a good working relationship between councillors and employees at all times which is professional, courteous, and based on mutual trust and respect. Furthermore, council employees should always be professional, courteous and respectful when dealing with the public, and having contact with anyone else such as contractors and members of other organisations.

18. Although there may be no impediment to any council developing its own Code of Conduct for staff, it would be useful for it to be made mandatory, and with some national guidance on what should be included.

Conclusions and Suggestions

19. The main problem with the Code of Conduct for councillors is the interpretation of those seven words in The Localism Act 2011, ***when they are acting in that capacity***.

20. The Act should be amended to clarify when a member is acting as a councillor, preferably to include all actions when members and or the public would normally perceive that a councillor was acting as such. If the councillor does anything that involves the council in any way, then they should be considered to be acting as councillor, and have an obligation to comply with the spirit and intentions of the Code of conduct. Hopefully, this would include any acts of misconduct by a member that embraces any aspect of council business, such as the incident mentioned in paragraph 3 above, and the serious lack of any legal means of dealing with such incidents as mentioned in paragraph 4.

21. The Code of Conduct should not apply to a councillor in his private life, i.e. when doing anything, which has no connection with the council.

22. There should be a national guide in England on Councillors' Code of Conduct to provide a single document that gives an overview of this subject, to help interpretation, and provide some uniformity across the country.

23. Councils should be required by law to have a Code of Conduct for staff.

SUBMISSION 176

Dear CSPL Secretariat

I write further to the above Consultation and provide a response on behalf of Oswestry Town Council.

The Town Council has 18 Councillors, a budget of £3.5 million per year, and an annual precept of £385,000.

Answer to Question A

The Town Council is aware of research by the Society of Local Council Clerks which indicate that there are significant problems in around 15% of local councils. These problems are the biggest issue facing the parish council sector. The general understanding is that there is little value in making a complaint as historically the situation has been no significant sanction or other effective action is available to raise standards.

Because of the number of parish and town councillors in any county, then the number of referrals to the Monitoring Officer are disproportionate to those of the principal council. It is also recognised that there is very little training provided on the Code of Conduct from the principal tier.

This Council believes that the overall number of complaints, since the deletion of the Localism Act 2011, has not increased simply because the Standards Board offered an opportunity for sanctions, where most currently suffering from instances of poor behaviour feel that the additional stress and aggravation is not worth pursuing, and many therefore simply leave the workplace. This is particularly true as the majority of parish and town council clerks are from small parishes but the most important fact is that poor conduct has an annual cost to the sector and the public purse. The impact on the individual includes serious ill health, loss of employment, loss of confidence, and a long term detriment to personal and professional lives. The ballot box is simply not the sanction because many of the cases, where issues are long standing, are repeated year on year.

Answer to Question B

This Council believes that the gaps are primarily:

- The lack of effective sanctions, especially the absence of any ability to suspend or disqualify an elected councillor;
- The absence of good quality, accessible training;
- Resources to support the standards regime;

Inconsistent processes that vary between authorities;

Poor understanding of the relationship between ethical standards and good governance.

This Council believes that where significant breaches take place, and complaints are regular to the Monitoring Officer from an individual council, then the costs of the Monitoring Officer should be recharged to that parish. This will produce a greater accountability and also potentially create greater interest at the time of elections.

Answer to Question C

The general view is that councillors understand the rules but there are many instances where there is a total disregard for them and, certainly in Shropshire, certain councils over a long period of time have incurred substantial costs for employment disputes.

It is stressed that there should be a national code to give some consistency to the behaviours covered by adopted codes and this in turn would give some clarity. In applying the Nolan Principles, the Town Council believe that the parish sector should be placed on a level playing field and parity should be provided. If a code is considered to be appropriate for Westminster, that specifically addresses issues of bullying and harassment, then this must apply to the whole of the public sector with all public sector employees being afforded the same rights and protections.

Answer to Question E

The Council supports the Society of Local Council Clerks suggesting that there could be greater rigour and clearer communication in dealing with complaints. At the Monitoring Officer level there is a need for much more consistency, clearer guidance, and communications, in respect of the process of assessment, earlier interventions and more pro-active engagement to provide a fairer process.

Answer to Question F

This Council believes that the sanctions available under the Localism Act 2011 are totally inadequate. There are no powers to enforce and often the relevant parish or town council can decline to accept any form of recommendation following an investigation.

It is vital that the powers to suspend and disqualify should be restored as a matter of urgency and these powers must be used with consistency. It is also considered that the cost of investigation must be recharged upon the parish or town council.

It is also felt that training for councillors and clerks should be mandatory. If an individual is required to undertake training to be a school governor, then surely the same rules should apply in taking public office with a parish or town council.

Answer to Question G

More transparency is required and at present there is a lack of clarity for councillors as to the appropriate action once an interest has been declared. The current situation does not support high ethical standards.

Answer to Question H

This Council would support the Society of Local Council Clerks in believing that better guidance could be provided on whistleblowing in respect of ethical standards.

Answer to Question I

It is essential that there is training on ethical standards for parish councillors and better communications as previously mentioned. In addition, standards must be set across the entire public sector to be consistent to be monitored and breaches therefore to be addressed under the same rules and on the same basis.

Sent by Sandra Trevor on behalf of:

David J Preston

Town Clerk

Oswestry Town Council

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Sedgemoor District Council
Review of Local Government Ethical Standards:
Response to Stakeholder
Consultation

a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Not in all cases, especially the potentially serious cases or instances whereby a particular councillor keeps breaching the code as the sanctions have no teeth to act as a deterrent. Attached is a copy of a letter that Sedgemoor and other Local Authorities in the South West sent to the government last year expressing concerns about the current regime and in particular the sanctions available.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Sanctions that would act as a deterrent. Very limited powers in respect of town and parish councils. At present, there is no independent body that people can go to if they are unhappy with the treatment/service provided by a town/parish council (like the local government ombudsman for example). This means a range of issues come to the Monitoring Officer which are either outside their remit completely and if they do relate to code of conduct issues, as mentioned above, there are no effective sanctions to adequately address the more serious issues.

c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Broadly yes at principal council level but not consistently across town and parish councils. It is very difficult to reach all such councillors. We have offered free training and have still only reached a small proportion of parish/town councillors in our area.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

The main issue is that since 2011 the wording does not have to be consistent in relation to declarations of interests and it would be much clearer if all codes of conduct had precisely the same wording. Using the three classifications of disclosable pecuniary, prejudicial and personal interests works well at our principal council level but this is not mirrored by all town and parish councils which has caused confusion and inconsistency.

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

(i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due

process?

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest to do so.

(ii) Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The views of the Independent Person do provide a useful check and balance and a significant support to the Monitoring Officer. Members of the public do not always understand where/why they fit in (in relation to the council, Monitoring Officers, Standards Committees etc.).

(iii) Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

The Monitoring Officer would always use someone else to undertake any formal investigation but this will take extra external resource which is very costly.

f. Are existing sanctions for councillor misconduct sufficient?

(i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

For less serious matters where some training or an apology is a proportionate mitigation, then the current sanctions are adequate. However, for cases that require a formal investigation, then, they do not offer a sufficient deterrent.

(ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?

For more serious cases, sanctions of up to and including suspension for six months would have the potential to have a real impact and make people think more about their behaviours. Even the making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the Police who may not necessarily be experienced in local government matters and do not (understandably) see such matters as a high priority, as compared to other types of criminal offences. There is also a lack of interpretation in relation to Disclosable Pecuniary Interests and currently they seem to be interpreted very narrowly which means that there are many circumstances where Members are not found to have a potential disclosable pecuniary interest when perhaps they should be.

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.

(i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes

that engage a disclosable pecuniary interest, not take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Broadly the arrangements work quite well. It is quite difficult from a Monitoring Officer perspective to get all register of interest forms completed by all parish and town councillors across our areas (can be hundreds of councillors) let alone keep them up to date.

(ii) What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If no, please say why.

A declarations of interest item is on the agenda near the beginning of all formal decision making meetings; induction training is given on the code of conduct and as long as the member concerned brings to the Monitoring Officer's attention any potential conflict of interest in good time, then discussions can usually be held to ensure that potential conflicts of interest are satisfactorily managed.

h. What arrangements are in place for whistleblowing by the public, councillors, and officials? Are these satisfactory?

The Council has a Whistleblowing Policy, which has proved to be satisfactory to date.

i. What steps could local authorities take to improve local government ethical standards?

Provide more training especially to parish and town councillors. Training should be mandatory.

j. What steps could central government take to improve local government ethical standards?

Either give councils greater sanctions or remove the requirement to formally deal with complaints.

k. What is the nature, scale and extent of intimidation towards local councillors?

There are often examples of tit for tat and/or persistent complaints, particularly about parish/town councils. Individuals try to use the local Standard process to deal with concerns that they have about the day to day running of the council or about the outcome of a planning application.

There is increasingly more pressure put on councillors who sit on the planning committee. It does not feel appropriate that they have to sit and determine, say, a contentious large housing development, sat in front of sometimes hundreds of angry objectors who make it clear that they will not vote for them again etc.

(i) What measures could be put in place to prevent and address this intimidation?

Adequate sanctions especially for more serious examples of bullying.

Towns/parishes being subject to the Ombudsman so that complaints about the running of the Parish are dealt with through this process rather than individuals trying to use the Standards process for this.

Standards Committee
Sedgemoor District Council
16 May 2018

SUBMISSION 178

Dear Sir/ Madam

As a past member and then chair of a local government standards committee, and now serving as a deputy independent person, I feel I have several years' experience of member conduct issues. The following views are my personal observations and in no way should they be seen as those of the two authorities with whom I am connected.

My reason for submitting these views is prompted by my dismay at the outcome of the last consultation culminating in the Localism Act changes, when I feel despite the extensive debate in the Lords, the practicalities of the outcome bore more relevance to a philosophical view of the world, than a practical application of real-world events.

The following are the key points I wish to make:-

1. I feel that the current lack of **proportionate** sanctions effectively brings the whole process into disrepute. Whilst suspension is not to be taken lightly, as it effectively 'interferes' with the democratic process, a power to suspend, in serious cases should afford suspension for up to 3 and possibly 6 months. Suspension meaning all allowances and remunerations would cease. However, in doing so it would be incumbent on the political party which is denuded of a member to provide 'meaningful' cover to the ward concerned (at their own expense). Where they refuse to do so, or the suspended member is a stand-alone politician/representative, the authority would provide 'cover' as they see fit.
2. In cases of suspension a right of appeal, whether it is a full re-hearing of the case, or merely an independent review of the papers by other Members would be possible; either option ensuring no infringement of art. 6 of the European Convention on Human Rights..
3. In taking decisions about a breach of the Code of Conduct where members fail to accept the findings and/or refuse to, for instance follow up on training, appropriate sanctions should be within the power of the authority.
4. Where a councillor relocates their permanent residence a considerable distance from the electorate, and there have been cases of Members relocating to USA, South Africa etc., it should be within the power of the authority/political group to de-select the Member. It makes a complete mockery of the democratic process that a member could potentially be residing thousands of miles away from their constituents, yet attend a single meeting every 6 months and still retain their allowance/remuneration for the next four years. Action needs to be taken to avoid the 'banana republic' criticism of our democracy. Clearly an entirely more considered view MUST be taken when a Member is absent due to health reasons.
5. Failure to declare a DPI is a CRIMINAL OFFENCE, yet you have to ask how often has this been reported to UK police forces, and consequently been acted upon. I question whether this should be more considered a breach of the 'code' rather than a matter for the courts. It would therefore be subject to the authority as to an appropriate sanction and/or referral to the police.
6. The role of the Independent Person(IP), if it is to remain independent, should continue as a non-voting advisor to Members. It is their duty(IP) to offer the best advice possible on the available evidence, and to allow this role to become comparable to Members in voting would be a step too far.
7. Local authority Councillors and town and parish councillors, when elected, should be REQUIRED to attend training, with this being followed by a 'refresher' every four years.
- 8.

It trust the above will prove of use but please do not hesitate to contact me should you need to clarify anything. My concern is that whilst authorities with whom I am involved are fastidious in having robust systems in place and adhere to due process, in the eyes of the public the outcomes are often seen in their ineffectuality to be meaningless, the existing powers (or lack of them) are ostensibly bringing the whole process into disrepute.

Thank you for allowing my personal views to be submitted.

Yours sincerely

Wayne Harvie

Brighton & Hove City Council's response to the CSPL review of standards in local government

Compiled by a cross party group of those councillors appointed to the Council's Audit and Standards Committee and one of the Council's Independent Persons

Link to detailed questions: <https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

Link to Brighton & Hove City Council's policies and procedures relating to member complaints: <https://www.brighton-hove.gov.uk/content/council-and-democracy/compliment-or-complain/complaints-about-councillors>

General Questions

Overall the existing Standards framework is considered to be adequate.

Clarity on the permitted use of council resources for personal use by members (eg phones, bus passes, car parking, etc) has recently been requested and is being generated by officers for members to review and approve.

Recommendation: a new requirement that where councillors are dual-hatted and are found to have breached the Code at authority A then either they or the Monitoring Officer at authority A be required to declare that fact to the Monitoring Officer at authority B.

Code of Conduct

This Council supports the principle whereby a local flavour to arrangements is permitted. This authority's Code is reviewed regularly and updated in response to perceived need - for instance, where a councillor under investigation fails to co-operate with a standards investigation then that conduct is of itself capable of amounting to a breach of [BHCC's Code of Conduct. \(para 1.8 \(i\) refers\) following a recent review of the Code.](#)

It was noted that the statutory provision for Disclosable Pecuniary Interests ('DPIs'):

a) does not catch the financial interests of close family members other than spouses, and also

b) where an authority makes provision for an additional category of interests (at this authority, 'Other Interests' deemed either prejudicial or non-prejudicial), then the resulting framework can be confusing for members.

It was felt that - given the current regime's reliance on a light-touch framework which lacks significant sanctions other than adverse publicity - it would be helpful for councillor training on Standards to be mandatory. That said, the difficulty of enforcing any such rule was acknowledged.

Investigations and decisions on allegations

i) BHCC's procedures are very regularly reviewed and are felt to be proportionate. They provide the MO with powers to informally resolve complaints in a range of situations following consultation with one of the IPs: an arrangement which was considered to work well.

ii) BHCC is fortunate to have two IPs whose professional backgrounds and willingness to engage promptly and in a considered way strengthen member perceptions of the regime as well as ensuring that it is applied smoothly and in a consistent way.

During hearings of breach allegations, one of the Council's Independent Persons acts as Chair of proceedings and remains in the room during deliberations, despite not being able to vote. It is felt that this is a clear and proportionate means of ensuring that fairness is both achieved & is seen to be achieved, as well as meeting the requirement that IPs input into decision-making. It is also felt that this encourages Panel members to exercise their role with maximum independence and neutrality. This is felt to be a useful **good practice measure**, which other authorities could gain by.

iii) MOs are often placed under pressure by members: an issue which may be mitigated in part by professional bodies and external support networks but which is otherwise not easy to address.

Sanctions

The current regime relies on a healthy culture, where negative publicity and/or the opprobrium of members' peers are to be avoided. In this context, the available sanctions were considered sufficient. However the interests of fairness mitigate in favour of members found to have breached the Code being required to shoulder some of the costs involved in the bringing of proceedings: a practice which is well-established in a range of regulatory arenas.

Recommendation: that express provision be made to permit an order be made requiring a subject member to make a contribution toward the costs of proceedings where a breach is found to have occurred. This could be docked from a member's allowances. It was felt that this financial penalty might be more impactful than existing sanctions in some cases.

Declaring interests & conflicts of interest

Existing arrangements in relation to interests can make for a complicated scene at Council meetings, especially at budget Council, when the volume of interests to be declared is excessive and this risks impeding Council business.

Recommendation: that the requirement to declare interests at meetings applies only where the relevant interest has not previously been notified, this on the basis that inclusion on the register is sufficient to ensure adequate transparency.

Recommendation 2: that specific provision be made exempting members from the bar on participation where they have interests at budget Council, this because the current situation results in a large number of dispensations being sought, often last minute.

In addition, it was felt that the definition of a Disclosable Pecuniary Interest is too narrow. It was felt that there is no logical reason for members to be required to notify and declare the interests of children under the age of 18 as well as those of 'close family members': a category which should be defined in settled terms, for clarity.

Recommendation 3: extend the DPI definition to include a category of 'close family members', which is defined and which includes a member's children.

Whistleblowing

BHCC's policy is available on its intranet and steps are underway to make sure it is as easy as possible to find. It is key that information regarding who may be approached and how that information will be kept is fully accessible: a concern which is borne in mind here.

Improving standards

It was felt that there was no substitute for having regard to the Seven Principles, including in particular those of transparency and openness. This needs to be embedded visibly in local authorities' decision-making, alongside the public interest test.

Similarly there is no alternative but to have in place robust governance arrangements which are vigorously maintained and adequately resourced: the latter not a given in this financial climate.

It was felt that the most effective step that central government could take to promote local government standards is to ensure that it leads by example, both by a) rigorously maintaining & complying with its own framework but also by b) not imposing greater expectations on local councillors than it has of MPs (see below re home address disclosure).

Intimidation of local councillors

The nature and scale of the issues was considered to be significant, while the level of vitriol to which members may now be subjected to is clearly amplified by social media.

There was consensus that this issue was putting prospective candidates off from standing for election, and that new measures suited to the new landscape were merited..

Although this authority is endeavouring to support members as best it can, councils have only limited measures at their direct disposal.

Recommendation: message service providers should be required to step up and take action where abuse is occurring.

Also there is no justification for the presumption that councillors' home addresses be published in their register of interests. This is not required of MPs, and there it is not clear why different rules apply to councillors given that councillors may face the same pressures and potential security risks from individual members of the public.

Recommendation 2: It is suggested that the requirement for home address details to be published on the register of interests be replaced either by a requirement that councillors indicate simply the first three digits of their postcode or some other equally logical and commonsensical measure which avoids making councillors vulnerable in this easily avoidable way.

Submission to the Committee on Standards in Public Life

We agree that the Seven Principles of Public Life are a reasonable set of expectations if we are to have confidence in governance and engagement in local services. We detail below two examples, which illustrate the ways we are failed by the Localism Act (Chapter 7, S28 Standards) and the monitoring framework, engendering cynicism regarding these matters.

We are electors in a principal authority in Cumbria and sometimes attend our local parish council meetings. Prior to retiring to Cumbria David Williams had a background as an executive councillor and a number of governance roles. Barbara Williams has worked in the NHS as a clinician and manager.

