

Local government ethical
standards

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BRISTOL CITY COUNCIL AUDIT COMMITTEE RESPONSE TO CONSULTATION

Committee on Standards in Public Life - review of local government ethical standards

The Council Audit committee remit covers work in relation Councillor Conduct that would otherwise be covered by a standards committee. On this basis, the committee considers it appropriate to respond to the Consultation.

- a. The committee consider that the existing structures, processes and practices in place are working to ensure high standards of conduct by local councillors

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

Declaration of funding of/donations to local political parties e.g. by developers or other organisations. Should transparency be strengthened and should donations to individual Councillors be declared as if it were councillor income. Members should be given training to understand of the provisions in relation to sponsorship and the need to declare disclosable pecuniary interests

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 committee has reviewed a recent update and are satisfied that it is clear and easily understood. Councillor training is undergoing a thorough review.

A bi-yearly refresher would be useful for councillors, to remind them of their ethical responsibilities and provide an opportunity for discussion on any local code changes to be/recently implemented.

- 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 Committee consider that in the main the requirements are appropriate but are concerned that there may be a lack of consistency as some councillors appear to consider the scope of what needs to be declared to be wider than others. For example, memberships of

organisations that offer no pecuniary or electoral advantage but that bid for local grants or campaign on local issues. Guidance is being developed by Officers and Audit committee members will be consulted on this.

Investigations and decisions on allegations

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

The committee are satisfied that this is the case in this Authority. Although they have not had any direct referrals they do receive regular reports From the Monitoring officer

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 consider that the arrangements put in place by the council are satisfactory

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 do not get directly involved in investigations and have no comment to make other than that they do not know that this is taking place.

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?

There is a risk of undue pressure especially in a Mayoral Authority and where there is no Chief Executive. The Council investigation procedure allows for the Monitoring Officer (MO) to seek the views of councillors on Audit Committee if the potential sanction is serious, and the committee consider that this is essential.

The MO needs to be robust enough to stand up to pressure, and the committee consider that the MO in this Authority would have the support of councillors, especially the Audit Committee, if anyone tried to interfere with the fairness of a process.

The Monitoring Officer could have situations where there is conflict of interest, but should be suitably trained to disclose this and have a Deputy who can fulfil the role in these situations as is the case in this Authority.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

The committee considers that the current sanctions are 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 committee do not think that this is necessary

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?

Some Councillors' jobs and activities could call into question their independence. Some are property developers for example. It could be perceived by a member of the public to introduce bias. There was also concern by some of the committee about local party funding and donations and that the current statutory duties are sufficient.

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.

Some councillors are not clear about the scope of what should be disclosed and it isn't in the forefront of their minds to remember to disclose. Councillors are reminded once a year to update their own interests, even though this should be completed as soon as a councillor has a new interest and not just once a year. Regular reminders would be good with examples of "here is an interest you may not have thought

of, have you disclosed?" Guidance is being developed by officers on this
Audit committee members will be asked to comment.

Whistleblowing

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

The Audit Committee regularly reviews arrangements and considers them sufficient at present, but the Council should be open to consider improvements in line with best practice. The committee had some concern about arrangements and protection for officers especially in this time of job cuts and austerity.

Improving standards

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

Funding reporting by local parties and salary/allowance levels of local councillors.

Having the power to investigate councils that appear to abuse their powers, especially on planning etc.

National guidelines on the ethical standards to be observed by council officers, who may also need to declare links to any organisations that may benefit from their work.

Intimidation of local councillors

- j. 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?

This varies by ward and the gender of individual councillors. The issues of bullying within parties may not be adequately dealt with. Should there be a system for dealing with these issues if the usual processes are inadequate?

Audit Committee
Bristol City Council
17th May 2018

Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

The Standards Committee at Newcastle City Council is responsible for promoting and maintaining high standards of conduct by members, and monitoring the operation of the Council's code of conduct for members (including dealing with complaints that a member has breached the code). The Committee considered the above consultation at its meeting on 20 April 2018 and its response is 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.

The existing arrangements are felt to be working to ensure high standards of conduct. This is reflected in the relatively small number of complaints against City Councillors in recent years, ie 6 complaints in the 2015/16 municipal year, 3 complaints in 2016/17 and 3 complaints in 2017/18 (to date). By way of context, the City Council has 78 councillors. Similarly, there are 6 parish councils in the City Council's area comprising 57 parish councillors and there has been no complaint against any parish councillor since 2014.

If you need this information in another format or language, please contact the person who sent it.

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

The Committee considers that the most significant gap is the limited range of sanctions – please see section (f) below. Another possible issue is the fact that, as any committee which deals with standards matters will be an “ordinary” committee under the terms of the Local Government Act 1972, then any independent members who are co-opted on to such a committee will not have voting rights. It is suggested that councils should have the option to have voting co-optees on such committees.

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?

This Council's code of conduct is based upon the former statutory code of conduct (ie pre-Localism Act 2011) with some local variations. It is felt that the code is “clear and easily understood” and covers an appropriate range of behaviours. The induction process for new members includes training on the code of conduct, which existing members may attend as a “refresher”. Any update to the code of conduct (or any supplementary guidance) is circulated to all members.

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 considered 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 Council's constitution, the Newcastle Charter, includes a Protocol for dealing with complaints – please see:

https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/part_5_4g_-_complaints_protocol_february_2018.pdf

This sets out the detailed process for assessing complaints, consultation with the Independent Persons, investigations and hearings. Our processes are considered to meet the requirements for 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?

The Council has appointed two Independent Persons. The involvement of the Independent Persons is a very helpful part of the process. The Council's Protocol for dealing with complaints details their involvement:

- The Monitoring Officer reviews every complaint received and, after consulting the Independent Persons where appropriate, decides whether it merits formal investigation.
- The Monitoring Officer also consults the Independent Persons if (a) he/she considers a local resolution is appropriate, and (b) a complainant is not willing to accept an offer of local resolution.
- If an investigation has been carried out, the Independent Persons are consulted by the Monitoring Officer on the investigating officer's final report.
- The views of the Independent Persons will be sought and taken into account before the Standards Committee takes any decision about a breach of the Code of Conduct or what sanctions to impose.
- In the event of an appeal against certain decisions made under the Arrangements, the Monitoring Officer will consult the Independent Persons.

It is considered that there is no need to "strengthen" the requirements relating to Independent Persons.

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?

There is no evidence of such problems at Newcastle. The involvement of the Independent Persons is helpful in this regard. It is noted that other authorities have managed potential conflicts of interests by referring conduct complaints to another authority.

If you need this information in another format or language, please contact the person who sent it.

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 Council's Protocol for dealing with complaints sets out the sanctions available to its Standards Committee:

1. issuing a formal censure;
2. publishing its findings in respect of the Member's conduct on the Council's website;
3. reporting its findings to Council, or to the Parish Council, for information;
4. recommending to Council, or to the Parish Council, the issue of a formal censure by the Council or by the Parish Council;
5. instructing the Monitoring Officer to, or recommending that the Parish Council, arrange training for the Member;
6. recommending to the Council, or to the relevant Parish Council, that the Member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable);
7. recommending to the Council, or to the Parish Council, that the Member be removed from being the chair or vice chair of any Committees or Sub-Committees;
8. recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities; and
9. recommending to the Council, or to the Parish Council, that the Member be removed, from one or more outside appointments to which he/she has been appointed or nominated by the Council or by the Parish Council.

In the Committee's experience, the sanctions are generally sufficient, given the importance of a councillor's reputation and the effect of negative publicity that may follow a censure etc. However, there can be cases where a councillor is not concerned by such publicity and therefore the sanctions available will not be a sufficient deterrent.

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

If you need this information in another format or language, please contact the person who sent it.

For the reasons set out above, the Standards Committee believe that it would assist if authorities were provided with additional sanctions up to and including suspension for a limited period for the most serious cases. The Committee also considered that sanctions which fell short of suspension but restricted a member's privileges could be explored, for example:

- removal from committees;
- removal of the right to speak at council/committee meetings;
- restrictions on the use of resources (such as the Council's e-mail system) and/or access to information;
- reduction in allowances.

It was felt that the availability of such sanctions would have a greater deterrent effect, although the Committee was mindful of the sensitivity of restricting the ability of an elected member to perform their role.

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 duties are generally considered appropriate, although it may assist if there were a provision in the legislation to ensure that a member is not prohibited from participating in a meeting where they have a DPI but its connection to the matter under consideration is remote.

- 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.**

In addition to DPIs, the Council requires that a member must register certain other interests which he or she (but not their spouse, civil partner etc) has. These include membership of or positions of control/management in:

- bodies/organisations which the councillor is appointed to by the Council; and
- bodies (i) which exercise functions of a public nature, or (ii) which have charitable purposes, or (iii) whose principal purposes includes the

influence of public opinion or policy (including any political party or trade union).

Members are also required to register any offer of a gift or hospitality which they have received within the previous three years with an estimated value of more than £50 (whether or not the offer was accepted) which is attributable to their position as an elected or co-opted member of the Council.

Members complete an annual return to make sure their register entries are up to date. The Standards Committee's annual report to Council provides an overview of the numbers of gifts and instances of hospitality recorded during the preceding year.

Furthermore, the Council's code requires a member to declare a "non-registerable interest" at Council/committee meetings if the well-being or financial position of that member (or a relative, close associate etc) would be affected by a decision more than other people in the area. This follows a similar test that existed in the code prior to the Localism Act 2011 and is considered to be helpful in dealing with interests which may not fall within the categories of DPIs but would be regarded by a reasonable observer as requiring attention.

If a member is precluded from participating in the consideration of an item at a meeting due to an interest, then the Council's Standing Orders require him or her to leave the room.

All agendas for formal council meetings include a standing entry for declarations of interest.

Whistleblowing

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

The Council's arrangements include a dedicated fraud reporting area on its website, which notifies Internal Audit of concerns, and a Whistleblowing Policy (Part 5.3A of the Charter) which contains a procedure for Council employees (and contractors) to report concerns confidentially. The Whistleblowing Policy requires the Monitoring Officer to be notified and to be informed of the outcome of any investigation and any actions instigated as a result. These arrangements are considered to be satisfactory.

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

Local authorities can be proactive in raising awareness of potential issues which might result in a complaint that a councillor has breached the code of conduct. For example, the Council issued guidance on the use of social media in 2016, and has subsequently reissued the guidance as a reminder.

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

Please refer to the comments at sections (b) and (f) above.

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 is understood that a number of councillors have experienced challenging behaviour, including via social media and correspondence, and "face-to-face".

The Committee has endorsed the CSPL's recent recommendation to amend the legal requirement to place an electoral candidate's address in the public domain.

The Council's Code of Conduct sets out the provisions in the Localism Act which allow sensitive information to be withheld from the public domain and members have recently been reminded of their ability to request this.

Review of Local Government Ethical Standards: Guildford Borough Council Submission

Background: Guildford Borough Council

Guildford Borough Council is a district council, responsible for local services such as council tax, planning, housing and environmental services. The Leader of the Council is responsible for most day-to-day decisions. These decisions can lawfully be delegated to the Executive, committees of the Executive, individual lead councillors on the Executive, individual local ward councillors, or to officers.

The roles and responsibilities for making decisions are set out in the Council's Constitution. The Council has 48 councillors who are elected every 4 years. They represent the 22 wards in the borough. The number of councillors for each ward depends upon the size of the electorate.

The political composition of the council is, 34 Conservative councillors, 9 Liberal Democrat councillors, 3 Guildford Greenbelt Group councillors and 2 Labour councillors. All of the committees meet in public and are webcast online.

The Executive includes the Leader of the Council and the lead councillors. Two Executive Advisory Boards comprising of backbench councillors advise the Executive on policy development. The Overview and Scrutiny Committee can investigate decisions made by the Executive and lead councillors.

Guildford Borough Council, together with the 23 parish councils within the borough adopted new codes of conduct for their councillors and co-opted members under the Localism Act 2011.

Guildford Borough Council's code of conduct is consistent with the seven principles of selflessness, integrity, objectivity, accountability, openness and honesty. The code of conduct sets out practical guidelines for councillors including their duty to ensure that any pecuniary interests that they or their spouse/civil partner may have are properly registered and, whenever they arise at meetings, disclosed. Unless they have a dispensation, councillors are required to withdraw from the meeting and not participate in, or vote on, any matter in which they have a disclosable pecuniary interest.

The Council has arrangements for dealing with allegations of misconduct by councillors and co-opted members of Guildford Borough Council and of the 23 parish councils within the borough. The arrangements set out the procedure for making a complaint against a borough councillor or a parish councillor.

The Council has guidance to assist completion of the complaint form, regarding the investigation process and the procedure at a hearing. The Council requires

complainants to use its complaint form when making a complaint as it covers all the relevant headings and information, which is required to process a complaint efficiently.

Consultation responses

- k. The existing structures and processes in place are generally working well. There are difficulties in the application of the sanctions and more importantly the effectiveness of the sanctions that are available.
- l. The most significant gaps in the current ethical standards regime are the type and nature of sanctions available.

Codes of conduct

- m. The adopted codes of conduct for councillors are clear and understood. The Council delivers ethical standards training following local elections as part of an induction process. Newly elected councillors, Council Solicitor & Monitoring Officer, and Democratic Services Manager, attend this training session. Independent Persons and Parish Councillors and/or Clerks also attend.

The Council covers a broad area within the training session including the Standards regime; the adopted code of conduct, the complaints process, adopted protocols and the role and function of officers and councillors.

- n. The Council's adopted code of conduct includes appropriate provision for registering and declaring councillor interests and the Nolan principles. Requirements around Disclosable Pecuniary Interests are appropriate.

Investigations and decisions on allegations

- o. At Guildford Borough Council, the Monitoring Officer assesses every complaint received and, after consultation with the Independent Person, makes a decision on the most appropriate action to be taken in relation to the complaint. If the complaint is about a parish councillor, the Monitoring Officer will also consult a Parish Member. The Monitoring Officer may ask the Complainant or the Subject Member for more information before making a decision. This decision will normally be taken within 20 working days of receipt of the complaint. Matters will be progressed as promptly as circumstances allow with realistic time limits being set for the receipt of information.

The following decisions can be taken by the Monitoring Officer in consultation

with the Independent Person:

- No further action;
- Attempt informal resolution;
- Recommend formal investigation;
- Referral to the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulations

Local Authorities would benefit from there being a national review of the arrangements and protocols between Local Authorities and the Police where a Council suspects a councillor has committed a criminal offence. Local Authorities would benefit from national guidance that acts as an adopted code of practice. Local Authorities require a clearer understanding of where the duty lies in terms of reporting suspicions of criminal conduct. It would be useful for this national guidance to include how to effectively manage an investigation involving allegations of criminal offences by a councillor that do not relate to their duties as a councillor.

Sanctions

- p.* In comparison with the sanctions regime that existed prior to the Localism Act 2011 the current standards regime has weakened the sanctions local authorities can use when councillors are found to have breached the code. There is a strong sense that the current standards regime fails to offer any meaningful sanctions. It is also arguable that it does not do enough in relation to vexatious complainants.

It has been argued by Local Government that the current process is not fit for purpose, not just in respect of whether there are sufficient penalties for those who breach the code but also the wider issue relating to behaviour in public life. Another viewpoint suggests that it is not merely, whether there are sufficient sanctions available but also the extent to which they can be enforced.

Guildford Borough Council agrees with these viewpoints and considers the powers that existed previously were sufficient.

Local authorities would benefit most from the re-introduction of an ability to impose meaningful sanctions and a national code that applies to all levels of local authorities, therefore creating an accepted standard across the country.

Declaring interests and conflicts of interest

- q. The rules regarding registration of interests are satisfactory. Local authorities would benefit from national guidance on how to better promote high standards of conduct regarding conflicts of interest. Stronger arrangements are required regarding the management of conflict of interests that go beyond the statutory requirements.

Whistleblowing

- r. The Council has a whistleblowing policy. This policy covers any malpractice by our councillors and staff, including agency staff and casual employees, and organisations and individuals providing goods or services or carrying out works. The policy does not cover complaints or reports from members of the public.

When the statutory roles in local authorities were first created, no disciplinary action could be taken unless a Designated Independent Person (DIP) recommended it. This protection was removed in 2015.

It has been argued by Local Government that the current arrangements seem to be contrary to the concept of whistleblowing e.g., these arrangements make the position of statutory officers more risky and now provide less statutory protection. This Council agrees with this viewpoint.

Improving standards

- s. Local authorities could regularly review:
- adopted local code and procedures and implement changes to promote more effective and meaningful outcomes.
 - The training programme for councillors regarding ethical standards.

Local authorities could:

- Train councillors during their induction and then follow up with annual refresher training.

- t. Guildford Borough Council views the sanctions available prior to the Localism Act to have been sufficient. Central Government could reintroduce sanctions enabling the current standards regime to be more meaningful. Also additional, tougher sanctions could be used to deal with inappropriate behaviour, which does not meet the strict tests required for a criminal prosecution.

Intimidation of local councillors

- u. Guildford Borough Council is in support of the Government's review of intimidation in public life, including intimidation that takes place using social media and other electronic communications. Intimidation of Guildford Borough Councils councillors and officers does occur. It is usually of a low scale or low risk nature. It is most severe in relation to public functions that involve high-level public engagement. For example, the Council's development of a new Local Plan has attracted instances of intimidation. An example of intimidating behaviour includes a member of the public throwing a projectile at a councillor during a meeting in the Council Chamber.

Review of Local Government Ethical Standards: Stakeholder Consultation

The following comments are from the RBKC Group of Labour Councillors and are additional to the submission from the Royal Borough of Kensington and Chelsea

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?

We are occasionally asked by people who do not use computers or have access to IT how they can make a formal complaint about a councillor's behaviour. This should be made clearer for residents.

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.

RBKC's provision for registering and declaring councillors' interests is inadequate. For example, the council interprets the duty to declare pecuniary and non-pecuniary interests as requiring councillors who are tenants or leaseholders of council properties – quite properly - to declare this interest at relevant scrutiny committee meetings. It does not require councillors who own and let properties in the borough's private rented sector to declare that interest at relevant scrutiny meetings. This contradiction needs to be addressed.

Other principles can also be utilised to over-ride the Seven Principles of Public Life, particularly those of openness and transparency (see answer to Question J)

Question E. Are allegations of councillors' misconduct investigated and decided fairly and with due process?

As a group of councillors in permanent opposition for the foreseeable future, we lack confidence in the operation of the existing standards procedure to be assured that decisions are not reached on the grounds of party political expediency. We remain concerned that there is also no effective mechanism to challenge decisions.

Question F. Are existing sanctions for councillor misconduct sufficient?

The belief that a councillor can be sanctioned by the electorate at a subsequent election does not apply in areas where one party has excessive dominance in a particular ward. Consequently the sanctions that a council can apply should be made significantly more robust.

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

Please see our response to Question D.

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

There seems to be a contradiction between the role of and protection for whistleblowers - who can be councillors - and the duty not to disclose confidential documents.

This means that the council can deem far too much information and financial details as confidential, including those substantially bound up in the contracting out/commissioning culture and around planning decisions that should be in the public arena in the interests of openness and transparency (Nolan Principles). This removes the power of scrutiny from councillors and local communities that in RBKC has led to some serious problems, such as a recently failed managed services contract. We believe that the scope of information and financial details that the council deems confidential is often too wide and could be employed deliberately to conceal from the public what the council is doing.

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

A local authority should ensure, where opposition parties are permanently in opposition, that their representations on behalf of their own electorates do not go unheard or ignored. This is a controversial and very important matter for this Group in the light of the Grenfell Tower tragedy.

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

Central government should legislate to clarify the current legal ability of outside bodies to over-ride elected councillors' duties to scrutinise, comment, criticise, or make representations on behalf of those who have elected them by citing the legal duties that a director owes to a board to which the council has appointed them. The prime responsibility of councillors is to represent the interests of their electorate and this should always take priority.

In RBKC, a ward councillor was not permitted to highlight the concerns of residents of Grenfell Tower about the refurbishment of their building, in particular about fire safety, to a scrutiny meeting. When she attempted to do so, she was forbidden by the chairman of the committee and the Chief Executive of the Tenant Management Organisation (TMO) to speak, saying that she was bound by her legal duty to maintain the collective responsibility of the TMO Board. She had been appointed to the TMO board by the council, but her responsibility as an elected councillor was over-ridden.

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

After the Grenfell Tower tragedy this has been a very significant matter for a number of elected councillors of this borough, to the extent that the police have had to put in place special measures to protect some of them.

This submission is from the RBKC Group of Labour Councillors.

18 May 2018

Somerset County Council Review of Local Government Ethical 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.*

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.

The sanctions are limited without the power locally to suspend even for a short period. If you apply the full range of sanctions as the County Council has done then the punishment can seem quite severe but we have no way of effectively dealing with most serious breaches.

Recommend Independent Standards Committees with decision making powers and under separate legislation as was possible pre 2011. This specifically included the appointment of co-opted independent voting members of the Committee and an Independent Chair of a Standards Committee.

Need better definition for Disclosable Pecuniary Interests as had clearer guidance under old regime and better clarity around each of the interests.

Would recommend a clear national framework and guidance with a model code that all of local government have to apply for consistency and transparency.

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

Appropriate sanctions that would act as a deterrent. 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 (at the relevant district council) 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.

Ethical standards need to incorporate guidance on social media issues.

Recommend an Independent Standards Committee with decision making powers and under separate legislation as was possible pre 2011. Would recommend a clear national framework and guidance with a model code that all of local government have to apply for consistency and transparency.

- 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 (county and district councils) but not consistently across town and parish councils. Would recommend a clear national framework and guidance with a model code that all of local government have to apply for consistency and transparency.

Clarity would also be welcomed from the Government regarding guidance on the application of the Nolan principles whether just to public life and doing council business or whether they should also be extended to elected members in their private life.

- 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. Simplicity and consistency are the key elements to aid understanding and application.

- 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 by having a consistent approach, 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. Investigations can be complicated and often need to be independently sourced at considerable cost – do the sanctions justify this expense.

An Independent Standards Committees with decision making powers and under separate legislation as was possible pre 2011. Recommend a clear national framework and guidance with a model code that all of local government have to apply for consistency and transparency.

- (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.). The role has been of benefit to the MO but is of limited protection to the MO where serious breaches are involved.

A member who is the subject of a complaint can seek the advice of independent person which could be a conflict as they also advising the Monitoring Officer. Would recommend a second independent person or a 'pool' of independent persons that councils can seek support from.

- (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 risk of conflicts of interest can be overcome to an extent by having an empowered Deputy Monitoring Officer to work alongside the Monitoring Officer on complaints to allow a separation of roles.

- 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, in my opinion, they do not offer a sufficient deterrent. Many authorities have made the case that the power to suspend would be a useful power if only for time limited periods with allowances withheld etc.

- (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 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, 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 and matters can take a long time and often end 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. DPI provisions are arguably quite limited in their application and need for declaration. The majority of

disclosures at meetings relate to personal and prejudicial interests as retained following the change in legislation and which relate much more closely to the day to day business of councils. The declaration of personal and in particular prejudicial interests are much more subjective on behalf of the councillors and require a degree of personal judgement.

(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?*

Make training on ethical standards mandatory to all councils within local government.

- 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 or not locally. 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 few examples of intimidation towards local councilors that have been escalated to the attention of the Monitoring Officer. Local councilors are though subject to persistent lobbying from their electors and other parties to take forward issues for a particular outcome which

the councillor may be the subject of verbal and electronic mail intimidation by not supporting their views.

(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).

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 able to be.

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

Comment: Sheffield has structures and processes in place that accord with the current statutory standards regime under the Localism Act. Whilst the Localism Act provides discretion for Local Authorities to create a procedure that suits their particular requirements, the extent of the sanctions available and the lack of independence of the Board create a model that has very little discipline and is dependent on established groups exercising the party whip. The profile of ethical standards within the Authority is also governed by the will of the ruling party as the Standards committee (as a committee of the Council) is politically proportionate.

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

Comment: Whilst there are criminal sanctions relating to members' interests, the reduced potential for other potential sanctions (where there is a finding of a breach of the code) is a problem. There is an obligation on local authorities to promote high standards of ethical conduct and a public expectation that it will do so. However, where there has been a breach of the Code, there are arguably only limited sanctions available and which may not act as a deterrent. This potentially erodes the effectiveness of the current standards regime and public confidence that significant action will be taken.

The elements of independence in previous standards regime, such as an independent standards committee chair and voting independent members of that committee to act as 'critical friend' was largely lost with the changes brought about by the Localism Act.

Codes of conduct

- x. 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?

Comment: Sheffield City Council's Members' Code of Conduct is generally straight forward and reasonably easily understood and it helps to provide a behavioural framework for members and a point of reference for citizens and council employees and partners. Parish and Town Councils have also adopted the same Code. At induction sessions for newly elected members and training for parish councillors, there is an opportunity for training and discussion about the

practical application of the Code to help give a sense of personal responsibility and to promote understanding.

- y. 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.

Comment: The requirements around registering and declaring interests are appropriate.

Investigations and decisions on allegations

- z. 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.

Comment: The Council has a written procedure in place for dealing with allegations of misconduct, including the assessment of complaints, a process for conducting investigations, case consideration and hearings. One of three appointed Independent Persons is consulted at the relevant stages in the process.

Whilst many complaints are resolved by an informal resolution or action to prevent a potential future breach of the Code, a smaller number have been referred for investigation, and this will usually be carried out by a Council officer with the requisite skills. This allows the Monitoring Officer to make decisions within the process and on the basis of the evidence gathered by the investigation and which has been conducted separately.

To help ensure fairness and objectivity, the views of an Independent Person are also sought before the Hearing Sub-Committee makes a finding as to whether a member has failed to comply with the Code of Conduct and decides on the action to be taken.

The Monitoring Officer has two deputies who are able to act in her place and this helps to reduce the risk of conflicts of interest.

Sanctions

- aa. 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?
 - iii.

Comment: The sanctions or actions available where a Hearing Sub Committee finds that a member has failed to comply with the Code include:

- Recommending to the Member's Group Leader and/or Group Whip (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council or Shadow Portfolio responsibilities.
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- Instructing the Monitoring Officer to arrange training for the member.
- That policies/procedures are amended.
- That a briefing/information note be issued.
- That an apology be given.
- That the Member is censured in writing and a copy of the letter is published on the Council's website.
- Take no action where it is not considered appropriate in the circumstances to impose a sanction.

It is considered that these sanctions provide only a limited deterrent against poor behaviour. Potentially and for serious cases, a limited sanction of a short term suspension might be reintroduced together with a corresponding protection for a subject member, such as a right of appeal.

The sanctions that involve the group Leader or Whip are only effective if the group has an effective Leader and Whip system. Some of the smaller groups do not observe these practices and are not willing to support any discipline of their members

Declaring interests and conflicts of interest

- bb. 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.
- iii.

Comment: The arrangements relating to members' interests are generally considered to be satisfactory. Council's Code of Conduct also identifies (in addition to disclosable pecuniary interests) a category of 'other interests', which includes personal interests.

Whistleblowing

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

The Council has a Whistleblowing Policy and the arrangements around that policy and process are considered satisfactory. This Policy is reviewed by the Council's Audit and Standards Committee.

Improving standards

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

Comment: Local government might seek to better promote the ethical framework and the arrangements it has in place relating to the Code and complaints, to help improve public confidence. Continuing training and development for members may be part of this activity.

Central Government might consider:
 extending the available sanctions for a breach of the Code
 placing a statutory duty on elected members to promote ethical standards
 reintroducing the concept of a Standards Committee with an Independent chair and Independents with voting rights.

Intimidation of local councillors

- ff. 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.

Comment: There have been examples of threats of violence or intimidation towards elected members in Sheffield, including through telephone, email, post and social media. Where appropriate, advice and support has been given to individual members and has been provided to members generally in relation to their personal safety. The most serious matters would be referred to the police. The main issue for councillors is the requirement to have their home address published on the web-site as part of their DPI declaration if they are unable to identify a sensitive interest justification for redacting it.

Review of Local Government Ethical Standards: Stakeholder Consultation

I am a councillor on Nuneaton and Bedworth Borough council since 2012 and on Warwickshire County Council since 2013, I have been had six standards hearings in six years at the borough council which has been run by the same party for 38 of the last 40 years. There are very serious issues with openness, transparency and governance in some areas at the borough council. There are councillors and officers who believe that the council can chose what the truth is and bring charges of bring the council into disrepute if you disagree.

As I am in a small party and some of the time ungrouped things have been difficult. I have yesterday been sent a copy of the councils response to you after much asking but have not seen the councils additional letter. The council as normal does what it can to prevent a right of reply.

I have also attached some background bits on the council asking consulates to make air pollution report as good as they can get away with and bits on the oak tree I saved during the local election period.

I currently have a ban on directly communicating with council officers which is likely to run until 2020.

Cllr Keith Kondakor

Rebuttal to Response to the Consultation from Nuneaton & Bedworth Borough Council by Councillor Keith Kondakor

- 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 existing structure is not fit for purpose and open for councils to apply very different approach to councillors in opposition groups. The processes themselves can be bureaucratic and unwieldy. Some councils where the relationship between officers and long term ruling group can result in the standards system being used as a way to reduce the ability of opposition councillors to robustly work for the residents. A massive issue is the councils ability to select if it considered if the code is engaged.

The lack of affordable appeal process means that councils subjected to kangaroo courts have to endure repeated censures and restitutions to communicating with council officers.

In my case there was a planning application for 245 homes approved by the planning committee early in 2016 where the documents had been changed just before the meeting without people being made aware. The change meant several extra important oak trees would be felled along the Weddington Road. These were highways trees and I was working to get at least one of these saved before the Borough Council issues its decision notice. I made it clear that there were serious problems with the determination of the application and that I was attempting to get a solution. This was in the run up to the local election. On Election Day the officer in charge emailed me to inform me that he had found nothing wrong with the process and that the decision notice would be issued. I sent an email back making it clear that I did not want the notice to be issued until the matter was clarified. In the email I made it clear that I would hold the council and the officer accountable. The next Monday the county council and developer agreed to a change which would save one of the oak trees. As a result of my email asking for a delay, I was censured and had most contact with council officers restricted for an unspecified time. There was no affordable way to appeal this.

This is one of many complaints I have been found guilty of from the same officer or Labour cabinet members. It is tiresome and expensive in both time and cost to the public. In the six years I have been a borough councillor I have been subject to six standards hearings and censure. In that time there has been zero standards hearing for any of the other 33 councillors on the council. Every other complaint about a significant number of councillors have been dismissed out of hand or resolved informally.

There is also no affordable way for councillors to get an equality of power at the hearing. The council refused to allow me to show anyone other than a paid legal expert the documents before the hearing or establish if I can take someone to help me into the room. The hearings I am against 3 councillors from opposing parties, a monitoring officer who is decidedly biased, another council solicitor who works for the monitoring officer and a so call independent person selected by the monitoring officer and sent the prosecution case.

The council refused to let me see what the independent person was sent or his reply.

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

Response:

There is no appeal process or method to ensure councillors get a fair hearing. The council can make all the documents confidential, not allow you to have help or legal advice and not allow the public to attend to see how biased the process is. There is no ability to dispute some of the councils claims. Quite alarming is the councils ability to state what are facts and then censure you for disagreeing.

When I was censured for my wife raising issues over a modified air quality report which contained a series of errors, the fact that the council did ask consultants to change the

report and the fact that it had errors was ruled out of order at the hearing but I was found to have made unfounded allegations in the censure.

Highlighting that council officers are asking for reports to be sexed up, that reports contain errors and asking for a planning notice to be delayed by a few days to save an oak tree is not “sub-criminal”, or “morally or socially unacceptable”, it is holding the council to account.

Nuneaton and Bedworth Borough Council has refused to show me the separate letter they claim to have sent the committee. It is outrageous and improper for the council to make accusations to you that I am unable to respond.

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 Code of Conduct broadly mirrors the original national code as advocated by the former SBE. It was amended to reduce the Ten Principles back to the original Seven and has retained the original requirements for the declaration of interests as amended by the 2011 Act and the related Regulations. These requirements 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?*

Response:

The process at Nuneaton and Bedworth Borough Council seem to vary with who is accused. The information sent to the independent person is clearly highly biased and the council has refused to release what it sent and the full replies. Houlding the whole hearing in private is not fair. Clearly I have no opportunity to demonstrate that I am being unfairly treated if I cannot speak in public before, during or after the hearing.

- 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:

There are problems with independent persons objectivity being lost when they are only sent the monitoring officers side of the issues.

- 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:

There are massive issues where the monitoring officer is too keen to clip the wings of an opposition councillor and is less than objective. At one hearing the monitoring officer claimed to have received at his home an election leaflet used in evidence against me which had never been posted to his address. It was passed to him by a councillor,

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?*

Response:

Forcing a councillor to apologise after being found guilty by a kangaroo court is not a useful sanction. Reading out and publishing a censure which is full of errors is not a useful sanction. Making it as difficult as possible for me to effectively sort out case work or ask questions of officers is a punishment for a hard working councillor but could result in councillors just doing nothing for till the end of their term of office.

No amount of training will help where the problems lie with officers thinking that councillors are not allowed to challenge what is going on. The council should have appropriate and effective methods to raise concerns and mediate when there are differences of opinion.

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

Response:

The council will not allow a few days to sort out planning issues over changed drawings before issues decision notice. The council does not allow an honest review of modified air pollution reports. By having useless internal methods to resolve disputes, things instead get raised in the traditional and new media. I do not have any other options to highlight when the council is being unreasonable and misleading. The council wants to get even more powers to control councillors who are passionate about protecting their neighbourhood. Saving oak trees from needlessly being felled and making sure the reports about air pollution are honest and objective is not inappropriate behaviour.

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?*

Response:

The council will get rid of any whistle blowers and has a track record of making a few people who displease the council leader redundant,

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:

There needs to be a method for councillors to get external investigations into councils behaviour. There needs to be an equity of power in standards hearings so that councillors human rights are upheld. There should be a video recording of standards hearings so that action can be taken where council officers are dishonest.

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?*

SUBMISSION 274

1. This response is being sent in a personal capacity, as the past Chief Executive Officer of Newbury Town Council.
2. I meant to provide a fuller response, but my commitment to Thame Town Council and my current workload has prevented that.
3. The current standards regime is not fit for purpose.
4. I was very successfully employed as the Chief Executive Officer at Newbury Town Council from April 2004 until October 2014.
5. I was forced to resign my position there because of the complete failure of the current Local Government Ethical Standards process providing protection for officers from errant Councillors.
6. This resulted in considerable financial impact, work related stress and a delayed retirement. Luckily I was in a financially strong and physically fit enough position to abide by my principles. I now enjoy my current role, so it is no great hardship – but for others it could have led to suicide.
7. In a nutshell: A new Councillor was elected at a by-election in May 2013. Unfortunately, he could not comprehend the legal nature of a parish council being a corporate body and kept acting as an individual, though in the name of the Council. He damaged various partnerships as a result and caused upset to both Councillors and Officers. The Leader of the Council could not control him. His aim seemed more and more to be to attack the Council and then me. After one specific incident, I took a stand, as no-one else did. I raised a grievance of bullying and intimidation, which was upheld. But he refused to acknowledge the findings or take any of the required actions. To continue in my role at Newbury Town Council would have in the eyes of the law accepted his lack of contrition, so my position became untenable and I had no choice but to resign. The Council itself raised a Code of Conduct issue, which was also upheld, but equally ignored. The issue was complicated by the fact Newbury Town Council is a political Council, and the Councillor in question was in the party that held power by 12 seats to 11. He did eventually resign in December 2014, once less than 6 months from next election, and he was subsequently expelled from the party. But all too late to protect me. Politics came ahead of the good of the community.
8. The whole episode had a significant financial impact on me, so I raised a case at the Employment Tribunal, claiming Unfair Constructive Dismissal. I lost the case on a timing technicality, as in the eyes of the law I waited four weeks too long before resigning. But I had to wait that long, while my grievance followed all the relevant timings, and to give the Council a reasonable amount of time to implement the required corrective actions. But they didn't have the tools to do it under the existing Code of Conduct. It is completely reliant on the Councillor accepting the findings.
9. So in summary, the fact that the current ethical standards can lead to an errant Councillor with one year's destructive service retaining his position while a valued officer with 10 year's constructive experience has to walk away must be seriously flawed.

Regards

Graham Hunt
Town Clerk
Thame Town Council

Consultation Response - Standards and Ethics Committee - Rotherham MBC

This response is submitted on behalf of the Standards and Ethics Committee of Rotherham Metropolitan Borough Council. The Committee has responsibilities including promoting and maintaining high standards of conduct by Councillors and Co-opted Members and monitoring the operation of the Rotherham MBC Members' Code of Conduct. These include responsibilities for dealing with alleged breaches of the Code of Conduct by both Borough and Town and Parish Councillors.

Taking each question in turn:

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 felt by the Committee that the absence of sanctions such as partial suspension, suspension and disqualification, since the implementation of the Localism Act, undermines the credibility of the system. Members (especially Parish Councillors) found to be in breach of the Code can effectively ignore the ruling.

The Committee feel that the disestablishment of the Standards Board for England meant that a lot of helpful guidance material was lost. Further the Committee felt that Councillors and in particular Parish and Town Councillors should be informed in advance of standing for election/being elected, what they would be expected to adhere to in terms of a Code of Conduct.

There was a feeling amongst the Committee about public expectation, in that the public expect the highest standards of conduct and behaviour from their councillors be it Borough, Town or Parish Councillors. This expectation applies to members in their private lives as well as their public role. The blurring of the different roles has become more difficult with the more prevalent use of social media. The Committee felt that a possible solution to this would therefore be for Members to have to comply with the seven Principles of Public Life at all times, not just in their Public role.

The Committee felt that it would be appropriate to review the rules around disqualification on conviction and consider whether disqualification should be automatic/ considered for certain offences or cautions if for example a Members name was included on the sex offenders register.

Further it is felt the Standards system is used because there is a perception that the Borough Council/principal authority has some sort of supervisory role in relation to Parish and Town Councils. The Local Government Ombudsman has no

jurisdiction over Parish and Town Councils and the Committee feels that this issue may be worth reviewing.

The Committee further feels there is a need to be clear as to whether the current regime is intended to be a “light touch” regime or a more rigorous one. With the way the current regime operates, there is an imbalance between the bureaucracy required and the lack of sanctions available. Taking this into account, even if there are no serious sanctions available, the Committee feel that the Standards process does need to be compliant with due process and natural justice. This is due to the potentially serious “name and shame”/political/press, and reputational issues and consequences of a finding that a Councillor has breached the Code of Conduct.

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

The Committee felt that the most significant gap was the lack of effective sanctions, [also see below] It is felt that this meant there was a lack of deterrence for poor conduct and bad behaviour by Councillors.

Associated to this, is a gap in relation to the disqualification of Councillors in certain circumstances as referred to above, e.g. for registered sex offenders. In the current system, this would not lead to an automatic disqualification of a Councillor.

Again in connection with the lack of effective sanctions, there was felt to be a gap between recommendations being made by a principal council and their implementation by a Parish or Town Council.

Although the Standards Committee does have Independent Members, some members did feel that the regime lacked public scrutiny.

There is a concern that Disclosable Pecuniary Interests (DPIs) as they are currently defined, cover a members spouse or partner, but do not cover a Members close family and friends. This appeared to the Committee to be a gap. This issue may be caught by the Nolan principles and there may also be an overlap with the offence of Misconduct in Public Office, however the uncertainty or lack of appropriate definition in terms of DPIs, is felt to be unhelpful.

For the sake of clarity consistency and certainty, it was felt that a National Code may be beneficial, based on the seven Principles of Public Life. Further it was felt that a National regulator may be beneficial in term of oversight and the provision of national guidance, which as stated above seems to be a gap. This gap has existed since the disestablishment of the Standards Board for England.

Another gap is felt to be the lack of an Appeals process in respect of the Standards regime and complaints considered thereunder. It is accepted by the Committee that this is presumably explained by the reduction in seriousness of the sanctions available.

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 referred to above, it was considered that a National code may be helpful.

Again as referred to above, there is a concern that the Code only applies to Councillors when they are acting in their Public life, and some of the Committee felt that Members conduct should be of the highest standards in both public and private life.

A further Issue was raised about candidates, in particular Town and Parish Councillors, being made aware of the Code of Conduct in advance of confirming their standing for election.

As stated above it was felt that DPs are too narrow in that they do not cover close family members or friends.

Some members felt a more descriptive Code of Conduct with examples of acceptable/unacceptable behaviours would be useful.

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.

It is felt that requirements in terms of the Code of Conduct are appropriate. The Seven Principles are felt to be a good basis for the Code of Conduct in that they capture all elements of desired behaviour. It is felt however that it may be of benefit for more descriptive and prescriptive elements to be included.

As previously stated the requirements in relation to DPs are overly complex, and include partners of members but not other close family / friends.

Investigations and decisions on allegations

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

Allegations of Councillor misconduct are investigated and decided fairly and with due process. There is a concern on the part of the Committee as to whether this is a light touch regime as referred to above, as the Committee feel that there is still a fair degree of bureaucracy and process involved in investigating and

making decisions in relation to alleged Councillor misconduct. As such this process can feel heavy handed especially for Parish and Town councillors.

iii.

iv. 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 and Ethics Complaints Procedure is at the following link and a hard copy is herewith at Appendix 1 [not published]:

[http://www.rotherham.gov.uk/downloads/file/3596/document_1 -
complaints procedure](http://www.rotherham.gov.uk/downloads/file/3596/document_1_-_complaints_procedure)

[It is felt that these arrangements do meet the requirements for 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?

It is considered that the requirement for the views of an Independent Person to be sought and taken into account before deciding on an allegation are sufficient to ensure the objectivity and fairness of the decision process.

Further to be effective in these circumstances there is a requirement for the Independent Person to hear all relevant evidence (in relation to a hearing) and to see all relevant papers.

It is also the view of the Committee that any consultation with the Independent Person, by the Monitoring Officer as part of the consideration of complaints should be done in a timely way.

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 may take the Independent Persons comments, which helps to ensure that objectivity is maintained within the system. Further the law could allow another authority's Monitoring Officer to be consulted if there was a concern about the Monitoring Officer for a particular authority being pressurised in a particular circumstance. Also in cases of a conflict of interest for a Monitoring Officer, the Deputy Monitoring Officer may be able to deal with an issue.

Sanctions

gg. Are existing sanctions for councillor misconduct sufficient?

As stated above, it is not felt that existing sanctions are sufficient for councillor misconduct.

This issue is exemplified by an standards case which arose in Rotherham recently. A Councillor was convicted of sexual assault in circumstances where the Code of Conduct applied when the offence was committed. The subject member resigned, but had they not chosen to do so they could have remained on the Council for the remainder of their four year term. In that case the Court did not require the subject member to sign the sex offender register but there may be cases where the sentence imposed by the criminal court does not trigger disqualification under the Local Government Act 1972 but where the subject member becomes a registered sex offender. It would be unacceptable to the public to have a councillor who was a registered sex offender continuing in office and receiving their basic allowance but that could happen under the current standards regime. There may be other convictions where the sentence would not trigger disqualification but which would also be incompatible with continued membership of a local authority. .

A further example of the implications of the lack of sanctions is highlighted by a recent case which came before the Standards and Ethics Committee, whereby a Town Councillor was found to have breached the Code of Conduct by using a racial slur, in a public meeting of the Town Council. The Standards and Ethics Committee recommended to the Town Council that the Town Councillor be asked to apologise and undertake training. However the Town Councillor refused to do either. In the circumstances the sanctions could not be enforced against the relevant Town Councillor. This does not take into account whether the sanctions which the Standards and Ethics Committee was able to impose were considered serious enough in the first instance.

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 as stated in the Rotherham MBC Standards and Ethics Complaints Procedure are as follows:

- (1) *Censure or reprimand the Councillor*
- (2) *Publish its findings in respect of the Councillor's conduct ;*
- (3) *Report its findings to Council [or to the respective Parish/Town Council if appropriate], for information;*
- (4) *Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;*

(5) Recommend that the Councillor be removed from the Cabinet, or be removed from particular Portfolio responsibilities;

(6) Instruct the Monitoring Officer to [or recommend that the Parish/Town Council] arrange training for the Councillor;

(7) Remove [or recommend to the Parish/Town Council that it removes] the Councillor from all outside appointments to which he/she has been appointed or nominated by the Council [or by the Parish/Town Council];

(8) Withdraw [or recommend to the Parish/Town Council that it withdraws] facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or

(9) 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 Sub-Committee meetings.

It is not felt by the Committee that these sanctions are sufficient to ensure compliance or deter breaches. However it is not felt that there is a particular concern in terms of the number of complaints for their seriousness.

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

The Committee felt that more serious sanctions such as suspension / disqualification sanctions should be reapplied. It is acknowledged that should this happen, there would need to be an appeal process (possibly involving the Local Government Ombudsman), rather than the current process of a Councillor having to apply for Judicial Review, if a decision is to be challenged.

Declaring interests and conflicts of interest

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

It is felt that the scope of DPIs is too narrow and does not cover interests of close family or friends (as stated above)

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 above there are issues as to the disclosure of interests of close family and friends. Further the disclosure of the spouse's or partner's interests raises issues in relation to the privacy of that partner's interests. Committee members also raised issues as to potential uncertainty around the definition of partner (e.g. if they were separated from the Member but still married)

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.

The relevant extract from the Rotherham MBC Code of Conduct in relation to the declaration of councillors' interests, and managing conflicts of interest is at Appendix 2.

It is considered that these requirements are sufficient.

Whistleblowing

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

The Council has a formal whistleblowing policy available via its website.

Improving standards

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

One improvement which could be made is the earlier notification of the requirements for councillors in terms of requirements in relation to behaviour and conduct as set out in the Code of Conduct. If there was a National Code this could be done by the Electoral Commission when it provides information for candidates, before they are elected. Alternatively the Code of Conduct could be provided in the candidates nomination pack.

Further, local authorities should ensure that appropriate induction and training is provided in relation to the ethical framework and its operation with the Council (this is carried out by Rotherham MBC).

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

The Committee felt that there should be a review of the sanctions available to Authorities in relation to allegations of misconduct. Similarly a review the range

of offences upon conviction of which, a Councillor is disqualified should also be undertaken, as referred to above.

The Committee felt that Central government and Parliamentarians generally should set a better example in terms of conduct and behaviour. It is felt that high ethical standards are needed at a national level, as they affect perception of all those in elected office. Parliamentarians should lead by example.

As stated above, a Principal authority may become involved with a dysfunctional Town or parish Council, by reference to what are stated to be Standards matters but in reality are Governance issues for the relevant Town/Parish Council. It is felt that there should be a better way to address such issues, which may involve a mediation role for the LGO, or Local Council Associations.

The Committee felt that a balance between the previous regime of the Standards Board for England with the First Tier Tribunal appeal, and the current situation should be sought. As such the option of a genuine light touch approach should be considered, as opposed to the nature of the current regime, which can be seen as bureaucratic, but lack “teeth” in terms of sanctions.

Intimidation of local councillors

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

Committee Members felt that intimidation towards local Councillors was not a particularly prevalent issue.

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

Monitoring Officers are able to remind Councillors that sensitive information does not have to be published if the statutory criteria is met.

Yours faithfully,

Councillor Rose McNeely
Chair of Rotherham MBC Standards and Ethics Committee

On behalf of the Rotherham MBC Standards and Ethics Committee

Consultation questions

The Committee invites responses to the following consultation questions.

Middlesbrough Council

Please note these comments are made on behalf of Middlesbrough Council.

1. The Council has seen a significant increase in the number of standards complaints being submitted since 2015 (last local election) which is having a major impact on resources, staff welfare and the authorities reputation e.g. in 2015 (7 complaints), in 2016 (14 complaints), in 2017 (24 complaints).

1a Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

2. The process to deal with standards complaints can take a prolonged period of time and will often take several months (in some cases 8 months) to be considered , investigated and a hearing held to determine the outcome. However, experience here in Middlesbrough has shown that the behaviour continues and sometimes with a total disregard for the integrity of the process and quite often further inappropriate quotes, vilification of complainants and officers and even a release of confidential information through social media. Therefore the process needs to have a way of dealing with issues as quickly possibly by more local resolution options for minor infringements.
3. The processes appear to work better where members are part a major political party/ group as they also tend to have a group discipline procedure. However, there are independent members and groups without that guidance/ structure, and in some cases this has led to behaviour that falls below the standard expected of elected members.
4. In Middlesbrough we also currently have an apparent lack of respect and regard for advice given by statutory officers and by the Standards Committee by certain independent members and the 'codes of conduct' offer no solution to that and the behaviour has continued over a prolonged period of time.
5. Some members subject to investigations believe their actions are valid despite the code /any findings and do not believe they have done anything wrong and either do not accept that the 7 principles apply to their behaviour or don't understand them sufficiently. Maybe further national guidance / examples may be helpful

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

6. The ability to protect the public/officers from extreme or persistent unacceptable behaviours of a Councillor.
7. Social media and the burden of proof – the council has experienced posting of inappropriate or confidential information on social media a prolonged period of time, which can impact on the economic investment in the area and damage the reputation of the council. The CEO and other officers have also been targeted with inappropriate and disparaging comments and accusations of dodgy dealings/ malpractice. However, some of those postings are done anonymously or through third parties social media sites. However, it is clear that some of the information is information that would have been given to an elected members, but the ability to prove who released/posted that information and in what capacity and to hold them to account is difficult and the ability to have it removed is very difficult.
8. There is a lack of any DBS checks on prospective candidates as to their suitability to office – electoral rely on self-notification or public challenge. Once elected it too late unless serious criminal convictions.
9. Criteria for judging the severity of a breach and clarity on what sanctions would be appropriate. Also provide options should a member fail to comply
10. Lack of independence / external consideration. Councillors who are not members of the majority party state that the committee system in place for considering alleged breaches disadvantages them. They have intimated that members of the committee, who they may have challenged / complained about may be biased and therefore they would not receive a fair hearing and in some cases have requested a hearing be heard by another authority. Although there is no evidence to support those claims. The majority party have large margin over any other group and as such more seats on committee.
11. Members of the Standards Committee are requested to declare any interest or bias, however, with the number of complaints being received it would be very difficult to find members that had not had some level of interaction with the subject member/s as to not attract the same criticism.

Codes of conduct

- 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?
12. They are clear but brief – not always understood.

13. The Council has an induction programme and also produces an annual Member Development programme and framework, with some local protocols on required training for members which includes Codes of Conduct training. However as there is nothing legislatively to compel attendance, some members do not attend.

- a. 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.

14. No – whilst the Council has adopted a code there is nothing in the code now to say Cllrs have to sign to accept that code – or to say they understand it, although they are expected to abide by it.

15. The declarations of interest guidance needs to be much clearer, with some worked examples especially on non pecuniary interests as requests are frequently received as to when members should declare an interest.

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?

16. Processes vary from authority to authority and as such the consistency and shared best practice has been lost.

17. Councillors who are not members of the majority party state that the committee system in place for considering alleged breaches disadvantages them and that members of the committee, who they may have challenged / complained about may be biased and therefore they would not receive a fair hearing and in some cases have requested a hearing be heard by another authority. Although there is no evidence to support those claims

18. It is understandable that independent members and minority groups can feel disenfranchised from decision making and having their voice heard especially were the Majority party have such large margin.

19. However, Middlesbrough Council now also have a situation that we have not experienced before where a political group do not accept sanctions against one of their members despite two separate external independent investigators findings and a committee decision. This has led to complaints

and accusations against certain officers managing the process with new claims of political bias being submitted by a political group.

20. Summary of Middlesbrough process - see attached flow chart

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?

- 21. Following our local research authorities involve the independent person at different stages of the process, some at initial determination of validity and some at the point of the end of an investigation.
- 22. Middlesbrough Council has appointed two independent persons due to the number of complaints received.
- 23. This independent oversight gives some small comfort to the authority but not necessarily to some members as they have little or no contact with the independent persons.

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?

- 24. The Monitoring Officer is the person that gives constitutional and legal advice to all members and to the authority. However, there can be a conflict as not all parties agree with interpretations or advice or use it for different purposes and as such the MO can become embroiled in conflict between groups/officers. This has led to a perception by officers involved in standards processes or decision making that they have become the opposition.
- 25. Yes - The Monitoring Officer here became a victim of bullying following persistent complaints and Councillors refusing to accept monitoring officer advice, and then questioning their competency, secretly recording a conversation and reporting them to their professional standards body.
- 26. In last 2 years the MO and other officers have been inundated with communications from 1-2 councillors over a sustained period of time and subject to undue demands to respond, subsequent corporate complaints, tit-for-tat standards complaints Data breach claims, senior officer complaints, claims of personal incompetency, constantly challenging advice given (occasionally hostile) which also lead to a conflict. The MO consequently submitted a complaint to the CEO as the persistent contact and challenge was affecting their health. Due to the conflict of a personal complaint, this complaint was then handled by the Deputy MO who also

subsequently became the object of the same level of contact, criticism and claims of political bias.

27. The Council have implemented a communications plan for 3 Councillors at present, all with varying degrees contact and in one case restricted access to the Town Hall in order to protect officers. However, whilst this has channelled the communications it hasn't lessened the amount of work and still greatly impacts on the use of officer time and places undue pressure on staff and resources during very difficult times when resources have been cut in half.

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?

28. The process to deal with standards complaints can take a prolonged period of time and will often take several months to be considered, investigated and a hearing held to determine the outcome. However, experience here in Middlesbrough has shown that the behaviour continues and sometimes with a total disregard for the integrity of the process and quite often further inappropriate quotes, vilification of complainants and officers and even a release of confidential information through social media.

29. Also after an investigation and hearing has taken place there are a limited number of options available to the committee and feel very strongly that there are no sanctions that they can apply that act as a real deterrent. Members feel that the current standards regime has no teeth.

30. We have had 3 hearings with investigations that have been undertaken by external investigator at great cost to the council. Members have sought to delay proceeding, declined to participate in the investigation, not turn up to a hearing and refuse comply with the outcome of Standards Committee findings.

31. It is widely felt that sanctions are limited and not comparable to the behaviour a Councillor is displaying - and no further sanctions if a Councillor doesn't comply with the sanction.

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

32. Yes

33. The ability to suspend a Cllr dependent on the severity of the case

34. The ability to withhold part of their basic allowance (up to 6 months)

35. Make it clear the Council/Head of Paid Service can withdraw services/support e.g. access to IT, group rooms, limit access to staff.

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?
- 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.

36. The Council has an electronic/automated process in place for Cllrs to submit their declarations, these are chased on an annual basis. These are published to the Councils website for public viewing. Were relevant, declarations are also shared with directors, the contracts and procurement team to ensure mitigation action can be taken were required.

Whistleblowing

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

37. Yes satisfactory.

38. The Council has a whistle blowing policy which is primarily aimed at officers. Members have other routes to raise their concerns routes such as the Monitoring Officer, the CEO, scrutiny call in, and the Corporate Affairs and Audit committee, and internal / external audit.

Improving standards

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

39. Give a higher profile to standards in public life to prospective candidates through the election process and through the electoral commission guidance.

40. Once elected training becomes mandatory and has to be given prior to them signing their declaration of office and acceptance of the code.

- 41. National Guidance should be developed showing working examples of what may be a breach (specifically for local authority members)
- 42. National guidance should be available on the use and standards of behaviour expected on social media

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?

- 43. A number of Middlesbrough councillors have had attacks on their homes or cars in the last 18 months, with some cars being set on fire on their drives. However none of the incidents have resulted in any of the culprits being identified. The Council has instigated an incident management plan, set up a multi-agency team to consider incidents and installed CCTV in approximately 12 Councillors homes.
- 44. There have also been several allegations of intimidation and harassment and verbal attacks that have been reported to the police.
- 45. Some of the intimidation of local Councillor comes from other Councillors and strengthening of the code of conduct may help that.

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

Draft Oxford City Council 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.

Processes for the assessment of complaints and complaint hearings are generally working well. There is some confusion about the role of independent persons. Standards Committees can no longer be chaired by an independent person and this can be seen by the public as a retrograde step which dilutes public accountability and the independence of the standards committee from the elected members.

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

The main weakness in the standards regime is the limited range of sanctions that can be applied, which are not strong enough to provide an effective deterrent. See also answer F.

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?

The rules around disclosable pecuniary interests and the Seven 'Nolan' Principles of Public Life are clear and easily understood. However, adopted codes have not kept pace with recent technological and societal changes and the range of behaviours covered is somewhat limited. For example, it is not necessary that aspects such as bullying, the use of ICT equipment and social media are covered by all adopted codes and this has been left as local choice.

In terms of good practice, all Oxfordshire local authorities are covered by a single, jointly-agreed Code of Conduct. This ensures that councillors who are members of multiple authorities within the area are covered by a single code, providing clarity and consistency.

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 Seven Principles of Public Life remain relevant and continue to form the basis of all adopted codes of conduct. The compulsory provisions for registering and declaring interests are limited to disclosable pecuniary interests with no accompanying guidance. This is quite a narrow range of interests that is subject to interpretation by elected members and is unlikely to satisfy public perceptions and expectations of the kinds of interests that should be declared. For example, there are no compulsory requirements around declaring other prejudicial interests, which may warrant further consideration.

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?**
- i) The Council's arrangements for dealing with allegations of breaches of its Code of Conduct for Members are summarised below:

Once a complaint about an alleged breach of the Code has been received, the Monitoring Officer will take advice from an independent person and decide within 21 days whether or not the threshold has been reached for an investigation.

If the Monitoring Officer's decision is that the complaint warrants an investigation then a person will be appointed to undertake the investigation and produce a draft report. The report will be sent, in confidence, to the complainant and the subject of the complaint for comment. The Monitoring Officer will then review the report and decide which course of action to take from the following options:

1. No further action.
2. A local resolution (e.g. an apology or remedial action).
3. A Standards Committee hearing.

These arrangements while not the most detailed are considered to be sound and to appropriately balance the need to treat allegations seriously with the need to ensure that an appropriate outcome can be achieved without undue delay.