We are setting out below our recent experience as complainants relating to conduct in public office. Background:

1. In November 2016 we provided information to the Monitoring Officer (MO) concerning the failure to declare a business relationship between the former parish clerk and a parish councillor;
2. The MO's response was (22/12/16) 'it has been confirmed that the directorship of the local company is not for profit or gain and therefore not required to be disclosed on the register' and she concluded that there was no relevance to the matter under discussion (which was the clerk's financial gain in his terms of departure). We enquired what relevance test was applied to support this assertion but received no reply except on 23/12/16 the MO told us she considered the matter closed.
3. In May 2017, in a further email, the MO told us '...alleged offence under s34 is a matter for the police to investigate.' We requested details of the protocol for doing this, but no response was received.
4. In June 2017 we met with the MO and an Independent Person to discuss a further alleged failure to declare a pecuniary interest by the same councillor. It seemed clear that an offence had been committed but the only way to proceed was either to refer the matter to the police or the Independent Person could meet the councillor to make clear what his obligations were. We took some time to reflect being deterred by lack of protocol, pressure on police service resources and possible repercussion in a small rural community.
5. Eventually further matters at the PC concerning declarations of interest persuaded us that we should request our two sets of allegations (failure to declare a business relationship and failure to declare a pecuniary interest) to be referred to the police.

Our response to consultation questions

In our view, our experiences demonstrate:

1. A) Process – complaints investigations - as far as we could ascertain there were no protocols for dealing with these allegations and no transparency in the way it was carried out, for example we do not know when the police investigation commenced or concluded but the outcomes were conveyed to us by the MO's letter attached [not published] dated April 11th, 2018. We were not interviewed or asked to provide any supporting information. To quote from the police inspector's email (20/04/2018) to us *'from the information you provided on this neither I, nor those I took specialist advise (sic) from considered it necessary to contact you during our investigation. If you had more information that you had not provided this should have been brought to the attention of...(the principal authority)'*.

In the letter reporting the outcome of the police investigation, it was indicated that certain matters were unclear. Had we been consulted, we could have clarified these.

Principal authority reporting to their Standards Committee

The following link accesses this council's website

<http://democracy.southlakeland.gov.uk/ieListDocuments.aspx?CId=139&MId=4357>

and provides the agenda and draft minutes of the Standards Committee held on Tuesday April 17th which includes a report of Code of Conduct Complaints and a draft response to your Review. Our comments on the report are attached - see the email dated May 9th [not published]. So far as we can tell, even anonymised, the report is not accurate.

It is difficult to accept that anything had been learnt and indeed the cases 'vanish'

b) Investigation of alleged breaches fairly and by due process

Both of our complaints were considered by the MO and email correspondence demonstrates this was superficial. No information is in the public domain about how to process an allegation with the police service. Unfortunately, the MO's letter to ourselves is not a formal report of an investigation. We do not know if one took place. It is a summary, and must be second or third hand. By the time the parish councillor made his 'statement' given in the Council minutes to his PC (the narrative which began with the police, through the MO to the councillor then minuted by the clerk), it was fourth hand. Again, the inaccurate Standards Committee report was written at a time when the result was being drafted to ourselves and so the subject investigation(s) were available to report to committee. The council's response to your Review could have included a brief account of the difficulties with the process from the perspective of the Principal Authority.

We continue to seek clarification of both outcomes through a meeting with the investigating officer and inspector. The inspector wishes the principal authority to be present, but our view is that they remain potentially witnesses because they have access to correspondence, and other information including the results of their own earlier enquiries on both matters. We do not think this is useful.

The inspector's emails to us so far do nothing to assure rigour, fairness or confidence.

c) Enforcing codes and imposing sanctions for misconduct

Although the constabulary found that the code of conduct had been breached (the councillor had acted “outside the remit of section 31”), no further action was considered to be in the public interest.

d) Declaring interests and managing conflicts of interest

We firmly believe that the business and personal relationship in the first case should have been declared in line with the principles of standards in public life – S.28, Localism Act. Similarly, if the council were interviewing to fill a post of clerk, instead of the terms following his resignation, his connection should clearly have been declared. (We are not saying that the member should necessarily be excluded.) Incidentally, the councillor’s directorship of the local company is referenced on his amended declaration of interest form following our initial complaint.

Failure to declare an interest was acknowledged but dismissed as inconsequential. The matter was not managed, but allowed to disappear.

2. Are existing structures conducive to high standards?

The existing structures appear to us (see the Standards Committee minute April 17th, describing the outcome of our complaint) to encourage malpractice as it is known that no action will take place when there is evidence of its having taken place. This leads to cynicism, hopelessness and a reluctance to engage in the local community. As all councillors can seek a dispensation there is no excuse for not declaring and indeed resisting declaring an interest. It is noteworthy that this councillor declared pecuniary interests in matters where they did not exist following our first contact with the MO.

3. Recommendations for improvement

The effect of the Localism Act, whatever it’s potential in other ways, has been to fragment a nationally accepted set of standards, an example of which was the 2007 Code of Conduct Local Authority (Model Code) Order. Small authorities outside the public gaze experience less scrutiny. When issues are raised individuals can easily become ostracised and it is a lonely and uncomfortable track to tread. These risks were noted in the House of Lords debate led by Lord Richard on 14th, September 2011 (Hansard).

Then we must ask – who monitors the monitors? And in our two instances who audits the investigations by the police?

- ii. The Standards Committee appears marginal rather than central to gaining public confidence. For example, there is no outline of the seven principles prefacing the Agenda. Apart from a training programme, what do the Authority gain from experience?
- iii. The umbrella organisations (Associations of Councils) have a public education role to play through making information available and being accessible to interested citizens. (Anecdotally, we know advice is offered on the ‘phone to Parish Councils which could be out of context.)
- iv. Adult Education and U3A could be an effective forum for disseminating information and sharing concerns.

- v. From our very limited experience, it should not be the role of the police to investigate allegations about councillors.
- vi. Engaging young people in models of governance would help raise interest in future.

There should be a requirement for all those in public office to have training in the seven principles prior to commencing formal duties.

Your ref:
My ref: SD/NE

Review of Local Government Ethical Standards
Committee on Standards in Public Life
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Resources Group
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Sarah Duxbury LLB Hon DipLG
Head of Law & Governance
Interim Head of Human Resources
& Organisational Development

By email: public@public-standards.gov.uk

16th May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

The responses of Warwickshire County Council are set out below:-

General

1. Generally, the structures, processes and practices in place within local authorities do work to ensure high standards of conduct by local councillors. Members noted the importance of peer pressure and the role of the political partners in maintaining standards. The local determination of code of conduct matters is appropriate.

Codes of Conduct

2. Codes of conduct are generally clear and easily understood and there is flexibility to adapt them to suit local circumstances. Linking the requirements under the Code to the Seven Principles of Public Life enables a wider range of behaviours to be included as potentially falling within the Code without being overly prescriptive.
3. We have not experienced any significant issues as regards the local arrangements for registering and declaring councillors' interests.

Investigations and decisions on allegations

4. Members noted the importance of transparency and following the rules of natural justice to ensure fair process and protection for all parties when handling code of conduct complaints. The processes in place provide for this. Provided these principles are adopted in terms of handling a complaint, it does not seem to be necessary to put in place any additional and potentially more prescriptive safeguards. Each complaint is necessarily different and each Council is different. The flexibility that the current arrangements provide for is helpful to the handling of complaints.



*Working for
Warwickshire*

-
5. The requirement to seek the views of an Independent Person in certain circumstances is appropriate and there is no pressing need to strengthen those arrangements. Their role is to provide a view as a member of the public: they are a safeguard to sense check any proposed decision. However the determination should still be for the Council to make in line with its local arrangements.

Sanctions

6. It was recognised that the ultimate sanction would be determined by the electorate when it came to elections. However given members are elected for four years this is not always seen as a timely response. This can sometimes lead to issues in terms of public perception and public expectations when balanced against the democratic mandate of councillors.
7. Group discipline is also a useful tool and in certain circumstances can be effective when formal sanctions available under the legislative framework cannot be pursued (e.g. those requiring the consent of the member complained of). However such mechanisms are naturally less transparent to the public and it is important that formal sanctions which do not require group or member consent remain available for Councils to impose as appropriate.
8. Members would advocate a review of the sanctions available to Councils to impose, as the changes to the standards regime some years ago limited the available range particularly for those rare, serious cases.
9. Consideration could be given to the scope to introduce, as an additional sanction, suspension of a councillor's allowance for a specified period. This might be helpful in terms of public perception and may assist with resolution where alternative options for sanction require member consent.
10. The Recall of MPs Act 2015 was introduced to provide a power of recall, forcing a by-election, where an MP is found to have engaged in serious wrongdoing. However it is questionable whether similar powers would be relevant or could be applied in the local government context.

Declaring interests and conflicts of interest

11. Whilst the overriding principle to ensure transparency in decision making is accepted, the statutory definitions of 'disclosable pecuniary interests' are not helpful and are not always easy to apply to practical situations councillors can be faced with, particularly in relation to councillors' membership on outside bodies. The definitions would have benefited from greater consultation with the LGA before implementation in regulations and it may be helpful to undertake a review of those definitions, especially given that failure to declare such interests amounts to a criminal offence under the Localism Act.
12. As a matter of good practice, the Council has maintained the requirement for councillors to disclose non pecuniary interests at meetings. This goes beyond the statutory requirements and has been maintained in the interests of transparency. Advice to members from relevant officers is also circulated in relation to specific matters as necessary (e.g. reminders to declare any conflict of interest; both financial and non-financial).

Intimidation

13. We are not aware of any significant issues in relation to intimidation towards local county councillors and where issues of this nature have arisen, they have been resolved locally, in collaboration with local partners as necessary. However members feel that incidences of intimidation of local councillors and the number of vexatious
-

complaints made against them were potentially increasing. Members expressed a view that a process to protect local councillors against this behaviour would be useful.

14. Vexatious complainants have been problematic on occasions. In such circumstances where the contact with local councillors has been viewed as unreasonable, specific arrangements have been put in place such as introducing a single point of contact. Members would advocate action being available for bodies to take against those individuals where it had been proved that vexatious complaints, acts of intimidation or the circulation of inaccurate information had been carried out by them.

Yours faithfully

A black rectangular box redacting the signature of Sarah Duxbury.

Sarah Duxbury

Submission to Local Government Ethical Standards Consultation

(Capacity: ex parish councillor Ringwould with Kingsdown Parish Council, (in Dover District), member of the public)

1. General: Dover District –

- 1.1 Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why. *County section of NALC (e.g. Kent ALC) could be more supportive of councillors, so that those disapproved of by domineering chairs of PC are not hounded out of office. In the case of the PC that I served on, when I resigned 14/2/18, I was the 7th person to resign since the 2015 local elections, since then 4 more councillors have resigned so there are currently only 3 councillors out of an allotted 9 currently. I know of others pushed into resigning from East Kent PCs.*
- 1.2 What, if any, are the most significant gaps in the current ethical standards regime for local government? *Too much capacity for bigger fish in very small ponds to make up their own rules as they go along so that debate and accountability is quashed.*

2. Codes of conduct

2.a Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist? *The Kent Code of Conduct seemed to me excellent and understandable. However the domineering half of the PC decided to misinterpret it to mean that a less senior cllrs shouldn't comment on anything in the streets near her, e.g. dog fouling, fireworks, because she had an 'interest'.*

2. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why. *See above, The Kent Code of Conduct seems clear that interest is pecuniary. Domineering members of PC need to be prevented from endlessly changing standard orders to create new standing orders that prevent lesser councillors from speaking, getting items on the agenda, getting items minuted, etc.*

It would be good if NALC standing orders were compulsory for all PCs in England, so that cllrs spent less time on revising them and more time engaging with the residents and more urgent matters.

3.+ 4. *Investigations and decisions on allegations + Sanctions – I haven't found time to contact DDC monitoring officer since I resigned. No Comment*

5. Declaring interests and conflicts of interest

5.a Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- xvi. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
- xvii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why. *Kent code of conduct seems to cover this very adequately.*

6. *Whistleblowing – Perhaps it would be useful if worried councillors could have an informal off the record conversation with a Monitoring officer before deciding whether to put in a formal statement or resigning.*

7. Improving standards

- gg. What steps could *local authorities* take to improve local government ethical standards? *Make it possible for parish / town councillors to attend KALC meetings without having to have the approval of chairs of parish councils to do so (KALC training conference session cost £70 each – difficult for voluntary cllrs) – The quarterly meetings of District forum of KALC was very refreshing, encouraging, non-fractious, issue-focussed. It would be good if the democratic services section of district councils would liaise with such fora and make sure that cllrs could be invited / emailed directly to attend (to prevent some invitations going astray in busy parish clerk's inboxes).*
- hh. What steps could *central government* take to improve local government ethical standards? *Councillors of the majority party on a District Councils behave accountably and listen to voters, only if they think they or their party might lose power in future elections. The draft submission to the Local govt boundary commission was voted through by the majority party on Dover District Council, the 28th March 2018, so that it went public in the local press 4th April, 5 days before the deadline for comments. It suggests reducing the DC from 45 cllrs to 32 and carves up a number of parishes, for what looks to many like party political gain. Turnout is very low for local elections, cynical acts like these, drive it down yet further. At the next level up, Kent County Council, in January 2018 it was suggested that debate on the budget be put aside because with 67 Conservatives out of 81 cllrs (67 on 50% of votes cast), it would be voted through any way by 67 regardless of the opinions of cllrs. (Many of the 67 majority county councillors are double-hatting district councillors also, does this encourage them to save time and be obedient lobby fodder? Should accumulating mandates be stopped?) I hear as I stand in supermarket queues, the words 'back-hander' and 'brown envelope' being used in conversations about the pace of non-affordable greenfield housing developments here, more frequently each year. There is a despair, a resignation about the deep and growing lack of democratic accountability here.*

It is dangerous, we have seen a rise in extremism. Proportional representation for county elections would bring us some of the accountability we are crying out for.

8. Intimidation of local councillors

- ii. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?

When a chair and clerk work together, and do not respect the Nolan principles, there can arise a considerable degree of intimidation, which discourages applications to fill vacancies. If a chair of PC shouts at fellow councillors and raises her voice to 14 members of public, telling each of the groups they do not have the right to question her actions, should a parish clerk privately suggest to the chair this is not appropriate? What if the chair has driven through clerk's large pay rise?

All parish / town councils need to have a parish clerk who signs up to and respects the Nolan principles, and many, many do hold themselves to very high standards with very little oversight. However, problems can arise. I would like to see a public annual oath-taking and signing of a declaration to uphold each of the Nolan principles by name and for these to be read out explicitly by parish clerks.

I would suggest that it is not appropriate,

- *for parish clerks to pick and choose whose applications for co-option are repeatedly lost, which ones are shown to the chair and which ones are brought to the attention of all councillors. It can cost the parish an election when persons whose applications are ignored, put in a call for poll. I have seen (after I was elected unopposed), the ridiculous situation of an election between 2 persons, both of whom are on the PC a month later, one having been elected, and the one who lost having finally been coopted and there were 3 vacancies before the election. If it were the practice, recommended in Good councillors guide, for applications for co-option to be sent to clerk with a copy also to District democratic services and to the chair of PC, clerks who take it upon themselves to choose who is on their council could be persuaded to behave more accountably.*
- *For parish clerks to tell councillors or members of the public that they do not have the right to remember what they heard and said, because the clerk has written up the minutes differently. There needs to be an objective record of what has been said. As members of the public have the right to record PC meetings, (after they've notified council they are doing so), councillors should have the same right whether the majority on a PC agrees or not and this should be made explicit in the Good Councillor Guide.*
- *For chairs and clerks to publish agendas that obfuscate the fact that the annual budget is going to come up, thus making it more difficult for the public to be aware of some changes that they may well want to give their views on.*
- *For chairs and vice chairs to misinform councillors that a budget has been voted through when it hasn't.*
- *For chairs and vice chairs to shout down polite questions about the clerk's review, and tell councillors, all they are entitled to know is that the review was*

satisfactory. (There should be a vote on who the clerk's review is delegated to, and clerk's reviews should have standard NALC criteria and the result of such a review should be communicated to all cllrs in a closed session, this standard practice to be made explicit in the Good Cllr Guide) .

- *For councillors to be told by the clerk and chair that cllrs are not allowed to talk to members of the public,*
- *For councillors to be invited individually in front of a panel of the chair, vice chair and clerk to be told off for not toeing the line.*
- *For the Notice of the Annual parish Meeting to be put up 5 days before the meeting with 15 minutes allocated for questions from the public.*
- *For chairs + clerks to tell cllrs they are not allowed to communicate with other councillors e.g. about precept deadlines being missed, etc.*
- *For Chairs + Clerks to tell a lesser councillor they are not allowed to inform fellow cllrs or have it minuted that there is a KALC conference on Governance, procedures and transparency that might be of interest.*



Review of Local Government
Ethical Standards Committee on
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ask for:
ddi number:
fax number:
email:
our ref:
your ref:

Sara Freckleton



15 May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

I have set out below, for consideration by the Committee for Standards in Public Life, the comments of the Cheltenham Borough Council Standards Committee following its consideration of the consultation on Local Government Ethical Standards. This submission uses the topic headings from the Consultation Document to provide information on how the conduct regime is operated within Cheltenham Borough Council and also to identify those areas where it is considered that the Committee might wish to consider amendments to the current standards arrangements.

1.0 Overview of existing structures, processes and practices

- 1.1 The Code of Conduct adopted by Cheltenham Borough Council exceeds the minimum required provisions and is based upon the pre- Localism Act statutory version of the Code. A suitably adapted version of that Code has also, upon the recommendation of the Borough Council Standards Committee, been adopted by the 5 Parish Councils operating within the Borough. Experience of the operation of the Code of Conduct over the past 6 years has resulted in very few complaints about Borough (or Parish) Councillor conduct and even fewer instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct.
- 1.2 One of the advantages of the current regime (compared to the pre-2012 position) is that there is discretion to resolve complaints informally. This has been beneficial in that less serious complaints can be resolved quickly without the bureaucracy that existed previously.

2. Codes of conduct

- 2.1 As stated above, the Cheltenham Borough Council Code of Conduct is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended, within a few days of election to office, comprehensive training on the Code of Conduct. Members are encouraged to seek advice from the Monitoring Officer / Deputy and frequently do so if at all unsure as to the implications of the Code of Conduct. The most frequent queries arise on the matter of interest declaration. A similar training and advice opportunity is offered to all Parish Councillors (and Clerks) within the Council area and has been relatively well taken up with individual bespoke sessions / refresher sessions carried out (where necessary / requested), for Parish Councils.

3. Investigations and decisions on allegations

- 3.1 Cheltenham Borough Council has made arrangements for allegations of misconduct to be fairly investigated and decided. These arrangements include a delegation to the Monitoring Officer to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and, if so to arrange for investigation. The delegation also enables the Monitoring Officer to seek local resolution of complaints without investigation where it is possible to do so. Where an investigation is undertaken, this is done by a suitably qualified officer (normally an in-house lawyer) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It should be recognised that there is a significant cost to the authority in resourcing an investigation and consequently these are likely only to occur where it is considered to be in the public interest to do so.
- 3.2 The role of the Independent Person is critical to the objectivity and fairness of the process. At Cheltenham Borough Council, the Independent Persons are also non-voting co-opted members of the Standards Committee. The review may consider whether it would be appropriate for Independent Persons to be full voting members of Standards Committees.

4.0 Sanctions

- 4.1 The sanctions available are broadly restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body.
- 4.2 Sanctions such as apology and / or training are sufficient to remedy less serious breaches of the Code of Conduct. However, in respect of recurrent / repeat breaches, refusal to accept a sanction or serious breaches of the Code of Conduct, the current sanctions do not appear to be adequate. Whilst not a unanimous view of the Standards Committee, the view was expressed by a number of Members of the Committee that suspension of a Councillor in respect of more serious breaches of the Code may be considered to be a proportionate sanction.
- 4.3 Members of the public who have occasion to raise concerns / make complaints about Councillor conduct have been surprised at the limited sanctions available. It is understood that the current regime is prefaced by the right of the electorate to decide its representative and therefore sanctions cannot currently

be imposed that interfere with that democratic choice. It is also essential that sanctions are proportionate to the breach which has occurred. The review provides the opportunity to resolve the tension between the statutory requirement to have in place arrangements to deal with complaints and the sanctions available to respond to breaches of the Code of Conduct. If there are not to be meaningful sanctions which both reflect the seriousness of breaches and act as a deterrent, then it is suggested that the requirement for the formality of investigating complaints should be reconsidered. The current regime of requiring a formal process which is fair with “due process” is costly to the Council’s resources and creates expectation on the part of complainants that serious breaches will be dealt with proportionately which is not always possible given the constraint on sanctions.

5.0 Declaring interests and conflicts of interest

- 5.1 Concerns have been raised previously with the Government Information Commissioner about the registration and publication arrangements within the Localism Act 2011 for Disclosable Pecuniary Interests. The particular concern is about the potential conflict of the current DPI registration and publication requirements with Data Protection / Human Rights legislation, insofar as these requirements extend to publication of the information relating to third parties (spouses and partners etc.) who have not been elected to any office. This will be the matter of a separate submission by the Council’s Monitoring Officer
- 5.2 The Borough Council interest registration and declaration requirements exceed the statutory minimum and require disclosure of “other interests” including bodies in which the Member holds a position of management or control whether or not appointed by the Council and to charitable bodies, lobby groups and other public bodies. Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £50 or more.
- 5.3 Where Members have an “other interest” and a decision on a matter affects, for example, the financial position of that other interest, Members are required, by the Code of Conduct to declare the interest and not to speak or vote unless dispensation has been received.
- 5.4 The Council has also amended its Council Rules of Procedure to reflect the requirement to leave the meeting when Members are precluded from participation.
- 5.5 These arrangements have, the Standards Committee believes, proved satisfactory.

6.0 Whistleblowing

- 6.1 The Council has a Whistleblowing Policy which is available for use by the public, Councillors and officials and this appears, to date, to have been satisfactory.

7.0 Improving standards

- 7.1 Local Authorities should ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also that it is clear that the Monitoring

Officer (or Deputy / representative) and Independent Persons are available to provide advice /guidance to individual Members on all aspects of the Code of Conduct. The Code of Conduct should be regularly reviewed to ensure that the Council considers it fit for purpose and complaints that Councillors have failed to comply with the Code of Conduct should also be reviewed by Members (in Cheltenham Borough Council's case the Standards Committee) to identify any action which may be necessary e.g. training.

Yours faithfully

Sara Freckleton
Borough Solicitor and Monitoring Officer

Borough Solicitor's Unit

Sara Freckleton
Borough Solicitor



Review of Local Government Ethical
Standards Committee on
Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

15 May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

I have set out below, for consideration by the Committee for Standards in Public Life, the comments of the Cheltenham Borough Council Standards Committee following its consideration of the consultation on Local Government Ethical Standards. This submission uses the topic headings from the Consultation Document to provide information on how the conduct regime is operated within Cheltenham Borough Council and also to identify those areas where it is considered that the Committee might wish to consider amendments to the current standards arrangements.

1.0 Overview on existing structures, processes and practices

- 1.1 The Code of Council adopted by Tewkesbury Borough Council exceeds the minimum required provisions and is based upon the pre- Localism Act statutory version of the Code. A suitably adapted version of that Code has also, upon the recommendation of the Borough Council Standards Committee, been adopted by the majority of the 43 Parish Councils operating within the Borough, the remainder having adopted their own versions which comply with the statutory requirements. Experience of the operation of the Code of Conduct over the past 6 years has resulted in very few formal complaints about Borough Councillor conduct and there have not been any instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct. There have been a number of formal complaints made against Parish Councillors, a significant number of which (over 50%) were made by other Councillors. The more serious complaints have been referred for investigation and some have resulted in findings that Parish / Town Councillor

have breached the Code of Conduct. The Council has delegated authority to its Monitoring Officer to determine certain complaints. Consequently, clear breaches of the Code have been dealt with by the Monitoring Officer in consultation with the Independent Persons and have resulted in, for example, Councillors giving written apologies and / or agreeing to undertake Code of Conduct training.

- 1.2 One of the advantages of the current regime (as compared to the pre- 2012 position) is that there is discretion to resolve complaints informally. This has been of benefit as less serious complaints can be resolved quickly and without the “bureaucracy” that existed previously.

2.0 Codes of conduct

- 2.1 The Tewkesbury Borough Council Code of Conduct as stated above is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended comprehensive training on the Code of Conduct, This training is compulsory as part of the Induction process carried out within a few days of election to office. Members are encouraged to seek advice from the Monitoring Officer / Deputy and frequently do so if at all unsure as to the implications of the Code of Conduct. The most frequent queries arise on the matter of interest declaration. The same training and advice opportunity is offered to all Parish Councillors (and Clerks) within the Council area and has been relatively well taken up with additional (as necessary on request) individual bespoke sessions / refresher sessions carried out for Parish Councils.
- 2.2 The requirement for a Code of Conduct to reflect the Seven Principles is appropriate; however, the Tewkesbury Borough Council Standards Committee is of the view that a consistent Code of Conduct across Local Government would be of benefit. This would facilitate public awareness of the standards of conduct which are expected across Local Government and would also assist Members who are elected to more than one Local Authority, each of which could have different conduct requirements, albeit all containing the statutory provisions and being based on the Seven Principles.

3.0 Investigations and decisions on allegations

- 3.1 The Council has made arrangements for allegations of misconduct to be fairly investigated and decided. These arrangements include a delegation to the Monitoring Officer to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and to arrange for investigation. The delegation also enables the Monitoring Officer to seek local resolution of complaints without investigation where it is possible to do so. Where an investigation is undertaken, this is done by a suitably qualified officer (normally an in-house lawyer) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It should be recognised that there is a significant cost to the authority in resourcing an investigation and consequently these are likely only to occur where it is considered to be in the public interest to do so.
- 3.2 The role of the Independent Person is critical to the objectivity and fairness of the process. At Tewkesbury Borough Council, the Independent Persons are

also non-voting co-opted members of the Standards Committee. The review may consider whether it would be appropriate for Independent Persons to be full voting members of Standards Committees.

- 3.3 As stated above, investigations are dealt with independently of the Monitoring Officer and there is an appointed Deputy Monitoring Officer which reduces the risk of there being conflicts of interest. Whilst there is no experience at TBC of undue pressure being applied, the review could consider whether it may be appropriate for Independent Persons to have a role in supporting Monitoring Officers should such circumstances occur. There is also in place within the Council, a Protocol for Member / Officer Relations, which assists in establishing and maintaining good Member / Officer working.

4.0 Sanctions

- 4.1 The sanctions available are broadly restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body.
- 4.2 Sanctions such as apology and / or training are sufficient to remedy less serious breaches of the Code of Conduct. However, in respect of recurrent / repeat breaches, refusal to accept a sanction or serious breaches of the Code of Conduct, the current sanctions do not appear to be adequate. The Committee did not go so far as to recommend particular sanctions as part of this consultation, but felt that sanctions such as deduction from allowances, or suspension may be worthy of consideration as part of the review.
- 4.3 Members of the public who have occasion to raise concerns / make complaints about Councillor conduct have been surprised at the limited sanctions available. It is understood that the current regime is prefaced by the right of the electorate to decide its representative and therefore sanctions cannot currently be imposed that interfere with that democratic choice. It is also essential that sanctions are proportionate to the breach which has occurred. The review provides the opportunity to resolve the tension between the statutory requirement to have in place arrangements to deal with complaints and the sanctions available to respond to breaches of the Code of Conduct. If there are not to be meaningful sanctions which both reflect the seriousness of breaches and act as a deterrent, then it is suggested that the requirement for the formality of investigating complaints should be reconsidered. The current regime of requiring a formal process which is fair with “due process” is costly to the Council’s resources and creates expectation on the part of complainants that serious breaches will be dealt with proportionately which is not always possible given the constraint on sanctions.

5.0 Declaring interests and conflicts of interest

- 5.1 Concerns have been raised previously with the Government Information Commissioner about the registration and publication arrangements within the Localism Act 2011 for Disclosable Pecuniary Interests. The particular concern is about the potential conflict of the current DPI registration and publication requirements with Data Protection / Human Rights legislation, insofar as these requirements extend to publication of the information relating to third parties (spouses and partners etc.) who have not been elected to any

office. This will be the matter of a separate submission by the Council's Monitoring Officer.

- 5.2 The Borough Council interest registration and declaration requirements exceed the statutory minimum and requires disclosure of "other interests" including bodies in which the Member holds a position of management or control whether or not appointed by the Council and to charitable bodies, lobby groups and other public bodies. Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £50 or more.
- 5.3 Where Members have an "other interest" and a decision on a matter affects, for example, the financial position of that other interest, Members are required, by the Code of Conduct to declare the interest and not to speak or vote unless dispensation has been received.
- 5.4 The Council has also amended its Standing Orders to reflect the requirement to leave the meeting when Members are precluded from participation.
- 5.5 These arrangements have, the Standards Committee believes, proved satisfactory.

6.0 Whistleblowing

- 6.1 The Council has a Whistleblowing Policy which is available for use by the public, Councillors and officials and this appears, to date, to have been satisfactory.

7.0 Improving standards

- 7.1 Local Authorities should ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also that it is clear that the Monitoring Officer (or Deputy / representative) and Independent Persons are available to provide advice /guidance to individual Members on all aspects of the Code of Conduct. The Code of Conduct should be regularly reviewed to ensure that the Council considers it fit for purpose and complaints that Councillors have failed to comply with the Code of Conduct should also be reviewed by Members (in TBC's case the Standards Committee) to identify any action, e.g. training, which may be necessary to prevent such breaches recurring.

Yours faithfully

Sara Freckleton
Borough Solicitor and Monitoring Officer

Sara Freckleton, Council Solicitor
Shirin Wotherspoon, Head of Law (Commercial)
Peter Lewis, Head of Law (Regulatory)



The legal service to
Gloucester City, Cheltenham
and Tewkesbury Borough
Councils

Review of Local Government Ethical
Standards Committee on
Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

16 May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

I am the Borough Solicitor and Monitoring Officer to Tewkesbury and Cheltenham Borough Councils and the 48 Town and Parish Councils within those Councils' administrative area. I am writing in response to the Stakeholder Consultation on the Review of Local Government Ethical Standards.

I have submitted representations from both of the Authorities which I represent and my own comments set out below are confined to a single aspect of the current conduct requirements relating to the statutory requirements on the registration and disclosure of "disclosable pecuniary interests". The statutory provisions with which I have concern are sections 29 and 30 of the Localism Act (the disclosable pecuniary interests being specified in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012).

Background and Context

1. Sections 29 and 30 of the Localism Act 2011 require the notification and disclosure by Councillors of pecuniary interests which are specified in The Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012. The

latter was dated 8th June 2012 and was introduced without any meaningful consultation and came into effect on the 1st July 2012.

2. The Statutory Requirements in respect of Disclosable Pecuniary Interests apply to all “relevant” authorities, which include District, Town and Parish Councils. Under section 34 of the Localism Act 2011, it is a criminal offence for a person, without reasonable excuse, to fail to comply with the obligations of notification and disclosure. Although there are separate statutory provisions by which members of Town and Parish Councils may be remunerated, the vast majority of Town and Parish Councillors and certainly those within the areas that I represent, are unremunerated and seek election / co-option to the Town / Parish Council because of their interest in their community and willingness to devote their time to “make a difference” locally for the people that they represent.
3. The three critical points of relevance to my concerns are:-
 - I. The requirement under Section 30 of the Localism Act 2011 for Councillors to notify the Council’s Monitoring Officer of those Disclosable Pecuniary Interests which they have as prescribed by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and which is an interest of the Member, the Member’s spouse or civil partner, a person with whom the Member is living with as if they were husband and wife or civil partner, and the Member is aware of the interest.
 - II. The requirement in section 29 of the Act that the interests which have been notified and which include personal data of the spouse / civil partner etc. are to be published by the Monitoring Officer on the District / Borough Council website as well as any Parish Council website.
 - III. Notwithstanding the matter of whether or not the Member’s spouse / civil partner etc. consents to disclosure and publication of the personal data in the manner described above, the Member could be liable to criminal sanctions for failure to disclose.

Whilst it is recognised and appreciated that the Disclosable Pecuniary Interests require disclosure which is, in the main, data specifically related to the Local Authority area in which the Member serves, it would, nonetheless appear, on the face of it, to be data to which there is an entitlement to protection under the Data Protection Act (DPA) 1998 and even more stringent protection measures under the General Data Protection Regulations 2016 and the Data Protection Bill.

4. It is important to provide contextual background about the way in which the registration requirements for Disclosable Pecuniary Interests have arisen. The current conduct regime was introduced via the Localism Bill, which was published early in 2011. The Bill provided, at clause 17, that there would be a register of interests for Members / Co-opted Members of Local Authorities and that regulations would specify the interests to be declared. Significantly, however, the Localism Bill did not include any requirement for the registration

of interests of a spouse, civil partner etc and neither did it require the register of interests to be published on the internet. It is important to make the point at this juncture that the Localism Bill was subject, as required, to an impact assessment and the link for this document is <https://www.gov.uk/government/publications/abolishing-the-standards-board-for-england-clarifying-the-law-on-predetermination-and-requiring-councillors-to-register-and-declare-interests-impact-assessment> (January 2011). During its passage through the Parliamentary process, the Bill was amended so that the provisions requiring registration and disclosure of Disclosable Pecuniary Interests were augmented to include the requirement to declare known interests of the Member's Spouse, Civil Partner or persons living with the Member as a spouse / civil partner and also to require that these interests are published on the internet. Those additional and significant requirements were not subject to any impact assessment. Enquiries of the Democracy Division of the Department for Communities and Local Government when the Localism Act had come into force (2012) confirmed that the impact assessment undertaken for the policy on Members' interests was that referred to above which was completed in advance (January 2011) of the publication of the Localism Bill. Therefore, it appears that the impact of the added requirements, from a data protection / human rights perspective were not considered prior to enactment, in November 2011, of the Localism Act 2011.

5. There was at that time (and remains) widespread concern amongst Members, particularly of Town / Parish Councils about this requirement which has caused some of the latter to resign and not seek re-election / co-option. Their objection is not that they do not understand, or wish to observe the practice of openness and transparency, rather that they consider that the requirements, particularly regarding the disclosure of the personal data of third parties, the requirement for that data to be published on the internet and the possibility of criminal sanctions, exceeds what is necessary to ensure that they do not promote their personal interests above those of their authority/ public interest.
6. The previous conduct regime under the Local Government Act 2000 provided, it is contended, the necessary balance between the need for transparency and the entitlement to protection of data and human rights. Members would, under the 2000 regime, in relation to their spouse / civil partner etc. have to disclose the information which now has to be registered only if it was affected by an item of business discussed at a meeting. This declaration would be duly recorded in the minutes of the meeting and the member would, if the interest were considered to be prejudicial, be precluded from participating in that item of business or even being present in the meeting room whilst the item of business was considered. The post 2012 requirement appears to exceed what is necessary.
7. The Government issued guidance in September 2013 – “Openness and transparency on personal interests – A guide for Councillors”. Although the Guidance makes it clear that there is no need for the Member to name their spouse/ civil partner etc or to separately record their data, which falls within the category, this does not adequately deal with the concerns which have arisen. Members are entitled, as are their spouses/civil partners etc. to choose whether or not they disclose their relationship status or even if they

have a personal relationship within the prescribed categories. It is possible, by process of elimination if nothing else, even taking account of the Government guidance, to identify that the Member has a relationship, with whom the Member has that relationship, together with a significant amount of personal data about that other (non- elected) person.

8. The data protection implications of the aspects of the Localism Act 2011 referred to above are illustrated by the following examples which have been expressed to me :-

- a. The situation where a spouse has specifically prohibited a Member from disclosing any of their personal data whether or not this is specifically attributed to the spouse. In this situation the Member is placed in the untenable position of having to disclose personal data without the consent of the data subject or face the possibility of a criminal sanction.
- b. Where the Member has not publicly revealed a relationship within the required categories (Section 30(3) of the Act.) The information required by the Act to be disclosed will alert third parties to that relationship, contrary to the right to privacy of those two persons. A specific example which has been raised with me confidentially is where a same sex couple have not disclosed their relationship to any other person and the information required to be registered will necessarily disclose that, notwithstanding the advice within the Government Guidance that there is no need to differentiate.

In this case the personal data is clearly sensitive data which has additional protection under the DPA. Although section 34 of the DPA provides an exemption where the Data Controller is obliged to make personal data available to the public, it is still necessary for the processing to comply with the conditions in Schedule 3 (as well as Schedule 2). It is not clear which paragraph would be relevant in this situation. Furthermore, all lawful processing must be fair and not in breach of other legislation. It appears that no regard has been taken by the Government in considering whether processing of personal data (particularly sensitive data) would be in breach of Article 8 of the Human Rights Act 1998. The Government published The Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests: Impact Assessment in January 2011. This document states at paragraph 30 "The new requirement to register and declare interests is very similar to the requirement in the existing Code of Conduct. It is therefore considered unnecessary to prepare a separate Impact Assessment". I am not aware of a separate Impact Assessment being undertaken when the revised section 30, which is significantly different to the then code, was introduced by the Localism Act in November 2011.

- c. Where the asset portfolio of a Member and spouse within a Local Authority area is extensive. In registering those properties, the Member / and spouse fear possible repercussions to their properties when unpopular decisions are taken by the Authority on which the Member serves. My dilemma is whether or not this can legitimately be excluded from the Register under Section 32 on the basis that disclosure would expose the Member or family to violence or intimidation. That Member

has been happy to comply with the previous requirement to put such information on the Register which was held by me locally but not put on the web.

This is a clear example of where the requirement for that data to be published on the internet and the possibility of criminal sanctions exceeds what is necessary to ensure that they do not promote their personal interests above those of their authority.