- ii) It is right that the independent person's view should be sought to provide an independent opinion and public perspective on the matter at hand. This can help to inform the Monitoring Officer's decision about whether to investigate an alleged breach but this decision should continue to rest with the Monitoring Officer.
- iii) The Monitoring Officer has to be extremely robust when dealing with complaints against senior members of an Authority. The statutory protection afforded to Monitoring Officers could be strengthened to encapsulate a specific category of when they are dealing with complaints against members. In the event of a conflict of interest it is useful to have reciprocal arrangements with other Monitoring Officers to step in, but depending on the circumstances there could be reluctance to wish to do so.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

The sanctions currently available are as follows:

1. Censure or reprimand;
2. Publish findings in respect of the member's conduct;
3. Report findings to Council or to Parish Council for information;
4. Recommend to the member's group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committee or Sub-Committees of the Council;
5. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

6. Recommend to Council that the member be replaced as Executive Leader;

7. Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member.

Additional sanctions which would strengthen the standards regime should include the powers to suspend members from office and to suspend members' allowances for a period of time. Currently there are insufficient sanctions to deal with more extreme behaviours such as serious bullying, dishonesty or conviction other than under s34 Localism Act 2011.

Declaring interests and conflicts of interest

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

- 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?**
 - vi. **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) See answer C. In addition, further explanation and guidance on disclosable pecuniary interests would be welcome, including, for example, roles on other organisations where the councillor receives expenses or payment in kind.
 - ii) Adopted codes could be clearer about expectations in relation to conflicts that are not disclosable pecuniary interests. Further guidance, including a model Code of Conduct, would be welcome.

Whistleblowing

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

The Whistle Blowing Policy forms part of the Council's Constitution. It is reviewed annually and is considered to be satisfactory.

Improving standards

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

1. Ensuring that high ethical standards are supported at the top of the organisation by both members and officers.
2. Ensuring that a Standards Committee or its equivalent is an essential part of the local authority framework and reports at least annually to full Council. The Committee should have a clear and meaningful role in relation to upholding high ethical standards.

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

1. Broaden the range of interests that must be declared.
2. Broaden the range of sanctions that can be applied.
3. Produce a model Code of Conduct.

Intimidation of local councillors

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

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

Council officers have little experience of any intimidation councillors may be subjected to when they are in their local community or acting as local politicians (e.g. when they are out canvassing). The most serious abuse seems to occur online and also involves close members of any politician's family being subjected to unwarranted abuse.

FROM MR DERRICK REID

- I represent no organisation but as a keen layman have followed /read the structure local government accountability in England.

PARAGRAPH 1 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?

PARAGRAPH 2 yes, this requirement should be strengthened

Why and how?

In chapter 7 of the 2011 localism Act....

PARAGRAPH 3 Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

(A) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

PARAGRAPH 4 So the independent person can be consulted by only TWO of the three parties - The authority ,the complainer but NOT the complainant.

PARAGRAPH 5 Clearly unfair that the citizen is not allowed to put his/her case to the Independent person when the complainer and authority can .How can that ensure a just outcome when an obvious bias occurs and denial of opportunity to verbally put your case (when adversaries can) is denied.

PARAGRAPH 6 I HEREBY ADVOCATE THE INDEPENDENT PERSON BE CONSULTED BY THE COMPLAINANT IF ONLY TO ENSURE THE INDEPENDENT PERSON HAS RECEIVED ALL DOCUMENTATION (FACTS/EVIDENCE) ON THE ALLEGATION

PARAGRAPH 7 I now refer to the first attachment – It is a transcript of a speech made at a full council meeting by councillor Rick Brackenbury chair of the Milton Keynes Council Standards committee Relevant section paragraph 4:- "Two brief comments from me1. took 5 years for the first sanction against a member2. "we have agreed to have another look at the process"

PARAGRAPH 9 a clear inference that all was not well with the process.

PARAGRAH 10 furthermore I give you their response to FOI reference 298246, which incidentally arrived after 35 working days (15 over deadline) regarding number of times complaints had been submitted, EVENTUAL answer 62 !

PARAGRAPH 11 Surely having councillors as their own judge and jury is undemocratic leading to closing of ranks and cronyism.

PARAGRAPH 12 Self -regulation was at the heart of the MP's expenses scandal and the country is still suffering from the light-touch regulatory strength of the Financial Services Authority .

PARAGRAPH 13 What is needed is AN EXTERNAL INDEPENDENT REGULATORY BODY FOR ENGLISH COUNCILLORS, which is what Scotland , Wales and Ulster have.

PARAGRAPH 14 The Standards Board of England should never have been abolished but REFORMED. Just because there were faults in the RUC did that mean Ulster should have no police force at all !? Of course the RUC was reformed as the PSNI.

PARAGRAPH 15 Restoring the SBOE with a public interest element ensuring the severity of cases/allegations and a threshold of viewable evidence would with the same powers of the Commissioner for Ethical Standards in Public Life in Scotland, The Adjudication Panel For Wales and finally Northern Ireland Commissioner For Complaints (1. ability to sack officer assistant director or higher 2. suspend councillor from public office up to 5 years) would restore mine and many others confidence in the Local government accountability.

PARAGRAPH 15

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?

PARAGRAPH 17 The Standards Committee can only make "recommendations " about member conduct .The party leader can decide whether to comply with them

The Standards Committee has no power to suspend or disqualify the Councillor or to withdraw any special responsibility allowances to which the Councillor may be entitled under the Council's Members' Allowances Scheme.

PARAGRAPH 18 Is it realistic to think a party leader will remove a colleague from a crucial committee, diminishing his/her own party's influence ?

See attachment below .A councillor endangers the public by giving a reference for someone to be a taxi driver who has serious criminal convictions

Although the recommendation has been made, it is entirely up to Mr Banwait and the Labour party whip, Councillor Jack Stanton, to take action or not.

<https://www.derbytelegraph.co.uk/news/derby-news/derby-city-councillor-carpeted-after-218284>

PARAGRAPH 19 There was even an occasion when Tory politicians BOYCOTTED the Standards Committee because it was politically

<https://www.publicfinance.co.uk/news/2016/06/auditors-issue-public-interest-report-derby-following-governance-failings>

Councillors have used the standards committee as a vehicle for political point scoring, the report stated.

There has been a "breakdown in trust" among political groups which has meant that opposition parties have not been willing to put members forward to sit on the council's standards committee, which investigates complaints against councillors

PARAGRAPH 20 13331 FOI - OXFORDSHIRE Council 0 of 10 complaints found in complainant's favour. County council 1 of 11 in favour of complainant NCC-030106-17 .Basildon council 0 of 20 found in complainant's favour CAS-176603-L6J9H6 . Portsmouth Council 1 of 30 complaints found against members FOI2018/0343. Stoke council SOT66477 4 out of 43 members sanctioned.

PARAGRAPH 21 i won't be surprised if the overwhelming response from stakeholders/councillors would be maintain the status quo . After all what organisation would want not themselves but someone else deciding their fate!

SUBMISSION 279

Selling Parish Council's response to the Local Government Ethical Standards consultation. 18th 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.	No they are not. Local Council needs to be in control of its own procedures and be able to decide how to take matters forward through its enforceable policies. Let the emphasis be on the implication of the due process rather than the process itself. MO's role is very limited and ineffective. Parish Council relies on SO10 and that being applied rigorously.
B. What, if any, are the most significant gaps in the current ethical standards regime for local government?	No gaps in standards but there are no enforceable sanctions.
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?	Very clear but on the whole un-enforceable. Not really understood and accepted by all councillors. Some councillors' behaviours can be atrocious and not worthy of being an elected representative. The test is what happens when the code is violated. At present, it would appear nothing.
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.	On the whole, they are. Disruptive councillors will still question and object to the non declaration, which, in the end, is up to the individual and others must accept.
<i>Investigations and decisions on allegations</i>	
E. Are allegations of councillor misconduct investigated and decided fairly and with due process?	<u>No they are not.</u> At the discretion of the MO. Due process is weak.
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?	Through the MO. This is ineffective. Serious in-meeting incidents can be reported to the police. Parish council needs to have the power to investigate, perhaps in collaboration with a neighbouring council. The due processes in place are totally inadequate. Whilst anyone has a right to raise complaints against the council, surely expensive, repeat vexatious complaints should be addressed and the council must have a right to act and expose in a way that it feels right for the whole of the Parish.
ii. Is the current requirement that the views of an Independent Person must be	Not sure what this is referring to.

	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?	If it is a complaint to the external auditor, this can be very expensive. A process of complaint to the PC, raising it with a partner PC and then the external auditor might filter out more vexatious complaints.
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?	Not sure if MOs are themselves aware of their powers and limits. MOs should be subject to the same CoC.
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?	Parish councils have no power to use any sanctions except in individual meetings where a councillor or a member of public can be excluded by evoking SO10. A bullying at work style policy, which is <u>enforceable</u> , would be invaluable.
ii.	Should local authorities be given the ability to use additional sanctions? If so, what should these be?	Yes. Suspend for a fixed term and ultimately expulsion if repeated misbehaviour persists.
Declaring interests and conflict of interests		
G.	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.	.

Whistleblowing	
H. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?	<p>If a member of the public sees something questionable in the audited accounts, they can "report" it to the external auditor. Fully in agreement with this. It is when the "whistleblower" then uses this mechanism to complain incessantly and put in vexatious complaints year after year that the system seems to be failing.</p> <p>There is no comeback on vexatious complainants. In the wider law, a person making false or vexatious claims should have court costs awarded against them. In the case of complaints against a local authority, all costs are borne by the authority. Totally unfair.</p>
Improving Standards	
I. What steps could <i>local authorities</i> take to improve local government ethical standards?	More delegated powers of sanctions to Parish councils through robust policies for those who bring the councils into disrepute. bullying & harassment have to be eradicated from our councils.
J. What steps could <i>central government</i> take to improve local government ethical standards?	Change the law to make accountability more real and robust. Bring back the LA ombudsman?
<i>Intimidation of local councillors</i> K. What is the nature, scale, and extent of intimidation towards local councillors?	<p>It ranges from the physically threatening to the aggressive tone of voice; from the sneering dismissal of opinion to the constant interruption of a speaker; it can be the undermining of the confidence of one person by continually questioning their ability; it can be the continual questioning of the integrity of the entire council. It can be through slanderous and abusive electioneering practices or it may be through a long regime of complaints against the council.</p> <p>some Councils become, "a graveyard for Clerks". This must be addressed. The historic resignation of so many Councillors of Selling PC, and current stress levels, shows how ineffectively this is currently dealt with.</p>
L. What measures could be put in place to prevent and address this intimidation	More power to decide locally by the Parish Council itself through accountable and robust policies that would include checks and balances and protecting individual rights including those of the alleged perpetrator.

Local Government Ethical Standards Consultation - Submission

Introduction

1. This is a personal submission from Mr. Christopher Potter. This is submission is not submitted on behalf of any organisation.
2. I am an experienced local government officer and serving Monitoring Officer. I first entered local government in 1986 and am a qualified solicitor. I am presently employed as Assistant Director (Legal and Democratic Services) and am the Monitoring Officer at Amber Valley Borough Council. I have previously been a Monitoring Officer at Brentwood Borough Council, and Chester-le-Street District Council. I have also been a Deputy Monitoring Officer at the Eden District Council, and at the Borough Council of King's Lynn and West Norfolk.
3. I make this submission in the hope that nationally the nettle will be finally grasped and effective measures will at long last be put into place and properly enforced to safeguard the public interest. There is much that is right within local government but we cannot be complacent about this overall assessment. A number of matters need to be urgently addressed if further public money and public confidence in local government and democracy is not to be undermined. Nationally report after report is produced and scandal after scandal eventually emerges to see the light of day, but some unfortunately are swept under the carpet never to be known and lessons learnt from.

Question a

4. No. In my experience the public generally have no confidence in the 2012 changes which removed the local sanction of suspension and abolished the independent Standards Board for England, which could impose disqualification from office. It is unrealistic to place a political group leader in a position of being asked to sanction a subject member of their own group found in breach of the relevant Members' Code of Conduct, and upon which they may depend to remain leader of the group. What if the political group leader was that subject member? There needs to be a proper separation out of powers to stand a chance of public confidence and support.

Question b

5. As above - The most significant gaps are the lack of meaningful and appropriate range of sanctions which can be imposed, and which can effectively act to deter a determined councillor to serve their own ambitious

private interests regardless to maintain and retain their position. Most councillors are a credit to their communities. A very small minority are not, and on occasions can create costly disruption and, if left unaddressed, a toxic environment, leading others to be tempted to breach the Code of Conduct.

Codes of Conduct

Question c

6. In my view they generally are understood, though the use of certain terms such as 'pecuniary' 'land' and 'securities' can limit such understanding. Such words could be better expressed in lay terms to ensure better understanding and therefore compliance. Local guidance may be produced but the absence of the knowledge bank of the Standards Board for England does not assist the objective of protecting the public interest. Effort (if made) is being exerted up and down the country when a central knowledge bank would save the need for much of that effort, and would create a minimum standard of material. Induction processes exist but training should not be a one-off.

Question d

7. No. Protecting the public interest should not be a variable, with local differences. There should be a national provision to ensure consistency with the national Nolan principles. Councillors can serve on various bodies so different versions can be confusing to them and the general public. The requirement to notify interests should be made a direct statutory obligation throughout the office of councillor, and not limited to a period after election or after a formal meeting.

Investigations and decisions on allegations

Question e

8. Yes I believe that they generally are but it is dependent to some extent on the experience of the legal adviser. (i) I believe this to be the case but there should be a re-instatement of the ability to refer to an outside body in appropriate cases where internal handling would not lead to public confidence being maintained. (ii) I think the role of Independent Person is no substitute for the former Standards Board for England and their trained officers, but, if the Independent Person role is retained, it should be strengthened by ensuring central appointment and training and support. (iii) From my experience, inappropriate pressure can be consciously or subconsciously

placed upon Monitoring Officers. I have left my employment following such pressure rather than to compromise my integrity. Better measures need to be in place where Monitoring Officers are conflicted out or are subsequently deliberately placed into a conflicted-out position to remove their ability to act. Frankly, to protect the public risk and to remove the danger of inappropriate pressure being directly or indirectly applied, the career and employment of a Monitoring Officer ought not to be dependent upon the particular local authority. Just as the Local Government and Social Care Ombudsman is externally appointed, so must, in my view, be a Monitoring Officer. Why the difference? The role of Monitoring Officer is too subservient within many local authorities and this is even reflected in the tier the Monitoring Officer holds within many a local authority. Obviously Monitoring Officers themselves need to be held to account - but not by those whom they are expected to hold to account. I have experience of one Monitoring Officer who continued to act whilst personally conflicted out, to protect their employment and the particular Council failed to act upon complaints and merely referred the matter back to that conflicted officer. The report of the National Audit Office on 'Conflicts of Interest' (January 2015) should be mandatory reading. MHCLG need to exert effective control without fear or favour. Pay-back is an all too present danger, and not all will have the personal integrity and health resilience to withstand inappropriate pressure, without the protection of effective coordinated legislation for protecting the public interest.

Sanctions

Question f

9. No. (i) The range of sanctions permitted by law but as stated above the range of sanctions are insufficient to deter the determined strong willed person from doing what they want. (ii) Suspension and referral externally for possible disqualification. Disqualification should not be removed by re-election as democracy depends upon the rule of law and protection of the public interest. Democracy is not the tyranny of the majority. Moreover, the cost of investigating and determining complaints ought not to be fully borne by the public purse. There should be a potential costs sanction against the subject member found to have breached the relevant Members' Code of Conduct. Why should such a person incur the cost but not pay for it or at least towards it?

Declaring and conflicts of interests

Question g

10. No because the concept of disclosable pecuniary interests is not wide enough. (i) Close family and relationships should be caught by new 'dpi' provisions and such provisions ought to prevent future rewards from affecting decision-making in the public interest (e.g., contracts being negotiated but not yet signed). Moreover, exactly when a 'dpi' bites should be clarified as the wording of Government's guidance is at variance with the Localism Act 2011. Does the item of business have to directly affect the dpi (e.g., such as a planning site being owned by the councillor) or is the dpi engaged because that dpi is 'affected' by the item of business in such a way as not to be too remote to trigger control (ii) It is keeping the duty in the minds of councillors at all relevant times that requires constant effort.

Whistleblowing

Question h

11. No. Too often the message can be lost and whistleblowers are destroyed, economically, professionally and health-wise. Concentration is on the messenger and conflicted out officers can in practice deploy public resources against the messenger. The law needs to be strengthened in practice to keep conflicted officers out of dealing with such matters. For example, the offence of misconduct in a public office would benefit from improvement and clarification. Caerphilly is an example of the problems of practical investigation etc. (including the expense of and delays in resolving such allegations, and even the effects on those facing such allegations before charges were dropped). There remains a gap between what a policy says and reality of protection. There needs to be a fusion of jurisdiction to stop the parcel between the civil and criminal jurisdiction in the court system. A whole system approach should exist, and this must involve a joined-up approach to criminal offences and civil wrongs. In my experience, Members of Parliament too often do not understand their roles and have been known to abdicate their roles on spurious reasons such as not knowing the whistleblower or that it is a police matter or that parliamentary protocol demands referral (notwithstanding the legislation) to the local (potentially conflicted out) Member of Parliament.

Improving standards

Question i

11. By putting in place compulsory training, internal and external. By repealing the 2015 changes and establishing effective safeguards to enable Monitoring Officers to do their jobs without fear or favour.

Question j

12. By recognising the realities of ambitious people wishing to gain/maintain/retain power and how human behaviour of generations is unlikely to materially change as regards the pursuit and maintenance of power. The public interest requires central government to have in place effective measures (including to protect Monitoring Officers and to ensure that Monitoring Officers do their job too). External auditors consciously and subconsciously recognise who pays their bills and awards their future contracts. That is not to say that they do not do their jobs but independent appointment would go some way here too to allay some public perceptions. The ability of employment tribunals to refer to a regulatory body is, in practice, not effective, not least because of pressure on resources. Pass the parcel and falling between jurisdictions is not unknown. Central government should overhaul the various fragmented systems and bodies, and recognise that investing in the public interest is cost-effective as it prevents misuse and abuse of power (or should do). The pressure on public resources will only improve if timely proactive action is taken, and reactive action is taken and known to be taken. We need to track the desired outcome back and design the process accordingly so it is truly fit for purpose.

Intimidation of local councillors

Question k

13. The widespread political party nature of local government has in some limited cases potentially a negative effect on councillor behaviour and their willingness to comply with the Nolan Principles etc. A councillor will need party support for re-selection as a candidate and to stand any chance of continuing on as a councillor. (i) To ensure that inappropriate retribution/revenge does not occur, a councillor should be able to have redress against inappropriate victimisation for behaving ethically against political party interest. The difficulty, of course, is to identify such victimisation as officer whistleblowers across the public sector know only too well how easy it is to find some other (predominant) reason to negate the public interest motive, and for others to construct a capability or disciplinary or restructuring argument or to engineer relationship breakdown (without the

appropriate authority asking and determining the real reason for that breakdown and particularly who caused it and why). Eyes need to be open and gullibility needs to be safeguarded against otherwise why would a councillor (or indeed an officer) put their heads above the parapet only to personally pay the consequences of trying to protect the public interest. Those who intimidate or otherwise abuse or misuse power must be held to account in the public interest.

Local government ethical behaviour should not just be for the brave, and society must truly enable all to behave ethically without fear or favour.

Chris Potter
18 May 2018

Committee on Standards in Public Life - Review of Local Government Ethical Standards: Stakeholder Consultation

Introduction

1. This submission has been compiled by a group of planning barristers at Cornerstone Barristers. It represents the work and views only of the following barristers: Robin Green and Estelle Dehon. They have been helped by pupil Dr Alexander Williams.
2. Robin and Estelle have long experience advising public authorities on the lawfulness of administrative decisions and they contributed to *Cornerstone on Councillors' Conduct*, which identifies and explains the law following the changes implemented by the Localism Act 2011 in relation to the standards system governing the conduct of elected members in local government.

Scope

3. The Committee on Standards in Public Life has invited written submissions on 11 separate questions. We have decided to focus on *question f* and *question g*.

f. Are existing sanctions for councillor misconduct sufficient?

4. This question asks if existing sanctions for councillor misconduct are sufficient. In relation to breaches of the code of conduct, there are no prescribed sanctions. Section 28(11) of the Localism Act 2011 states that if a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member, and (b) what action to take. Nothing further is said about what action can or should be taken.
5. In *R (Taylor) v Honiton Town Council* [2016] EWHC 3307 (Admin) the High Court described section 28 as "puzzling", holding (at paras 39-43) that Parliament clearly contemplates that a relevant authority may take "action" following a finding of non-compliance with a code, and does not seek to define or limit what action that may be. An authority has no power to disqualify or suspend, but it may impose a sanction requiring a councillor to do something lawful, including to undertake training. If the councillor refuses, the only further sanction is publicity.
6. In contrast, the sanctions that could be imposed on a member under the previous conduct regime¹ were:
 - a. censure
 - b. restriction for up to six months of the member's access to the premises of the authority or use of the resources of the authority
 - c. partial suspension for up to six months
 - d. suspension for up to six months

¹ See reg 19(3) of the Standards Committee (England) Regulations 2008.

- e. that the member submits a written apology in a specified form
 - f. that the member undertakes specified training
 - g. that the member participates in specified conciliation
 - h. partial suspension for up to six months or until such time as the member submits a written apology in a specified form
 - i. partial suspension for up to six months or until such time as the member has undertaken specified training or conciliation
 - j. suspension for up to six months or until such time as the member has submitted a written apology in a specified form
 - k. suspension for up to six months or until such time as that member has undertaken specified training or conciliation.
7. Since the current standards regime came into force in 2012, authorities have sought to impose a variety of sanctions following code of conduct breaches, including:
- a. publicising findings of breach²
 - b. expressing disapproval of the councillor's misconduct (i.e. censure)
 - c. requiring the councillor to write a letter of apology
 - d. requiring the councillor to undertake relevant training
 - e. requiring the councillor to engage in mediation
 - f. removing the councillor from a committee
8. While some of these sanctions do not require the co-operation of the councillor, some do. If a councillor refuses, for example, to comply with a request to apologise or undertake training, the authority has no power to enforce its request, save by publicising the fact of non-compliance.
9. Whether the sanctions currently imposed by authorities are sufficient to deter and punish misconduct is open to question. The experience in Wales, which retains the former standards regime, might provide a useful comparator. The authors of this submission do not have sufficient empirical evidence to express a view on the adequacy of the current system of sanctions, although it can be said that in the absence of a power to suspend a councillor they are significantly less robust than was the case before 2012.
10. If further sanctions are thought appropriate, a power to suspend, deny access to council premises and resources and/or reduce the allowances paid to councillors would be obvious additions.

g. Declaring Interests and Conflicts of Interest

11. The consultation asks whether the existing arrangements to declare councillor's interests and manage conflicts of interest are satisfactory. In our view, the current regime under the Localism Act 2011 is workable and provides some important

² A power to publicise findings of misconduct was held to be implicit in the duty on authorities under s 27(1) of the 2011 Act to promote and maintain high standards of conduct by members and co-opted members of the authority: see *R (Taylor) v Horiton Town Council* [2016] EWHC 3307 (Admin), paras 37-43; *R (Hussain) v Sandwell MBC* [2017] EWHC 1641 (Admin), paras 231-232, 246.

safeguards, buttressed by the criminal law. But it could be enhanced in the following respects.

12. First, by imposing a statutory duty on councillors to register specified non-pecuniary as well as pecuniary interests. Although non-pecuniary interests are currently covered by the codes of conduct that each council is statutorily required to produce, we are aware that some councils do not do this. Furthermore, the definition of those interests and the consequences of failing to disclose them are left to the discretion of the councils themselves.³ A single statutory obligation requiring the registration of defined non-pecuniary interests would make for greater transparency and ensure consistency between councils. Failure to register non-pecuniary interests could, but need not be, made a criminal offence. No such offence existed under the pre-2011 scheme.
13. Relevant non-pecuniary interests should be precisely defined and might include unpaid directorships or other senior roles within organisations that are directly affected by council policies and may generate conflicts of interest.⁴ For a statutory duty, especially one that is underpinned by the criminal law, we would recommend defining non-pecuniary interests clearer and more narrowly than the old 2007 Model Code of Conduct. The Model Code contained a list of specified personal interests in addition to a general category of interests that might reasonably be regarded as affecting “well being”, either of the councillor or of specified relevant persons.
14. Second, the regime would be improved by broadening the legislative list of pecuniary interests. The current list contains manifest omissions such as hospitality deriving from a councillor’s position, unpaid employment (including directorships), interest in land outside of a council’s area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups. A sensible starting point is that a councillor should be excluded from the decision-making process if any of these interests are in play.
15. Third, the regime would be improved by providing for further-reaching measures where disclosable interests are indeed in play. Currently the relevant councillor is debarred from participating any further in the matter or from voting on it – but can remain at the meeting unless the council’s standing orders provide otherwise. A statutory requirement for councillors to remove themselves would help maintain the integrity of the decision-making process as well as excluding any possibility of the meeting being influenced by the presence of the councillor alone. It would also give teeth to DCLG guidance requiring councillors to remove themselves where their presence is incompatible with the Nolan Principles.⁵
16. Fourth, the regime would be improved by limiting Councils’ powers to grant dispensations for councillors with disclosable interests to continue in the decision-making process, in particular the general and wide-ranging power to grant

³ Although in reality it remains popular for councils devising their own codes to rely heavily on the Model Code passed by statutory instrument in 2007. Gateshead, North Hertfordshire DC and Uttlesford DC are three of many examples.

⁴ Along the lines of e.g. Part 5, para 7.5 of the East Devon DC Constitution:

<http://eastdevon.gov.uk/media/2128472/constitution-2017-part-51.pdf>.

⁵ DCLG, ‘Openness and Transparency on Personal Interests: A Guide for Councillors’ (September 2013).

dispensations to councillors "if otherwise appropriate". This power allows considerable discretion to councils that may be exercised starkly differently from council to council or even from case to case within the same council. It would better serve the requirements of consistency and accountability to limit the power to dispensations that are not just appropriate but "strictly necessary", and/or to impose on councils a statutory duty to give reasons for a grant.

18 May 2018

Local government ethical standards: stakeholder consultation

I hereby enclose some thoughts from myself, a mere member of the public. No doubt I am skimming the surface of the subject, and that an 'expert' would be able to correct some of my assertions. However, I am doing my best.

Some, but not all, of my comments relate to the London Borough of Barnet, where Capita run many services.

In particular, Capita get first dibs at any additional (lucrative) contracts, where there is no independent tendering. An example I give you below is in designing a new Thameslink railway station at Brent Cross, which is not exactly an obvious local authority task.

Unfortunately, I was unaware of the recent publication of your document:

"The Continuing Importance of Ethical Standards for Public Service Providers",

although I might have renamed it:

"Establishing for the First Time The Importance of Ethical Standards for Public Service Providers".

I have concentrated on specific examples below, although you may even welcome that, rather than fluffy, generalised statements from others.

Re-reading this before submission to you makes this seem rather like a Private Eye article, with perhaps an obsessive level of detail (and no cartoons to lighten the read).

ETHICAL STANDARDS

You ask:

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

In response, I would welcome a definition of what is the public sector.

Although the modern civil service was created in the 1850s, and local government in the 1890s, it is no longer clear.

For instance, when I asked Barnet, in an Fol request (3 August 2017, ref. 3778296):

"Please supply a copy of your authority's records of the Section 106 negotiation competences of current Barnet Planning staff. This will include training courses attended."

because I had become dismissive of its competence in defence of the public interest in planning negotiations, I received the reply:

"Regulatory Services, including the planning function, are contracted out and planning staff are directly employed by Re. The contract can be viewed at <https://open.barnet.gov.uk/dataset/regional-enterprise-ltd-re-contract> We therefore do not hold any information in relation to Re staff."

I have also hit a brick wall when asking, in another Fol request,

- what the structure of the three strands of planning were in LB Barnet, that is: (1) strategic planning, (2) development control and (3) regeneration, and
- the job descriptions of all the roles in those strands.

Barnet HR department replied that it had no idea, because it was not kept informed of either the structure or the roles. All they were informed of were staff names and staff job titles, and they just assigned internal phone numbers for them. People could clearly be introduced and removed by Capita at will. Maybe that is still the case; I do not know.

Ironically, Capita also runs Barnet's HR department.

I do not accept that staff 'generally' consider themselves in the public sector.

Do they feel that are personally covered by the Nolan Principles of Public Life? Have they even heard of it?

PUBLIC SECTOR EQUALITY DUTY

I also do not think staff within Barnet generally know what this is, and how it should determine their behaviour.

Let me set the scene:

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office, which has just been transferred from the Department for Education to the Home Office.

The Government Equalities Office has a history of unfavourable reviews of the Equality and Human Rights Commission, the executive non-departmental public body still sponsored by the Department for Education, due to what it described on one occasion as a lack of appropriate corporate and organisational culture, processes and systems within the Commission.

With that historical background, I wish to point out that the Women and Equalities Committee has current concerns in this Parliament about the lack of progress in general monitoring and specific investigation by the Equality and Human Rights Commission of the Planning Inspectorate's compliance with the Equality Act.