Request for further consideration

9. The Committee for Standards in Public Life is asked to reconsider the current provisions on the statutory requirements for registration and disclosure of interests in order to suggest amendments, which will reconcile the requirements with all current Data Protection legislation. The options for change include the following: -

- I. Revert to the position as it was prior to the Localism Act 2011 (and as initially intended by the Localism Bill) that, in relation to Disclosable Pecuniary Interests, those of the Member only should be required to be registered with the Monitoring Officer and no requirement for Registers of Interest to be published on the Internet. This would completely resolve the current conflicts. Members would be required to register their interests with the Monitoring Officer, these would be available for inspection, and Members would, as currently, continue to be required to declare (and as necessary be precluded from participation) those interests. Interests of any Member's spouse, civil partner, a person living with the Member as a spouse / civil partner could continue to be required to be declared at any meeting at which an item of business related to the spouse / civil partner etc interest was to be considered. This would be a proportionate and transparent way of dealing with interests as they arise rather than, as presently required, making the personal data available to world-wide web users irrespective as to whether or not that interest ever materialises as an item of Council business during the period of public service of the Member. N.B. There is no effective method of ensuring that data (registered interests) is removed from the internet altogether when the Councillors period in office ceases even though it would be removed from the relevant Local Authority website.
- II. If it is considered that the requirement for registration of personal data comprising the Disclosable Pecuniary Interests of the Member and their spouse / civil partner etc. is compliant with all relevant legislation, particularly data protection / human rights, then consideration should, at least be given to removing the requirement for this to be published on the internet or, at the very least removing the requirement for the spouse / civil partner data to be published on the internet.

Yours faithfully

Sara Freckleton
Borough Solicitor

RESPONSES TO COMMITTEE ON STANDARDS IN PUBLIC LIFE
ETHICAL STANDARDS STAKEHOLDER CONSULTATION

1. Are the existing structures, process and practices in place working to ensure high standards of conduct by local councillors? If not please say why.
2. What if any are the most significant gaps in the current ethical standards regime for local government?

These two questions are answered together. Since 2012, Wycombe District Council itself has, fortunately not encountered any cases which have been viewed as meriting formal investigation. It has voluntarily maintained its freestanding Standards Committee.

However, this does not in itself indicate that the current regime overall is entirely satisfactory. We are aware for example that the Chair of the Sandwell MBC standards committee has recently expressed concerns about the limits on actions which can be taken against members within the Localism Act framework, and the “extremely high threshold” police forces must apply with considering Misconduct in Public Office offences.

Anecdotally, there has been much concern expressed about the limitation on sanctions available under the current regime, and doubtless this will be expressed by other respondents with more urgent and pressing local need for a more stringent system. For serious breaches of the Code of Conduct, the absence of disqualification or suspension sanctions significantly reduces the effectiveness of the regime, and in cases of serious misconduct could significantly reduce public faith in the arrangements.

The change in the standards regime enacted by the Localism Act 2011 was profound, with a number of key relaxations compared to previously. Notably, combined with the abolition of Standards for England and the extension of the practice of all member conduct complaints being handled locally with no central national structure in place, sanctions were also greatly curtailed by the removal of suspension and disqualification. The removal of the need to abide by a Model Code gave rise to local differences, which though all based on the Nolan Principles, has allowed the danger of different interpretations of the same behaviour.

Locally, our Code has appeared to be adequate so far, but if a serious case arose, it could prove to have severe limitations in providing an effective sanction.

Some checks and balances apply, notably the requirement to consult the Independent Person’s view when deciding if a complaint merits formal investigation or not, but this in itself not sufficient. In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue. Accordingly we believe that strong consideration should be given to reintroducing the sanctions of suspension and disqualification in some way.

Codes of conduct

3. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

4. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Wycombe District Councillors undergo standards training as part of their induction, and Standards Committee and the Monitoring Officer support periodic refresher training. Parish and Town Council representatives are invited to some sessions.

The Nolan principles have been in place since 1994 and generally have stood the test of time as a benchmark to underpin descriptions by which conduct in public office should be judged. However, whilst Codes must abide in general by these principles, there is considerable scope for different content of Codes, not only between different tiers of local government, but within those tiers.

For example, anecdotally, we are aware of at least one Code which does not include a prohibition against bringing the authority into disrepute, which appears to omit a significant requirement covered in many other codes.

The difference between Disclosable Pecuniary Interests and their implications and "other interests" and their implications is also a complex area, and can easily be misunderstood by lay people.

Any consideration given to ways in which Codes of Conduct can be clarified should focus on these areas. We also believe there is a strong case for reintroducing a mandatory Model Code to promote consistency across the country and reduce scope for differing requirements and interpretations of what behaviour is and is not judged acceptable.

Investigations and decisions on allegations

5. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Wycombe District Council, in common with many other District Councils, following an initial sifting process to ensure the matter genuinely falls within the Code ambit, operates a 3-stage system where if after response at Stage 1 from the subject member a complainant remains dissatisfied, Stage 2 involves the Monitoring Officer in consultation with an Independent Person determining whether a matter should be formally investigated, and Standards Committee would become involved at Stage 3 if an investigation is carried out.

Given the current framework, and since the abolition of an external independent body to handle conduct complaints, the risk of appearance of partiality in respect of internal complaints handling is unavoidably raised.

Monitoring Officers undertake a complex role, and have employment rules and in many cases professional conduct rules by which they must abide. However, the internalisation of the standards complaints process would make it difficult to effectively refute a vigorous accusation of partiality, no matter how impartial the parties involved may genuinely be.

The existence of the Independent Person role provides some safeguards to the role of the Monitoring Officer in complaints sifting. However, inclusion into role of Independent Person by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 of the role of belonging to the panel considering dismissal of one of the Council's Statutory Officers including potentially its Monitoring Officer actively undermined their perceived independence because they could find themselves in the difficult and potentially conflicting position of contributing to a decision affecting the employment of the very person by whom, in the main aspect of their role, they are likely to be consulted, and therefore be perceived to work with, in relation to member conduct complaints. So far this eventuality will have been rare (if indeed it has happened at all) but the extension of the role in this way has risked potentially compromising an Independent Person's impartiality in this way with a consequent negative impact on the perception of their role, for those who understand the nature of the role properly.

Representations were made at the time arguing against this addition to the Independent Person's role.

Any consideration of these questions should seriously consider removal of this 2015 aspect of the Independent Person's role.

Sanctions

6. Are existing sanctions for councillor misconduct sufficient?

- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

As noted above these comments are theoretical rather than based on local experience over the past four years, as there have been no instances of breach being found after investigation.

However, we have commented on the inadequacy of current sanctions above. Wycombe DC's sanctions are limited to, but include all of those available in law, which centre around various types of adverse publicity for members who have been found to breach the Code. These sanctions might cause some subject members to consider their position, but for members who have no intention of resigning even if a serious breach was found, and examples have arisen (though not in Wycombe) the system is ineffective.

The reintroduction of suspension or disqualification as an ultimate sanction should be seriously considered.

Declaring interests and conflicts of interest

7. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

As required by legislation, the list of Disclosable Pecuniary Interests is set out within Wycombe DC's Code of Conduct, and the definition of "other interests" matches those within many similar authorities.

A key weakness in the current regime is that for "other interests" councillors are not under a duty to withdraw, having declared such an interest. This could mean, for example, that a member could participate in the planning application of a friend or family member other than their spouse and not breach their Code. Wycombe District Council's Code has been strengthened to make withdrawal obligatory for both DPs and "other interests". However, this distinction and the very rationale for doing so is not straightforward. Any review of the framework should include careful scrutiny of this area, debate on exactly what interests are and are not considered to require a member to absent themselves from the decision making process, and how clarity could be improved and simplified.

Whistleblowing

8. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Like many authorities, Wycombe District Council has a Whistleblowing Policy which its employees and contractors can make use of, which is regularly reviewed, compliant with legislation, and publicly available, allowing issues to be raised where necessary. Use of this process is rare. There is no reason to presume that it is in any way unsatisfactory.

In relation to the public, again like other authorities, the Council has a general complaints system which can be used to deal with all other aspects excluding member conduct, and ultimately the Local Government Ombudsman has legal powers to make recommendations on complaints and the Monitoring Officer has a duty to report to Cabinet under S5A of the Local Government and Housing Act 1989 in maladministration cases.

Councillors have access to senior officers to raise any issues which are of concern to them, and the Council has a Member/Officer Protocol as part of its Constitution.

No other “whistleblowing” requirements or improvements are obvious at this time.

Improving standards

9. What steps could *local authorities* take to improve local government ethical standards?
10. What steps could *central government* take to improve local government ethical standards?

Local authorities in general already take steps to support ethical standards, and are obliged to have arrangements in place for doing so in accordance with prevailing legislation. These must be compliant with statute and cannot exceed that or they would be ultra vires. Generally, the number of really high profile examples of member misconduct are relatively few, but when they do arise, public faith can be damaged.

Some councils have chosen to merge the functions of their Standards Committees into other committees, such as Audit or Governance Committees, with or without the “Standards” title still included. Though this may have some justification in terms of efficiency of workload, it could result in a perception that ethical standards has a lower priority than it should. Having freestanding Standards Committees, or at least including this function in the committee title, can help raise the profile of this work.

Central Government should continue and where necessary improve its engagement with the CSPL to engage in the debate on how the current system is working, and establish how the best aspects of the current regime, and the previous pre-2012 regime could be selected and combined to avoid both the perceived over-bureaucracy of the previous system, and fragmentation and lack of sanctions of the current one, to forge an improved future system.

Intimidation of local councillors

11. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

This is a very broad question and perceptions will be specific to individual members.

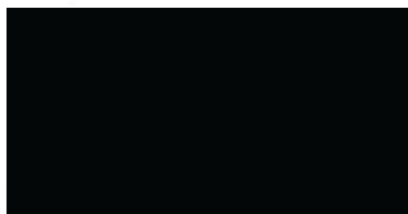
Wycombe District Councillors have been made aware of this consultation through a report to Standards Committee and the minutes being noted by full Council. The separate work and recent report of the CSPL on Intimidation in Public Life, including its various and detailed proposed measures to address potential intimidation has also been highlighted and noted, and actioned in terms of the recommendation to the Monitoring Officer.

Individual members may wish to provide more information about their perceptions and measures to address intimidation.



North Tyneside Council

Vivienne Geary
Head of Law and Governance



Review of Local Government Ethical
Standards Committee on Standards in
Public Life
GC:07
1 Horse Guards Road
LONDON SW1A 2HQ

Our Ref: VMG(SB)

Date: 16 May 2018

Dear Sir/Madam

Review of Local Government Ethical Standards: Stakeholder Consultation

Further to the above Stakeholder Consultation I set out below the consultation response of the Council of the Borough of North Tyneside. The Authority, like all Principal Authorities, has the responsibility for the administration and enforcement of its Code of Conduct for Members.

The Authority (together with immediate neighbouring local authorities) has adopted a Code of Conduct and standards regime similar in effect to the original Code of Conduct and procedural arrangements under the Local Government Act 2000 and the Local Authorities (Model Code of Conduct) Order 2007.

It is against the background of these locally agreed robust arrangements and Code of Conduct that the Authority's response (in bold) to the Stakeholder Consultation has been provided.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

The Authority considers that the current minimum statutory requirements are insufficient to secure high standards of conduct. In 2012, the Authority (together with immediate neighbouring authorities) developed a Code of Conduct for Members and Local Arrangements incorporating features of the

original statutory based national Code of Conduct and the associated procedural arrangements as it considered that the removal of these requirements did not assist in the delivery of the statutory obligations placed on local authorities to promote ethical standards or in securing the public trust in its public officials.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

There are significant limitations in the current statutory requirements for the declarations of interests by Members.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

In response to c. and d. the Authority as explained above has adopted a Code of Conduct for Members that has maintained, and further developed, the obligations in terms of Members' behaviours that appeared in the former national Code of Conduct. It supports the use of the Seven Principles of Public Life and covers an appropriate range of behaviours. The Authority considers that its Code of Conduct is clear and easily understood and has maintained levels of behaviour.

A hyperlink to the Authority's Code of Conduct is enclosed below:

<https://my.northtyneside.gov.uk/category/477/complain-about-councillor>

The Authority provides as a part of its Member Induction process bespoke face to face Code of Conduct training upon a Councillor's election to office and every 2 years thereafter.

Behaviours relating to on-line or social media communications provide a source of opportunities for perceived or actual misconduct. In the induction of new members the use of good practices in relation to social media has been emphasised.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due
-

process? Should any additional safeguards be put in place to ensure due process?

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Investigations are carried out by officers/external investigators appointed by the Authority's Monitoring Officer. The findings are reported to a politically balanced Sub-Committee of the Standards Committee, appointed to undertake the hearing of the matter, determine whether a breach has taken place and any sanction to be imposed. An independent person is consulted at each stage. It is not considered that this arrangement requires strengthening.

The established procedures are fair and follow due process, affording complainant and Subject Member with access to assistance and advice from one of the Authority's two Independent Persons. Investigations are thorough and outcomes based on a full consideration of recorded evidence and reasons.

This Authority has no evidence of any attempted or actual pressure being placed on the Monitoring Officer or any other persons connected with the Code of Conduct regime.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
 - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Under the original national regime there was a wider range of sanctions available to the Standards Committee and at the most serious level, it was possible to suspend a Member. Currently, the most severe sanctions are public censure and limiting a member's access to specified resources.

Moreover where a Member has been found to have been in breach of the Code of Conduct the Standards Committee can request the removal of the Member from particular roles, such as the Chairmanship of a Committee this has to be with the cooperation of the relevant Political Group and/or full Council.

There are therefore a limited set of options for more serious conduct and a reliance on party political/group leader cooperation at a critical point if sanctions are to be effective.

The Authority suggests that Standards Committee should also have the power to suspend Members from committees/sub-committees, with the exception of full council meetings (with adjustments made to allowances accordingly). This suspension would not extend to prevent a member from fulfilling their normal Ward duties e.g. Ward surgeries.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

A public register of interests is held on the Authority's website. As well as the pecuniary interests defined in the current Regulations, it includes a wide range of 'personal interests' which are defined to reflect the former national code.

At the Authority's meetings an initial Agenda item invites Members to declare any relevant interests. This serves as a prompt for Members.

The Standards Committee has issued guidance and a Pocket Guide to the main requirements of the Code of Conduct.

Under the Authority's Constitution Members are required to attend initial training on the Code of Conduct and Interests and refresher training biennially.

These measures in place help to promote an effective, open culture of declaring interests. Very few complaints to the Standards Committee have involved a failure to declare or act on an interest.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

The Authority has a whistleblowing policy for Members and a similar policy for its employees.

Members of the public are directed to the Authority's complaints procedures or to the statutory officers for specific areas of complaint.

Members are entitled to raise questions, either openly or confidentially of officers, including the senior leadership team and the Council has no record of any member being unable to raise and pursue such concerns.

Members are provided with contact details of all relevant officers to assist them in the discharge of their work.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

Social media is a fairly new means of communication and the Authority's Standards Committee has considered a number of Code of Conduct complaints arising from comments made on social media.

The Authority has issued guidance to all members about the use of social media and the need to abide by the code of conduct when using social media. This could be a useful approach for all authorities. Common issues and areas of good practice could be captured in guidance.

More formal arrangements for exchanging experience and good practice between local authorities could be developed.

Monitoring Officer forums and conferences provide a useful source of such information.

It is not felt that any particular central government action would be of assistance.

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
- i. What measures could be put in place to prevent and address this intimidation?

The Authority generally publishes the personal contact details of members in the public domain but may take action to remove the details of individual members based on evidence of risk of or actual intimidation. The removal of a members contact details is only done following consideration of the evidence by the Authority's Monitoring Officer pursuant to Section 32 of the Localism Act 2011.

There have been a small number of requests for removal that have been approved due to evidence of actual or perceived threats or risks of harm. To date this arrangement has provided some assurance.

Reports to the Police would be used in more serious instances or cases of persistent threat.

I hope the above responses are of assistance to you.

Yours sincerely



Vivienne Geary, LLM Solicitor
Head of Law and Governance

SUBMISSION 188

Dear Sir/Madam

Please find below comments on the consultation from Amesbury Town Council:

The Council felt that:

Although councillors agree the Code of Conduct at each Annual Meeting, they should be required to re-affirm and re-sign the Code.

A thorough induction with the Town/Parish Clerk must include the Code of Conduct.

Reference public allegations of misconduct against town councillors, advisors are often difficult to contact. Support is therefore lacking and not easily accessible. More provision and access to the support is required.

A question of the Monitoring Officer being subject to conflicts of interest is answered by them simply declaring an interest if required.

Sanctions used by local authorities when councillors are found to have breached the code of conduct are ill-defined. Town/Parish councils need better information from the local authority.

Whistleblowing: the Town Council has a complaints procedure which is followed when complaints are received.

Best wishes

Wendy Bown

Town Clerk

Amesbury Town Council



SUBMISSION FROM
OXFORDSHIRE COUNTY COUNCIL

THE COMMITTEE ON STANDARDS IN PUBLIC LIFE
REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS

Introduction

1. The Audit and Governance Committee of Oxfordshire County Council discussed the Stakeholder Consultation at its meeting on 7 March 2018. It was agreed that the issues raised were of great importance to all Members of the Council and that a collective submission should be made.
2. The Committee set up a Working Group to draft a submission on behalf of the County Council. The draft submission was circulated to all 63 Members of the Council for further input. The following is the submission from Oxfordshire County Council.

Ethical Standards

3. The public have a right to expect very high standards in all levels of government. In order to inspire confidence and engagement, any system needs to acknowledge that elected representatives have a high degree of responsibility and can often be, or be perceived to be, in a position of power over others.
4. The number of complaints under the current system appears to be very low. We believe that this may be the result of a combination of two main factors: the available sanctions are perceived to be light and the complaints system may not be seen to be sufficiently independent.

Code of Conduct

5. Consideration should be given to creating a model code which refers not just to 'bullying' in general but to other specific ethical areas such as abuse, exploitation, sexual harassment and discrimination. Greater clarity on what can constitute unacceptable behaviour would benefit councillors as well as complainants. In addition, it would be helpful to provide guidance on protocols for dealing with complaints under each of those areas.
6. All councils in Oxfordshire have an agreed Code of Conduct. This should be the norm in all non-unitary situations in order to avoid inconsistencies for "dual-hat" councillors.

Independence

7. Councils have a statutory role in considering and deciding upon complaints. Currently the Monitoring Officer has responsibility for dealing with complaints and the position of Monitoring Officer is established, and protected, in law to facilitate effective challenge to elected members. We are aware too that a Monitoring Officer must consult an Independent Person or Persons as an integral part of investigations. Nevertheless, as Monitoring Officers have to deal with their local councillors on a regular, day to day basis, some members of the public may regard that Monitoring Officers should not have a solely pivotal position and that the statutory requirement to consult the Independent Person(s) does not provide a robust enough level of detachment.

8. We ask the Committee to consider how the public can be given a more independent resource to access to deal with complaints, either as a source of advice or for example as a means of appeal.
9. On that latter point, we consider there should be a right of appeal in the complaints procedure. We would like the Committee to consider, for example, if the Local Government Ombudsman could more routinely take on the role of investigating complaints against councillors if complainants are not happy with the outcome from local authorities

Complaints about councillors

10. It seems iniquitous to us that sanctions against a 'dual-hat' councillor should only apply in relation to the role in which they were acting at the time of the relevant incident. Sanctions should apply to any elected position that they hold where appropriate.
11. There should be a right to recall an elected councillor similar to the provisions of the Recall of MPs Act 2015.
12. Currently councillors can lose their seat if convicted and sentenced to three months or more in prison. We do not believe this three-month limit sends the right signals about the importance of standards in public life and would advocate that a councillor should lose their seat if they serve any custodial sentence.

Declarations of Interest

13. Spouses of councillors are entitled to a certain level of privacy and in this regard we believe that spousal interests should not be listed separately because they are, in effect, *the councillor's interests*. As such, it should be made clear that authorities need not differentiate in published registers the councillor's and spouse's interests. This is already the practice in some local authorities but we believe that it should be the standard defined in legislation/guidance.

Whistleblowing

14. A charity, Public Concern at Work, offers an independent helpline for whistleblowers. Local authorities should be obliged to include contact details in their publicised arrangements for complaints to ensure that members of the public are aware of this facility and can easily access it if they wish.

Improving standards

15. Individual local authorities should be encouraged to pilot measures that might be introduced more widely if found to be successful and share their findings.

16. National government still needs to play a strong role in ensuring a high level of minimum standards across England. This should include identifying examples of best practice and disseminating these to other authorities.
17. Rather than each local authority developing their own protocols on complex and sensitive issues such as sexual harassment or cyber bullying, national government can play an important role in ensuring the provision of advice or standard protocols.

Intimidation

18. Councillors (and potential councillors) are growing increasingly concerned about how vulnerable their families are because their home addresses are published on election material.
19. The government has a current proposal that the legislation for parliamentary elections be amended to remove the requirement to publish candidates' addresses on ballot papers. This should be extended to local elections.
20. It is not a legal requirement that authorities publish councillors' home addresses, though many do routinely. It should be made clearer that inclusion of full addresses on council websites is optional.
21. There is a legal requirement to publish a members' interests but in cases 'sensitive' circumstances, such as intimidation, there is already a legal mechanism for councillors to ask that the Monitoring Officer does not publish that information. We believe that this is not as widely known as it should be and a greater effort locally and nationally should be made to ensure that councillors are aware of this.
22. It may not be within the remit of this Committee but in our experience the police appear to have a very high threshold for acting on complaints of unacceptable behaviour in the political arena. While respecting the independence of the police force, politicians must not be perceived as being 'fair game' for behaviour that goes beyond a robust expression of views.

END

Contact: Nick Graham, Director of Law and Governance

Response from Hampshire County Council to the Local government ethical standards: stakeholder consultation

May 2018

In response to the consultation questions:

- a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*

It is considered that the existing structures, processes and practices in place are working to ensure high standards of conduct by Hampshire County councillors. This is evidenced by the limited number and nature of complaints received by the County Council concerning alleged Member Misconduct.

- b. *What, if any, are the most significant gaps in the current ethical standards regime for local government?*

The County Council has not experienced any significant gaps in the current ethical standards regime for local government.

Codes of conduct

- c. *Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?*

- The County Council's Code of Conduct is concise (7 pages) and clear. The Code of Conduct is divided into five parts: General Obligations of Members, Disclosable Pecuniary Interests (DPIs), Registration and Disclosure of DPIs, Registration of Gifts and Hospitality, Registration and Disclosure of Personal Interests.
- The 15 general obligations of Members listed in Part 1 of the Code of Conduct detail the behaviours expected of Members in their dealings with Hampshire residents, constituents, the wider public, colleagues, officers and the County Council, and are comprehensive.
- Immediately following County Council elections, in a letter sent to them by the Chief Executive of the County Council, Members are advised about the County Council's Code of Conduct for Members, as well as the legal requirement to complete and return their Notification of Disclosable Pecuniary Interests within 28 days of the date they take up office. They are advised that the notification form provides for them to register any non-pecuniary interests and gifts and hospitality.

Separate guidance about registering interests and about the relevant legal and Code of Conduct requirements is then given in a letter sent to Members by the County Council's Head of Law and Governance and Monitoring Officer.

Members are given a choice of dates for Code of Conduct briefings covering: Members' Code of Conduct, Member-Officer Working Protocol, Members' Interests & DPLs, Gifts & Hospitality, Members' Allowances and expenses. HCC arranges a Member induction day (to which returning Members are invited from lunchtime onwards) which includes arranging for Members to register for one of these Code of Conduct briefings. A register of attendees is taken at the briefings

- d. *A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.*
- HCC's Code of Conduct references, and is consistent with, the Seven Principles of Public Life. As mentioned above, the Code of Conduct makes provision for the registering and declaring of both DPLs and other personal interests, including having a specific section dealing with gifts and hospitality.
 - A copy of the Register of Members' Interests is published on the County Council's website, and is available for public inspection at the County Council's offices at all reasonable hours.
 - It is considered that the statutory requirements relating to a local authority's code of conduct are appropriate as they stand.

Investigations and decisions on allegations

- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*
- i. *What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?*
- The County Council's procedures for handling complaints against Members, described below, succeed in establishing a fair and transparent process for both the Subject Member and the Complainant, ensuring that complaints are investigated where appropriate. The procedures prescribe timescales at various stages of the process whilst allowing flexibility in respect of more complex complaints. Taking into account the common law duty of procedural fairness, the County Council does not consider that additional safeguards are required to ensure due process.

The County Council's procedures involve two initial stages which are considered and decided by the Monitoring Officer, the validation stage (to ensure that the complaint concerns a HCC Member who was in office and acting or purporting to act in his/her official capacity as a HCC Member at the time of the alleged conduct and that the complaint, if proven, would amount to a breach of the Members' Code of Conduct) and the initial assessment stage.

The initial assessment is carried out by the Monitoring Officer in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person (of which the County Council currently has two). Therefore, although it is not statutorily required, the County Council has chosen to involve an Independent Person in the earliest consideration of a complaint against a Member.

The Subject Member is informed of the complaint and any response from the Subject Member is taken into account.

The purpose of the initial assessment is to determine whether the complaint should be accepted for further consideration by an Assessment Panel of Members, or rejected. In determining whether a complaint should proceed, certain criteria are considered (sufficiency of information, seriousness of alleged conduct, duplication, length of time since alleged conduct, public interest and whether the complainant wishes to remain anonymous) and a decision is made by the Monitoring Officer taking into account the views of the Chairman of the CAP and the Independent Person. The Subject Member and Complainant are informed of the decision.

If it is determined that the complaint be considered further, a meeting of an Assessment Panel of three Members is convened. An Independent Person is invited to attend the meeting of the Panel whose views are taken into account by the Panel. The Panel determines whether the meeting shall be open to the press and public. The Panel decides whether to refer the complaint to the Monitoring Officer for investigation or for 'other action' which can include training, conciliation (if the parties agree) etc; or whether no further action should be taken in respect of the allegation. The Subject Member and Complainant are informed of the decision.

If there is an investigation, the Investigating Officer will take the comments of the Complainant and Subject Member into account and shall produce a report. The Subject Member may take the views of an Independent Person at any stage in the investigation.

Following completion of the investigation, a report is prepared for consideration by an Investigation Consideration Panel. An Independent Person is invited to attend the meeting of the Panel and his/her views are taken into account by the Panel. The Panel may determine that the matter be referred to a hearing of the Conduct Advisory Panel; or that the complaint can be disposed of by informal resolution (which can include training or requesting the Subject Member to offer an apology and/or other remedial action); or that there was no failure by the Subject Member to observe the Code of Conduct for Members.

Where it is determined that the matter should be referred to a hearing of the Conduct Advisory Panel, or Informal Resolution has been declined by the Subject Member, a Hearing Panel is arranged comprising three Members. An Independent Person will be present at the Hearing Panel and his/her views shall be taken into account. The Subject Member may make representations to the Hearing Panel, and call such witnesses as he/she considers necessary, and shall be entitled to take the views of an Independent Person at any stage in the Hearing. The Hearing Panel will determine whether the Subject Member has failed to comply with the

Code of Conduct for Members and, if so, whether to apply any of the available sanctions.

- ii. *Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?*

As can be seen from the answer given above, HCC has chosen to involve the Independent Person at nearly every stage of the complaints handling process. However, the County Council considers that the current statutory requirement is sufficient to ensure objectivity and fairness of the decision process.

- iii. *Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?*

In the County Council's experience, no conflict of issue has arisen in respect of the Monitoring Officer's involvement in the complaints handling process and there has been no issue of undue pressure. The Monitoring Officer is able to utilise the services of the County Council's Deputy Monitoring Officer and other officers to ensure that conflicts do not arise. It is also possible to instruct third parties to avoid conflicts.

Sanctions

- f. *Are existing sanctions for councillor misconduct sufficient?*
 - i. *What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*
 - ii. *Should local authorities be given the ability to use additional sanctions? If so, what should these be?*

The County Council has not been required to apply formal sanctions against any Member since the new standards regime was introduced as complaints have either been dealt with by the Monitoring Officer at the Initial Assessment Stage or resolved through other action. It is therefore reasonable to conclude that the available sanctions are appropriate to manage Member Conduct at the County Council.

Declaring interests and conflicts of interest

- g. *Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.*
 - i. *A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*

The County Council consider that they are. However certain clarification would be appreciated:

- In order to assist the smooth running of the County Council's business, and to provide certainty in any case of doubt, dispensations have been granted by the County Council in order to enable all Members with an interest in land in the Administrative area of the County Council to participate and vote in any business relating to the setting of Council Tax or Precepts. For the avoidance of doubt, similar dispensations have been granted enabling all Members and Co-opted Members of the County Council in receipt of an allowance under the County Council's Members' Allowances Scheme, or the Members' Allowances Scheme of another relevant authority, to participate and vote in the business of the County Council. However, it would be appreciated if these matters could be clarified in the legislation; and
- There has been some ambiguity as to how section 31(1)(b) of the Localism Act 2011 should be interpreted i.e. "[if a member] has a disclosable pecuniary interest **in any matter** to be considered, or being considered, at the meeting" (our emphasis), and clarity regarding this would be appreciated.

For example, if there is a planning application for a campsite on a property which adjoins a property owned by a Member, would the Member have a DPI in relation to the consideration of the planning application? One interpretation is that the Member does not own the property in respect of which the planning application is made and therefore he/she does not have a DPI **in the matter** to be considered, albeit he/she has a personal interest in respect of which a member of the public with knowledge of the facts would take the view that the Member's judgement of the public interest is likely to be affected. Another interpretation is that the value of the Member's house is likely to be affected by a having a campsite next door and consequently the Member has a DPI in relation to the planning application. The problem with the second interpretation is that it requires a subjective assessment of what might affect the value of a property. In view of the criminal sanctions that can apply in respect of DPIs, greater clarity would be welcome.

- ii. *What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.*

As referred to above the County Council's Members Code of Conduct makes provision for Members to declare personal interests and provides guidance on whether or not they should participate in the business of the County Council if they have a personal interest. The position on personal interests is open to interpretation and requires the exercise of discretion and judgement by Members. No issues have arisen at the County Council in

relation to Personal Interests and the arrangements are therefore considered to be satisfactory.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?*

The County Council has a long established whistleblowing procedure which involves the Head of Internal Audit. The Whistleblowing Policy forms part of the County Council's Code of Corporate Governance and is regularly reviewed. The County Council's Whistleblowing arrangements are considered to be satisfactory.

Improving standards

- i. What steps could local authorities take to improve local government ethical standards?*

Ethical Standards at the County Council are considered to be satisfactory.

- j. What steps could central government take to improve local government ethical standards?*

None relevant to the County Council

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?*

We are not aware of any specific problems.

- i. What measures could be put in place to prevent and address this intimidation?*

This is not a specific problem at the County Council.

SUBMISSION 191

Local government ethical standards review
GC.07
1 Horse Guards Road
London
SW1A 2HQ
Email: public@public-standards.gov.uk

Corporate and Commercial Services
Legal & Democratic Services

Dear Sir/Madam,

Re: Local Government ethical standards consultation

I refer to the above consultation. The Council have consulted Group Leaders on the consultation. It maybe of course, that political groups submit their own proposals. The following is the Officer's response, taking into consideration, the views expressed by the local group leaders.

- a) One of the difficulties with the current structures and processes is that the sanctions available to local standards committees are so limited. This not only acts as a deterrent to someone potentially making a complaint but also gives a member the clear impression that even if found in breach of the code, the potential consequences for them are very limited.
- b) The most significant gap in the current ethical standards regime is the limited sanctions if a breach of the code is found. In particular, the removal of the ability to disqualify or suspend members does not encourage high standards of conduct.
- c) The committee should consider extending sanctions and giving local standards committees the ability to suspend, for example, in the event of repeated breaches of the code. Local politicians however, have different views on the sanctions which should be available.
- d) The codes of conduct are much improved on earlier versions and are much more clearly understood. Nevertheless, there is still occasional confusion amongst members as to the differences between pecuniary and prejudicial / personal interests.
- e) It is considered that the code includes appropriate provision for registering and declaring interests. This is supplemented by training to members.

- f) There is a view that code issues can be adequately dealt with through group procedures, although this still leaves the issue of independent members and also the group processes have been known not to be wholly successful in this area. To some members, disqualified and suspensions should not be within the remit of a local committee.
- g) The council has a process for deciding upon allegations, which meets the due process requirements. There have been issues as to whether a complainant should be able to have sight of a member's response to an allegation and the committee is requested to consider whether guidance should be given on this point.
 - (ii) The involvement of the Independent Person is a key strength in the assessment of the complaint and should be continued.
 - (iii) There are considerable problems in conflict of interest for Monitoring Officers which is why our local arrangements make provision for the assessment to be determined by a Standards Sub Committee where there are exceptional circumstances.
- h) Please see the response in questions (a) and (b)
- i)
 - (i) The statutory duties are appropriate.
 - (ii) Our code makes provisions for the declaration of prejudicial and personal interests beyond the statutory requirements and these are considered to be satisfactory.
- j) The council has an extensive whistleblowing policy in place.
- k) The code of conduct provides a foundation for local government ethical standards. New members receive training on the code and annual training is available to all members. The code and the framework is accessible to the public judging by the fact that complaints are made. It is not considered their further steps are required by local government.
- l) As previously mentioned in this submission, it is considered that central government need to reflect upon whether the sanctions available under the current ethical standards regime give sufficient powers to enable the standards framework to be properly enforced. May I also add at this point that the Council passed a resolution previously to make recommendations to central government that the disqualification grounds for Councillors, should include being placed on the sex offenders register. The Council have made those representations separately and in response to the formal consultation on disqualification grounds. It is also noted that district councils should be given formal powers to recharge Parish Councils for work undertaken on the standards regime.
- m) It is difficult to identify the extent of intimidation towards local councillors. Intimidation can be experienced from many quarters and is very subjective, i.e. in similar situations, one councillor may feel intimidated, but another may regard it as one of the consequences of public office.

- i) Existing legislation enables action to be taken by councillors when the relevant thresholds are met. However, there are legal and practical difficulties with legal action, particularly as to whether the Council may instigate proceedings where a councillor is being intimidated or whether individual action is required.

Yours sincerely,



Paul Entwistle
Director of Legal Services

SUBMISSION 192

Submission to the Committee on Standards in Public Life

In relation to the Review of Local Government Ethical Standards May 2018

By Skellingthorpe Village Action Group.

This submission is based on a report/complaint sent to the Local Government Ombudsman in Nov 2017 (updated May 2018), which encompasses the same issues referred to in the current review. The report/complaint is included here, as an appendix and is an account of the collective experiences of parishioners and, charitable trustees of 3 community buildings, based in our village.

It covers a 2-year time span and relates to the then parish council's plans to develop an alternative community building, against the wishes of the parishioners. It also describes how the role of the district council (& their councillors) in aiding this process, drew such widespread dissatisfaction, that the village called its own parish meeting & poll on the matter.

This led to the mass resignation of the 'dual hatted' Parish chairman/district councillor and 5 other councillors before the poll; which itself produced a 94% majority against that council's plans. Sadly, considerable village/public funds (£35k+) were already expended by the council, & now wasted, and various unsatisfactory Section 106 arrangements made, which the new Council have 'inherited' and are trying to re-examine.

In relation to your specific review questions (a to k), and based on our recent experience (as detailed in our report, below) we would answer as follows

- a. We believe that existing structure of 'self-regulation', gives those in authority the power to ignore legitimate & reasonable complaints, without justification, or the right of the complainant to be properly heard.
- b. Significant gaps are particularly; 1) the poor management of conflicts of interest, especially the role of 'dual-hatted' councillors, who appear able to just disregard existing interests if the circumstances simply don't suit their own 'agenda'. 2) No apparent right of appeal, if the District's Monitoring Officer doesn't so wish it. 3) The routine & inappropriate use of secret 'part b' / closed sessions.
- c. Codes of Conduct- these appear clear & simple and are clearly laid out in the Good Councillors Guide, and standing orders, yet are routinely overlooked by councillors.
- d. Registration of Councillors interests; appears lax, especially when a 'lack of understanding' of an interest held by a senior councillor, is regarded as an acceptable excuse for persistent non-declaration of a DPI, even after it was reported to the District Council, by the complainant.
- e. Points i & iii- misconduct investigations; appears to be at the sole discretion of the Monitoring Officer and therefore open to potential undue outside pressure/conflicts of interest, even more so where the complaint is against a district councillor. Compelling evidence provided at the time was disregarded by the Monitoring Officer, despite subsequently proving to be valid.
- f. Sanctions- again from our experience, appear negligible, & left to the discretion of the parish council, with little/no follow up by District, despite the seriousness of non-declared DPI, as described in the code of conduct.
- g. Conflicts of interest & DPI declarations; reliance on self-regulation & honesty is open to abuse, with a reliance on 'ignorance' as an acceptable excuse by transgressors. Please see relevant section in the following complaint/report.
- h. Whistle blowing; existing procedures are unsatisfactory, giving those in authority the ability to ignore/ridicule the ones reporting misconduct.

- i. improving standards; The re-institution of an independent standards board outside of the local authority would help. Widening the scope & resources of the Local Govt Ombudsman, who seems unwilling to investigate any alleged misconduct or contentious behaviour claims, beyond a narrow reference base, at the moment. Repeated appeals to the LGO to examine breaches of codes of conduct/unacceptable orb unconstitutional behaviour, were ignored simply because they were also connected to a planning decision.
- j. And k)
- k. Councillor intimidation; this works both ways, ie we have endured considerable intimidation and poor behaviour from councillors themselves (see following report)

The report now attached as an appendix, runs to over 5000 words, and was backed & supported by over 50 separate attachments (copy letters/minutes etc, not included here). It was sent in its entirety to the Local Government Ombudsman, who felt unable to investigate the issues identified (including breaches of standards; listed earlier here).

It has been difficult to try to edit the report down, without losing the context of the numerous examples of poor ethical standards surrounding this particular issue of major importance to our parish. Therefore, we would respectfully request, it is used as a reference only, to our points made above, rather than be discarded due to its length.

A brief survey of the numerous internet forums on this issue, seems to indicate widespread dissatisfaction with standards in local government. Our hope & intention is that lessons can be learnt & improvements made in the observance and improvement of standards nationally.

Neil Cheeseman

For & on behalf of

Skellingthorpe Village Action Group May 2018



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OFFICIAL – SENSITIVE [PERSONAL]

Your Ref:
Our Ref: Donna Nolan
CC:



16 May 2018

Dear Sirs

Review of Local Government Ethical Standards

Thank you for providing the opportunity to respond to the above review. As Monitoring Officer I have discussed the review with members of the District Council's Standards Committee and would offer the following observations to your questions:

A. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

The Committee felt that by far the greatest short coming of the current practices is the failure of the current sanctions available to act as an adequate deterrent, especially in the case of repeat offenders. The removal of the power of suspension had been a retrograde step from the previous arrangements.