I extend that concern to the LB Barnet, as my submission to your consultation.

As part of the Public Sector Equality Duty arising under section 149 of the Equality Act 2010, Barnet is required to give due regard to the elements of the duty to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act;

- advance equality of opportunity by removing or minimising disadvantages experienced by people due to their protected characteristics, meeting the needs of particular groups and encouraging under-represented groups to participate in public life; and

- foster good relations between those sharing and those not sharing protected characteristics by tackling prejudice and promoting understanding.

Members of the Women and Equalities Committee have for some time expressed exasperation about the Planning Inspectorate [and local authorities?] on this subject, for instance contained in these recent quotes:

"disabled people have the right to participate in all parts of life under the law [but] this is undermined if the built environment locks them out."

and:

"[we must] enable disabled people to enjoy life, to participate in society, work and travel on an equal basis, as is required by the law. The ability to access public and private buildings, city centres and other parts of the public realm, is central to this."

and:

“the impact on people’s lives when public spaces are not accessible is devastating. Inclusive design must be the golden thread that runs through all new buildings and works in the public realm.”

and:

“disabling features of the built environment do not only pose problems for people with physical impairments, but also for people who have less visible disabilities including mental health and neurological conditions, or who are neuro diverse (such as people with autism).”

An example of Barnet being controlled by the financial interests of Capita rather than ‘the public interest’ is when Capita officers (including the deputy chief executive) unreasonably protect Capita’s ‘additional’ work, when I believe public-sector staff would have behaved differently, and more flexibly.

One example proves the rule. It concerns the proposed railway station at Brent Cross.

Capita is the designer of a possible new Brent Cross station (seemingly with no transparent costing and billing, yet with no known transfer of risk to the private sector).

Capita’s everyday local authority processes cannot credibly be separated from Capita ‘additional projects’, and both Capita staffing streams are managed in practice by the same Capita people.

There is a proposal in the London Mayor’s 2017 Transport Strategy document, repeated in his 2018 draft London Plan, for a ‘West London Orbital Railway’ (WLO) including a station within the CPO2 boundary.

This is a map of the intended routes:

https://4.bp.blogspot.com/-0pUUkVOCj1Q/WoYS_yhIz6I/AAAAAAAAARc/xoIESR5qlcl-z-AwS_jKDmA-GHeflNrLACLcBGAs/s1600/West%2BLondon%2BOrbital%2BRailway%2BRoute.png

This refurbished railway corridor across the London Boroughs of Hounslow, Ealing, Brent and Barnet would also allow:

- new London Overground services

- new inter-regional train services (between West-Sussex/Surrey/Hampshire and Herts/Beds/Northants, serving several London Opportunity Areas and deliberately running tangential to congested central London).

The west London boroughs are incorporating the WLO route in their borough local plans, where renewal cycles permit, and given its very favourable benefit-to-cost ratio, trains may be running along the line by 2023.

Capita management administering the LB of Barnet has told Capita management administering the Brent Cross railway station design service in Barnet (i.e. themselves) not to design a Brent Cross station that integrates the WLO into the station. It forever says a WLO station is not 'precluded' but refuses to engage in detailed, technical justification of its position, only responding indirectly to necessarily-simplified graphical material that we local people have produced to explain the issues involved to the public.

The station planning application will also, of course, be considered by Capita planning officers (can we still call them that?).

I submit that Barnet-Capita is acting in a way that is at odds with the Public Sector Equality Duty, and is not upholding the highest ethical standards in public life.

Capita's only known proposal, vague and merely verbal, for a WLO station at Brent Cross is not to incorporate it in the main station at all.

I accept there would have to be changes that would produce short-term extra costs to Barnet, but the WLO opening would only be two years after the 'private-sector Capita station' might open, and the 'public-sector WLO' would face the burden of considerably more unnecessary costs due to Barnet-Capita's deliberate obfuscation.

In the verbal 'Capita WLO solution', the worse-case scenario would be as follows.

A WLO line passenger on an inter-regional 8-car train would alight at the far western end of a curved WLO platform almost in the next borough, Brent. They would walk the whole length of the 8-car platform and then negotiate stairs up to a walkway which crossed over two tracks. Then they would descend another staircase on to the far southern end of a 12-car Barnet-Capita platform.

They would walk north along that 12-car platform to about the half-way position, where a third staircase would take them up to the station's only ticket barrier.

That trek is not exactly an example of progress regarding the House of Commons Women and Equalities Committee's acerbic comment that:

“disabling features of the built environment do not only pose problems for people with physical impairments, but also for people who have less visible disabilities including mental health and neurological conditions, or who are neuro diverse (such as people with autism).”

Incidentally, it is likely that only limited sections of those long platform lengths would be protected from the weather, and the line speed for non-stopping trains is 100mph.

Because of the current and sustained attitude of Barnet-Capita, the public-sector WLO would have to pay for two extra staircases, an overhead walkway and two extra lifts.

Possibly the WLO would also have to fund a second, branching walkway to the other Barnet-Capita platform and another staircase and lift to the southern end of that, since it would also have interchange passengers.

A better alternative, mindful of the general public including people covered by the Equality Duty, would be WLO platforms closely integrated in the main station. That is opposed by Capita because it would upset the concept of a closely-defined and profitable Capita special project – devised by Capita with its other hat on, the one which suffers much lower profit margins managing day-to-day council functions.

That is the core of the point I am making – the overall public interest is being failed.

POLITICAL CONTROL – v – COMMERCIAL CONTROL: FURTHER STATION MATERIAL

It is worth showing how Barnet’s political leadership is at odds with Capita. *(I hope you will agree, although this does get a bit Private-Eyey).*

It has emerged that Capita has told the political leadership of Barnet to play dead on the WLO proposal while they got Brent Cross compulsory purchase orders (CPOs) through the Planning Inspectorate and the Secretary of State.

The agreed wording that everyone was to use (and I once heard it three times in one day, from politicians and officers of three boroughs) was that a WLO station at North Cricklewood (the area was suddenly renamed without any consultation at all to Brent Cross West) was:

“not precluded”.

The WLO scheme would have broken Barnet-Capita’s CPO effort.

The current Leader of Barnet used to be less keen on public transport and he personally banned officers from carrying out any analysis of alternatives or refinements to the 2001 Brent Cross Railtrack proposal – such as guided buses, trams or light rail.

Alternative transport solutions might not have proved better, but we were never able to find out.

One example of the current Leader's strict instructions against credible (and fair under common law) transport analysis occurred in this article in the 'Willesden and Brent Times' of 17 February 2011:

https://4.bp.blogspot.com/-xMmGektnCdl/Wsu5rx87_wl/AAAAAAAAArd4/otFOcj2Q-hle8s4AAAnCjeeJhbVjA24NVQCLcBGAs/s1600/2011-02-17%2BWillesden%2B%2526%2BBrent%2BTimes%2Barticles.jpg

At the time, Councillor Brian Coleman, London Assembly Member, the overwhelmingly-dominant Executive Member of Barnet council and now a convicted crook, insisted that his official Barnet council transport policy was:

“roads, roads, roads and roads”,

as in:

http://www.times-series.co.uk/news/8171558.Council_will_go_ahead_with_Future_Shape_pledges_leader/

Although there is little chance of Capita 'doing a Carillion' just now, the outsourcing company desperately needs the short-term cash flow from high-value Barnet projects such as a 'settled' Thameslink station design-and-build project. Being forced to pause the project while the WLO was incorporated would be very bad news.

What the Barnet-Capita cannot hide, however, is the political momentum for the WLO among the post-Coleman Barnet ruling party (still ruling after the May election) perhaps no longer backward in coming forward with their own agenda, after the king had been deposed.

BARNET COUNCIL LEADER LEADS ON THE 'WEST LONDON ORBITAL'

Barnet was the key borough in establishing the 'West London Economic Prosperity Board' (WLEPB) on 13 November 2015, as a joint local authority committee within the meaning of the Local Government Act 1972, Section 102.

The clerk of that first meeting sought nominations for the position of Chairman. Councillor David Perry (LB Harrow) proposed **Councillor Richard Cornelius (LB**

Barnet). The proposal was seconded by Councillor Julian Bell (LB Ealing). Councillor Richard Cornelius was duly elected as Chairman.

Councillor Cornelius led the Board in agreeing that:

"West London is growing but the projected rate of increase in GVA is less than other parts of London and West London is not fulfilling its potential to leverage investment opportunities. ... Creating the Capacity for Growth means ... securing investment in transport schemes that are likely to enable the greatest overall economic growth in West London."

By 17 February 2016, Councillor Cornelius's chairmanship had led to an agreement to endorse a report from a commissioned economic assessment that highlighted a issues to be addressed, including:

"To build off the current progress of the West London Boroughs, working with Transport for London and other partners, on defining infrastructure priorities in order to ensure sufficient infrastructure for growth in general and within the Opportunity Areas (OA's) specifically, exploring new forms of investment."

Councillor Cornelius's next meeting was on 8 June 2016, when the Board was treated to a lengthy presentation by the 'Old Oak and Park Royal Development Corporation' (OPDC), a Mayoral development corporation set up under the Localism Act 2011, Chapter 2, and enclosing land from LBs of Brent, Ealing and Hammersmith & Fulham.

The OPDC was promoting a 'Crossrail-to-the-West-Coast-Main-Line' project (now abandoned) that would have connected to the freight-only Dudding Hill Railway Line. It crosses the middle of Brent and connects to the Midland Main Line at a triangular junction pointing towards Cricklewood and towards Cricklewood North (now unilaterally renamed by Barnet-Capita as 'Brent Cross West').

The Crossrail branch, plus new London Overground services, plus I suggest, other inter-regional trains, would share sections of the Dudding Hill Line and would help the required dispersal of High-Speed-2 passengers at Old Oak Common, to avoid overloading Euston station.

Councillor Cornelius called his next meeting on 21 September 2016, where the Board accepted a report that stated:

"On 8 June 2016 the West London Economic Prosperity Board agreed the Vision for Growth Action Plan, which included a focus on identifying a small number of shared priorities relating to transport infrastructure. Accordingly, officer groups have been working to develop a 'long list' of potential transport infrastructure priorities that will allow leaders and senior officers across West London to have a discussion about which ones might be identified as shared priorities, subject to further detailed transport modelling and cost benefit analysis, and incorporated into Local Plans to

form the basis of Lobbying Activity with the GLA, TfL and government. ... A shorter set of proposed priorities has been extracted from this long list following individual discussions with Growth Directors."

Alongside Heathrow expansion and improving the A40 Hanger Lane Gyratory was a third subject, under:

"Orbital passenger rail connecting regeneration schemes"

and amounted to a single project:

"Connecting [London Opportunity Areas at] OPDC, Wembley, Brent Cross, and Brentford via Wembley along the current 'Dudding Hill' freight line, which would be activated as a passenger line."

[It is not actually 'via Wembley', but via the Brent home of Private Eye's 'Neasden United Football Club', playing in the 'North Circular Road Relegation League'.]

By the meeting of 21 September 2016, Barnet's political leadership had produced a set of targets:

"1) September 2016: WLEPB member boroughs to incorporate prioritised transport schemes into the refresh process for their Local Plans

2) October 2016: West London Transport Officers Group (West Trans) will develop a detailed programme plan for delivery of the schemes identified by the WLEPB, including timescales, communications and lobbying, planning, and financing arrangements. To be completed by March 2017

3) October 2016: Growth Directors to commission more detailed economic appraisals of the recommended schemes (particularly the orbital rail and Hanger Lane proposals) to better understand the economic benefits and viability of each, and to validate their inclusion in local and London-wide planning frameworks

4) April 2017: Prioritised schemes embedded into engagement and lobbying activity by members of the WLEPB in order to secure agreement by the GLA, TfL and government."

The writing was clearly on the wall for Barnet-Capita's plan to ignore the West London Orbital Railway in its Brent Cross plan. Barnet-Capita was now at odds with Political-Barnet.

Capita's plan ought to shatter because, (as it turns out) either its CPO breaks the Public Sector Equality Duty, or it bursts the settled nature of the CPO boundary.

Capita ought to lose either way.

The 21 September 2016 meeting also heard a presentation from the Deputy Mayor for Planning and Regeneration about the 'London Plan'. An aspiration in that slide show was to:

“Ensure London’s transport system is accessible to all users”,
which surely supports the active integration of the WLO into the Capita Brent Cross station under the Public Sector Equality Duty, rather than it being “not precluded”.

In addition, it was resolved that further analysis would be undertaken by Growth Directors prior to common positions by the Board on the:

“Feasibility of establishing an orbital passenger rail[way] connecting regeneration schemes, ... with findings to be reported back to a future meeting of the Board.”

Councillor Cornelius’s leadership on the WLO, undercutting Capita’s station design, continued at the Board meeting of 6 December 2016, where his ‘forward work plan’ said that, by March 2017, the Board would discuss [and hopefully endorse]:

“sub-regional transport infrastructure priorities following a presentation by external consultants in the context of influencing the London Plan” [and in practice, the ‘Mayor’s Transport Strategy’ (MTS)].

So then, what was going to happen to the West London Orbital?

On 21 March 2017, LB Barnet Councillor Richard Cornelius chaired his final Board meeting, before leadership on the WLO passed to the next Chair, the Leader of LB Brent (a borough which is 110% in favour of the WLO – “as long as we get some stations”).

The Board was asked to:

“consider the findings from analysis commissioned by Growth Directors into the economic constraints associated with inadequate transport infrastructure in West London”

and to:

“consider one particular orbital rail scheme as potential shared priorities based on the analysis and agree next steps. [This was of course a reference to the WLO!]

It did consider them and the Board authorised the following:

“1) Agree that the Dudding Hill rail line is identified as a shared priority for boroughs represented on the West London Economic Prosperity Board based on the information collated to date by officers and TfL, and the advice of West London Growth Directors. This would be open to review at a future date as further data becomes available

2) Agree for officers to commission the next stage feasibility study, to be completed by June 2017, in order to inform the content of the forthcoming Mayor’s Transport Strategy and London Plan, as well as borough local plans

3) Agree to engage with the Deputy Mayor for Transport and the Deputy Mayor for Planning and Regeneration, in order to incorporate Dudding Hill into the MTS and London Plan

4) Instruct officers to develop a longer-term road map and project plan that will set out how the Line will be taken to completion by the mid-2020s." [Now '2023', note!]

It was reported that:

"Transport for London have been supportive of this work to date and offered in-kind support in the form of advice, guidance, and technical input as reasonably required by the West London Alliance of boroughs."

The credibility of Capita's Brent Cross station and its CPO3 was crumbling, but Capita still had wiggle room for its 'not-precluded' position:

"... It is important to note that, alongside the overall story for West London associated with the Dudding Hill Line, individual boroughs and OPDC also have local requirements and objectives which can all be addressed through the next stage of analysis. These are set out below (in alphabetical order):

*- BARNET: would like to take a view about whether the line should have a station at either the new Brent Cross Thameslink Station (and on to Hendon and national rail services) or at Cricklewood (and then into the London Overground via West Hampstead)
..."*

The 22 June 2017 meeting saw no expected WLO report, because the consultants were still hard at work. Drafts were leaking out though.

The meeting minuted:

"Members asked for an update on the Dudding Hill orbital rail line which had previously been identified as a priority by the WLEPB. Luke Ward (Head of Growth, Employment and Skills, West London Alliance) explained that this remained of great importance and was specifically referenced in the recent draft of the Mayor's Transport Strategy 2017. He outlined that WSP had been commissioned to complete a feasibility framework on a West London orbital rail line and that the West London Alliance would additionally be working with senior figures within Transport for London (TfL) to assess the viability of this. He mentioned that the work with TfL was [now] hoped to be finished in early August [before the date of the Brent Cross Cricklewood CPO3 public local inquiry!] and also pointed out that the consultation on the Mayor's Transport Strategy ran until October 2017. Luke Ward also suggested that the Dudding Hill orbital rail line be referred to as the 'West London Orbital' rail line moving forward." [That does not influence the suitability of the rail corridor for longer-distance, inter-regional trains as well - which Capita itself mentioned above as 'national rail services'.]

The Board meeting of 20 September 2017 considered the WLO report, published as a committee paper beforehand. It recommends eight trains an hour each way, made up of four trains an hour through Cricklewood, plus four trains an hour through Brent

Cross (unfortunately it didn't mention 'inter-regional trains', so more lobbying will be needed):

<http://democracy.brent.gov.uk/documents/b13754/West%20London%20Orbital%20Rail%20-%20Final%20Reports%20Wednesday%2020-Sep-2017%2010.00%20West%20London%20Economic%20Prosperity.pdf?T=9>

If that doesn't work, try:

<http://democracy.brent.gov.uk/documents/s58355/7b.%20Draft%20feasibility%20study.pdf>

or

<http://democracy.brent.gov.uk/documents/s60140/07d.%20Final%20West%20London%20Orbital%20Technical%20Report%202017%20item%207.pdf>

The WLO has continued to gather pace.

I recently asked the London Mayor some written questions about the West London Orbital, via the Assembly Member for Barnet and Camden, Andrew Dismore, who kindly submitted them for me.

Having asked London Assembly questions for years, I had deliberately worded them with 'no wriggle room', but unfortunately political assistants to London Assembly members can never resist tweaking questions, and they have lost their exactness. Nevertheless, I submit them now:

West London Orbital Railway [1]

Andrew Dismore (22-Mar-2018)

Do you welcome the proposals of the West London Alliance of boroughs to open a 'West London Orbital' railway, as part of London Overground?

The Mayor (22-Mar-2018)

I welcome the proposals to open a 'West London Orbital' railway. This new line could support the delivery of many new homes and jobs in west London, as well as improving connectivity across a wide area stretching from Barnet to Hounslow where there are currently limited public transport options for orbital travel.

Given the support received for the West London Orbital rail line through the draft consultation on my Transport Strategy, I have strengthened my commitment to delivering the scheme in Proposal 88 of the final strategy, which now states:

"The Mayor, through Transport for London (TfL), the West London Alliance boroughs and Network Rail, will work towards the delivery of a new London Overground 'West London Orbital' line connecting Hounslow with Cricklewood and Hendon via Old Oak, Neasden and Brent Cross."

TfL is now beginning the necessary feasibility work to take this proposal forward. I look forward to continuing the collaborative approach with the West London Alliance which has been invaluable in developing the proposal to this point.

Plus:

West London Orbital Railway [2]

Andrew Dismore (22-Mar-2018)

Will you promote longer-distance trains along the 'West London Orbital' railway tracks, such as services between Surrey and Bedfordshire, via several of the London Opportunity Areas?

The Mayor (22-Mar-2018)

I welcome support for the proposal to deliver a new West London Orbital railway line.

On the basis of the support received through the consultation on my draft Transport Strategy, the Strategy has been amended to set out the potential route and its benefits in more detail.

As the scheme is currently at feasibility stage, no decisions have yet been made regarding service operation. It should be noted that there are a number of capacity constraints on the route that would need to be addressed, notably the interfaces with the Midland Main Line north of Cricklewood, the North London line and the Hounslow loop. These may restrict the number and destination of services that can be offered on the route. There are also several freight services using the line. Taking these constraints into account, the core ambition will be to serve the already identified corridor, as this is where the key opportunity for delivering new homes and jobs lies. As is common with large infrastructure projects, further details relating to the design and operation of the scheme will be outlined through future public consultation.

Plus:

West London Orbital Railway [3]

Andrew Dismore (22-Mar-2018)

Will you intervene in Capita's plans for a new Brent Cross station if sufficiently long West London Orbital platforms are not included? **[Should have said 'separate and sufficiently long'.]**

The Mayor (22-Mar-2018)

I welcome the proposals to open a new 'West London Orbital' railway line. This new line could support the delivery of many new homes and jobs in west London, as well as improving connectivity across a wide area stretching from Barnet to Hounslow where there are currently limited public transport options for orbital travel.

At the northern end of the proposed route, there is the potential to include a stop at the planned new Brent Cross Thameslink station to further support new development in the area.

The new Thameslink station will be opened in 2022 and will be delivered as part of the Brent Cross West project. As the West London Orbital scheme is only in the early stages of development, any decision to serve Brent Cross will be dependent on future feasibility work. Subject to the outcome of this work, proposals for Brent Cross will look at whether it will be feasible to support the additional new development. The new Thameslink station will have 12 car long platforms, which would be of sufficient length to support any future West London Orbital service.

[My comment: They misunderstood that last question, although Capita's 2022 opening is now only one year before a fully-funded WLO may open, according to west London's politicians.]

Clearly the WLO construction will probably overlap the Capita construction.

(The mistaken reference to using the main 12-car platforms had been ridiculously put forward by Capita's transport witness (from AECOM) at an earlier, 2015 CPO public local inquiry.)

CONCLUSION

Overall, I would welcome consideration of the material above by the Committee regarding standards of governance of privatised local authorities. Where Barnet leads, other will follow.

To be clear as well: the politicians in Barnet have never been able to understand any significant level of detail regarding the privatisation of the borough, and at various times have openly admitted as much.

(end)

Review of Local Government Ethical Standards: Consultation

Submission by Cllr Rob Kendrick, Member of Lincolnshire County Council & North Kesteven District Council. This submission is made in a personal capacity.

1. I work with and observe a number of parish councils in my county division/district ward. They range from small councils with only a few hundred pounds of precept income to one with over £100,000 income.
2. In my view parish councillors give their time for the benefit of the community.
3. Invariably parish councils are short of members. In some cases such as the largest council (Metheringham) they have not had a full complement for some years. Some people have said they have been put off becoming councillors by recent rules and regulations. The lack of councillors leads to less scrutiny of council activity and this is compounded by little interest by the public. Most parish council meetings I attend there are either no members of the public or very few. The exception being when there is a contentious local issue such as a planning application.
4. Whilst councils circulate reports and public information on their websites there seems to be limited community engagement in the work of councils.
5. Issues which councillors outside parish councils observe include: parish councils taking on more functions. However the level of independent scrutiny seems not to have caught up with the volume of work they are now doing. Quite large councils seem to have minimum external audit including monitoring of procedures and not just finances.
6. Monitoring officers at higher tiers remark that the biggest number of cases they have to deal with regarding councillors relates to parish level. This is clearly disproportionate to both the responsibilities of parish councils.
7. One of the biggest issues is where a parish councillor takes on the role of Responsible Financial Officer (RFO). Whilst this is currently not encouraged, as it is not best practice it still takes place. Therefore there is the analogous situation where a councillor is both a councillor making financial decisions as part of the council and is the person preparing financial statements and accounts. In one case the Parish Clerk had as part of their job description the task of supervising the work of the RFO who was a councillor. This situation needs to be rectified in law so that a councillor cannot have this dual role.

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; 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?	<p>Generally, the Code is clear and easily understood. However, the parts which deal with disclosable pecuniary interests are complicated and less well understood</p> <p>We have also sought to make the code clearly understood by use of plain English and constantly providing real examples of how the code works in practise. We have kept the code under periodic review to ensure it is up to date and covers all essential requirements /obligations.</p> <p>We have also introduced a more structured training /refresher programme for members which is aimed at addressing any trends that</p>

		<p>may be starting to develop and ensure members are kept up to date with any national development.</p> <p>There are other interests which are not supported with statutory requirement, such as interests of close associates and family interests such as memberships of clubs and societies, controlling functions of non-paid directorships or nominations to bodies such as fire authorities which are not paid.</p> <p>The confidence in the system could be improved and consistency obtained across all councils if statutory enforcement covered the wider interests apart from the member and spouse only interests.</p>
d.	<p>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.</p>	Yes.
Investigations and decisions on allegations		
e.	<p>Are allegations of councillor misconduct investigated and decided fairly and with due process?</p>	

	i	<p>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>Birmingham City Council (BCC) has a complaints process which is used to supplement the code.</p> <p>This process allows for an initial investigation/review of the complaint to take place and for a draft report to be produced. This enables those which are without merit, or where an informal resolution is possible, to be dealt with without a formal investigation.</p> <p>Formal investigations are reserved for the most serious cases and are usually carried out by an independent investigator.</p> <p>Occasionally the Monitoring Officer (or Deputy) has carried out the investigation but she/he then takes no part in the hearing process except as the investigating officer. Otherwise complaints are investigated externally.</p> <p>The process allows for both parties to participate in the process at various stages by providing comments and further information.</p> <p>Any process such as this has to bear in mind the need for natural justice and for there to be confidence in the system.</p> <p>The role of the independent Person is fairly limited because BCC has, along with others, retained the Standards Committee structure whilst others have moved to an</p>
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			Ethics Style Committee comprised solely of Councillors.
	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 retention by BCC of the Standards Committee structure which is a mix of lay members and councillors with a lay Chair introduces a high level of objectivity and fairness into the process. The knowledge and experience of the Councillors is invaluable. Equally, the involvement of lay members in the whole process strengthens the perception that it is acting independently of party political allegiances.</p> <p>BCC has not, to date, any experience of having to call on the services of the Independent Person. In our structure a useful role might arise where there is a need for conciliation in order to avoid a hearing. However, recently we have found the Councillors have sought their own advice from outside the system from solicitors /party organisations.</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?	The BCC code of conduct allows for the MO to delegate investigations to a senior lawyer and deputy MO. Where necessary we will instruct external individuals/bodies to conduct investigations. Such delegation allows investigations to be conducted at arm's length from the MO which is helpful in that that it gives her/him the chance to have more general oversight role over

			investigations and where necessary remove the perception of there been a conflict of interest.
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?	<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>It is believed that the lack of effective sanctions in cases of serious breaches 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 the ability to use	Councils should be able to impose a short period of suspension (up to

	additional sanctions? If so, what should these be?	<p>3 months) for councillors who have committed particularly serious breaches of the Code or who have failed to comply with previously imposed sanctions.</p> <p>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.</p> <p>It is submitted that these sanctions are not draconian and less than existed under the previous Statutory scheme. However, they are serious enough for councillors to be aware that misconduct on their part could have a serious impact on their work. Further it would allow the Council to impose sanctions which should offer a better chance of breaches not being repeated and for the public to perceive "real" action being taken.</p> <p>Accordingly, it is the view of BCC that to have credibility there needs to be the restoration of some of the powers which were removed under the Localism Act 2011 . The possibility of even a short suspension from the council would concentrate the mind of the recalcitrant Councillor.</p>
<i>Declaring interests and conflicts of interest</i>		

g.	Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.	
	<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>The current regime under the statutory arrangements under the Statutory Instrument Relevant Authorities [Disclosable Pecuniary Interests] Regulations 2012 outlines a limited number of occupation for gain, business and property interests. This is for a member and their spouse.</p> <p>However, it is the case that members have interests linked to close associates, fiends and wider family that can cause confusion as to what is discloseable.</p> <p>They also are required to register non paid interests where they are on bodies like fire authorities or parish councillors where they are not paid allowances. It is also the case that if they have memberships they should declare those. It would be more straight forward if all of these interests where all included in a the statutory instrument framework and defined all in one place.</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>At BCC the declaration of interest forms include both the statutory and non-statutory interests. There are in addition forms to register gifts.</p> <p>These forms are in the process of review as there is a need to include more reference to the interests of spouses. This is currently under review to make it more understandable and effective.</p>

Whistleblowing		
h.	What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?	The Council has a Whistleblowing Policy. There is also a dedicated resource to deal with any whistleblowing allegations
Improving standards		
i.	What steps could <i>local authorities</i> take to improve local government ethical standards?	<p>There seems to be quite a wide range of standards across local authorities, some authorities have quite detailed codes others do not. It would be a lot better if there was more standardisation of codes across the board as it would help with public confidence in the system. The variations in codes can cause misunderstanding of the public as to why such variations exist.</p> <p>Having said that we think it equally important that each authority be allowed a degree of flexibility as to how they draft their code to reflect its local circumstances. What might be suitable for a small rural district council may not be suitable for an authority the size of Birmingham (and vice a versa)</p>
j.	What steps could <i>central government</i> take to improve local government ethical standards?	Central government could support the process identified in point i.
Intimidation of local councillors		
k.	What is the nature, scale, and extent of intimidation towards local councillors?	Councillors have occasionally experienced threatening behaviour and intimidation from members of

		<p>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) although this is changing.</p> <p>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.</p> <p>In particular female councillors or those in single parent families have expressed real concern about disclosing their home address.</p>
	<p>i</p> <p>What measures could be put in place to prevent and address this intimidation?</p>	<p>From 2019 candidates will no longer need to publish their home address when standing for election; Consequently thought needs to be given about removing the requirement for the address of the councillor's only or main residence to be published on the register of DPIs to ensure consistency.</p>

Dear Sir

RE: Review of Local Government Ethical Standards: Stakeholder Consultation

Thank you for providing this authority with the opportunity to respond to this consultation.

The Council's Standards Committee met on 8 May 2018, we welcome this review and would like to submit the following comments in response to your questions.

We appreciate that the arrangements for considering the "standards" regime vary from Council to Council. At Luton Council the Standards Committee contains both elected and co-opted (independent) members recruited from the general public. The co-opted members are an important asset to us as representatives of the public in maintaining standards of behaviour.

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's views are that in general terms the process works well and is transparent to the public. The addition of the Independent Person is helpful. However, the limitation of sanctions that can be applied in the event of a breach of the Code of Conduct is the biggest concern.