B. What, if any, are the most significant gaps in the current ethical standards regime for local government?

The Committee felt that the current arrangements offer very limited powers in respect of town and parish councils where the majority of issues arise. At present, there is no independent body that people can go to if they are unhappy with the treatment/service provided by a town/parish council (like the Local Government Ombudsman for example) and this means a range of issues come to the Monitoring Officer which are either outside their remit completely and if they do relate to code of conduct issues, as mentioned above, there are no effective sanctions to adequately address the more serious issues.

C. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

OFFICIAL – SENSITIVE [PERSONAL]

The Committee felt that the Code of Conduct was broadly clear and understood at District level but not within the Parishes and Towns. Even where training had been offered it was not regularly or consistently received. It was suggested that it may be better to have a single Code for Districts and a single Code for Parishes and Towns.

D. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

The use of the three classifications of disclosable pecuniary, prejudicial and personal interests works well at District council level but this is not mirrored by all town and parish councils which has caused confusion and inconsistency. The fact that the wording does not have to be consistent in respect of declarations of interest is a weakness. The provision of examples would also contribute to consistency across elected members.

E. Are allegations of councillor misconduct investigated and decided fairly and with due process?

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?*

The Committee felt that the processes in place are both sound and robust, however investigations are often conducted in the knowledge that limited sanctions are ultimately available. Councils cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest to do so.

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?*

The Committee felt that the views of the Independent Person provide a useful check and balance and a support to the Monitoring Officer however the committee also agreed that the Independent Person provides limited protection to the Monitoring Officer as ultimately the decision lies with them. The point was also made that members of the public do not always understand the role of the Independent Person and how they contribute to the maintenance of ethical standards in local government, this is despite the Council making the position clear in our supporting advice notes.

- iii. *Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?*

As a Monitoring Officer I would always use a third party to undertake any formal investigation but this has budget implications. Having a suitably empowered Deputy Monitoring Officer can also assist in protecting the Monitoring Officer post holder.

F. Are existing sanctions for councillor misconduct sufficient?

- i. *What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*

For less serious matters where some training or an apology is a proportionate mitigation, then the current sanctions are adequate. However for cases that require a formal investigation then the available sanctions do not currently offer a sufficient deterrent.

- ii. *Should local authorities be given the ability to use additional sanctions? If so, what should these be?*

For more serious cases, sanctions of up to and including suspension for 6 months would have the potential to have a real impact and make members carefully consider their behaviours. Even the making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the Police who, from my experience, are not familiar with the local government environment and do not (understandably) see such matters as a high priority to them. As a result matters can take a long time to investigate and in my experience are always referred back to the Council to deal with in any case. The Committee felt that the ability to suspend and/or the ability to withhold allowances would be a useful power.

G. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.

- i. *A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*

The current arrangements generally work quite well. Disclosable Pecuniary Interests provisions are arguably quite limited in their application. The majority of disclosures at meetings relate to personal and prejudicial interests which are much more subjective on behalf of the councillors and require a degree of personal judgement.

It is challenging from a Monitoring Officer perspective to get all register of interest forms completed by all parish and town councillors across our areas (hundreds of

councillors) let alone keep them up to date. Parish Clerks often lack an understanding of the importance of the register of interest forms and the process is a significant administrative burden.

- ii. *What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.*

A declarations of interest item is on the agenda near the beginning of all formal decision making meetings; induction training is given on the Code of Conduct and as long as the member concerned brings to the Monitoring Officer's attention any potential conflict of interest in good time, then discussions can usually be held to ensure that any issues are satisfactorily managed. The current arrangements are satisfactory.

H. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Our current Whistleblowing policy and corporate approach has proved to be satisfactory.

I. What steps could local authorities take to improve local government ethical standards?

Additional resources to enable them to provide more and better quality training and guidance to parish and town councillors.

J. What steps could central government take to improve local government ethical standards?

Central Government could either give Councils the power to apply greater sanctions or alternatively remove the requirement to formally deal with complaints. At present there is a statutory requirement to have to deal with complaints with nothing significant to back it up.

K. What is the nature, scale, and extent of intimidation towards local councillors?

- i. *What measures could be put in place to prevent and address this intimidation?*

There are some rare examples of tit for tat and/or persistent complaints about a particular parish/town council who rather than try to sort out their own issues, try to use the local Standards process. On occasion an individual councillor may be the subject of several complaints with other councillors ganging up on them. Independent

Persons could be allowed to sit as full voting members of a Standards Committee to demonstrate that this process is not purely political.

Yours sincerely



Donna Nolan
Deputy Chief Executive and Monitoring Officer

OFFICIAL – SENSITIVE [PERSONAL]

Review of Local Government Ethical standards: stakeholder consultation

Individual Response from Johanna Holmes, OBE, Independent Person in the Royal Borough of Kensington and Chelsea

This response to the invitation from the Committee for Standards in Public Life to comment upon questions under consideration in its review of local government ethical standards reflects only my own personal views. My observations are based on five years' experience of acting as the sole Independent Person in one local authority only. I have seen a copy of the draft response to the consultation by the Royal Borough of Kensington and Chelsea, but our observations have been developed independently of each other. The selected questions to which I am responding are shown below. My comments relate only to the structures, processes and practices relating to the investigation of complaints made by members of the public in which the Independent Person has a role.

a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Response:- Overall, the effectiveness of the arrangements is limited by the gaps identified at in response to question b. However, where there is a robust Code of Conduct for elected Members, the arrangements act as a constraint on the extent and degree of deviation from high standards.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Response:- The current arrangements have significant areas of weakness:

- i. They are fragile, being dependent upon a number of fortuitous circumstances to achieve effective independent scrutiny of individual cases, or of local arrangements and case outcomes.
- ii. Partly for this reason, and partly due to the lack of transparency and effectiveness of enforcement arrangements (see below), the regime must lack public credibility, insofar as there is public awareness of it.
- iii. The regime presumes that complaints of councillor misconduct will arise from their dealings with individual members of the public. There is insufficient clarity about the standards of conduct and procedures for dealing with breaches in their dealings with corporate bodies, particularly voluntary and consultative bodies.

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Response:- The statutory regime now in place which stipulates the involvement of an Independent Person in the process of determining, firstly, whether a complaint should be investigated, and, secondly, the adequacy of any investigation and the sanctions to be imposed, is entirely inadequate to "ensure the objectivity and fairness

of the decision process". The Independent Person has only an advisory locus. He or she is entirely dependent, for their information on the case, upon the authority's Monitoring Officer (who, as your other questions indicate, may, or may not be subject to other influences). The quality and consistency of the Independent Person's judgments have no public transparency or accountability. Independent Persons are isolated: they have no wider contextual framework or guidance to refer to in reaching their judgments or determining their role. While some of these shortcomings could be addressed voluntarily at a local or regional level, firstly, such arrangements would be more costly and more heavy-handed – precisely the features of the previous statutory arrangements which were considered unsatisfactory in drafting provisions under the Localism Act 2011. Secondly, any such voluntary arrangements might achieve a higher degree of deterrence, by being more visible internally and externally to the authority, but their public credibility would depend upon the force and clarity of the adopted Code of Conduct, upon the sanctions available in the case of the most serious breaches and upon the commitment of party political groups to an agreed range of sanctions against minor or first breaches.

i. What steps could local authorities take to improve local government ethical standards?

Response:- As indicated above, there are steps which local authorities could take to improve the visibility, penetration and consistency of their procedures for dealing with complaints from members of the public concerning shortfalls in required standards of conduct. The value for money of such arrangements, however, would be dependent upon action by central government.

j. What steps could central government take to improve local government ethical standards?

Response: Central government could provide more robust guidance on local authorities' Codes of Conduct, particularly with reference to relations with external bodies, as mentioned above, and in relation to abuses of the authority of their position as Councillor in dealings with members of the public. Guidance might also be provided on mechanisms to encourage greater transparency and accountability, with the intention of encouraging traceability, consistency and effectiveness as a deterrent in the authority's response to minor and first breaches of the Code. Such arrangements should offer scope for individual and comparative monitoring of authorities' implementation of the regime. Sanctions in the case of more serious breaches should also be revised and extended, but local authorities' responses to this consultation should inform these.

17 May 2018

Johanna Holmes, OBE

Response to Review of Local Government Ethical Standards Stakeholder Consultation

Submission on behalf of: East Dorset District Council
Ethical Governance Committee (26 April 2018)

Submitted by: Richard Jones
Monitoring Officer

Reason for submission: The Ethical Governance Committee is responsible for promoting high standards of conduct and standards within the Council

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

1. East Dorset District Council comprises 29 members and operates an executive model of governance, with a strong scrutiny function being chaired by a member of the opposition. Nine of the district councillors are also county councillors, and many are parish or town councillors.
2. Structures, processes and practices are determined locally in accordance with the provisions of primary legislation. The discontinuation of the Standards Board for England removed a useful national body to oversee arrangements and to provide guidance.
3. The Council's processes for handling complaints of misconduct are well tried and tested and regarded as sound and effective. However, the sanctions available are considered to be too weak to address serious breaches. The Council does not receive significant numbers of complaints of misconduct about principal or local councillors.
4. East Dorset District Council takes its role in promoting high standards of conduct and standards very seriously. All Councillors are required to attend code of conduct training after the council elections, including those councillors re-elected to office. An independent person is in place, and consulted in accordance with the council's procedures. An Ethical Governance Committee, responsible for the promotion of high standards, is appointed with the following terms of the reference:-
 - Advising the Council on the adoption or revision of a members' [code of conduct](#), as set out in Part 5 of the Constitution, and monitoring its operation to ensure adherence to high standards across the Council.
 - Providing advice and/or training on matters relating to the members' code of conduct.

- Advising the Council on the adoption or revision of a protocol for member/officer relations.
- Reviewing and reporting to the Council on proposed changes to the Council's Constitution as set out in Article 14 (excluding the Scheme of Members' Allowances which will be subject to consideration and recommendation direct to the Council by the Independent Remuneration Panel).
- Contributing to the compilation of the Council's Annual Governance Statement and Local Code of Corporate Governance compliance.
- Considering any findings of maladministration by the Local Government Ombudsman.
- Making representations to Government, Local Government Association and other external bodies on matters relating to the General Principles of Conduct for members.
- Advising members as to the rules for disclosure of interests and for granting dispensations, in conjunction with the monitoring officer.
- Overseeing the development and implementation of a Code of Practice for elected members representing the Council on the boards of voluntary organisations and other independent bodies.
- Supporting the Monitoring Officer in his/her statutory role.
- Promoting the observance of the Ethical Governance agenda within Parish and Town Councils in its area.
- Through operation of an Ethical Governance (Hearings) Sub-Committee to hold hearings to consider all reports where following an investigation a Member is alleged to have breached the Code of Conduct.
- Making arrangements for suitable liaison, as appropriate, with the statutory Independent Person in the course of dealing with an allegation of breach of the Code of Conduct.
- To oversee and monitor the delivery of the Member Development Strategy to enable members to effectively perform their duties.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

5. Although, the previous regime under a Standards Board for England was considered more robust and possessed greater sanctions, the Council does not consider there to be gaps in the current regime within the current legislation.
6. However, the lack of local sanctions at an appropriate level leads to the risk of councillors being criminalised for minor lapses which under the previous scheme would have been dealt with at a local level.

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

7. East Dorset District Council originally adopted a Code of Conduct which was in line with the former national code and incorporated the Seven Principles of Public Life. Subsequent modifications have sought to provide clarity and guidance on appropriate and inappropriate behaviour. The code includes the requirements for registering and disclosing members' interests. All Members of the District Council are required to attend Code of Conduct training after their election to office.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

8. As mentioned above, there are many councillors who are also county councillors and/or parish and town councillors and as a consequence, whilst similar, each operates under slightly different codes of conduct and registration guidance. This can cause confusion for councillors serving on different councils and introduces increased risks that different guidance will be provided by the relevant Monitoring Officer.
9. The benefit of a standardised national code was that it provided consistency for members on more than one local authority.
10. Similarly, local discretionary requirements for the disclosure of registerable interests (in addition to the standard list) add to this confusion for members, monitoring officers and the public.

Are allegations of councillor misconduct investigated and decided fairly and with due process?

11. East Dorset District Council operates a staged complaints handling process with the Monitoring Officer undertaking an initial assessment to filter allegations that are considered to be trivial or tit-for-tat.
12. At the conclusion of the initial assessment the Independent Person is consulted and asked to comment on the initial assessment before the final decision is made. This is an active and positive arrangement between the Independent Person and the Monitoring Officer with the IP providing challenge when applicable.
13. A clear procedure is in place to process complaints, and where applicable dismiss with no further action, determine a local resolution without a hearing or to investigate through a panel of members.

14. There is a risk that Monitoring Officers could be exposed to undue pressure, however, the role is protected by statute, usually held by a senior officer and supported by a nominated deputy Monitoring Officer and Independent Person. The committee was advised and understood that there had not been any undue pressure for the current officer.
15. It would be helpful, however, if clear guidance was available to prevent over or under declaration on the Register of Pecuniary Interests, which is considered to present councillors, under the current regime, with an inconsistent dilemma as to whether or not to register an interest. This inconsistency potentially exposes councillors to criminalised offences, due to the automatic referral of complaints regarding DPI's to the Police to investigate without any local review.

Are existing sanctions for councillor misconduct sufficient?

16. Notwithstanding the response above, regarding Police investigations relating to DPI offences, the sanctions available under the current regime are relatively toothless when compared to the previous regime which permitted suspension. The current sanctions are significantly limited with the most serious sanction being restriction of access, or removal from role or membership of committees. The latter requiring support of political leadership.
17. The sanctions available forces the Monitoring Officer or Investigating Panel (where convened) to seek a resolution to achieve a change of behaviour through encouragement, rather than discipline. Whilst this softly-softly approach usually produces positive results, it is extremely time-consuming and is not necessarily appropriate for repeat offenders.
18. A sliding scale of sanctions including suspension would be welcomed.

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

19. A public register of disclosable interests is held on the Council's website under each Councillor and a page containing those for each respective parish and town council. This has not been expanded beyond the formal national code.
20. Members are reminded at the beginning of every meeting to disclose any relevant interest for the meeting in question with pro forma available for this purpose. Members are encouraged to seek guidance and advice prior to the meeting where possible.
21. In addition, a flowchart is available which guides members through the declaration process at meetings, including bias and predetermination.
22. However, problems do arise through conflicting advice on declaring interests, provided by different monitoring officers in two-tier authority areas. This can be exacerbated further where the register of disclosable

interest requirements differ between authorities and as a consequence advice on inclusion varies. Disclosable declarations may therefore vary between different authority web sites, causing confusion to those viewing the content; this may result in over or under-declaration in one or the other council; and can lead to different guidance from MO's in two-tier environments. Where this occurs a serious 'technical' offence of failure to declare an interest could inadvertently ensue from what would otherwise be a minor misdemeanour, resulting in a disproportionate criminal offence.

23. A fixed and consistent register of disclosable pecuniary interests with appropriate and comprehensive guidance would be welcomed to protect Councillors falling foul of the legal requirements on a technicality, particularly when professional advice has been sought. Such an approach would facilitate an online support system for councillors and Monitoring Officers.
24. Furthermore, there is no indemnity afforded to a councillor who has sought and followed advice from statutory officers under the current system.

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

25. The Council has a whistleblowing policy which is readily available to staff, members and the public. It is not considered that any changes are required to this policy.

What steps could local authorities take to improve local government ethical standards?

26. Whilst the Council requires all Members to undertake code of conduct training following election to office, it is considered that member training on standards should form part of a national mandatory induction and training programme.

What steps could central government take to improve local government ethical standards?

27. There should be a uniformed national policy framework for standards requirements, and a consistent complaint handling processes for both DPI and Code of Conduct complaints. This framework should extend to national guidance that covers the areas that are currently open to interpretation. A central contact to advise monitoring officers would be helpful as currently it is down to individual officers or local officer networks to make a judgement.

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

28. There is limited intimidation of councillors, most of which is fairly low key. This does not mean that there is limited risk though. The current standards regime does little to protect councillors from malicious and politically motivated complaints, which was better reflected in the previous code. Furthermore, whilst there are local policies in place to ensure good working relationships between officers and members, such policies may not give appropriate safeguards to members when they are the subject of bullying by officers.
29. Measures should be put in place to filter malicious complaints, social media trolls and other actions against councillors who seek to serve the best interests of their communities. Advice and guidance supported by a national framework should be available to councillors and their families to follow should they be threatened, feel intimidated or consider they are at potential risk or harm. This should include clear advice on reporting mechanisms to appropriate authorities, and reassurance that support and injunctive action would be available, where applicable.

Response to Review of Local Government Ethical Standards Stakeholder Consultation

Submission on behalf of: Christchurch Borough Council
Ethical Governance Committee (1 May 2018)

Submitted by: Richard Jones
Monitoring Officer

Reason for submission: The Ethical Governance Committee is responsible for promoting high standards of conduct and standards within the Council

Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

1. Christchurch Borough Council comprises 24 members and operates a committee model of governance. Five of the borough councillors are also county councillors, and three are parish councillors.
2. Structures, processes and practices are determined locally in accordance with the provisions of primary legislation. The discontinuation of the Standards Board for England removed a useful national body to oversee arrangements and to provide guidance.
3. The Council's processes for handling complaints of misconduct are well tried and tested and regarded as sound and effective. However, the sanctions available are considered to be too weak to address serious breaches. The Council does not receive significant numbers of complaints of misconduct about principal or local councillors.
4. Christchurch Borough Council takes its role in promoting high standards of conduct and standards very seriously. All Councillors are required to attend code of conduct training after the council elections, including those councillors re-elected to office. An independent person is in place, and consulted in accordance with the council's procedures. An Ethical Governance Committee, responsible for the promotion of high standards, is appointed with the following terms of the reference:-
 - Advising the Council on the adoption or revision of a members' [code of conduct](#), as set out in Part 5 of the Constitution, and monitoring its operation to ensure adherence to high standards across the Council.
 - Providing advice and/or training on matters relating to the members' code of conduct.
 - Advising the Council on the adoption or revision of a protocol for member/officer relations.

- Reviewing and reporting to the Council on proposed changes to the Council's Constitution as set out in Article 14 (excluding the Scheme of Members' Allowances which will be subject to consideration and recommendation direct to the Council by the Independent Remuneration Panel).
- Contributing to the compilation of the Council's Annual Governance Statement and Local Code of Corporate Governance compliance.
- Considering any findings of maladministration by the Local Government Ombudsman.
- Making representations to Government, Local Government Association and other external bodies on matters relating to the General Principles of Conduct for members.
- Advising members as to the rules for disclosure of interests and for granting dispensations, in conjunction with the monitoring officer.
- Overseeing the development and implementation of a Code of Practice for elected members representing the Council on the boards of voluntary organisations and other independent bodies.
- Supporting the Monitoring Officer in his/her statutory role.
- Promoting the observance of the Ethical Governance agenda within Parish Councils in its area.
- Through operation of an Ethical Governance (Hearings) Sub-Committee to hold hearings to consider all reports where following an investigation a Member is alleged to have breached the Code of Conduct.
- Making arrangements for suitable liaison, as appropriate, with the statutory Independent Person in the course of dealing with an allegation of breach of the Code of Conduct.
- To oversee and monitor the delivery of the Member Development Strategy to enable members to effectively perform their duties.

What, if any, are the most significant gaps in the current ethical standards regime for local government?

1. Although, the previous regime under a Standards Board for England was considered more robust and possessed greater sanctions, the Council does not consider there to be gaps in the current regime within the current legislation.
2. However, the lack of local sanctions at an appropriate level leads to the risk of councillors being criminalised for minor lapses which under the previous scheme would have been dealt with at a local level.

Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

1. Christchurch Borough Council originally adopted a Code of Conduct which was in line with the former national code and incorporated the Seven Principles of Public Life. Subsequent modifications have sought to provide clarity and guidance on appropriate and inappropriate behaviour. The code includes the requirements for registering and disclosing members' interests. All Members of the Borough Council are required to attend Code of Conduct training after their election to office.

A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

2. As mentioned above, there are many councillors who are also county councillors and/or parish councillors and as a consequence, whilst similar, each operates under slightly different codes of conduct and registration guidance. This can cause confusion for councillors serving on different councils and introduces increased risks that different guidance will be provided by the relevant Monitoring Officer.
3. The benefit of a standardised national code was that it provided consistency for members on more than one local authority.
4. Similarly, local discretionary requirements for the disclosure of registerable interests (in addition to the standard list) add to this confusion for members, monitoring officers and the public.

Are allegations of councillor misconduct investigated and decided fairly and with due process?

1. Christchurch Borough Council operates a staged complaints handling process with the Monitoring Officer undertaking an initial assessment to filter allegations that are considered to be trivial or tit-for-tat.
2. At the conclusion of the initial assessment the Independent Person is consulted and asked to comment on the initial assessment before the final decision is made. This is an active and positive arrangement between the Independent Person and the Monitoring Officer with the IP providing challenge when applicable.
3. A clear procedure is in place to process complaints, and where applicable dismiss with no further action, determine a local

resolution without a hearing or to investigate through a panel of members.

4. There is a risk that Monitoring Officers could be exposed to undue pressure, however, the role is protected by statute, usually held by a senior officer and supported by a nominated deputy Monitoring Officer and Independent Person. The committee was advised and understood that there had not been any undue pressure for the current officer. Where appropriate, an independent investigator may be appointed.
5. It would be helpful, however, if clear guidance was available to prevent over or under declaration on the Register of Pecuniary Interests, which is considered to present councillors, under the current regime, with an inconsistent dilemma as to whether or not to register an interest. This inconsistency potentially exposes councillors to criminalised offences, due to the automatic referral of complaints regarding DPI's to the Police to investigate without any local review.

Are existing sanctions for councillor misconduct sufficient?

1. Notwithstanding the response above, regarding Police investigations relating to DPI offences, the sanctions available under the current regime are relatively toothless when compared to the previous regime, which permitted suspension. The current sanctions are significantly limited with the most serious sanction being restriction of access, or removal from role or membership of committees. The latter requiring support of political leadership.
2. The sanctions available force the Monitoring Officer or Investigating Panel (where convened) to seek a resolution to achieve a change of behaviour through encouragement, rather than discipline. Whilst this softly-softly approach usually produces positive results, it is extremely time-consuming and is not necessarily appropriate for repeat offenders.
3. A sliding scale of sanctions including suspension would be welcomed..

Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

1. A public register of disclosable interests is held on the Council's website under each Councillor and a page containing those for each respective parish council. This has not been expanded beyond the formal national code.
2. Members are reminded at the beginning of every meeting to disclose any relevant interest for the meeting in question with pro forma available for this purpose. Members are encouraged to seek guidance and advice prior to the meeting where possible.

3. In addition, a flowchart is available which guides members through the declaration process at meetings, including bias and predetermination.
4. However, problems do arise through conflicting advice on declaring interests, provided by different monitoring officers in two-tier authority areas. This can be exacerbated further where the register of disclosable interest requirements differ between authorities and as a consequence advice on inclusion varies. Disclosable declarations may therefore vary between different authority web sites, causing confusion to those viewing the content; this may result in over or under-declaration in one or the other council; and can lead to different guidance from MO's in two-tier environments. Where this occurs a serious 'technical' offence of failure to declare an interest could inadvertently ensue from what would otherwise be a minor misdemeanour, resulting in a disproportionate criminal offence.
5. A fixed and consistent register of disclosable pecuniary interests with appropriate and comprehensive guidance would be welcomed to protect Councillors falling foul of the legal requirements on a technicality, particularly when professional advice has been sought. Such an approach would facilitate an online support system for councillors and Monitoring Officers.
6. Furthermore, there is no indemnity afforded to a councillor who has sought and followed advice from statutory officers under the current system..

What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

1. The Council has a whistleblowing policy, which is readily available to staff, members and the public. It is not considered that any changes are required to this policy.

What steps could local authorities take to improve local government ethical standards?

2. Whilst the Council requires all Members to undertake code of conduct training following election to office, it is considered that member training on standards should form part of a national mandatory induction and training programme.
3. At a local level, Monitoring Officer networks should be encouraged to provide consistent local advice and guidance.

What steps could central government take to improve local government ethical standards?

1. There should be a uniformed national policy framework for standards requirements, and a consistent complaint handling processes for both DPI and Code of Conduct complaints. This framework should extend to national guidance that covers the areas that are currently open to interpretation. A central contact to advise monitoring officers would be helpful as currently it is down to individual officers or local officer networks to make a judgement.

What is the nature, scale, and extent of intimidation towards local councillors?

What measures could be put in place to prevent and address this intimidation?

2. There is limited intimidation of councillors, most of which is fairly low key. This does not mean that there is limited risk though. The current standards regime does little to protect councillors from malicious and politically motivated complaints, which was better reflected in the previous code. Furthermore, whilst there are local policies in place to ensure good working relationships between officers and members, such policies may not give appropriate safeguards to members when they are the subject of bullying by officers.
3. There is increasingly intimidation in committee meetings, particularly those relating to regulatory matters. This could be mitigated in part through the provision of appropriate skills training for councillors and chairmen to control meetings and the public.
4. Measures should be put in place to filter malicious complaints, social media trolls and other actions against councillors who seek to serve the best interests of their communities. Advice and guidance supported by a national framework should be available to councillors and their families to follow should they be threatened, feel intimidated or consider they are at potential risk or harm. This should include clear advice on reporting mechanisms to appropriate authorities, and reassurance that support and injunctive action would be available, where applicable.

Review of Local Government Ethical Standards: Stakeholder Consultation

Response from The Society of Local Council Clerks

Contact Officer :Lis Moore, Head of Advisory Services

Please note that for brevity town, parish and community councils are referred to only as parish councils; district and unitary councils as principal authorities.

1. Preliminary questions

a. *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.*

- 1.1. The SLCC membership have reported year on year concerns about the current processes. Our research revealed that these processes have not led to an improvement in standards of conduct by local councillors who continue therefore to cause significant problems in about 15% of local councils. These problems (which include low staff morale, high staff turnover and disrupted meetings) contribute to inefficiency and ineffectiveness on a scale that amounts, in SLCC's judgement, to the biggest issue currently facing the parish council sector. The main issues reported by members concern poor communication and understanding of the processes for dealing with complaints about councillor behaviour; this is coupled with a perception of little value in making a complaint that leads to no significant sanction or other effective action to raise standards.
- 1.2. The SLCC is conscious that complaints about parish councillor conduct can represent the majority of cases that are presented to monitoring officers and create a disproportionate workload. The increasing pressures on resources do not help delivery of the current processes. Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint. The data gathered also indicated that 25% of respondents did not offer training on the Code of Conduct to parish councillors.
- 1.3. Our research indicates that the overall level of complaints submitted has not significantly altered since the Localism Act 2011 was implemented. However there is some evidence that confidence in the current regime is reducing due to a belief that raising a complaint is pointless.
- 1.4. The SLCC's research indicates that around 15% of parish councils have experienced or are currently experiencing issues concerning inappropriate behaviour. The research data does not take into account those who have left the sector completely and therefore the SLCC believes that the 15% is more likely than not to be an underreport of the scale of the problem. In any other workplace a report of 15% of employees reporting concerns about behaviour would be shocking and not tolerated. Whilst it is accepted that the vast majority of parish councils are not affected, for this minority of parish councils, the impact of these problems has a significant impact on the Council's ability to deliver its functions

and engage with its local community. This has huge costs – both in monetary terms and as opportunity cost. The SLCC is aware that in the last 2 years there has been an annual cost to the sector and the public purse in excess of £300,000 in settlement agreements and employment tribunal awards. This does not account for other costs that may have been incurred through training, mediation and other interventions. Nor does it place a value on the opportunity cost of unprogressed projects, wasted meeting costs, recruitment costs and other hidden charges on the public purse.

- 1.5. All of this fails to promote the expectation of high standards of behaviour further damaging the reputation of the local government sector.
- 1.6. None of the above takes into account the impact of poor behaviour, in particular bullying on the individuals who are subject to this unwelcome and unpleasant behaviour. The impact often includes serious ill health, loss of employment, loss of confidence and a long term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.
- 1.7. The SLCC Advisory Service believes that the absence of a national code makes the process of advising and support its members more complex. The current plethora of codes can lead to confusion as to the rules that apply to councillor conduct. Where examples are shared within the clerking community the differing regimes and comparisons of these does not promote confidence in a fair and just system. This has become more apparent as the regimes in England and Wales have diverged over time. Further complications arise where councillors are dual or triple hatted and subject to different codes for each role. This can confuse both the councillor and members of the public.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

- 1.8. The SLCC believes that the significant gaps in the current ethical standards regime are:-
 - The lack of effective sanctions, specifically the absence of any ability to suspend or disqualify an elected councillor
 - The availability of good quality accessible training on ethical standards
 - Inadequate resources to support the regime
 - Inconsistent processes that vary between authorities
 - Poor understanding of the relationship between ethical standards and good governance

- The lack of clear guidance on the practical implications of the regime and understanding of public interest

2. Codes of conduct

c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

- 2.1. The SLCC believes that adopted codes can be clear and easily understood by councillors. This was evidenced in our member research where 90% felt that all or most of their councillors understood the rules. However regrettably this was nuanced by comments that a quarter felt that their councillors think they understand but have total disregard for the rules or don't actually understand them or just choose to ignore the rules because they feel they can act with impunity and a similar number said they had one or two councillors who just did not understand the code at all.
- 2.2. The SLCC believes that greater clarity on acceptable behaviour is needed and a national code would give consistency to the behaviours covered by adopted codes. In particular the SLCC would welcome greater clarity and examples of good practice around bullying vs robust debate/criticism and respect for others.
- 2.3. The evidence gathered that indicates the provision of training on ethical standards is inconsistent is of great concern. The SLCC believes that provision of mandatory induction training on ethical standards should be required. Due to the absence of a national code this means that it would be difficult to provide national materials and that the best placed providers are the principal authorities.
- 2.4. There are examples of good practice with some principal authorities providing such training for parish councillors, unfortunately such induction training is often restricted to principal authority councillors due to budget constraints.

d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

- 2.5. In applying the Seven Principles and any code of conduct to councillors the SLCC believes that the parish sector should be placed on a level playing field. If it has been decided that it is appropriate for Westminster to have code of conduct that specifically addresses issues of bullying and harassment then this should apply to the whole of the public sector with all public sector employees being afforded the same rights and protections.

3. Investigations and decisions on allegations

e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

3.1. The SLCC believes that there could be greater rigour and clearer communication in dealing with complaints. In particular whilst it is clear SLCC members generally feel that their Monitoring Officer is supportive there could be much more consistency, clearer guidance and communication in respect of the process of assessment, earlier interventions and more proactive engagement would provide a fairer process.

3.2. In terms of early intervention, many of the cases that the SLCC Advisory Service has supported would have benefitted from the offer of mediation. The SLCC is aware that many monitoring officers do engage in various forms of informal resolution and feel that opportunities for this should be encouraged. For example, embedding a resolution approach at an early stage and ensuring that mediation is available could provide cost savings, curtailing the dispute before significant actual and opportunity cost is incurred. A duty to offer mediation should be considered.

ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

3.3. The SLCC feels that this requirement should be strengthened and made more transparent. In some cases the reasons why a case is not taken forward to investigation are not made clear to the complainant. By creating a duty to provide written reasons, evidence of the Independent Person's views being sought and a plain English explanation of these would ensure that complainants understand why their complaint has not progressed. This would enhance ethical standards.

iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

3.4. Monitoring Officers are subject to power and influence by the ruling group at the principal authority. The SLCC has observed reciprocal arrangements between principal authorities which if extended could ease some of this concern. Again this is an area where more consistency and better communication could "myth bust" and enhance the perception of ethical standards in local government.

4. Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

- i. **What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**
 - ii. **Should local authorities be given the ability to use additional sanctions? If so, what should these be?**
- 4.1. The current sanctions available under the Localism Act 2011 are inadequate. The sanctions in the parish sector take the form of recommendations back to the parish council from the principal authority. Neither can compel compliance as there are no powers to enforce. The SLCC has observed cases where a Standards Committee has made recommendations and the relevant parish council has declined to accept them or only partially accepted them. This leads to further distress for the complainant and a loss of faith in the effectiveness and justice of the process. In other cases the parish council has accepted the recommendation only for the subject councillor to decline to comply and further unacceptable behaviour occurred.
 - 4.2. The SLCC does not believe that the current sanctions deter breaches. In a minority of cases censure can become a “badge of honour”, removal from committees does not prevent other contact or opportunity for such behaviour and recommending training has limited efficacy. Monitoring Officers who responded to the survey agreed that greater sanctions were desirable.
 - 4.3. The SLCC seeks greater consistency in sanctions applied when a breach is identified.
 - 4.4. The ballot box is not an effective sanction. In many parish councils the quadrennial elections have insufficient candidates standing and many candidates are returned unopposed. Incidents that give rise to a finding of a breach may have taken place some time ago and may not have registered with electors. Where there is a contested election, breaches of the adopted Code of Conduct do not become an “election issue”. This is particularly the case where the complainant is an employee and the matter is cloaked in the necessary confidentiality of internal employment processes – put simply the matter can be and is hidden from the electorate. This then leads to the chronic and repeated incidents in some councils.
 - 4.5. The SLCC believes that the powers to suspend and disqualify should be restored as a matter of urgency. The SLCC accepts that these powers will be used sparingly and will only apply in a minority of cases. It does however believe that they would act as a deterrent in more cases than not. These powers must also be used with consistency.
 - 4.6. The SLCC also believes that making the decision on the recommended sanction mandatory rather than a recommendation to the parish council would further raise standards. It acknowledges that to do so would potentially have a cost to the

public purse, for example a requirement that the whole council attend training on ethical standards.

- 4.7. The SLCC also believes that the regime could be strengthened. Where a parish council or subject councillor does not comply with the sanctions the matter should be returned to the principal authority for re-consideration at which point the sanction could be reviewed.
- 4.8. Monitoring Officer respondents suggested that an ability to recharge the parish council for investigation costs or officer time would be desirable. The SLCC is supportive of this suggestion as it believes that parish councils should take responsibility for their own governance.

5. Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- i. **A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**
 - ii. **What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**
- 5.1. In some areas the local code has provision for declaring interests that are not disclosable pecuniary interests under the regulations. These tend to be the type of interests that used to be declared as personal interests pre2012. Declaration of these under some codes prohibits the councillor's participation in debate and voting. However the variances in codes and standing orders leads to a lack of clarity for councillors as to the appropriate action once an interest has been declared. This could be detrimental to the reputation of local government and does not support high ethical standards.
 - 5.2. A national code that includes these "other interests" would promote the reputation of the sector; reducing perceptions of corruption and fraud. A situation where an elected councillor does not need to declare an interest in a matter that will benefit a family member (such as an adult son or daughter who still lives at home who is bidding for a contract with the local council) but which does not meet the definition for a DPI is not transparent and could potentially lead to allegations of corruption.

6. Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

- 6.1. The SLCC believes that better guidance could be provided on whistleblowing in respect of ethical standards.

7. Improving standards

i. What steps could local authorities take to improve local government ethical standards?

- 7.1. Provision of training on ethical standards for parish councillors and better communications as set out above.

j. What steps could central government take to improve local government ethical standards?

- 7.2. Ensuring that ethical standards across the entire public sector are consistently set, monitored and breaches addressed under the same rules and on the same fundamental basis, affording appropriate protections to all public sector employees. Such parity would provide protection for both councillors and employees and serve to promote high ethical standards across the sector.
- 7.3. Restore the powers to suspend and disqualify as set out above.
- 7.4. Giving the power to make sanctions mandatory rather than the current recommendations
- 7.5. Create additional duties for monitoring officers in respect of process, communication and offering of mediation.

8. Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

- 8.1. The research undertaken by SLCC focused on the experiences of its members rather than local councillors and therefore provides little hard data on the scale of intimidation of local councillors. Our evidence suggests, however, that (in contrast to the bullying and harassment of staff) such intimidation is likely to be a significant factor in only a small number of the dysfunctional councils in the parish councils sector. There is a significant problem of the intimidation of parish council employees by councillors and members of the public. This includes extensive use of social media sites, email and other forms of communication in addition to any face to face interactions.

**Review of Local Government Ethical Standards – Stakeholder Consultation –
SUBMISSION FROM HARTLEPOOL BOROUGH COUNCIL**

INTRODUCTION

A report was submitted to the Council's Audit and Governance Committee on 14 March 2018 to seek the views of Members in relation to the Committee on Standards in Public Life in their stakeholder consultation in undertaking a review of Local Government Ethical Standards. Members of the Committee discussed issues arising from the report at length and agreed that the comments of the Committee be utilised to formulate a response to the consultation. Authority was delegated by the Committee to the Chief Solicitor and Monitoring Officer, in consultation with the Chair of the Audit and Governance Committee, to finalise a response to the consultation on behalf of the Committee.

The Audit and Governance Committee had been invited to respond to a number of consultation questions.

**1. EXISTING STRUCTURES/GAPS IN THE CURRENT ETHICAL
STANDARDS REGIME FOR LOCAL GOVERNMENT**

- 1.1 Hartlepool Borough Council comprises 33 members and operates a Committee based system. The Council operates with the form of governance through a Leader and with 5 Policy making Committees reflecting the Council's structure. This approach was endorsed and supported by DCLG and reflected earlier guidance issued through DETR/LGA/I&DeA ('New Council Constitutions – Dec 2000). The Council has Committees that are responsible for monitoring and reviewing the Council's Corporate Governance arrangements. In addition, the Council has an Independent Remuneration Panel to advise and make recommendations to the Council on the scheme of allowances.
- 1.2 The Council's Audit and Governance Committee responsibilities include the following functions:-
 - promotion and maintaining high standards of conduct by Members and co-opted members of the Authority.
 - Assisting Members and Co-opted members to observe the requirements of the Council's Code of Conduct
 - To advise and offer guidance to Members and Co-opted members on the adoption or revision of the Code of Conduct.
 - To delegate to a Hearing Sub-Committee, the conduct of a hearing upon a complaint and to make recommendations and report findings, as appropriate.
 - To grant dispensations to Members and Co-opted members (including Parish Council representatives) from requirements relating to interests as set out within the relevant Code of Conduct.
 - Powers to make payments or provide other benefits in cases of maladministration etc.
 - To assist in making recommendations through the better governance of the Council insofar as it relates to the maintenance and promotion of high ethical standards.