To further bolster and reassure the public of the transparency of the process, we'd like the scope to have an independent or co-opted Standards Committee chair and for independent/co-opted members to have the same voting rights as elected members when decisions are required.

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

Our concern is the perception to the public that elected members judge their colleague elected members behaviour in the event of an allegation being heard. At this authority we use the co-opted/independent members of Standards Committee as influencers to the decision makers (elected members) to ensure the process is as transparent as possible, but appreciate that this arrangement isn't adopted by all.

We also believe that an allegation that is investigated should have an appeal mechanism as a requirement which we understand isn't in place at all authorities.

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?

We believe the Code is clear and easily understood. Luton Council considers the elected member obligation to protect the Council's reputation ie: not bringing the Council into disrepute, as very important, although we're aware that not all local authorities' codes include this responsibility. Standards Committee reviews the Code of Conduct periodically to ensure it's appropriate and up to date.

Attending a training course which covers the Code of Conduct is mandatory for all Councillors. This requirement is reinforced every four years and is held very early into a new Councillor's commencement of office. Councillors who haven't attended the training are "named and shamed" to their appropriate political group leader and ultimately, the Councillor's non-attendance, will lead to a report for consideration at Standards Committee. However, the lack of an appropriate sanction is again a concern.

The training course content is updated regularly to reflect learning from cases elsewhere. An example is the proliferation of allegations arising from content on social media.

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 believe they are appropriate.

Investigations and decisions on allegations

e. 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? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

The Council's flow-chart detailing the process is attached. Standards Committee, based upon feedback from various Independent Persons we've worked with, would like to see consistency over who determines a valid accusation, is it the Monitoring Officer, the Monitoring Officer in conjunction with someone else, some or all of Standards Committee or the Independent

Person? We believe that some independence is required in the decision making of a valid accusation.

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?

Yes, this should be maintained and made mandatory in the 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?

Potentially the Monitoring Officer could be subject to a conflict of interest or undue pressure, although that isn't the experience of this Council. Adding the mandatory requirement to work with either the Independent Person or Independent/Co-opted Member will provide some additional protection.

The use of external investigators can mitigate this concern. However this needs to be balanced with the cost of an external investigator.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

No, as outlined previously we consider this to be the biggest weakness in the process and aren't real deterrents.

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?

Sanctions utilised have included censure, private and public apologies and the requirement to attend training.

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

Standards Committee would like the option to suspend a Councillor. In addition, we would like consideration of financial penalties, for example the requirement to make a charitable donation.

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.

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 existing arrangements are satisfactory, in our experience elected members are cautious and do not want to create any perception of bias.

Whistleblowing

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

Yes they are considered to be satisfactory; a copy of the current Whistleblowing Procedure is attached (updated January 2016).

Improving standards

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

Transparency, openness and accessibility to the democratic process.

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

Implement the proposals contained in this response, principally strengthening the role of independent/co-opted members to enhance transparency; ability to apply more meaningful sanctions and ensuring a consistent approach to the investigation of complaints.

Lead by example in modelling appropriate behaviours.

Intimidation of local councillors

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

Most Councillors have experienced some low level intimidation from members of the public, particularly when dealing with controversial decisions or high

profile subject matter. This has included voluminous and vexatious complaints; telephone and house calls late into the evening, comments on social media; anonymous telephone calls and threatening comments.

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

Councillors accept that they have opted a position in public office, however their family members haven't. They would like the requirement to publish a Councillor's home address to be optional. In addition for an enhanced package of support to be provided by the local authority to deal with all forms of intimidation particularly cyber or social media bullying

Yours faithfully

Sameera Saleem
Angela Claridge

**Committee on Standards in Public Life
Review of Local Government Ethical Standards:
Stakeholder Consultation**

**Submission from the Standards Committee
of the London Borough of Bromley**

1.1 The Standards Committee of the London Borough of Bromley considered the consultation on local government ethical standards at its meeting on 22nd February 2018. The Committee is comprised of five elected members of the Council, from all political groups, plus two co-opted members. This submission is based on the Committee's comments.

1.2 The Committee wished to make one particular comment in relation to the consultation. This is a general comment applicable across local government in England and is related most closely to consultation questions (b) about significant gaps in the ethical standards regime and (f) on sanctions for councillor misconduct.

1.3 The Committee's concern is about the lack of sanctions available to Standards Committees, and the reliance on party groups to discipline their own members. There are criminal penalties in place for serious failures to register or declare pecuniary interests, and Councillors can be disqualified if they are convicted of a criminal offence and receive a sentence of eighteen months or longer. However, there is a potential loophole in that a councillor could be convicted of a relatively serious criminal offence, but still remain in office as a councillor if the sentence was below eighteen months. The Committee considered that the eighteen month limit should potentially be lowered.

1.4 In practice, the complaints made against Councillors in Bromley in recent years have been of a relatively minor nature, and there has been no need to impose any significant sanctions. However, there is a concern that, below the level of serious criminal conduct, there seems to be very little in the way of effective sanctions that a Standards Committee could apply beyond naming and shaming and certain limited administrative actions. Even sanctions such as requiring an apology or attendance at appropriate training cannot be made mandatory, and removal or suspension from committees can only be carried out with the cooperation of the relevant party group. This also means that there is a lack of any deterrent effect.

1.5 In conclusion, the Standards Committee would like to see consideration of how a broader range of sanctions can be made available that spans the current divide between the penalties for committing serious criminal offences and the limited actions that are needed for very minor matters. These could include giving Standards Committees powers to suspend councillors for

temporary periods, remove them from committees or other offices, or require mandatory training.

Graham Walton
Democratic Services Manager,
London Borough of Bromley

SUBMISSION 287

Consultation response from Ms Gwen Swinburn

City of York resident

Relevant former positions- former World Bank Senior Urban Specialist, former local government staffer in planning, democratic services and economic development. No political affiliations but concerned with honest good transparent local government only.

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.

1. From my experience the existing system is overly and arbitrarily controlled by the Monitoring Officer sometimes in collision with others including the Standards Chair and or Council Leadership. All know that it is so, Councillors and commentators acknowledge this in the open.

2. Additionally Councillors are bullied, coerced and intimidated into silence by top officers who threaten them with standards process if they criticise. Those same top officers who have no parallel disciplinary structures such as the standards Board process for Councillors. So whereas Councillors often want to do the right thing they are intimidated into silence or denied the tools to do their job by those same officers who have no disciplinary process. The system is asymmetric unfair and seen to be so.

3. Such processes as there are (these are few), are vague and not followed by the Monitoring Officer equally. Whilst some Councillors are fast tracked through the system, others are really put through the ringer. As an example the current leader of the Council had a complaint against him that was slipped onto a without notice hearings sub committee immediately before the Council meeting at which he was appointed. Whilst both the Monitoring Officer and Chair of Standards were quizzed about this no satisfactory answer was ever provided. At the other end of the spectrum two Exec members were reported to standards by top staff and immediately sacked without process from the Executive. Summary justice York style. Many months later they still remain without resolution to this officer managed process.

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

There is little point. There are no sanctions, private 'local resolution' means sweeping under the carpet. A Councillor, hadn't declared her Directorship in a City of York business, following a citizen report, she received an email saying she needs to register, End of, so it is no wonder many Councillors simply don't bother. And why? Nothing happens.

The system places extraordinary powers in the hands of the supposedly independent Monitoring Officer, who's position in the council hierarchy makes them partial rather than independent. Too much depends on the quality of the individual and too much opportunity for corruption and collusion as there is no appeal or outside supervision inspection of Monitoring Officers. They have become a law unto themselves, with their word being final.

Codes of Conduct

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

No.

Do the codes cover an appropriate range of behaviours?

No. It includes far too many subjective areas such as treating with respect.

These should be replaced with more quantifiable charges such as abusive behaviour

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

Sadly, I can not offer any good examples.

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 provisions

sion (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand?

Yes. With the possible exception of respect which is greatly misused and needs to be better defined from principle to code.

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. The all-powerful Monitoring Officer acts as a filter and primary investigation. He sometimes uses one of two independent persons on an apparent random basis. One of these persons rarely attends standards committees which lays her and the Monitoring Officer open to charges of collusion. It should not be the case that independent persons should normally not attend standards boards meetings and be unknown to the committee and not contribute other than to deal with complaints.

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

None, the Monitoring Officer uses his 'discretion' a law unto himself as it were. He also, when it affects certain councillors but not others, seems to try and pass responsibility to a neighbouring Monitoring Officer, which appears to serve his interests not the Councillors, and is arbitrary and not codified. In accordance with one of the Monitoring officer's favourite words oh .. it's 'custom and practice' which allows for anything to go.

ii. Do these processes meet requirements for due process?

No. The principles of natural justice are hardly ever met where councillors and officers from the same authority are unable to distance themselves from group loyalties or personal relationships with those charged.

There is no independent appeal process within CYC

There is no mechanism for enforcement of sanction.

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

Yes. Natural Justice requires a right of appeal.

It also requires that you can not prosecute your own case. Standards should not be controlled by an employee of the Council, nor should hearing committees include members who know and have a relationship with the accused. The Chair of the standards Board should be rotated out every couple of years, ours has been in since 2012 and natural justice is not being served.

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?

The entire committee should be independent persons, not just a drafted in non-voting token. Also independent members are vetted and approved by the Council, this is too risky. The Standards Board should never be chaired by a Councillor, particularly not an Exec member, the position needs to be rotated at a minimum every two years max four.

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

Monitoring officers and committee members can be local to the council area but should be entirely independent of the council, in the same way as the planning inspectors are appointed independently and monitored by the planning inspectorate.

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?

I do not know one who isn't! It is essential that Monitoring Officers are NOT employed by the council, or as in many cases, have another role within the council.
Undue pressure is an issue but you need to address capitulation, collusion and corruption.

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

It is only possible if Monitoring Officers are part of an external inspectorate / regulator paid for by the council.

I do not want to see the Standards Board for England returned: individual Monitoring Officers could be under the auspices of the Local Government Ombudsman and work on a seconded basis directly within the council.

This would also be beneficial and cost-saving in streamlining ombudsman complaints and taking on initial case assessment.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

Yes. But only if applied. Councillors need training and guidance is needed as is given to magistrates. In particular it is necessary for committees to have a duty to refer potential criminal cases to the police.

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

Anything from nothing (mostly) to writing a letter of apology, nothing else. Although in nearby Scarborough Borough Council a whistle-blowing Member has been excluded from entering Council property or communicating with Council staff.

This sanction was imposed by the Chief Executive without any hearing.

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 more serious breaches.

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

No. Not unless the committee is completely independent and there is a proper appeal system.

I was staggered to see the Monitoring Officer in his first draft was more concerned about himself than the survey, members refused to sign it off, rightly so.

iv. If so, what should these be?

Declaring interests and conflicts of interest

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

In theory, yes. In practice, a councillor can delay declaration or choose not to declare a significant interest. The Councillors are given no training and no sanctions by standards despite being reported.

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. But apparently these are now unlawful acts supposedly not covered by standards committees. There needs to be a duty to refer allegations of criminal activity to the police. This needs clarifying.

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

Forms which are rarely updated. None

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

Whistleblowing

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

Whatever is in place is not trusted.

Are these satisfactory?

Absolutely not. Whistle blowers are subject to being discredited, bullied and intimidated using the entire power of the council.

Improving standards

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

An increasing number of decisions are delegated to officers and so fall outside any call-in, requirements for public access or any public standards procedures. A standards system must also include officers.

Public meetings should be recorded and broadcast.

Senior officers should also make public their register of interests and declare in meetings alongside Councillors. Officers and members who are directors of Council businesses must declare each time that business is discussed, officers may only speak on those items as witnesses.

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

Local government needs to have an independent regulator with proper powers to act.

Most complaints are dealt with internally and scrutiny recommendations given no standing, so they are not subject to any real effective checks and balances.

Combining Standards with a more powerful, compelling and sanction-imposing Ombudsman service would provide independent oversight and a reversion to the electorate which currently does not exist or is ineffective.

The cost would be offset by efficiencies in combining services across multiple Authorities, investigating initial complaints and from the cessation of individual funding of current standards committee and Monitoring Officers.

Intimidation of local councillors

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

I have seen frustrated residents, but the longstanding and very serious official intimidation and bullying of councillors is from the Council staff. There is absolutely no mechanism for redress at the moment. All councils should be required to have an Investigations and Disciplinary Committee for officers in parallel with standards.

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

We need an inspectorate of local government with proper powers to act.

SUBMISSION 289

Dear Sirs

My members agree that the existing structures, process and practices ensure high standards of conduct by local councillors and have no other comments to make on this document.

Regards

Christine

Mrs Christine Gurr

Parish Clerk

St James, Isle of Grain, Parish Council

[REDACTED]

[REDACTED]

SUBMISSION 290

Dear Sir / Madam

- 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 am a town councillor in Devon. At the January full town council meeting this year I experienced bullying and taunting by a town councillor, who is also a senior district councillor, and currently deputy leader of the district council.

This was witnessed by all the other councillors, the town clerk, and members of the public.

I completed a formal complaint form and sent it to the monitoring officer at the District Council. This is because our town council standards and code of conduct is managed and monitored by the District Council.

I believe that the response that I received was not impartial, and the reply included the paragraphs below. I was told that I had no right to appeal.

Lord Bew, Chairman of the Committee on Standards in public life recently observed in a presentation to a Select Panel on Intimidation in Public Life, "Politics is always a rough trade and we are not, in any sense, assuming it should be anything other than a rough trade, but..."

There is a cut and thrust to political debate and given the circumstances and context of this complaint it is considered that the complaint does not disclose any breach of the code.

I believe that as a volunteer town councillor – we receive no payment nor expenses – one should not have to experience bullying behaviour, and because the code of conduct and standards is managed and monitored by the district council – whose councillors do receive payment, and for whom the councillor that used the bullying behaviour is a senior long-standing councillor – that my complaint was not seen in the light that it should have been judged.

I will be interested to hear the results of your Consultation

Kind regards

Yours sincerely

Alison Foden

SUBMISSION 291

Sent on behalf of Chideock Parish Council.

I have been a Parish Councillor for 7 years in Bedfordshire and a parish Councillor in Dorset for 25 years. I was also elected as a representative on the Local Standards Board.



1. a) With no sanctions there is little support for Chairman to take action against anyone breaking the code.
- b) as above.
- c) discussion group by Cllrs on the Code would help rather than just reading a leaflet or book.
- d.) Yes.

Investigations.

- e) i. A how to make a complaint leaflet is available on request.
- ii. Seeking advice from Local Assoc. of Town and Parish Councils first
- iii. A panel of 3 to assist Monitoring Officer.

Sanctions.

- f) No.
- i. Too much rests on Monitoring Officer.
- ii. Yes. perhaps more public explanation of how the breaking of the Code affects the whole attitude of the public and leads to mistrust of Local Government.

Declarations of interest.

- g. i. Yes.
- ii. a form is supplied at the time of Declaration of Acceptance and is regularly updated.
- h. A form is available on request on how to make a complaint.

i. all councillors to understand about public perception.

j. look at themselves.

k. better public information about the role of parish Councils.

Ethical standards in local government

Response to call for evidence from the Committee on Standards in Public Life

Contact: Ed Hammond, Director of Research

Introduction

We welcome the opportunity to contribute to this important consultation. In our view the standards regime in local government needs urgent attention. The removal of Standards for England (previously the Standards Board for England) created an opportunity to develop local solutions to meet the needs of councils, councillors and the public on issues on conduct and ethics. That opportunity was not taken up. Councils are constrained by an inability to put in place robust regimes that follow through from complaint, to investigation, through to censure and sanction in a way that is open, transparent and meets the needs of natural justice and equality and human rights legislation.

In our view, Government needs to put in place a permissive legal framework for conduct and standards that can give councils the confidence that they can put in place strong, independent systems at local level that can police and enforce those standards – as well as promoting a culture that rewards and encourages positive behaviours.

Our evidence is drawn from:

- The provision of support to a large number of councils and councillors since 2003 (when CfPS was established), and in particular support to councils experiencing significant challenges around member culture and behaviour;
- Responses, over the course of many years, to the CfPS Annual Survey of overview and scrutiny in local government, which has in some editions touched on issues around conduct;
- Research carried out around the abolition of Standards for England by CfPS and other organisations;
- Conversations with national policy-makers and others around shared experiences of conduct and standards issues (in particular, CfPS contributed to the recent CSPL round table on this subject).

Comment on existing systems

Justification for the abolition of Standards for England

Opinion within and outside the sector around the abolition of Standards for England was mixed. Some agreed with Government that the national standards regime was unfit for purpose, and too onerous. Government expressed the view very strongly that the Board's systems and processes had

been abused by councillors engaging in “tit for tat” complaints, and that in any case it was unreasonable for the “unelected” Board to pronounce on councillors’ guilt or innocence, particularly bearing in mind the sanctions that could be handed down. Worry was particularly expressed that Board action could be used to stifle whistleblowers.

It is worth pointing out that, shortly before its abolition in 2010, the Board produced an evaluation of its work and performance which largely dealt with these criticisms.

Some expressed worry that the abolition of the regime, even if accompanied by new criminal offences relating to standards and behaviour alongside a beefed up local regime, would lead to local issues going unchecked. It is worth pointing out that there is no evidence that the abolition of Standards for England has resulted in a significant worsening of conduct and ethical standards in local government; although evaluating this effectively is obviously extremely challenging as the two regimes are not especially comparable. Nevertheless, it is not possible to argue that the issue of ethical standards in the sector is one which is unimportant – continued and serious issues of conduct, behaviour and decision-making continue to make themselves felt in a way that make it clear that some change and reform is necessary.

Changes since the abolition of Standards for England

The abolition of the national Code, and of the Adjudication Panel, and their replacement with local systems, has had mixed results. On the plus side the new arrangements allow councils more flexibility to establish light touch systems, and systems which are designed to meet the needs of local areas. On the negative side, the lack of a systematic national backstop places, we think, too much onus on local areas themselves to resolve complaints and issues of poor behaviour, with little support and no real power to impose meaningful sanctions.

An area where standards regimes have always struggled is in where poor conduct is a symptom of a wider cultural problem – and a wider governance problem. In the old regime, this was reflected in councils which suffered from cascades of “tit for tat” references to the Standards Board – that behaviour had itself been normalised, with poor personal conduct (and inappropriate organisational responses to that conduct) becoming a part of the political environment of that authority. Similarly, in environment with no external systems to arrest poor behaviour, local standards regimes (despite the presence of the independent person, on which we comment in more detail below) can prove unable to cut through local politics and local context to act meaningfully and conclusively. The lack of effective local sanctions is a part of this, but culture goes wider than this.

CfPS has provided support and advice to some councils where the lack of effective sanction for behaviour that falls short of the outright criminal has been a huge problem. People do not tend to obey rules simply because of the existence of a sanction, but because there is an internal aspect to the way that they act and behave which compels them to act in what they consider to

be the “right way”. But sanction is a vital backstop which can help to guide the development of this internal aspect of people’s thinking. Its absence in the current framework – with the exception of the creation of new criminal offences, the applicability of which are vanishingly small – is notable.

The main behaviour and ethical issues

Culture is central to behaviour. Many councils have plans for organisational development, and member development, which involves the adoption and promotion of “values” of behaviour. Many councils incorporate the Nolan principles into their constitutions and use forms of words around member conduct in rules of procedure, and other documents, which makes expectations around conduct explicit.

The issue is that these expectations, written on paper, tend not to be followed through in practice. Councils need to recognise the specific behavioural challenges that they are likely to experience (or are experiencing) and put in place specific systems to challenge and tackle them.

These issues are likely to include:

- Bullying and intimidation (member-member and member-officer). This includes understanding the limits of appropriate political action. Different people’s attitudes and considerations of what can be considered ordinary “political” activity can vary wildly. One person’s “robust debate” is another’s bullying. Issues around how structural inequality plays out in the council context (particularly in relation to the councillor corps, but also in relation to gender and ethnic considerations amongst both officers and member) is increasingly important, but is rarely tackled or even mentioned as an issue. More straightforward power dynamics are better understood (bullying of junior officers by senior officers, or Cabinet members; bullying councillors by Whips or Cabinet members, other similar abuses of power). But even tackling those issues is difficult. They will play out differently from authority to authority. Always, the statements that senior people (especially the Leader and Chief Executive) make about behaviour has a huge impact on what is seen as acceptable.
- Overly informal and/or inappropriate relationships. On the other end of the spectrum sits relationships which are too close. This is a problem in two respects. Firstly, overly close member/officer relationships. It is right that members and officers have positive working relationships, but where these tip into meaningful friendships risks develop – around assumptions relating to officers’ partiality, and around officers’ and members’ ability to carry out their necessary roles of mutual challenge. Secondly, overly close relationship between people within the council and those with whom the council partners or contracts. This is an increasingly pressing issue as public service delivery becomes atomised, and an increasing number of people and organisations come to have a stake in both decision-making and deliver at local level. Sometimes, this involves decision-making becoming more opaque and informal, occurring in spaces other than formal council meetings.
- The operation of declarations of interest, and acting proactively on these declarations. The making of declarations of interest is a core part of local government decision-making and is generally well-understood, but often that understanding begins and ends with the formal act of decision-making itself. It

is important to recognise (as we noted above) that the development of policy and decisions happens in informal spaces; focusing on a declaration at the formal decision point is less effective if the decision has been crafted by someone with a notifiable interest, even if that person leaves the room when the decision is in the act of being made;

- Whistleblowing. All councils have systems in place for dealing with whistleblowing, but in reality those systems can be complex, isolating and therefore unattractive to people with concerns to raise. The act of whistleblowing can be career-ending, and is usually at least career-defining. The import of the act, and the strength of character required to do it, is significant. But most councils focus on the presence or otherwise of a whistleblowing process without thinking about the individuals operating within it. The extent to which councils are able to respond positively to challenges from within – even where those challenges are uncomfortable and make serious allegations about practice, conduct and ethics – is a defining feature in the presence of a positive organisational culture.

The role of the Monitoring Office and the independent person

We are concerned at the relatively weak overall position in local authorities on corporate governance. This goes beyond the standards regime: it reflects a local government landscape where expertise on governance issues have been hollowed out, and where staff no longer possess the time and expertise to reflect on and intelligently apply local governance systems.

This is particularly expressed in the respective roles of the MO and Independent Person in respect of the local standards regime. MOs have declined in influence and importance in recent years. It is increasingly common to see MOs no longer sitting as permanent members of corporate management boards, and/or occupying second-tier positions in the corporate hierarchy.

The role of the independent person is similarly weak. Within an environment where a strong corporate culture of probity exists the independent person can provide a valuable safeguard – ensuring that the standards committed to be the organisation are adhered to and understood by all. Where that commitment is lacking, the independent person can be isolated. They have a limited freedom to act.

Overall, the people in these two formal roles have few formal drivers that they can use to address more systemic issues, or to follow through individual complaints in a way that will always be fair.

The role of regional / national political parties

Different political parties will often use local, regional and national structures to enforce standards of behaviour. This will often begin with informal sanctions within political Groups; the whip can be removed, and so on. However, the extent to which this can be seen as part of the “formal” approach that councils take on standards is moot. Particularly at the most local and informal level, they can be seen as harmful to councillors’ right to natural justice. Disciplinary action at this level needs oversight.

This oversight is often provided by party structures, but this will generally happen in a way that is unco-ordinated with enforcement action at local level. In particular, different expectations around conduct may exist than those that exist within local authorities themselves. This potential tension (and the space that this uncertainty provide for poor behaviour) needs to be addressed.

Politics (and local democracy generally) is seen as a safeguard on conduct, but this is often overstated. Removal of a councillor at the ballot box is not a helpful or timely sanction, even if conduct matters are live issues in local election campaigns.

An improved and enhancement system

This part of our response makes brief suggestions of what an improved and enhancing system for ethical standards and conduct might look like.

A culture of probity and good behaviour

We think that it will be important for areas to set locally understood standards of behaviour and activity: standards which make clear how they translate into practical, day to day activity. This recognises that this is a cultural issue, rather than one about minimal compliance with rules. It makes it easier to establish training, development and mentoring which can reflect these aspirations.

These standards must form a critical part of councils' plans for organisational development – and OD plans themselves must make more central the intersection between officers and members in their various roles, and highlight the risks attached to new systems and working practices. This is not to act as a brake on innovation, but to provoke councils to ensure that new ways of working (including more flexible, and informal, methods of decision-making) are marked by similar innovation on standard and behaviour.

Positive working cultures cannot emerge overnight. They require commitment from Chief Executives and Leaders, and others in senior positions. They require public statements about change, and continued transparency about how the council will hold itself accountable to ensure that this change happens.

Member oversight

Ethical standards need to be owned by those responsible for adhering them. This starts with councillors themselves. The role of standards committees in both overseeing individual complaints, and in overseeing the cultural development of ethical standards, needs to be bolstered and made more transparent. This is about the visibility of those committees, their work and their outcomes. Local councils' overview and scrutiny committees can and

should look at the role of these committees, and what they are doing to pursue and promote broader council activity on organisational development.

Member oversight and transparency can also play a role in ensuring fairness. Members need to be satisfied – advised by monitoring officers with the credibility and influence to enforce what is agreed – that the systems put in place to investigate and issue sanctions are fair and well understood. This is about more than councillors signing a form at the start of the electoral term; it is about continued engagement of standards as a concept. Similar oversight and ownership is needed from senior officers, and those working in partnership environments (even in private organisations) should be expected to subject themselves to these principles, and to the systems and processes that go along with them.

There are issues in play in relation to procedural fairness and natural justice with proper oversight can help to resolve. CfPS recognises that there is the potential for poorly designed and enforced standards regimes to interfere with councillors' Article 6, Article 8 and Article 10 rights. The assumption is that frivolous or otherwise baseless complaints on standards and conduct can be triaged out of the system, but this is not guaranteed. Similarly, the rights of complainants (who may be classed as whistleblowers) needs to be protected. These issues will be very difficult to navigate – both in terms of general principles and in respect of specific “hard cases”. For councillors and officers, openly learning the lessons from experiences and building and developing the local standards regime to account for these issues can be a critical way both of ensuring that local regimes stay relevant, and that they stay fair – and publicly transparent and accountable.

Independence at local level

Because culture is local, and personal, standards must be as well. We have already discussed the shortcomings associated with imposition of systems centrally. Individual councils have to “own” their own response to standards, and they have to own the way that they reflect those standards in the way they work with partners and other stakeholders.

The maintenance of a degree of independence at local level – local standards committees, local systems of resolution, local agreement and discussion about how a culture of good governance will be developed – is vital to improved. Otherwise councils will become passive “recipients” of standards, imposed from elsewhere. This would lead to a culture of minimalism, compliance and gaming, which is entirely at odds from the systematic changes in attitude necessary for improvement.

National structural solution: an enabling framework for local action

We have already noted that the new standards regime cannot be said to have resulted in a worsening of the position on standards nationwide. We are clear that any improvements to standards systems have to be about local action, and local culture – not centrally imposed systems.

Nevertheless, we think that there is a case for a national framework within which options exist on sanctions, oversight, and protections for key individuals. Councils could craft their own local systems to take advantage of particular elements of this framework, while not being constrained by detailed structural prescriptions on how their local regimes are to operate.

We consider that a part of the answer to independent, local oversight on standards could be the CfPS proposal for local Public Accounts Committees. LPACs, as independent bodies, would not necessarily investigate individual complaints but could have general oversight of the culture and practices around ethical standards, as a backstop – supportive of local standards committees. They could provide protections for Monitoring Officers and could play a role in the appointment and oversight of independent people.

A framework could also make available:

- National and regional (sector-led) mechanisms for dispute resolution and adjudication which conform to legal principles and whose operation is transparent. This would take standards out of the hands of a single authority to act on – should it wish to do so.
- A form of accreditation for local standards schemes, to assert their compliance with the law and to facilitate access to the national and regional schemes described above; with accreditation making available sanctions which would be applied in a legally consistent and transparent way;
- Sanctions, associated with the above, which are meaningful. These could include (for councillors) suspension from council business for a given time, requirements to make restorative action where appropriate or in extreme circumstances removal from the authority outright.

Centre for Public Scrutiny
18 May 2018

SUBMISSION 293

To Whom it May Concern

This formal response is submitted on behalf of Worplesdon Parish Council, Worplesdon, Guildford, Surrey, GU2 9UG

Comment regarding the implementation of Sanctions:

The current ethical standards, introduced when the Standards Board was abolished in 2012, offer no sanctions to poor or unacceptable behaviour. The current Code of Conduct has "no teeth" in the event that the Code is breached by members. Previously, a range of sanctions could be applied by the Standards Board to members in breach of the Code of Conduct, including suspension, or disqualification from office for a period of up to five years.

Whilst the introduction of the Standards Board could be considered to be "the use of a sledgehammer to crack a nut", and cost an excessive amount of money to administer, in terms of dealing with councillor's who do not abide by the Code of Conduct, the current lack of sanctions is also inappropriate. Sanctions should be introduced, albeit there should be safeguards to ensure that councillors are not subject to sanctions being applied for politically motivated reasons.

Kind regards

Gaynor

Gaynor White PSLCC

Clerk to the Council

Review of Local Government Ethical Standards: Stakeholder Consultation

Brief Introduction

I am a member of the public. I have had a bad experience with a parish council in the village where I currently live, and problems are ongoing. At times I have found this experience shocking -even harrowing- and above all profoundly disappointing. The issues it raises are very important to me on a personal level. My experience has led me to have concerns about the first / grass-roots tier of democracy, and has had an impact on my previously held assumptions. My story is highly relevant to the Review, and given that I am well-placed to respond, I feel I had a duty to provide my story and make recommendations.

Background

In order to enable an understanding of the comments which follow, I need to provide a brief summary of what happened, (whilst recognising the terms of reference).

I live in the centre of a village, in a former Post Office opposite a Town Hall. Two and a half years ago, the PC erected a very substantial timber structure immediately outside my property, on land they do not own. There was no consultation. The structure has been referred to as an 'arbour' and a 'shelter'. Less than two metres away, its casts its shadow directly across my window.

I attempted to express my concerns, but was told (by the PC) they had no complaint process. For the first time, I attended a PC meeting to communicate - with people who are essentially my neighbours - about what I assumed must be a simple mistake. My concerns were dismissed, or rather, silenced aggressively. I encountered an organisation which, in my opinion has a culture of bullying which is deeply embedded.

It appeared to be a 'done deal', but I attended a second meeting, to try again to (politely) express my concerns about the structure outside my property. This time, I witnessed what I perceived as a bizarre and intimidatory 'charade', and the next morning I received a threatening letter, stating that the matter was closed and including words or phrases: "defamatory", "harassment" and "at risk of legal action". It was anonymously signed 'The Parish Council' on letter headed paper. I was astonished.

Realising that something was profoundly wrong here, at this stage I went straight to the Monitoring Officer at the District Council (or principal authority). I made a formal complaint which had two aspects: bullying behaviour, and of course the planning problem. Both aspects of my complaint were dismissed, or perhaps I might now say, 'terminated'.

The DC said the structure was 'permitted development', but this conflicted with advice I received from an independent consultant, who wrote to explain that the PC did not own the land. Re the bullying, I sent a stack of evidence which I believe any reasonable person would recognise as such, but similarly, this matter was dismissed.

I then referred the matter to the LA Ombudsman, my MP, and eventually, the PC's External Auditor. In turn, the results were, the Ombudsman could not deal with complaints re the parish council and found that the DC had acted correctly / according to their process. My MP was extremely helpful, as you will hear. The PC's External Auditor decided that the erection of the structure was unlawful on two counts, and concluded it demonstrated "*significant weakness in its governance arrangements*".

Just days before the deadline for making a complaint / objection to the External Auditor, an event took place, which in my opinion was an act of extreme intimidation by the PC. The incident caused immense personal distress.

I told my MP immediately. I am extremely grateful to both him and his caseworker for their help at this time.

Looking back on events, I am sure the act was designed to frighten, and to stop me from submitting an objection to the Auditor. I submitted it anyway. The Chair of the Parish Council resigned a fortnight later, and an employee took a long period of leave. This matter has never been addressed and I have never received an apology. For this reason it is still sensitive, presumably not just for myself but for another party.

The External Auditor reported on the matter over a period of two annual returns, (15/16 and 16/17), giving the PC time to provide evidence and / or resolve the issue. In its 16/17 report, the Auditor finally concluded, highlighting "*significant weakness in its governance arrangements*".

Eventually, the DC responded to this - and my requests - and asked the PC to submit an application for Retrospective Planning Permission. During this process, I felt it was necessary to contact the DC's (new) Monitoring Officer, since I had concerns re a potential conflict of interest. The MO was unwilling to talk to me, so instead my MP forwarded her my written account. I never received a response. Meanwhile, the planning process was completed, and despite representations by local people, the DC granted the PC retrospective permission for a structure they erected two years ago.

The matter currently rests with the Land Registry. The PC submitted an application for 'Adverse Possession' of the land which they do not own. Three immediately-affected parties objected, and the Land Registry confirmed there were grounds for this.

In these circumstances, if both parties 'opt-in', the Land Registry allows a 5 month period for negotiation, but if no agreement is reached, the matter is referred to a tribunal. I have tried to negotiate with the PC, in a reasonable manner and in the proper way, suggesting a compromise solution. This has been decidedly 'one-way traffic'. I do not believe there has been any genuine intention to negotiate, though

pressure has certainly been applied to get me to drop my objection. The period ended with me suggesting mediation.

During this period, I have met with what in my opinion has been breathtakingly unethical behaviour, a range of behaviours excluded / debarred by the councillors' Code of Conduct.

For example, in my opinion Minutes have been distorted to such an extent as to be positively misleading, i.e. where full facts have not been disclosed, they do not reflect the truth of the situation honestly or openly. My formal proposal for compromise has not been disclosed properly or discussed, so no vote taken. I have had to write twice when, in my view, I have been misrepresented / my good character defamed.

There is nobody to turn to about this at the moment. My past experience shows that complaints in relation to the Code of Conduct issues, are dismissed or go nowhere.

These are the many reasons why I feel it is important to respond to this consultation....

Consultation questions

a.

In my case, going on what has happened here, No. Absolutely not. I think my experience demonstrates a *systemic* failure.

Part of the problem has been dealing with multiple organisations about multiple issues, e.g. the monitoring officer / principal authority, the LA Ombudsman, the ICO, the External Auditor, etc. Put plainly, it been a 'runaround'. It would be much easier for the public, if there was a joined-up approach.

While I understand the need for different organisations with different priorities, in reality there is often crossover with issues faced. For example, when exactly does a lack of accuracy in minutes (the Auditor's remit), slip over into 'lying' or 'bullying', (the MO's Code of Conduct remit)?

b.

In my case, the role of the monitoring officer could have been particularly helpful to me, but this was effectively absent / not present / totally ineffective in rectifying matters.

The fact that the MO didn't deal with my complaint, allowed matters to get considerably worse. I believe that the dismissive response actually *gave license* for matters - and intimidatory behaviour - to escalate quite seriously later on. For this reason, I see this as perhaps the most significant gap or failure in the system in my case. (Having asked around, my sense is that its a 'postcode lottery' whether or not you have a helpful MO.)

Imagine my surprise when the LA Ombudsman concluded that the DC had operated in accordance with its process. It may well have done so, but this process did not

work for me! It did not safeguard me, either in terms of intimidatory behaviour, or, the planning issue.

c.

I am not a councillor, I am a member of the public. However, I clearly understood the principles and ethos of the code. I have a 'moral compass' and common sense.

The problem is not the code, but the enforcement or oversight of it. My experience has definitely led me to understand that, there is nobody to oversee the governance of PCs, (at least no single body). The present arrangement results in something of a 'wild west'. For example, I found that the External Auditor was restricted to focus on expenditure, and while this was helpful, they were unable to look at wider issues which might be seen to come under 'Code of Conduct'.

Given the response to my initial complaint, I did not feel able to rely upon the principal authority in this respect. My MP did however help, when I needed it most, during what was in my opinion, an incident of gross intimidation. I was fortunate and very relieved to have been met with an attitude which was very receptive and supportive.

d.

My impression is that the main focus is on the registration / declaration of councillors' pecuniary interests. I do not think this goes far enough. Here's an example of why:

Our district councillor works closely with an employee of the Parish Council, in a different role and in a different working environment / employment context. The two persons are acquainted through this activity, in what I gather is a small, two-person office.

This district councillor had a key role within the planning process, while the Parish Council's Retrospective Planning application was submitted by the PC employee on behalf of the PC.

While this is clearly not indicative of a 'pecuniary' interest, there is nevertheless, the potential for a personal conflict of interest or bias.

Despite a number of representations from the community - and not a single representation in favour of retaining the structure, the application for Retrospective Planning permission was successful.

e.

In my experience and in my opinion: No.

i.

In my area the process involves multiple stages or tiers, the 'Preliminary Stage', 'Level 1 Complaint', 'Level 2 Complaint', 'Investigation Stage', 'Outcome 1', 'Outcome 2', 'Hearing Stage', and seemingly - on and on.

The MO receives written complaints, and decides at the outset whether for example, it falls within the scope of the process, whether there is evidence which might suggest a breach of code, and whether or not to take the complaint further than this 'Preliminary Stage'.

In my case, I sent a stack of written evidence, which I believe any reasonable person would recognise as highly questionable behaviour, but despite this, the complaint was dismissed at this earliest stage by a single individual. It was not considered by a standards committee.

As a member of the public, this process - with seemingly endless stages - seems overcomplicated. The drawn-out process could make it easy for complaints to slip through the net, or be 'nipped in the bud', or put simply: to go un-dealt with.

My experience leads me to believe that a wholly separate, fully independent body is needed to look at complaints about parish councils.

ii.

Not Applicable. As explained above, my situation did not benefit from the views of an Independent Person. I see from the guidance notes that an Independent Person is not involved until stage three of the process.

iii.

I have never understood the MO's response, or what the complicated reasons for it might be. Initially, I put matters down to the notion that, resources must be under pressure. Our MO was also Head of Legal Services, so presumably much in demand / stretched.

A local person (a PC councillor) mentioned that the MO was related to an former PC chairman. I'm not sure whether this was true, and can't imagine this could be relevant. Looking at the guidance notes now, I see that it says - in bold letters and underlined,

"Only very exceptionally will a complaint result in an investigation."

At a certain point, the previous MO was replaced by a new MO. This was around the time of the planning application, and I wanted to make her aware of the background, and in particular, to let her know about a *potential* conflict of interest within the planning process. The MO insisted I write-in, but having done this previously to no avail, I asked to be *heard*, and, stated that my word was my evidence. She was unwilling to talk with me, so in the end, my MP forwarded my written account on my behalf. There has never been any response.

f.

i. and ii.

Looking at the guidance notes, I see sanctions *might* be applied at *stage 7* of the complaint process, the 'Hearing Stage', and possible sanctions are listed. However, at the top of this section the notes emphasise:

"In relation to Town & Parish Councils in our area, it is important to appreciate that we can only recommend the imposition of a particular sanction to those councils; we do not have the power to enforce or require compliance."

If this is true, this is a profoundly unsatisfactory state of affairs.

g.

Not applicable / already covered in question (d) above

h.

Not applicable / outside my knowledge as a member of the public

i. and j.

The current system is not working at all. Its a 'wild west' and the notion that parish councillors are only accountable through the ballot box is totally unacceptable. (Only 2 of 13 parish councillors here were actually elected, and that was in 2011.) I believe this lack of accountability threatens the health of democracy.

*** I wholeheartedly believe we need a totally-independent body to oversee governance and ethical standards of parish councils.**

*** I believe this task should be removed from the principal authority, and would be best overseen by parties beyond / outside the immediate geographical area.**

*** As the External Auditor is totally independent, I believe it would make sense to extend their remit. At present, the limited assurance audit is exactly that: too limited, but surely the scope of their remit could be enhanced?**

k. and l.

Not applicable; I do not know as a member of the public. I have however, witnessed a parish councillors treating one another with a breathtaking lack of respect, and behaviour which I would definitely describe or refer-to as 'bullying'.

SUBMISSION 295

Dear Sir or Madam,

I have had extreme difficulty in getting breaches of standards looked at fairly by Scarborough Borough Council.

1. I followed procedure and filed complaints to standards concerning breaches of codes of conduct.
2. They did not get past the monitoring officer and public member
3. The Standards Committee have only sat 3 times in as many years.
4. LGO would not investigate as I had not suffered significant personal injustice

I complained because the meeting was a special no confidence meeting and members of the opposition were not allowed to debate by the Mayor. Members of the public clapped. They did not cheer or make nusciense of themselves but the Mayor closed the meeting asking them to leave. Clapping in previous meetings has not caused closure. On resuming the meeting the Mayor proposed to go straight to the vote. Previous proposal to go straight to the vote was ignored by the Mayor. The Mayor only went to the vote after the ruling party had 'debated' at length. The ruling party read out special dispensations to debate which were the result of an undocumented telephone conversation between the legal department and a solicitor. The legal department confirmed when asked that this allowed them to vote for themselves.

5. The vote of no confidence was brought because of the councils handling of a whistleblower's case where despite 4 people saying they had work done by council workers on their own property there was not police investigation. The council conducted their own investigation and no cause was found. An independent investigation my Mazars who did the council's accounts was only conducted on the council's whistleblowing procedure – which was found to be poor. The whistleblower suffered so much stress at treatment by the council he suffered heart attacks as a result. No investigation into work being done for at least 4 people has taken place despite calls for it. £4m has been spent on demolishing a theatre despite over 11,000 letters of objection. A preferred developer who has contributed over 1.5m to the party is bragging about the development despite SBC saying there are no plans.

At meetings opposition councillors are not allowed debate or answers to questions.

An unsecured loan/investment of £9m has been given to another preferred developer.

I feel that as a member of the public the council are difficult to work with and the complaints procedure is unfair giving them licence to break codes at will without being brought to account.

I would like to see changes made so that any unfairness and breaches of codes of conduct can be dealt fairly at council level and that there is means, where a person has not suffered significant personal injustice, for cases of this nature to be taken to the LGO should the need arise.

Best wishes,
Ali Wilkins

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

Proposed response from the Standards Committee of Forest Heath District Council and St Edmundsbury Borough Council

Contact: Leah Mickleborough, Monitoring Officer,

Forest Heath District Council and St Edmundsbury Borough Council work together as West Suffolk Councils. Together, the Councils are represented by 72 members, and serve an area including a further 85 Parish and Town Councils. In 2019, it is expected they will be part of one of the first District-tier reorganisations to create West Suffolk Council.

a) Are the existing structures working to ensure high standards of Conduct?

1. Generally, standards of conduct are very good. In our area, in the past financial year, complaints were raised against 17 of the 700 Parish, Town, District and Borough Councillors in our area. Whilst some complaints are still in resolution, just 4 have been upheld.

b) What are the most significant gaps in the current ethical standards regime?

2. The standards regime is reliant on the election or co-option of Councillors who recognise the importance of good ethical governance. As Councils, we have limited ability to constrain Councillors who may not have been subject to appropriate background checks by political groups or demonstrate poor or deliberately disruptive behaviour. We have welcomed the Government's recent consultation on extending disqualification criteria for Councillors and would encourage political groups to ensure that they undertake appropriate background checks on Councillors before nominating them for election.

c) Are local authority codes of conduct clear and understood? What good practice exists?

3. We are satisfied that our current Code of Conduct is clear. Across all local authorities in Suffolk, the same Code of Conduct has been adopted to ensure that the public can expect the same standard of

behaviour whether the councillor represents a Parish, District / Borough or County Council.

d) The code of conduct must be consistent with the Nolan Principles and include provision for registering and declaring interests. Is this appropriate?

4. We believe this is appropriate as the Nolan principles are well-established and understood.

e) (i) What processes do you have to deal with allegations? Should additional safeguards be put in place?

5. We appreciate the flexibility given to authorities to develop their own, local regimes and are satisfied with the safeguards we have available. Like many authorities, the Monitoring Officer addresses the majority of matters, although more complex or significant matters may be referred to the Standards Committee to address. This generally means it is now quicker to resolve more straightforward issues, rather than having to convene a series of committees which could be confusing and leave both Councillor and complainant frustrated.

e) (ii) Does the Independent Person provide sufficient objectivity and fairness to the process? Should this be strengthened?

6. It is important to have the "right" independent person, who understands the environments that Councillors can face and when to draw the line between genuine poor behaviour, and matters that are primarily disputes between individuals. Our independent persons are required to provide a short report on each complaint they consider, and help to provide assurance to all sides that the process is fair. We are satisfied with the present arrangements.

e) (iii) Could Monitoring Officers be subject to conflicts of interest or put under pressure? How could they be protected?

7. Monitoring Officers are employees, and have statutory protections to their role. There is the potential for a conflict of interest, however this can be resolved either by matters being considered by their deputy or by an independent investigator. We are satisfied with the present arrangements.

f) (i) Are existing sanctions for Councillor misconduct sufficient

8. We strongly believe the present sanctions for most offences are insufficient. We can cite a case where a Town Councillor was requested to provide an apology to his fellow Councillors for offensive comments towards them. He refused to do so, and as a Committee we had no ability to enforce or introduce further sanctions. This caused significant consternation. Of course, such sanctions may only apply in an extremely small number of cases but the threat of their existence may serve to deter poor behaviour.
9. Whilst we consider the sanction for failure to declare a pecuniary interest to be strong in principle, this is reliant on the police taking action in relation to cases which they will only do where it meets their own thresholds. Such cases are then referred back to the local authority to consider.

f) (ii) What sanctions do you use? Are these sufficient?

10. As above, we do not feel our sanctions are sufficient. We may use the following – recommend training; recommend an apology; censure letter or motion; recommendation to review social media use / settings; recommendation to a political group or Council to remove the Councillor from positions; press notice.

f)(iii) Should local authorities have additional sanctions?

11. Yes, we believe local authorities should have greater sanction powers. These could operate in a similar manner to cases where a statutory officer is subject to disciplinary action – an independent panel is convened to assess the case, and it is put to a vote of the full Council. This could apply in cases of repeated poor behaviour or significant concerns.

g) i) Are arrangements to declare councillors interests and manage conflicts of interest satisfactory?

12. We are concerned there is a grey area relating to matters that are not pecuniary interests, but may fall under the scope of the principle of selflessness; for example, a planning application where it is the son or daughter of a councillor. In practice, Councillors would not take place in such a debate and before 2012, there was still a judgement to be made on what was deemed a prejudicial interest. However, unless appropriate safeguards are put into the

constitution, or the code of conduct of the Council, then Councillors may feel under no obligation to declare interests of this nature.

g) ii) Are the duties for pecuniary interests appropriate?

13. Yes, we believe these are appropriate

g) iii) What arrangements are there to declare interests beyond the statutory requirements?

14. As above, we are concerned there is a grey area beyond the statutory requirements. This would fall under the scope of the selflessness principle, but we believe that further statutory (or non-statutory) guidance would be helpful to provide greater clarity to Councillors

h) Are arrangements for whistleblowing satisfactory?

15. We believe the arrangements are satisfactory

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

16. As highlighted above, in practice, standards are generally good across local authorities. We would be concerned at measures that increased the burden placed on local authorities unless there was significant evidence to support this.

17. In particular, we are particularly concerned at the arrangements for handling complaints related to Town and Parish Councillors. Approximately 2/3 of the complaints we consider are made against Town and Parish Councils. The majority of complaints related to a small number of Parish and Towns.

18. Unfortunately, from time to time, there will be disagreements within Parish or Towns. Whilst there are generally systems within a District or Borough Council to address this, in Parishes many sides attempt to use the standards regime to resolve issues, rather than working together to resolve their differences.

19. This can be endemic in Parishes where factions form, and the Chairman or Clerk is not empowered, or capable to be able to resolve problems. Whilst some complaints can be considered tit-for-tat, this can mask poor behaviour which escalates.

20. The net result is that Parishes and Towns quickly become dysfunctional, with no party having any power or duty to resolve these. Potential resolution, such as mediation, can be difficult for a small Parish to justify. We suggest it would be helpful for the Committee to explore potential for options for Parishes who encounter such situations.

j) What steps could central government take to improve ethical standards

21. As above, we believe that further it would be helpful for local government have greater power to be able to address genuinely poor behaviour where it occurs, and to have clearer statutory guidance on the expectations in declaring non-pecuniary interests.

k) What is the nature, scale and extent of intimidation towards Councillors? What could address this?

22. We support the Committee in recognising this as a growing area of concern for Councillors.

23. We have experienced this on two fronts:

- Intimidation of election candidates, mainly on social media, witnessing even at Parish Council level victimisation and personal attacks on candidates
- Personal attacks on widely-used social media groups against individual Councillors

24. It is extremely challenging to address many of the social media attacks. Whilst social media can have a degree of self-policing, if Councillors respond to concerns, this can often lead to further instigation against them. We have experienced Councillors who have been subject to unwarranted personal campaigns against them.

25. There is legislation under which the police can take action, however this is also balanced against the expectation that Councillors are public figures and need to be accountable. This can, at times, mean there may be less willingness to take action, especially where those undertaking the abusive behaviour can have more complex challenges.

26. We would suggest measures could include introduction of a statutory offence to deliberately intimidate Councillors and / or

election candidates and action taken against social media
companies who fail to address concerns raised by Councillors

SUBMISSION 297

Good morning,

Please accept my apologies that this response is after your closing date and time of last Friday, however Kirton in Lindsey Town Council wished to provide the following response to this Code of Conduct Review.

“Kirton in Lindsey Town Council find the existing standards adequate for our purposes.”

Thank you,

Neil

Neil Taylor-Matson

Town Clerk & RFO

Kirton in Lindsey Town 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.

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

Comment

The Code of Conduct adopted by NELC exceeds the minimum required provisions and is based upon the pre-Localism Act statutory version of the Code, which has also been adopted by all Parish and Town Councils within our area.

Experience of the operation of the Code of Conduct over the past 6 years has resulted in a limited number of complaints about NELC, Parish, or Town Councillor conduct and very few instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct.

One of the advantages of the current regime (as compared to the pre-2012 position) is that there is discretion to resolve complaints informally, which can allow a quicker, satisfactory, resolution for less serious complaints without the bureaucracy that existed previously.

The most significant gap, however, is the lack of sanctions to address any serious breaches of the Code of Conduct which is further referenced below.

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?

Comment

The NELC Code of Conduct is comprehensive and is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects, and expands on, the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended comprehensive mandatory training on the Code of Conduct, which is part of the induction process. Members are encouraged to seek advice from the Monitoring Officer / Deputy Monitoring Officer and

frequently do so if at all unsure as to the implications of the Code of Conduct.

The same training and advice opportunity is offered to all Parish and Town Councillors (and Clerks) within the borough and has been relatively well taken up.

The review should consider making training mandatory for Councillors when they are elected, with a 'refresher' provided every 4 years.

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.

Comment

The requirement for a Code of Conduct to reflect the Seven Principles is entirely appropriate. However, a consistent Code of Conduct across Local Government may be of benefit to facilitate public awareness of the standards which are expected.

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?

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?

Comment

NELC has made arrangements for allegations of misconduct to be investigated and decided fairly and impartially, which are not politically motivated or infected by actual or apparent bias. These arrangements include an assessment criteria applied in the first instance, with a delegation to the Monitoring Officer to determine whether a complaint should be investigated with regard to Parish/Town Councils and a referrals panel for NELC Members. Where an investigation is undertaken, this is undertaken by a suitably qualified officer (normally from Legal or Manager with experience of undertaking investigations) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. The Hearings Panel is designed to be non-party political and reflects the political make-up of the whole Council.

It has to 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. A recent complex investigation (a number of allegations against several Town Councillors) was investigated externally and cost in excess of £10,000, with the final determination of the Hearings Panel being one of training, with the Town Council then failing to follow the recommendation.

The role of the Independent Person is critical to the objectivity, impartiality and fairness of the process. Allowing Independent Persons to be full voting members of Standards Committees would alter the perception of their role & independence and would be a step too far.

Investigations are dealt with independently of the Monitoring Officer and there is an appointed Deputy Monitoring Officer which should reduce the risk of there being conflicts of interest. Whilst there is no experience 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 an NELC Protocol for Member / Officer Relations which assists in forming and maintaining good Member / Officer working.

NELC is currently in the process of recruiting a new Independent Person and has received no applicants for the role. It has to be noted that the role can be quite onerous, with no remuneration (understandably so for independence). The review may consider possible ways of enticing applicants, assisting Local Authorities in the recruitment process and the implications of being unable to recruit an Independent Person.

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?

Comment

The sanctions available are restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body. These sanctions are not sufficient to deter serious breaches or repeated breaches. Neither are there additional sanctions available in the event that a Councillor, who has been found to be in breach of the Code of Conduct, refuses to accept the sanction (e.g. apology) or a Parish/Town Council refuses to accept the recommendations of the Principal Authority.

It is appreciated that the basis for removal of sanctions such as suspension and disqualification was that a Councillor's tenure should be determined by the electorate (publicity of the hearing and decision does at least allow the public to become aware of the breaches). However, the sanctions available currently would appear to be insufficient in cases where there have been serious and potentially repeated breaches of the Code. Complainants and witnesses have been surprised at the limited sanctions available and often feel that the sanctions are disproportionate to the behaviour.

The review should consider sanctions such as suspension, disqualification and withdrawal of a Member's basic allowance/special responsibility allowance.

Currently, failing to declare a DPI is a criminal offence, but how often have these been reported and/or acted upon? We question whether this should return to being a matter for Standards Committee as a breach of the Code of Conduct rather than a matter for the Courts.

Declaring interests and conflicts of interest

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

Comment

NELC's 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.

The Council has also amended its Standing Orders to reflect the requirement to leave the meeting when Members are precluded from participation, i.e after declaring a prejudicial interest or a DPI.

Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £25 or more.

These arrangements have proved satisfactory.

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.

See comment above

Whistleblowing

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

Comment

NELC has a 'Policy for Raising a Concern', which incorporates the Whistleblowing Policy. It is comprehensive, regularly reviewed (currently under review) and available for use by the public, Councillors and officials. The Policy appears, to date, to have been 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?

Comment

If there are to be no meaningful sanctions which act as a deterrent then 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 at a time when Council budgets are increasingly stretched.

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?

No such issues have been raised.

SUBMISSION TO THE COMMITTEE ON STANDARDS IN PUBLIC LIFE ON THE LOCAL GOVERNMENT ETHICAL STANDARDS ARRANGEMENTS IN NORTHERN IRELAND

Introduction

Thank you for the invitation to provide a submission to the Committee in my role as the Northern Ireland Local Government Commissioner for Standards. I welcome the opportunity to set out the best practice elements of the ethical standards regime, which, in my view, is an innovative and unique model.

1. The Local Government Code of Conduct for Councillors

1.1 The Local Government Act (Northern Ireland) 2014 (the 2014 Act) introduced a new ethical standards framework for local government in Northern Ireland. This framework is based on a mandatory Code of Conduct (the Code)¹, was developed by the former Department of the Environment and approved by the Northern Ireland Assembly. The Code specifies 12 principles² and 62 rules. Four of the rules of the Code apply to Councillors at all times. Both the principles and the rules govern the conduct expected of Councillors in all eleven Councils in Northern Ireland.

1.2 The Code was approved by the Northern Ireland Assembly on 27 May 2014. Parts 1 to 8 came into effect immediately. In preparation for the transfer of planning functions from central to local government, Part 9 of the Code ('Application of the Code in relation to planning matters') came into force on 1 April 2015.

1.3 The ethical standards regime provided for in the 2014 Act is a 'one stop shop' model as a number of discrete regulatory functions are undertaken by a single office. These are;

- (i) the publication of guidance on the Code;
- (ii) the investigation of written complaints;
- (iii) a power to pursue alternative action instead of, or in addition to, an investigation;

¹ <https://nipso.org.uk/Code-of-Conduct>

² The principles are based on the Seven Principles of Public Life and an additional five principles relevant to the Northern Ireland context.

- (iv) a quasi own initiative power to investigate a potential breach from an ongoing investigation;
- (v) the adjudication (including interim adjudication) on alleged breaches and the imposition of a range of sanctions;
- (vi) the power to publish reports;
- (vii) the power to recommend changes in practice to the relevant Councils and Departments; and
- (viii) oversight of Council's register of interests.

Whilst not mandated to do so, I also promote ethical standards for Councillors through my attendance at information and training events where I share the learning from casework. These arrangements are multi-faceted and adjudication functions have resulted in significant costs savings to the public purse.

2. Complaints and investigation procedures

2.1 The 2014 Act gives the Commissioner the authority to investigate, and to adjudicate on, complaints that councillors have, or may have, failed to comply with the Code. To ensure a separation of the investigative and adjudication functions, and adhere to Article 6³ requirements, I have delegated the authority to investigate alleged breaches of the Code to my Deputy Commissioner and his team, the LGES Directorate. That Directorate's role is to receive, assess and investigate all written complaints. As Commissioner, I am removed from the investigation of complaints. I undertake the adjudication function, which is a tribunal-like function. I must decide whether a public hearing should be held which may result in a finding of no breach, or when a breach is found, I may decide to take no action or impose a sanction.

2.2 Complaints that a councillor has or may have failed to comply with the Code must be made in writing. Anonymous complaints are not normally accepted. Complaints are assessed against a number of criteria including:

- Whether the conduct complained of is within the scope of the code
- When the conduct occurred
- Whether it is proportionate or in the public interest to conduct an investigation
- Whether the complainant has provided any evidence to support the allegation that there has been a breach of the Code.

³ Article 6 of the European Convention on Human Rights – The right to a fair hearing

The requirement for supporting evidence ensures that vexatious, malicious or frivolous complaints are not investigated.

When a complaint is made, the LGES Directorate will assess it to decide whether it is one that is in jurisdiction, and should be investigated. In determining whether a matter warrants investigation, a number of public interest factors are considered⁴. If an investigation is undertaken, the Directorate will take account of all the facts and evidence available to it, providing a number of opportunities for the councillor who is the subject of the complaint to respond.