- 1.3 The membership of the Committee consists of 7 Elected Members (chair and vice-chair to be a Member not in the majority group and comprising Members not on Finance and Policy Committee plus Independent Persons and Parish Council representatives when dealing with standards' functions.
- 1.4 The Chief Executive reported to Council, on 23 May 2017, that the Localism Act, 2011, required that a relevant authority must include provision for the appointment "of at least one Independent Person" as part of the arrangements to deal with complaints relating to the Council's Code of Conduct for Elected Members. Council agreed to the appointment of 3 Independent Persons for a period of four years from 1st July, 2017. Previously the Council had appointed 2 Independent Persons.
- 1.5 The Council considers the gap in the current regime relates to lack of sanctions and that investigations are time consuming and difficult to prove.
- 1.6 It is recommended that it should be a national requirement for Members newly elected to Councils, without prior training, to attend a recognised Code of Conduct training event.

2. CODES OF CONDUCT

- 2.1 The Audit and Governance Committee noted that the Code must include provision for the registration of pecuniary interests and interests, other than pecuniary interests. Accordingly, the Members Code of Conduct adopted by Hartlepool Borough Council fully conforms with the requirements of the Localism Act and Members also chose to widen the above principles with replication of the 'Ten General Principles' which underpin the recommendations of the Nolan Committee on Standards in Public Life.
- 2.2 It was helpful that the Act clarified that a Code would only operate when a member acted in their 'official capacity'.
- 2.3 The Council's induction programme includes a session on Council Governance. On completion of the session, it is expected that participants will be aware of the Codes and Protocols included in the Council's Constitution which includes the Code of Conduct for Councillors and Co-opted Members and the Officer Member Protocol.
- 12.4 ncluded within the Elected Members' Development Programme is a mandatory session on the Code of Conduct which explores what we mean by respect and dignity and how the policies and procedures of the Council help Members to understand what is expected of them.
- 2.5 The Code of Conduct is currently under review as it is recognised that the Code could be clearer and more easily understood. It is considered also that the section on declaring interests should clarify current confusion around types of interest.

3. INVESTIGATIONS AND DECISIONS ON ALLEGATIONS

- 3.1 Any allegations are considered by the Monitoring Officer in conjunction with the Independent Persons who would decide if the complaint should be

investigated, in accordance with the assessment criteria. If an investigation is required, there is a maximum timescale of 6 months to complete the investigation. If not, attempts would be made to resolve the complaint informally.

- 3.2 If an investigation is carried out the views of an Independent Person are sought and included in the report which is submitted to the Audit and Governance Committee. The Independent Person is invited to attend the Committee meeting.
- 3.3 Any investigation into alleged misconduct can be time consuming and ultimately difficult to prove as the political process will involve valid disagreement and argument.
- 3.4 In terms of possible Monitoring Officer conflicts, another Investigating Officer could be appointed. Any undue pressure on the Monitoring Officer would be reported to the Chief Executive.
- 3.5 Members of the Audit and Governance Committee were pleased to note that in the last five years, of the 49 complaints received; only a small proportion had resulted in a finding of fault. The Committee raised concerns regarding the current processes and practices, particularly in relation to the resource implications of investigating such complaints in terms of officer time and that of Independent Persons, given the limited sanctions available, and welcomed a review of the current regime.

4. SANCTIONS

- 4.1 In the lengthy discussion that followed presentation of the report at the Audit and Governance Committee, concerns were expressed regarding the limited powers available under the current regime.
- 4.2 Some examples of sanctions used when Councillors are found to have breached the code of conduct include publicising the breach, the Member issuing an apology and the involvement of the Chief Executive/Group Leader as appropriate.
- 4.3 The ability to use additional sanctions including suspension/disqualification is recommended. It would assist also to receive clarification as to what action can be taken against members when misconduct can be proved and what action can be taken when it is felt the process has been used to either discredit or embarrass members.

5. DECLARING INTERESTS AND CONFLICTS OF INTEREST

- 5.1 As referred to earlier, one of the aims of the review of the existing Code of Conduct is to clarify declarations of interests (including types of interest).
- 5.2 A public register of interests is held on the Council's website.
- 5.3 At all of the Council's meetings, the first item on the agenda is to ask Members to declare any relevant interests. This serves as a prompt for Members.

- 5.4 Current arrangements are considered satisfactory although the review of the Code of Conduct will assist in clarifying declarations of interest and conflicts of interest.

6. WHISTLEBLOWING

- 6.1 The Council's whistleblowing arrangements are up to date and comply with the statutory requirements of the relevant legislation. Any relevant cases would then be reported to the Council's Audit and Governance Committee when undertaken. Therefore, as far as we are aware our current arrangements are satisfactory.

7. IMPROVING STANDARDS

- 7.1 It is considered that any new requirements of the code should take into account how members are held to account via different forms of social media where anonymity can be used as a way to change the nature and level of debate.
- 7.2 It is considered that there is no particular Central Government action which would assist further.

8. INTIMIDATION OF LOCAL COUNCILLORS

- 8.1 As far as is known, there have been no instances in the last three years of intimidation towards local councillors. Any reported instances would be referred to the Monitoring Officer.
- 8.2 As part of the review of the Code of Conduct, consideration will be given to the insertion of guidance in terms of prevention and addressing intimidation issues. It is intended to also address how to deal with aggressive behavior as part of a review of Member induction and to arrange for Notices to be displayed at Member surgeries relating to 'zero tolerance'.
- 8.3 Following recent discussions, the following areas have been identified to assist in dealing with this issue:-
- i) Risk assessing venues that are used to hold members' surgeries.
 - ii) Removing members' personal addresses from the Public Domain (subject to the agreement of individual Members). Personal contact details are currently available on the Council's website and therefore in the public domain.
 - iii) Providing personal safety alarms for each member who wants one.
 - iv) Supporting members to navigate around the Employee Protection Register.
- 8.4 It is noted that there does not appear to be a national policy in place to protect local councillors – this is a recommendation for action which we would like the Committee to consider.

HAYLEY MARTIN
INTERIM CHIEF SOLICITOR

Review of Local Government Ethical Standards: Stakeholder Consultation

The Committee on Standards in Public Life is undertaking a review of local government ethical standards. Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

As part of this review, the Committee is holding a public stakeholder consultation. The consultation is open from 12:00 on Monday 29 January 2018 and closes at 17:00 on Friday 18 May 2018.

Terms of reference

The terms of reference for the review are to:

1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
3. Make any recommendations for how they can be improved; and
4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London). Submissions will be published online alongside the final report, with any contact information (for example, email addresses) removed.

The Committee will publish anonymised submissions (where the name of the respondent and any references to named individuals or local authorities are removed) where a respondent makes a reasonable request to do so.

Consultation questions and RBKC's response

The Committee invites responses to the following consultation questions. Whilst the Committee understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

- a. **Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

The Council does support the requirement for Councils to adopt a code of conduct which is consistent with the Nolan principles and which can be adapted to local circumstances.

The Council would propose however that the Localism Act 2011 is amended to introduce

- more independence into the consideration of complaints
- appropriate sanctions for the more serious breaches

It is difficult to justify the regime for dealing with alleged breaches of the code of conduct and build confidence in it where the requirement for independence is limited to the provisions requiring Councils to appoint at least one independent person. The weakness of the current regime is that it only allows for complaints about councillors to be considered and judged by their peers or by Council officers. It does not allow for decisions on complaints and the imposition of sanctions by a person or body independent of the Council. The perception of the process by those making complaints is that other non-relevant considerations, for example, political or other alliances may be taken into account.

Councils can co-opt non-councillors onto the committee responsible for promoting high standards or dealing with complaints that the code has been breached. However, the provisions which regulate voting on Council committees do not allow such co-optees to have a vote in any decision. The independent person or other co-opted members, all with voting rights, should have a place on or even chair the Committee charged with determining whether there has been a breach of the code and, if so, the sanction to be imposed. In the Council's view the introduction of an independent assessment would promote higher standards and build public confidence.

Such a change should be combined with appropriate sanctions for the more serious breaches such as, for example, a pattern of leaking confidential documents or bullying council officers or others. Councils have a duty to promote high standards of conduct. The positive promotion of a culture where high standards are maintained has to be accompanied by range of sanctions for those who transgress.

b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

As mentioned above the gaps are a lack of

- independent membership of the Committee; and
- appropriate sanctions for the more serious breaches

The advice and dissemination of good practice previously provided by the Standards Board for England was helpful to Councils and therefore consideration should be given to an alternative provided by, for example, the Local Government Association.

Codes of conduct

- c. **Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**

A template code, based on the Nolan principles with local flexibility to add provisions to apply to local circumstances, is recommended. The former Department of Communities and Local Government (now the Ministry of Housing, Communities and Local Government) and the Local Government Association have both provided templates which should be reviewed following this consultation.

In Kensington and Chelsea Council the Monitoring Officer reports annually to the Committee responsible for standards and as part of that process the code of conduct is reviewed annually in the light of complaints and any learning from those complaints as well as other matters which are relevant. The Council will be reviewing the Code and the arrangements for dealing with complaints after the local election in May 2018. The review will take into account recommendations made in the recent independent review of governance by the Centre for Public Scrutiny. The requirements of the Code will be covered in the induction of new councillors. The Monitoring Officer also offers one to one meetings with new councillors.

- d. **A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

The Nolan Principles are appropriate and should continue to be embedded as a requirement in the Code.

Investigations and decisions on allegations

- e. **Are allegations of councillor misconduct investigated and decided fairly and with due process?**
- i. **What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?**

See (a) above regarding the need for the independent assessment of complaints. It is vitally important that those making complaints are satisfied

that their complaint is considered fully and to some extent externally from the Council.

- ii. **Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**

The required involvement of the Independent Person is limited. We have made suggestions about the need for more external involvement generally elsewhere in the response.

- iii. **Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

This has not been an issue for us locally, however, this does not mean that it might not be an issue in the future.

The suggestion in response to paragraph (a) above relating to independent input within the processes would also reinforce the independence of Monitoring Officers and also help allay any concerns that the public might have that in the majority of cases the Monitoring Officer is an employee of the Council. It would give the public much greater confidence that the process was independent.

Any conflict issues can easily be dealt with by delegating the investigation to another officer in the Council or to external lawyers.

Sanctions

- f. **Are existing sanctions for councillor misconduct sufficient?**

- i. **What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**

If a Council has the duty to promote high standards of conduct the lack of appropriate sanctions for serious breaches is a major issue.

Under the current regime sanctions are limited to sanctions such as

- Censuring the Member;
- Reporting its findings to a meeting of the Council for information;

- Recommending to the Council that the Member be issued with a formal censure;
- Recommending to the Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending training; or
- Recommending to the Leader of the Council that the Member be removed from the Executive Team, or removed from particular Portfolio responsibilities.

It is questionable whether such limited sanctions are a sufficient deterrent to lead to changed behaviour and neither do they justify the time and resources taken to investigate and report a complaint to the Committee. Save for the option of censuring the councillor, the Committee hearing and deciding the complaint cannot implement the sanction. The only remedy for non-compliance with a sanction is for a further complaint to be made.

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Yes, there should be an opportunity to use other sanctions. In certain circumstances the suspension of the Basic Allowance for councillors for a temporary period may be appropriate as a sanction. There should also be an ability to require a councillor to attend training and other development activities with a sanction if they don't engage. Sanctions are however only part of the answer and there should still be the opportunity for complaints to be settled informally eg by a swift and authentic apology.

Declaring interests and conflicts of interest

g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Yes.

ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond

the statutory requirements? Are these satisfactory? If not, please say why.

The Council's code has some additional requirements relating to other non-pecuniary interests ie requiring the declaration of other significant interests which might lead to a conflict of interest if a member were, for example, to participate in the determination of a planning application. A set of requirements, standard across the sector would seem sensible.

Councillors appointed to outside bodies by the Council have experienced conflicts between their duty to comply with the Code and the duties owed to the outside body. The Code requires openness, particularly in terms of open and transparent decision making, but the governance code of the outside body may require those appointed to keep certain decisions and the reasons for them confidential and councillors have expressed concerns this may conflict with under the Council's code to be open and transparent. If the outside body is incorporated the legal duties directors owe to the company may give rise to a similar conflict.

Whistleblowing

h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

The Council has a whistleblowing policy, in addition to the member complaints process.

Improving standards

i. What steps could *local authorities* take to improve local government ethical standards?

The Independent Review of Governance commissioned on behalf of the Council recognised that high standards of behaviour are not achieved by codes or processes alone.

There needs to be a greater emphasis on ethical standards in political leadership and an understanding that ethical standards are the responsibility of all members and officers and not just the Monitoring Officer and the Committee responsible for dealing with complaints.

j. What steps could *central government* take to improve local government ethical standards?

Some of the proposals will require changes to the legislation.

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

i. What measures could be put in place to prevent and address this intimidation?

This has been an issue in Kensington and Chelsea. Where there is evidence of intimidation the Monitoring Officer does allow Members to treat their home addresses as sensitive interests on the register of Members' Interests. This has limited effect however, as when standing for election, candidates for local councils still have to put their home addresses on nomination forms. The proposed change to the requirement to put home addresses on nomination forms should be enacted as soon as possible. Online and often anonymous intimidation does need to be tackled otherwise there is a risk that this will prevent candidates from a diverse range of backgrounds coming forward to stand as councillors.

Response to the Review of Local Government Standards by Parliamentary Committee on Standards in Public Life

This is a collective response from the Members of the Bolsover District Council Standards Committee to the questions posed as part of the Review undertaken by the Parliamentary Committee on Standards in Public Life on Local Government Standards.

- (a) *Are the existing structures, processes and practices in place working to ensure high standards of conduct by local Councillors, if not, please say why?*

We, the Standards Committee of Bolsover District Council, agree that the existing structures, processes and practices are fit for purpose. However, we need to communicate roles and responsibilities to the public.

- (b) *What, if any, are the most significant gaps in the current ethical standards regime for local government?*

The Standards Committee feel that there should be better communication with the public around ethical standards within local government. We have agreed to add this matter to our Work Programme for the forthcoming municipal year to consider this matter locally. Further, statute does not dictate that a Member should remove themselves from a room and from a discussion when they have a disclosable pecuniary interest (DPI). To manage this locally we have added this requirement in to our Constitution. Parish Councils are sometimes unclear on this matter, we follow it locally, however, is there anything nationally that we could do?

- (c) *Are local authority adopted Codes of Conduct for Councillors clear and easily understood? Do the Codes cover an appropriate range of behavior? What examples of good practice, including induction processes, exist?*

The Standards Committee feel that the Code of Conduct in place at this Authority is clear and applicable. We also feel the same in regards to the DALC Code of Conduct which the majority of Parish Councils have adopted. However, we would urge Parish Councils to adopt the good practice from within our Constitution in regards to declaring DPIs and leaving the room during discussion.

- (d) *A local authority has a statutory duty to ensure that its adopted Code of Conduct for Councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring Councillors' interests. Are these requirements appropriate as they stand? If not, please say why.*

The Standards Committee feel that the requirements are appropriate. The Code of Conduct is reviewed on an annual basis by this Standards Committee and the Authority works with its elected Members to ensure that Declarations of Interest are updated on a regular basis and when necessary.

The Standards Committee, however, have made a recommendation to officers to support Parish Councils in this matter by reminding them on a bi-annual basis.

- (e) *Are allegations of Councillor Misconduct investigated and decided fairly and with due process?*

The Committee feel that the processes that this Authority has in place for investigating and decide upon allegations are rigorous and meet the national requirements. We do not feel that any additional safeguards to ensure due process need to be put in place and we have full confidence in the Monitoring Officer to ensure that all complaints under the Code of Conduct are dealt with in a fair and ordered manner. We agree with the requirement of the involvement of an Independent Person and feel that this ensures the objectivity and fairness of the decision process.

There may come a time when the Council's Monitoring Officer may be subject to a conflict of interest in regard to a code breach and when this occurs this Council will work with another authority to ensure that the same process is applied by another Monitoring Officer to ensure consistent management and transparency. Our Monitoring Officer in return would offer their service to any other neighbouring authority that may be subject to a conflict of interest.

- (f) *Are existing sanctions for Councillor misconduct sufficient?*

This Authority applies sanctions that are available for use such as training and apologies which are in place to meet our current needs.

We would welcome the opportunity to apply incremental sanctions for repeat offenders we will add this to our work plan to explore this in more detail.

- (g) *Are existing arrangements to declare Councillors' interests and manage conflicts of interest satisfactory? If not, please say why.*

This Committee agree that it is appropriate that Members declaring DPIs cannot participate in discussion or votes that engage their DPI, nor take any further steps in relation to the matter. However, we feel that this could be strengthened nationally, as we have done locally, to state that a Councillor with a DPI should not remain in the room during any discussion on that matter.

As stated earlier we have incorporated this requirement in to our Constitution as well as the Declaration of Other Interests and Significant Other Interests. It is felt that DPIs do not cover the extent to which District Councillors may have a conflict of interest in an item.

- (h) *What arrangements are in place for whistleblowing, by the public, Councillors and officials? Are these satisfactory?*

The Standards Committee feel that the arrangements in place for whistleblowing are satisfactory and the Council has a Whistleblowing Policy which is reviewed on an annual basis.

- (i) *What steps could local authorities take to improve Local Government Ethical Standards?*

Local authorities should review their processes as is undertaken by Bolsover District Council. In addition, Ethical Standards are covered as part of the induction process for newly elected Members instilling ethics in our Members as soon as they become Councillors and refreshed annually.

As a result of this consultation this Standards Committee have suggested for our scrutiny function to conduct a review of the work of the Standards Committee as an additional measure.

- (j) *What steps could Central Government take to improve Local Government Ethical Standards?*

It would be appropriate for standardisation of management of Local Government Ethical Standards to take place. This could resolve the issues perceived by the public around their management and give guidance.

- (k) *What is the nature, scale and extent of intimidation towards Local Councillors?*

Within Bolsover it is not unheard of for our local Members to feel persecuted by residents within their Wards or for groups of public attendees to be perceived as intimidating during meetings of Council. The Standards Committee will be commissioning a report to consider how to monitor this to identify steps to take to address this locally.

During meetings of the District Council, this is managed locally through our Chairman and training is provided on chairing skills on an annual basis. We have powers within our Constitution to control any unruly behaviour within the Council Chamber.

In regard to intimidation towards local Members on a one-to-one basis, not only do Police powers apply but we also have a single point of contact system operating at the Council. Whilst we have these measures in place, the Standards Committee feel that a wider debate is required on this both nationally and locally.