- 2.3 The Code also requires councillors to comply with any request in connection with an investigation conducted in accordance with my statutory powers. Where a councillor fails to do so this can also constitute a breach of the Code.
- 2.4 The purpose of an investigation, under section 55(5) of the 2014 Act, is to determine which of the following findings is appropriate:
- that there is no evidence of any failure to comply with the Code;
 - that no action needs to be taken in respect of the matters that have been investigated; or
 - that the Commissioner should make an adjudication on the matters that have been investigated.
- 2.5 The 2014 Act also provides for action instead of, or in addition to, conducting an investigation in dealing with an alleged breach of the Code. Alternative action can be recommended by my Deputy at his discretion, having due regard to my Alternative Action policy⁵. This is a power that I would commend to the Committee as a proportionate response to minor or technical breaches of the Code and for the saving of costs.
- The purpose of the Alternative Action policy is to seek a satisfactory resolution of a complaint without the cost and resource implications of an investigation and/or an adjudication.
- 2.6 The availability of alternative action has proved to be one of the most beneficial features of the legislation and is a mechanism which has been utilised to resolve a number of complaints.

⁴ <https://nipso.org.uk/LGES-Public-Interest-Considerations>

⁵ <https://nipso.org.uk/FINAL-Alternative-Actions-Policy>

3. Sanctions

- 3.1 All adjudications follow a three stage process of fact finding, determination on breach with a decision on no action or sanction. The adjudication hearings follow published adjudication guidelines⁶. At an Adjudication Hearing I may decide there has been no failure to comply with the Code.

When I find a failure to comply with the Code I can decide that no action be taken or impose one of the following sanctions:

- censure the Councillor;
- suspension or partial suspension for up to one year; or
- disqualification for up to 5 years.

- 3.2 Sanction guidelines have been published and are available on my website⁷ and are made available to any councillor coming before an Adjudication Hearing.

The principal purpose of sanction is the preservation of public confidence in local government representatives. The guidelines also draw attention to sanction objectives:

- (i) Upholding the public interest in good administration
- (ii) Upholding and improving the standard of conduct expected of councillors
- (iii) The fostering of public confidence in the ethical standards regime introduced by the 2014 Act.

A decision on sanction must be justified, evidence based and meet the wider public interest in the preservation of confidence in local government representatives. A sanction must discourage or prevent the particular respondent from any future failures to comply with the Code, and to discourage similar conduct by others.

- 3.3 In terms of best practice, the 2014 Act provides for me as Commissioner, having adjudicated on any matter, to make a recommendation to a Council about any matters relating to:

⁶ <https://nipso.org.uk/Adjudication-Procedures>

⁷ <https://nipso.org.uk/sanctions-guidelines>

- (a) the exercise of the council's functions; or
- (b) the failure to observe the Code of Conduct.

I have used this power to recommend to the Department for Infrastructure that all councils make mandatory training on planning a requirement for all Chairs and Vice Chairs of planning committees. This should occur prior to assuming their positions on the committee.

4. Conflicts of interest

- 4.1 The Code and the statutory regime established under the 2014 Act was designed to address complaints relating to impropriety concerning direct and indirect pecuniary interests. At the same time an older regime in place since the Local Government Act (NI) 1972 creates a statutory offence for matters relating to impropriety in relation to pecuniary interests to be prosecuted by or with the consent of the Attorney-General.
- 4.2 The Code also requires councillors to declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting. In my guidance I have stated that a non-pecuniary interest will be considered to be 'significant' if:
 - It is one that falls within any of the categories of interest listed in paragraph 5.2 of the Code;
 - You anticipate that a decision on the matter coming before the meeting or your council might reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other council constituents.
- 4.3 This is an issue of personal responsibility for Councillors who, having identified an interest, must withdraw from the meeting. The guidance on the Code makes clear that 'withdraw' means the councillor must leave the room whilst the discussion takes place.

5. Whistleblowing

- 5.1 Whistleblowing in the employment context Northern Ireland is covered by the Public Interest Disclosure (NI) Order 1998. Whistle-blowing employees can make a disclosure to a 'prescribed person' with investigatory and regulatory functions, who can consider action upon the

information that has been disclosed to them. My Office is not a 'prescribed person' under this Order. In the event that a 'whistle-blower' contacted my office about such a matter I would signpost the individuals to the list of 'prescribed persons'.

- 5.2 The Comptroller and Auditor General for Northern Ireland receives whistle blowing complaints about failures in governance or financial probity by government departments and their agencies. However, there is a separate Local Government Auditor (LGA) for Northern Ireland and, given our remits in relation to local government and good governance, I am currently completing a joint working protocol with the LGA.

I hope you find my submission helpful. I would of course be happy to provide any further information or clarity necessary either in writing or in person.

Marie Anderson

Local Government Commissioner for Standards

Committee on Standards in Public Life

Review of Local Government Ethical Standards: Stakeholder Consultation

Response of Essex County Council's Audit, Governance and Standards Committee

Essex County Council serves a population of 1.4m people and has 75 elected councillors. The Audit, Governance and Standards Committee has been appointed by the Council to be responsible for administering and monitoring the system of member conduct under the Localism Act 2011. This response is sent on behalf of the Committee. Any queries or questions should be sent to Paul Turner, Director, Legal and Assurance and monitoring officer at [REDACTED]

Response to 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.

We believe that members of Essex County Council generally observe very high standards of behaviour. However, we believe that this results from the culture in the organisation. Our view is that the current rules can be confusing and complex - and could be improved in order make life easier for members and further promote high standards. These themes are expanded on in our responses to other questions.

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

The most significant gaps are:

- (a) The inability for the Council to consider matters which arise outside the conduct of someone acting as councillor.
- (b) The lack of clarity or certainty in the law relating to 'disclosable pecuniary interests'. It is unclear what is meant by 'having a disclosable pecuniary interest in' means. For example a job is a DPI. If a matter relates to granting planning permission to my employer then do I have a DPI in that planning decision? The law does not provide any clear guidance, and the statutory language provides no guidance. There have been conflicting judicial decisions, making it difficult to advise members or comply with the rules.
- (c) The fact that there are two systems of rules:
 - a. The DPI system which can only be enforced by the police and the courts with significant sanctions
 - b. The code of conduct system which is created by the Council. Beaches can relate to serious misconduct which cannot be addressed other than through the code of conduct. IT is therefore

surprising that breaches can only be dealt with by a committee which has no real sanctions available to it.

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?

We have tried to make our code of conduct as simple and comprehensive as possible. However, the lack of a mandatory code means that some of our councillors have four different codes of conduct to comply with (Parish, District, County, Local Enterprise Partnership and Regional Park Authority, which makes things very difficult for them. This is a real issue because around two-thirds of our 75 councillors are members of district councils.

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 adequate, although they cause confusion because we regularly receive complaints which do not allege a breach of the code of conduct but do allege a breach of one or more of the principles.

There would be some benefit in having national code. Under the current system, people who are members of more than one authority may need to know several different codes of conduct.

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?

The Essex procedures are available online here:

<https://www.essex.gov.uk/Your-Council/Councillors/Pages/How-to-complain-about-a-councillors-conduct.aspx>

DPIs can only be investigated by the police. Essex monitoring officers have a protocol with the Essex police which sets out how matters will be referred.

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?

There is currently no requirement to consult the independent person on complaints which are not to be investigated. At Essex the practice of the monitoring officer is to consult on difficult or borderline cases before making a decision on an investigation.

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 believe that it is incumbent upon monitoring officers to manage the process to ensure separation of roles. Given the diversity of local authorities it seems very difficult to provide legislation for separation of roles which would work in all cases.

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?

The suggested sanctions available to the Essex Committee are set out in the procedures for investigation.

<https://www.essex.gov.uk/Your-Council/Councillors/Pages/How-to-complain-about-a-councillors-conduct.aspx>

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

If there were to be a serious breach of the code it would not be possible to impose a sanction commensurate with the breach. Removal of allowances or suspension for up to 3 months as under the old system seem to be an appropriate sanction for serious breaches. When the system is explained to new members they are surprised by that a few very specific standards matters result in the commission of offences whereas there is no sanction for others which may be just as serious. A power to withhold allowances might also be effective.

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?

1. The rules about registration of DPIs are generally clear but are complex and are not necessarily logical.

For example, being an unpaid company director is not itself a DPI and therefore is not registrable, but if the company has a contract with the local authority then that contract (but not the directorship itself) is a DPI. This creates the position that a councillor does not have a DPI in a decision to give planning permission to a company of which they are a director. The Essex code of conduct attempts to fill this gap by creating a separate system of interests which have to be registered and declared, although this is not ideal because a failure to register DPIs is an offence but a failure to register code interests is only a breach of the code of conduct which has limited sanctions.

2. The fact that, in addition to DPIs, each Council creates separate categories of interest under their local code makes it harder for members to understand and to know what to declare. Across the Essex authorities, the codes refer to 'non-pecuniary interests' 'other pecuniary interests' 'code interests', making it hard for members to know how and what to declare.
3. The rules about registering of a DPI are clear, but the rules about declaring a DPI are not. The test for declaring a DPI is that a member must declare a DPI on an item of business if a member 'has a disclosable pecuniary interest in it'. It is not clear what this means. It could mean 'relating to a DPI' or could mean 'affecting a DPI'. As an illustration, a member's home is a DPI. Some authorities advise that a member would 'have a DPI' in a proposal to install parking restrictions in the highway outside their home because it affects their home. Others say that it doesn't relate to their home and they do not have a DPI. This causes difficulties for members because they may not get consistent advice between different authorities.
4. The position of relating to declaring interests in membership of other public authorities is inconsistently applied between authorities, potentially exposing members to the risk of criminal conviction. The view of the Essex monitoring officer is that almost all Councillors hold a public office for which they receive an allowance which is paid partly as compensation for their time. Therefore that office must be considered as an office held for private gain which is registrable as a

DPI. Not all monitoring officers take this view, but it is very difficult to see how a different view can be taken, particularly when one considers income tax law which uses similar language.

However, although in our view it is clear that members must register being a councillor at another authority, it is not wholly clear in what circumstances members have to declare a DPI in business which affect that other authority. The conviction of Cllr Spencer Flowers of Dorset CC seems to suggest that they would have a DPI in many decisions affecting the other authority. This potentially means that members would have an interest which disables them from participating in a wide range of business relating to their other public offices. This is much more restrictive than the previous code of conduct under the Local Government Act 2000.

In order to prevent this risk, ECC has given a dispensation to all its members who are members of other local authorities so that they may take part in decisions affecting the other authority unless it is awarding a contract or planning permission to the other authority. We believe that the 2011 Act provisions were not intended to be more restrictive than those made under the 2000 Act and that this approach is a sensible precaution given the uncertain state of the law.

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.

Our arrangements are set out in the code of conduct. They are satisfactory when viewed within the context of Essex County Council, but we have been unable to make the rules consistent with the 12 different codes adopted by Essex district councils. Since around two-thirds of our members are district councillors, this makes it difficult for them. In our view there should be a single national system for declaring interests.

Whistleblowing

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

The arrangements are published on the website. We require complainants to complete a simple form or contact an external independent organisation called Expolink 0800 374199 or via e-mail – essexcc@expolink.co.uk.

<https://www.essex.gov.uk/Your-Council/Strategies-Policies/Code-of-Governance/Documents/Counter-Fraud-Anti-Bribery-Strategy.pdf>

https://www.essex.gov.uk/Your-Council/Strategies-Policies/Code-of-Governance/Documents/Whistle_blowing_policy.pdf

For code of conduct complaints we have the processes linked to here:

<https://www.essex.gov.uk/Your-Council/Councillors/Pages/How-to-complain-about-a-councillors-conduct.aspx>

Improving standards

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

We keep standards under review and change the code of conduct/arrangements where necessary. The ECC code was last reviewed in 2016.

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

Central government could change the law to deal with the issues identified above:

- More consistency in definition of DPI (eg requiring unpaid directorships to be registered as a DPI)
- Greater clarity on when DPIs have to be declared at meetings.
- A national code would make life easier for councillors who are members of more than one authority.
- Harmonisation of the standards of conduct expected of local authority members and members on the Local Enterprise Partnership.
- Increased sanctions for breaches of the Code of Conduct.
- Allow local authorities to deal with DPIs as a breach of the code of conduct, if the police do not wish to investigate.

Intimidation of local councillors

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

Some Councillors have received threatening communications from electors in their division. These may come via social media but also we have had cases of members receiving unpleasant anonymous communications. This has been increasing as the Council has had to take more contentious decisions. We do not believe that this has impacted on council business but we do think it makes the job of councillor significantly less attractive and it is difficult to get social media operators to take action.

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

- Social media companies could be more responsive to requests to take down sites.

- The default requirement to publish Councillors' addresses in section 100G of the Local Government Act 1972 and the Localism Act 2011 could be repealed.
- Government could issue guidance making it clear that it would be appropriate to support councillors by obtaining injunctions in serious cases.

Dear Sirs,

Re: Local Government Ethical Standards - Stakeholder Consultation

I write on behalf of the Standards Committee of Milton Keynes Council's (MKC) in response to the review of local government ethical standards by the Committee on Standards in Public Life which opened on 29 January 2018.

The Standards Committee would like to make a submission on the consultation as, following the introduction of the Localism Act 2011, MKC made the decision to retain the function of its Standard Committee. The Standards Committee believes that this has enabled MKC to promote and maintain high standards of conduct by its members and co-opted members, whilst also maintaining transparency and accountability of the standards process overall.

MKC has 57 elected Councillors and there are also a number of Co-Opted Members that sit on some Council Committees. Further, there are 40 Town, Parish and Community Councils in the Milton Keynes area and for which MKC is the principal authority under the Localism Act.

For ease of reference, each answer correlates with the lettered question contained in the consultation document.

- a. The Standards Committee's view is that the existing legislative structures, processes and practices currently in place provide an effective high level framework to ensure high standards of conduct by Councillors. Underneath that framework Councils have latitude to create their own code of conduct and local arrangements. At MKC we have recently reviewed our arrangements to make our process clearer and more streamlined for all parties.

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- b. The Standards Committee agree that the most significant gap in the current ethical standards regime for local government is the ineffective sanctions against Councillors in breach of the code of conduct. Most Councillors adhere to and respect the code of conduct but when serious breaches occur there should be more effective sanctions available.

The majority of member complaints made in the Milton Keynes area are against parish Councillors. This may also be the case in other areas which are fully or heavily parished. It is often the case that a parish decision or incident can result in a number of complaints and cross-complaints. This can be a heavy pull on resources for the Monitoring Officer and her staff who have responsibility for conduct issues across all the parishes in the area. At the same time where relationships at parish level breakdown the standards regime is not usually the most effective process to resolve issues and satisfy the protagonists.

- c. MKC predominantly kept its pre-Localism Act 2011 code of conduct, as it covers an appropriate range of behaviours. The Monitoring Officer undertakes code of conduct training as part of new Councillor Induction as well as running other training sessions for MKC and Town/Parish Councillors.
- d. The Standards Committee agree that MKC's code of conduct is consistent with the Seven Principles of Public Life which is a good high level framework on which to base the code of conduct. It includes appropriate provision for registering and declaring Councillors' interests.
- e. The Standards Committee agree that allegations of Councillor Misconduct are investigated and decided fairly. An example of this is that the Council outsources all investigations into Councillor Misconduct to maintain due process. The legal requirements for the views of an Independent Person to be taken into account are welcomed by the Standards Committee as this adds further to the impartiality of the process.
- f. As mentioned earlier, the Standards Committee holds the view that the existing sanctions for Councillor Misconduct are insufficient. The focus of the current sanctions follows that of a 'name and shame' regime, rather than deterring future breaches of the code of conduct. Delegating further statutory powers to local authorities to impose stricter sanctions could strengthen its position and increase public confidence in the elected body of local government. We believe that local determination is always most effective, however acknowledge that this would need to be alongside additional safeguards to ensure no improper political influence, such as an independent appeals process.

At present, complainants and potential complainants are always surprised that more effective sanctions are not available for more serious breaches, for example, bullying, using your position to confer an advantage for yourself. The current sanctions for more serious breaches may not provide sufficient motivation to abide by the Code when a breach is so lightly treated.

- g. The Standards Committee believe that, although the existing arrangements to declare disclosable pecuniary interests are satisfactory and clearly set out in legislation and regulations, unfortunately the legislation did not deal with other types of interest and most Councils across the country have, as a result, felt the need, to include some provision about 'other types of interest'. This situation has been confusing for Councillors, officers and the public.
- h. The Council has procedures for whistleblowing which are considered to be effective.
- i. The Standards Committee agrees that local authorities are somewhat restricted in terms of the steps it can take to improve local government ethical standards without further statutory powers from central government.
- j. As per above, further statutory functions, such as the power to impose more strict sanctions on Councillors who seriously breach the code of conduct, is a key step central government could take to improve local government ethical standards.
- k. No comment on intimidation towards local Councillors.

Thank you for taking the time to considering MKC's response to the consultation. On behalf of MKC, we do hope it makes a positive contribution to the review of local government ethical standards.

Yours sincerely,



Councillor Ric Brackenbury
Chair, Standards Committee

Response to Local Government Ethical Standards: Stakeholder Consultation.
To whom it may concern.

In response to the consultation I would commit my comments regarding the Parish/Town Council and the general process/practices of Governmental rule. I am presently a Parish Cllr for the Etching Hill Ward of Rugeley Town Council in the District of Cannock Chase with principal authority of Staffordshire County Council.

1. Existing standards of conduct are in place as the situation requires, but not adhered to in practice often through lack of knowledge, with many councilors including myself failing to comprehend the "jargon" that experienced councilors take for granted and use to their advantage, this has the effect of being left out of the debate.
2. Cohesion between principal authorities and the smaller town/parish authority. The budgeting alone is substantial and leads to smaller authority being compared to that of a church group (parochial) with powers and duties limited unless General Power of Competence has been granted from NALC.
3. The Nolan principles underpin the code of conduct and if practiced qualify soundly. Practices to be fulfilled, use resources and a willingness from those to affect.
4. Appropriate when adhered to from the lead authority, and the power to act upon anything that does not reach the requirement, from the agreement; in example registration incomplete or insufficient information.
5. Due process for misconduct practice adhered to and practiced including independent person objectivity, requirement failed at gaining appropriate due diligence, and apprehension of monitoring officer involvement.
6. Applying sanctions exist of in colloquial terms, of "banishment" from partaking in any debate and form of ex communication from peer group. Policing of all/any sanctions is from the individual completely, use jargon and bluster see what works.
7. Distance almost always apply when appropriating all-encompassing rules and regulations all administered from written instruction to be complied at the recipients' acknowledgements of receipt and then ignored or subject to interpretation.
8. Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfill the expectations of their electorate where possible and a term of compliance i.e. two terms of office apply.

Review of Local Government Ethical Standards

The Council's Standards Committee has recently met to consider its response to the Committee on Standards in Public Life's consultation on the workings of local government's current ethical standards regime. Set out below is the Committee's agreed 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.**

Overall, the Council's experience is that the majority of councillors strive to achieve high standards of conduct when carrying out their councillor duties.

However, the lack of meaningful sanctions is a fundamental weakness in the current standards regime and has resulted in a lack of respect for it. A return to a regime where sanctions are more in line with that which existed prior to the changes introduced under the Localism Act 2011 would be welcomed.

The lack of perceived accountability at national level undermines confidence in the whole regime.

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

See above.

- 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 removal of the national code has led to inconsistencies and confusion for members of the public and also 'dual or triple hatted' councillors.

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- 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 freedom for local authorities to decide what other matters should be addressed in their code of conduct for councillors has enabled the Council to react to local issues. However, in the absence of a national code for 'dual and triple hatted' councillors, the current system is too complicated and therefore lacks transparency.

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

We believe that allegations of misconduct are investigated and decided fairly but this is as a result of the Council committing to provide adequate resource and to Standards Committee continuing to ensure that the process is fit for purpose.

- 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 has adopted detailed arrangements for handling standards complaints. This process operates well because Standards Committee is quick to identify and address issues.

Where an allegation of misconduct relates to a parish councillor and the complaint results in a Hearing Panel being convened, a parish member of the Standards Committee should sit on the Panel.

- 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 role of the Independent Person is an important element of the current process, although there is the potential for that role to be misunderstood.

Provision which allows dialogue between the Independent Person and the councillor who is the subject of the complaint is an important part of the process, and similarly the ability of the Monitoring Officer to use the Independent Person as a sounding board.

- 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 Council uses external investigators to carry out investigations in respect of allegations against councillors. This is an important part of the process, mitigating the risk of a conflict of interest or undue pressure being placed upon the Monitoring Officer.

f. Are existing sanctions for councillor misconduct sufficient?

As already stated, the lack of meaningful sanctions is a fundamental weakness in the current standards regime and undermines public confidence in it.

Whilst a councillor who fails to meet the statutory obligations relating to Disclosable Pecuniary Interests (DPIs) may be subject to criminal proceedings, there have been very few prosecutions.

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 Council has set out a range of possible sanctions within its adopted arrangements. The sanctions available to a Hearing Panel are:

Publish its findings in respect of the member's conduct;

Report its findings to Council (or to the Parish Council) for information;

Recommend to Council that the member be censured;

Recommend to the member's group leader (or in the case of ungrouped members, recommend to Council) that he or she be removed from any or all committees or sub-committees of the Council;

Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training/coaching for the member;

Recommend to Council (or recommend to the Parish Council) that the member be removed from all outside bodies and/or appointments to which they have been appointed or nominated by the Council (or the Parish Council);

Withdraw (or recommend to the Parish Council that it withdraws) resources and/or facilities provided to the member by the Council such as computer, website and/or email and internet access etc.

Place such restrictions on member's access to staff which may be reasonable in the circumstances provided that such restrictions do not prevent the member from carrying out their duties as a Councillor;

Recommend the member apologise to the relevant person(s) affected. This could also include a recommendation that this is done in conjunction with the Monitoring Officer to ensure that it meets the Hearings Panel's expectations.

The sanctions are inadequate which has resulted in a lack of respect for the regime and perhaps more importantly, deters people from making complaints.

There is no requirement for Parish Councils to accept any recommendations made to them by the District Council Hearing Panel on sanctions to be imposed on a parish council member who has been found to be in breach of the code. This can weaken public confidence in the system, particularly in situations where the member has significant influence at parish council level.

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

Actions which undermine confidence in the Council or other body whether acting in the capacity of councillor or not, should be a consideration and open to sanction.

The power to suspend should be reinstated as a sanction and also extended to enable a member in receipt of three periods of suspension to be suspended for the remainder of their term of office and thereafter barred from standing for election within the District in any capacity.

Publication of censures would be a powerful tool, but the period for which they remained publicly available would need careful consideration.

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?**

Distinguishing between the different types of disclosures and interests can be confusing.

The level of information which individuals are required to divulge about themselves and partners in completing the register of interests, and which has to be published, can be viewed as excessive and disproportionate resulting in potential candidates and existing councillors, particularly, but not exclusively, at parish level, being reluctant to stand for office.

- 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 adopted two additional categories of interests, known as 'Other Interests' to deal with non-financial interests and 'Financial Interests of Other Relatives', which is self-explanatory. These extra requirements have not caused any issues.

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

The Council has an adopted Policy on whistleblowing. It is reviewed regularly by both Standards Committee and Audit and Governance Committee and is considered satisfactory.

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

Where an allegation of misconduct relates to a parish councillor and the complaint results in a Hearing Panel being convened, a parish member of the Standards Committee should sit on the Panel.

Resolve that all Councillors should receive standards training, which should be compulsory for members of Planning Committee.

Refresher training for councillors would provide an opportunity to reflect on cases to have arisen in the preceding 12 months.

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

A national code should be established that applies to all levels of public office, the existence of a standard national code would enable the development of appropriate guidance. A code of this nature would simplify the position for dual and triple hatted members.

A more flexible regime in relating to the granting of dispensations is needed, ideally forming part of a national code. For purposes of transparency, the dispensation should be supported by an oral declaration at the meeting in question.

Introduce mandatory training for all Councillors who sit on a Planning Committee.

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

We are not aware of any specific concerns being raised by local councillors in relation to intimidation. However, the increasing inappropriate use of social media is beginning to have an effect.

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

Provide appropriate training and guidance notes.

Yours sincerely



Annette Moppett
Solicitor to the Council and Monitoring Officer

Wyre Council Response to Review of Ethical Standards in Local Government

The following submission is made by Wyre Borough Council's Monitoring Officer, Liesl Hadgraft, as instructed by the Council's Standards Committee following its consideration on 15 March 2018 of the consultation document published by the Committee on Standards in Public Life.

During a wide-ranging discussion on the main elements of the review, the following issues were identified for inclusion in a response to the questions asked in the consultation document.

Background and context

The Committee recognised that there had been widespread support for the abolition of the former Standards Board for England and for the reform of the previous very convoluted and prescriptive standards regime when proposals for change had first been made. However, the Committee noted that it is now widely accepted that, the current arrangements, whilst simpler, are fairly toothless and ineffective.

Q's (a) & (b) Existing structures processes and practices

The Committee stated that, at Wyre, the main issues are:

1. That the local processes for considering alleged breaches of the Code of Conduct (although sometimes time consuming) are fair and reasonable, but effective outcomes and improved behaviours are often not achievable.
2. That the most significant gap is the lack of sufficient sanctions to deter or improve inappropriate behaviours.
3. That the responsibilities imposed on monitoring officers and standards committees' at district councils such as Wyre are onerous, because of the large amount of time spent on dealing with complaints relating to parish and town councillors. In Wyre, a disproportionate amount of time had been spent in recent years on complaints relating to behaviours and relationships within a very small number of Parish/Town Councils, which it has not been possible to resolve under the current arrangements.

Q's (c) and (d) Codes of Conduct

When the Localism Act was implemented, Wyre Council chose to adopt a simple, "light touch" Code of Conduct, based on the previous model. The Standards Committee has now decided, in the light of experience over the last few years and the issues raised in the current review, to consider recommending to the Council that a more rigorous code should now be

adopted which could, for example, require councillors to treat others “with respect” or refer more explicitly to situations when Councillors would be considered to be “acting as a Councillor” in the event of alleged breaches of the Code.

Q(e) Investigations and decisions on allegations

The Standards Committee considers that Wyre has adequate processes in place to investigate complaints, although a significant amount of time is still spent dealing with fairly low level behavioural issues.

The role of Independent Person has worked well at Wyre and provisions for that role could perhaps be strengthened. In particular, it is felt that at least two Independent Persons need to be appointed to ensure effective input to the process for investigating and making decisions on alleged breaches of the Code of Conduct.

In order to provide more protection for Monitoring Officers, provisions could possibly be introduced to make it easier for a Monitoring Officer from another council to be appointed to deal with a complaint in certain circumstances.

Some concerns have been expressed about the overall effectiveness of the locally administered ethical standards regime in preventing or dealing with the relatively rare occurrences of significant wrongdoing, abuses of democracy or potential corruption, which occasionally occur across the country.

Q(f) Sanctions

The sanctions currently available are considered to be insufficient. Naming and shaming is not always a deterrent. The national review should therefore recommend to the Government that additional, more meaningful, sanctions be made available to local Standards Committees, including consideration of the following:

- Suspensions;
- Enforced removal from Committees or positions of responsibility, without reference to a Group Leader;
- Withdrawal of Allowances.

A two tiered approach could perhaps be considered, with Monitoring Officers being given authority to impose a range of fairly low level sanctions without reference to the Standards Committee, with higher level sanctions being made available to Standards Committees to impose following a hearing, if either the subject member has declined to agree with the Monitoring Officer’s initial sanction or, if the Monitoring Officer decides to refer the matter to the Standards Committee because of the seriousness of the allegation.

Q(g) Declaring interests and conflicts of interest

Members of Wyre's Standards Committee felt it would be helpful if clearer national guidance should be given to Councillors on when interests should be declared, particularly on when a non-financial interest is "significant".

Q(h) Whistleblowing

Wyre's Whistleblowing Policy is primarily targeted at employees, although Councillors could use it if they felt it necessary. As the policy was originally approved by and is reviewed annually by the Council's Audit Committee, most recently in November 2017 when it had been considered satisfactory, the Standards Committee agreed that there was no need to comment on this issue.

Q's (i) and ((j) Steps could be taken by central government or the Council to improve standards

The Committee reiterated its view that the measures referred to above should be considered, particularly the need for more effective sanctions.

Q(k) Intimidation of local councillors

The Standards Committee noted that this question has been included in the consultation as a follow up to a separate review recently undertaken by the Committee on Standards in Public Life on intimidation of candidates during the 2017 elections. The intimidation of candidates at elections is not considered to be a particular problem in Wyre, but Members of the Committee expressed concern about the potential impact of increasingly vitriolic social media attacks on individual Councillors.

The members of the Standards Committee felt that clarification, at a national level, of when Councillors would be considered to be acting in their capacity as a Councillor when making or responding to comments on social media would be helpful.

Public Concern at Work's response to the "Review of Local Government Ethical Standards: Stakeholder Consultation"

1. We welcome the opportunity to make this short response to the above consultation. Our submission will seek to highlight the inadequacy of the current whistleblowing arrangements in local government for councillors and officials.

Introduction

2. Public Concern at Work ("PCaW") is the UK's leading authority on whistleblowing. Set up 25 years ago, at the heart of the charity's work is the free, confidential advice line, which helps over 2,000 whistleblowers each year. The charity also supports hundreds of organisations to help ensure their whistleblowing arrangements are trusted and effective. We currently work with many regulators, professional bodies, commercial, public sector and voluntary organisations including: CIPD, AAT, General Medical Council (GMC), The Law Society, John Lewis Partnership, Barclays, the Bank of England, ITV and the British Red Cross.
3. These two complementary streams of work give us a unique perspective on whistleblowing – including the challenges faced by individuals in speaking up, and those experienced by organisations in listening to and addressing concerns. PCaW has employed this experience in a wide array of policy work which has shaped the frameworks in which individuals raise concerns, and how organisations handle them. This includes: helping to draft the primary piece of legal protection for whistleblowers, the Public Interest Disclosure Act 1998 (PIDA); drafting the British Standard Institution's Guidance on Whistleblowing Arrangements; establishing the Whistleblowing Commission which developed a Code of Practice for whistleblowing arrangements, a guide used by many organisations in creating their whistleblowing processes; ongoing involvement in sectoral developments within the NHS and Financial Services; and long-standing collaboration with government on numerous initiatives which have touched on the wider world of whistleblowing.
4. We will limit this response to specific comments around question h. namely whether the current local government whistleblowing arrangements for public, councillors and officials⁸ are satisfactory. We note that the question includes members of the public in relation to whistleblowing. Our view is there is real merit in keeping whistleblowing as a definition focused on workers rather than extending it to include members of the public. This is

⁸ To be defined as anyone employed by local government.

due to two factors: the first is that workers have unique access to valuable insider information; the second is their vulnerability due to wages and their career being put at risk if victimisation flows from raising concerns. These two factors are not applicable to members of the public, although we fully appreciate the need for them to have a mechanism by which they can raise their concerns; however their needs are quite different from those of workers.

5. In 2017, PCaW had 98 whistleblowing cases: of them, 68 claimed to have suffered some form of detriment at work as a result of raising these issues. Drawing on PCaW's experience in speaking to workers or employees voicing concerns about wrongdoing in local government, analysing some related whistleblowing policies, and identifying how PIDA interacts, if at all, with various situations, we will identify the flaws in current whistleblowing mechanisms in local government in light of structural changes not least the abolition of the Audit Commission.
6. This response will examine whistleblowing arrangements for the largest local authority in England by population – Birmingham City Council - and the smallest local authority in England by population – West Somerset Council –⁹ as a way of illustrating the systematic defaults in the current structures in place in local government. We are keen to note that practices vary from one local authority to another, so our analysis of the aforementioned local governments does not necessarily reflect common practice around England.

Local government whistleblowing arrangements post-Audit Commission

7. Since the closure of the Audit Commission on 31 March 2015 under the Local Audit and Accountability Act 2014 (LAAA), external auditing of local government is now solely undertaken by private companies appointed by the Public Sector Audit appointment (PSAA) whose tenure started on 1 April 2015.¹⁰ As such, there is now a commercial relationship between the private firm carrying out the auditing and the local authority. Though it is welcome that the PSAA has oversight of the awarding of such contracts, we are concerned that the mere existence of a commercial relationship potentially compromises the independent scrutiny previously offered by the Audit Commission. This is notwithstanding obligations outlined in the LAAA which call on local authority's audit panels to "advise the authority on the maintenance of an independent relationship with the local auditor appointed

⁹'Local Government Facts and Figures' < <https://www.lgiu.org.uk/local-government-facts-and-figures/>>

¹⁰'Local audit framework replacing the Audit Commission'
<<https://www.gov.uk/government/collections/local-audit-framework-replacing-the-audit-commission>>

to audit its accounts”.¹¹ Consequently, we take a view that such a relationship could have the effect of deterring whistleblowers from raising public interest concerns to the auditing firms relating to wrongdoing, risk and malpractice in the local authority.

8. We have, in part, adopted the stance above due to anecdotal evidence from individuals we have spoken with through our advice line service who have been apprehensive about contacting an external audit firm on the basis that they do not exist as a formal regulator – but are instead high-profiled private companies engaged with the local authority for the purposes of profit, rather than being perceived to exist to fulfil an overriding need to scrutinise any potential wrongdoing for the public good.
9. Whilst it is encouraging that external auditors under this regime are listed as prescribed persons under Public Interest Disclosure (Prescribed Persons) Order 2014 (SI 2014/2148), and therefore disclosures to auditing firms may capture PIDA protections, we are concerned that is not clear to officials (and for that matter the public and councillors) which private firm is in charge of auditing a local authority, still less who to contact to report concerns to within the company.
10. We have spoken with individuals working within the local authority who are unaware of avenues available to them for reporting concerns to external auditors. Though the PSSA can be contacted to seek advice on what private firm audit a local authority,¹² it is our understanding the contact details of the relevant people within the firm are not readily available. Birmingham City Council’s (BCC) whistleblowing policy¹³ does not set out details in respect to which firm externally audits it, and who to contact in the event of an individual/s wanting to raise concerns to this prescribed person. In a similar vein, West Somerset Council’s whistleblowing policy¹⁴ does not set out contact details of their external auditor, but does reference the Audit Commission which of course is no longer in operation.
11. Moreover, we hold concerns that the relationship between internal local government audit departments and external audit firms is not clearly delineated. In one case, a local government official who reported concerns externally to the relevant private firm was referred to the internal auditors within local government as it was deemed to fall out of the former’s remit. It is

¹¹ S.10(1) LAAA.

¹² ‘Whistleblowing: list of prescribed people and bodies’ <
<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>>

¹³ ‘Whistleblowing and Serious Misconduct Policy’
https://www.birmingham.gov.uk/downloads/file/787/whistleblowing_and_serious_misconduct_policy

¹⁴ “Policy and Procedure for reporting of concerns (“Whistleblowing”) <
<https://www.westsomersetonline.gov.uk/.../Us/.../Whistleblowing-Procedure.pdf.aspx>>

unclear whether this was the right suggestion, but the lack of guidance in the 'Code of Audit Practice'¹⁵ for external auditors to follow risks greater uncertainty insofar as whistleblowers being able to ascertain which avenue – internal or external – to pursue in particular circumstances.

12. As such, it is our view that the perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward with concerns relating to financial malpractice, wrongdoing, and risk in local government.

Legal protections for local authority officials

13. In speaking to a number of individuals working within local government, there have been some occasions where PCaW have advised individuals to report concerns to elected councillors. Under PIDA, disclosures to councillors would class as 'wider disclosures' which imposes on the whistleblower a more onerous duty¹⁶ to justify the course of action taken in order to secure protection under this law. This is because councillors – unlike MPs –¹⁷ are not classed as 'prescribed persons'. The effect of this is that officials who disclose wrongdoing to councillors may not be covered by PIDA in the event they suffer detriment as a consequence of raising concerns. The result of this is that genuine whistleblowers, in the knowledge that they would have to satisfy the stringent criteria of justifying a wider disclosure to invoke PIDA protections in raising concerns to councillor, may not speak up as a result. MPs are an obvious parallel for inclusion as 'prescribed persons' as both occupy a key external accountability mechanism, central government when it comes to MPs and local government when it comes to councillors.
14. Moreover, both whistleblowing policies of Birmingham City Council and West Somerset Council do not provide details of appropriate councillors – for example the leader of council - to report concerns to. Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors. As discussed above, any officials making such disclosures maybe left in a very vulnerable position if they suffer backlash from their employers for raising concerns, as the high bar for 'wider disclosures' in PIDA may not be satisfied.
15. Accordingly, the risk from a legal perspective in reporting concerns to councillors, matched with whistleblowing policies not entertaining such a

¹⁵ 'Code of Audit Practice' < <https://www.nao.org.uk/code-audit-practice/> >

¹⁶ See S.43G PIDA.

¹⁷ See The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2014.

possibility, presents a sound basis for inferring that officials may not speak up about wrongdoing further, if at all, not least in the event that matters are not resolved at an internal level.

Going forward

16. The abolition of the Audit Commission in England brought about a new regime for the external auditing of local government and the regulatory structures behind this. We have outlined above our consternation around the commercial relationship now in existence between local government and private firms auditing the former. We have also highlighted the lack of useful guidance for whistleblowers who may want to take their concerns to external auditors. Whilst we accept there are other avenues – internally or externally - for whistleblowers to go in certain circumstances, we maintain the view that raising concerns to external audit firms can be an appropriate step to take.
17. We therefore recommend the government publishes guidance for local authorities to produce materials to inform potential whistleblowers about the above changes, and offer sufficient information in respect to how and who to contact in external audit firms to raise concerns, and the remit of these audits - including scope and powers.
18. As discussed above, officials raising concerns to councillors would have to meet the high threshold for disclosures if they were to benefit from PIDA protection in the event of subsequent victimisation. We therefore believe a legislative change to the list of prescribed persons should be made to include councillors, as it was to MPs, in order to lower the bar required to demonstrate a protected disclosure¹⁸ has been made under PIDA. The possible effect of this is that officials may be encouraged to speak up to councillors if there is a less risk of their concerns not falling within the said legislation.

Summary of Recommendations

- Guidance on the creation of internal whistleblowing arrangements should be produced for local councils at all levels. This guidance should highlight the possibility of external auditors as a regulatory option where concerns can be raised. The policy should also identify who the auditor is and a named contact or department by which concerns can be raised with them.¹⁹
- Guidance and a public awareness campaign should be considered as a way to better inform officials in local government of the existence of their employer's whistleblowing policy and their rights under PIDA.
- Councillors, like MPs, should be included under the 'prescribed persons' regime to give local government officials with whistleblowing concerns greater

¹⁸ See S43F PIDA.

¹⁹ For an example of best practice principles for internal whistleblowing arrangements, see Whistleblowing Commission's Code of Practice: www.pcaw.org.uk/files/PCaW_COP_FINAL.pdf.

legal assurances.

SUBMISSION 306

Dear Sirs

I am emailing on behalf of Staffordshire County Council with comments on the Review of Standards in Public Life.

At the outset I apologise that our submission has not met your 18 May deadline but ask that the following comments be taken into consideration:

Here at Staffordshire County Council we are fortunate that amongst our elected members there is a strong culture of high standards of behaviour towards each other and their communities, treating all with equal respect. Consequently we only have an occasional need to engage in our 'Standards' processes. That said, we are not complacent towards the importance of a strong and effective Standards Regime and adherence to the Code of Conduct. In that context we would comment on two areas:

Sanctions -section (f) in your paper: The available sanctions are limited in their effectiveness and, whilst we have not had cause to put them to the test, we suspect that they would be ineffective as a deterrent for any 'rogue' member who chose not to adhere to the Authority's culture.

Social Media – Whilst not referred to in your paper we feel that this area needs to be addressed as the variety of social media options widens and their use becomes increasingly commonplace in everyday life. As with other social media 'conversations' Political dialogue and debate can escalate to insult and personal attack at an alarming pace. We are aware of instances where elected members have faced racist, homophobic and misogynistic abuse. It is important for the Standards regime to keep pace with changes in political/social activity.

Should you require anything further from me, please don't hesitate to contact me.

Many thanks

Julie Plant

On behalf of Staffordshire County Council

[Julie Plant](#)

[Governance and Support Manager](#)

Committee on Standards in Public Life (CPSL) - Review of local government ethical standards

Evidence from the Association of Police and Crime Commissioners

Introduction

Police and Crime Commissioners have been invited to submit evidence to the CPSL 'Review of local government ethical standards'. Our members are particularly interested in the following terms of reference:

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

The Committee have advised that they would be interested in hearing about PCCs' experiences (in respect to the above) and that PCCs should take the above terms of reference to apply to them.

About the APCC

The Association of Police and Crime Commissioners (APCC) is the national body put in place to support Police and Crime Commissioners ('PCCs') as well as other policing governance bodies, such as the City of London Police Committee, the Deputy Mayors of Policing and Crime in London and Manchester and the British Transport Police Authority.

The evidence in this submission is largely drawn from direct material from our members. We have also included some anecdotal evidence drawn from discussions at all PCC meetings as well as one to one conversations with members. We have also referenced evidence from an APCC security survey conducted in January 2017. We have not generally named our members in this submission, but would be pleased to work with the CPSL to approach Commissioners to provide additional evidence should they wish to offer it.

Annex A sets out PCC Katy Bourne's compelling submission.

While this submission sets out some of the issues and themes for from PCCs who have provided evidence – it is stressed that the points made are not necessarily shared by all members.

Nature, scale and extent of intimidation

The following sections set out themed evidence we have received around the nature, scale and extent of intimidation.

Social Media / Online:

- Members have experienced intimidation on Social media:

- the types of intimidation include people focusing on personal issues (using foul language, referring to looks or clothes) rather than contributing to 'the debate'
- It is becoming the norm that facts can be replaced with people's opinions and then spread by a simple re-tweet.
- Those who leave offensive comments tend to hide behind false names and addresses when setting up accounts. Legal action can be taken for such matters, but this is timely and very costly and it would not be appropriate for the public purse to pay for such action.
- Some members choose to "mute" or block such offenders online.
- There is concern that some online threatening behaviour locally may be part of a more national or coordinated threat (across force boundaries). However, there is no way of knowing this if it is being managed through the lens of a single force.

"I am now enduring a sixth year with false and malicious information and images remaining on the web and being reposted" ... "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" PCC Katy Bourne

Home / Personal Security

- Many members are concerned about their home security – especially where their home address and details are in the public domain.
- Unlike MPs there is no national security package in place for PCCs. Custom and practice around home security for PCCs varies from force to force.
- One member felt that their force was less reluctant to put in place home security provision for fear of being perceived as giving preferential treatment to their Commissioner.
- Some members (who do not have home security) have cited the reason for this deficiency to be a lack of funding.
- PCCs who do have home security packages put in place by their force are not automatically eligible for tax relief and must submit a case to HMRC who hold the 'bar high' as to whether it should be considered a taxable benefit or not.

"On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter."

"My intimidation all related to the release of my home address, with people calling unannounced, one of the 3 above had an injunction against him."

Staff and Offices

- Some members noted that rise in their staff being intimidated. This includes naming staff on social media or threatening to contact employees directly concerning their issues.
- Some members received threatening mail with foul language – an example of receiving pins in a letter (which will have been opened by staff). This were referred to the police.
- As a result of these issues, some office have specifically reviewed their lone worker policies and bolstered their personal security awareness and training for staff.
- There have also been occasions where people have turned up at PCC's offices unannounced demanding staff to take action on their particular concerns and/or acting in a threatening manner.

“She walked in and signed the visitors’ book without being directed to do so. She was angry and aggressive throughout.... She became more abusive, calling the Manager a pathetic idiot and raised her arm saying ‘you will regret ever getting this job’. The manager felt she was going to be hit.”

The role of PCC

- With the role of PCC looking to expand into the Criminal Justice System – this could potentially expand the pool of disaffected people who could seek to target the Commissioner.
- Members have expressed concern that inadequacy of security provision surrounding the role could impact on potential candidates putting themselves forward – and in particular women candidates.
- The role of PCC often requires the Commissioner to speak publicly on matters of crime and terrorism – heightening them as a public figure head who could be seen as a potential target. Similarly, others feel that being a politician in the ‘policing arena’ could heighten or attract more nasty and unbalanced people than most politicians.

“I was contacted by Special Branch to advise me that during a protracted police operation (several months) that had attracted considerable levels of protest by both sides. I was informed that one group had discussed targeting my home address, particularly during the night time to disturb me and my family.”

Scale

- All members (or their offices) will have experienced some form of online harassment or intimidation – varying from trolling to the far more severe harassment (examples set out earlier).
- Based on the levels of concern expressed when these issues are discussed in ‘all PCC meetings’, we could deduce that most (if not all) members consider the provision of security to be an issue. Although not all members will have necessarily had issues for themselves.
- A smaller pool of members have been subject to more targeted and extreme forms of intimidation and harassment. For these members the issues are highly distressing, impactful on their ability for them to carry out the role of PCC and affect their family and work colleagues.

“It is sad that in the year we celebrate 100 years since some women first got the vote that such issues are deterring women from entering public life “

Measures could be put in place to prevent and address this intimidation:

Parity with MPs

- PCCs should have parity with their parliamentary colleagues and be afforded the same national security assessments and responses.
- PCCs should be able to access to Security Assistance funding in the same way that MPs can.
- The practice and provision of security arrangements for PCCs locally varies. We would like to see consistency of approach (which has a national perspective to identify threat across force boundaries) as part of the safe working conditions for all members.

“We deserve the same support, advice and funding as MP's”

Online

- Social Media companies need to do more to stop online and threatening behaviour – this includes more accessible and flexible preventative measures to disrupt stalking and harassment activity.

This could include putting a “filter” on posts that bans inappropriate words – whilst this will not solve the problem, it will go a long way in reducing it. We acknowledge that some companies already offer a service where a user can implement a number of chosen words to ensure if they are used by someone leaving a comment, it remains hidden until it has been authorised by the owner of the Facebook page.

- Social Media sites should band together to take action against a small number of problematic users in order to send a message that this type of behaviour is not acceptable.
- We would like to see the ability to impose penalties on those who think it is acceptable to behave in this manner as well as social media companies do not provide support to tackle these problems.
- Some feel, where legislation *may* need to follow, is if tech providers do not step up to their responsibilities.

“We acknowledge that the Prime Minister will introduce a social media code of practice later this year – this document must not gloss over the serious issues that have been raised, it must have substance and be a tool that can help combat the problem rather than a token gesture.”

Other

- There needs to be a way for PCCs to protect their home address details - this means not mandating the publication of a candidate’s home address on election material (they were not allowed to use of PO Box).
- Some members feel that our police and other criminal justice partners need to be able to spot the signs and join the dots between behaviours in order to protect victims and secure prosecutions in relation to stalking and harassment.
- Other felt that guidance for prosecutors is needed 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.

“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.” PCC Katy Bourne

Annex Below

Annex A: Submission from Sussex PCC Katy Bourne

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 Madelaine 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.

W Hill

Review of Local Government Ethical Standards:

Although this submission in relation to the above is slightly out of time (it has only just come to my attention) I make the following comments, which I hope can be taken into consideration.

Firstly it is known that there are several 'live' cases with The Ombudsman and St Helens Council. One case has been up-held in relation to the council not following its own Protocols and at least one further case is pending determination.

Under the terms of reference of the review there is particularly concerned about:

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;

From personal experience in recent dealings with St Helens Council it is evident that the codes of conduct are not being adequately adhered to as laid down and are not working as intended - this has allowed a culture of lack of transparency to be cultivated. Additionally, as the Council is held by Labour with a significant majority and deemed a Rotten Borough, there is a definite problem with attitude – in so much as because of the Council's majority they see themselves as 'untouchable'.

Examples of which are - that the Council and its officials are meeting with property developers etc on a regular basis – there are no diary entries, notes, minutes of meetings that have taken place, no action plans etc.

This then leads the public to lose confidence in how the Council is dealing with developers with the inevitable accusations (which may or may not be accurate – that is for others to determine) that deals are being struck behind closed doors, are done deals and are pre-determined when it comes to obtaining for example planning permission.

A further example is of how the codes of conduct are not being upheld cover a), b) and c) above relates to [REDACTED], you will note from the following how codes/protocols are being flouted, investigations although undertaken seem to have little effect and how the enforcement sanctions etc are ineffective.

██████████ has now been up in front of the Standards Committee on 3 separate occasions over a period of a few years. The most recent of which was in December 2017 when he was sanctioned and stripped from his post of Armed Forces Champion. The common thread within the complaints relates to his conduct and interaction with the general public (usually) on social media eg Facebook and Twitter etc. He has a proven track record of being rude, abusive and unprofessional. He openly supports the release of greenbelt and brandishes anyone who doesn't agree with his stance as a NIMBY.

Now barely 6 months after his last skirmish with the Standards Committee he is now to oversee the newly emerging Local Plan as Chair of Planning! That is rewarding someone for bad behaviour. The whole Borough is scratching their heads as to how this appointment has taken place – especially in terms of past childish, undemocratic and frankly outrageous behaviour.

- 2 Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;

Judging by my own experience it is deemed that there is still further work to do – especially in relation to Councils that merely pay lip service to the structures, processes and practices.

- 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 judging from personal experience (see above)

- 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 accountability and adequate punishment - a closed shop of investigation – ie 3 stage complaint procedure before anything can go forward to the Ombudsman who the public see as the last line of defence.

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 codes of conduct are adopted in good faith but sometimes as a member of the public it is difficult to see that Councillors are in fact adhering to the codes. There is a lack of transparency, especially if it can be blatant flout

Investigations and decisions on allegations

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

More independency is required – a panel of independent persons, specifically trained, drawn from diverse backgrounds would be preferable.

- 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?

To protection of Monitoring Officers can only take place if the Monitoring Officer is independent ie Monitoring Officers from Merseyside – investigating cases in Greater Manchester therefore not presiding over breaches in their own area.

Sanctions

- e. 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 sanctions are ineffective for the most part (although as a member of the public I have very limited experience). It would appear the sanctions are not sufficient or robust enough to deter further breaches.

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

Yes, additional sanctions should be available. The sanctions should be a clear deterrent and not just a tap on the wrist. Fines – in the case of Councillors either to pay the fine personally, or to fine from the Ward finances available – so the Wards they serve suffer the consequence – which will focus the mind when it comes to local elections. Removal from post, recommendation to remove from political party.

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 arrangements are not adequate as they allow too high a degree of self-regulation. Despite the independent person's representation, they do not have the scope or resources to access information unless provided by The Council. In Councils where there is a dominant single party, the cases which are brought before Standards Committees are heavily influenced by the political agenda and most powerful factions of the ruling regime.

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

Truly independent scrutiny of the complaints submitted to the Council and independent moderation of both: which cases proceed to investigation and then onto the Standards Committee and the severity of sanctions applied

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?

Most codes of conduct I have seen tick the right boxes. However there is often a significant difference between what is written and how it is operated

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?

- iii. 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 my experience very significant complaints have been delayed until the complainant gave up. The Monitoring Officer is often put under significant political pressure. A monitoring officer's body with the same level of organisation and authority as CIFA could begin to improve this.

- iv. 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 is totally dependent on the Monitoring Officer for information about the complaint. They are therefore only as good as the Councils MO. One Independent Person, often with only partial information can be easily influenced by the group of Councillors making up the Committee. They therefore can be, unwittingly used for political purposes. If they resist this they have little independent redress and are often not even aware of wider intra party conflicts

- 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?

Please see response to i.

Sanctions

Are existing sanctions for councillor misconduct sufficient?

- vi. 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?
- vii. 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.

- viii. 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 duties are correct but the sanctions for not complying are totally inadequate. In particular a personal bankruptcy of a Councillor should trigger immediate disqualification for holding office.

- ix. 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.

Arrangements are adequate but implementation and sanctions are not.

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?

Self-regulation is not working. It is probably unrealistic to expect this to change from within.

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

Reinstitute previous powers of Standards Committees with more independent person's involvement. An appropriate inspection regime, requiring annual public reports of complaints submitted, timescales for dealing with them, outcomes and trend information. This would be a good indicator of the governance of the Council.

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?

Clearly this will vary but I have witnessed examples where intimidation and pre rehearsed hearings have been farcical. When Councils use multiple expensive solicitors and barristers knowing that the complainant and respondents cannot access support which would move closer to a fair hearing and outcome.

There should be a standard timescale of the exchange of documents which cannot be deviated from. If new documents become available then the hearing should be delayed. I have witnessed situations where 200 pages of documents have been released to the defendant less than 12 hours before a hearing and then requested adjournments have been denied.

While the Ombudsman's existence is very welcome, its ability to deal with complaints is clearly insufficient given slow response times. This in effect leaves both complaints and defendants at the mercy of the Council with no realistic timely redress.

A. BACKGROUND.

I have been Parish Councillor for about 15 months. Prior to this, I was extremely busy in my professional life as an Irrigation, Drainage and Water Resources Consultant working worldwide many key donors and projects in many countries. Two years ago I decided to wind down my consultancy work and because of my local experiences in relation to an illegal development on a site near my home in the Bethersden Parish and the ineffectiveness and unwillingness of the Ashford Borough Council to take timely and appropriate action, I decided to work at a local level to try and change this. I was extremely upset to find that what I could see existing at Borough level was mirrored at Parish level with cliques operating in both authorities irrespective of what would be expected according to the legislation regarding localism and empowerment. The combination of the Parish Borough councils has meant that they seem to work with impunity and no one willing to address what is clearly illegal and inappropriate.

B. DETAILS.

- a. **Secret societies.** I am at a loss to understand why it is not a requirement for Parish Councillors and Borough Council members to declare membership of secret societies, particularly the Freemasons. I have found that not only are my Parish Councillors in the key positions Freemasons, but they use this to give favours to others with similar membership, particularly in relation to planning applications, and they do it in such a way that there are no written records that can be used to prove this.

Recommendation 1. Secret societies must be included in the Declarations of Pecuniary Interest as they may not be directly related to financial profit, but by considering the “connections”, in most cases this leads to preferential treatment, (either in planning applications or others situations) and these in lead to financial profit.

- b. **Borough Council Legal Officers declaring that they have no authority over PC issues.** I have trying to raise a number of irregularities with the legal officer in Ashford Borough Council (ABC) only to receive very weak responses and after much correspondence, saying that it is up to the Parish Council to solve and that the ABC cannot do anything as they do not have responsibility for these issues. Even where I have provided strong evidence of concerns over failure to declare properly and fully the DPI of all members of the Parish Councillor's family, ABC has shown no interest whatsoever in getting the issue is correct and after four months of writing I am told that (a) the wrong forms were completed and (b) that it is being done when it is not shown publicly anywhere and (c) “it takes time before it is loaded on the ABC website”.

Recommendation 2. The responsibilities and relationships between Borough councils and Parish councils, particularly in relation to serious issues such as those relating to financial irregularities and purposely incomplete Declarations of Pecuniary Interest, must be clearly defined and openly defined as in spite of Councillors declaring some interests when under pressure, it is very easy for them and ABC to sidestep what would seem to me to be legal obligations.

- c. **Financial irregularities and financial matters.** Although it is quite clear to me reading our statutes that every Councillor is individually and collectively responsible for the financial performance of the Parish Council, when the Parish Council officers choose to be selective in their circulation of financial details, cut certain Councillors out of the circulation list as the controlling group feel that by including all Councillors into the circulation list they will have too many details and may vote against proposals. In our particular Parish Council, the process of preparing the annual financial papers have followed any logical sequence with

internal audits ignoring irregularities that have already been identified and reported on and preparing the annual financial statements without the intermediary stages being properly and openly followed to ensure openness and transparency. The Kent Association of Local Councils has been approached on these matters and has followed the Borough Council's line in failing to ensure that the irregularities are corrected and that deadlines are correctly enforced.

C. Recommendation 3. Ensure that proper internal audits are carried out annually on Parish Councils and that minority groups on Parish Councils can raise their substantial concerns with the independent auditors (currently this is very easily blocked both at Parish Council level and Borough Council level).

d. **Minuting of meetings.** The various guidelines provided by KALC and NALC set out that minutes should be brief and not verbose. However, this enables those Councillors who said were right up and expect your tennis tomorrow. Just then read control by majority voting of the Council to "doctor" minutes to suit what they wanted, said and not to record what is actually said. There are various means full Councillors to try and prevent this fraudulent change of minutes, but if the majority Cllrs are intent on proceeding down this line, in practice it is very difficult for dissenting Councillors to get anything done to provide proper reflection on what was said.

D. Recommendation 4. Ensure that guidelines on how minutes are reviewed and recorded and how Councillors can ensure fabrication of minutes actually reflect what was said and done is reassessed so that negative situations are properly examined when the guidelines are produced. What exists certainly does not suit those situations where the intent is to misrepresent.

e. **Key positions on Parish Councils.** It may be difficult to persuade parishioners to join Parish Councils, however, when many ordinary parishioners see that those who occupy PC positions (particularly the chairman and vice-chairman) only do so to "feather their own nest" rather than the interests of the community, it is even more difficult to get anyone to join a Parish Council for what may be considered altruistic reasons.

E. Recommendation 5. Prevent Parish Council officers from maintaining key positions such as chairman and vice-chairman for more than one consecutive year. [For over 15 years, we have seen the same three people in these two positions and this ensures that bad practices are perpetuated so much so that it is regarded as normal].

f. **Position of Parish Clerk.** In the small Parish Council such as our own, are only employee is the Parish Clerk who is also the **Responsible Financial Officer**. When this person appears to be tolerate and put up with the irregularities practised by the two key Parish Council officers (Chairman and vice-chairman) and as such does not enforce the details of the financial statutes nor behaviour at Parish meetings etc, and is quite happy to permit all the irregularities without question, it is extremely difficult for minority group on a Parish Council to change this situation. When Councillors express concerns, the majority group tries to "hound out of office" those refusing to toe the adopted irregular lines. This leads to a total impulse and a breakdown in the democratic process of the Parish Council.

F. Recommendation 6. Ensure that better control on recruitment and continued employment of Parish clerks is presented to prevent the perpetuation of elite groups in the Parish Council and the enforcement of well documented procedures that form the basis of proper democratic local councils.

- g. **Selective communications and doctoring of emails.** When Councillors who are holding office choose to perpetuate their positions and their incorrect actions, it leads to a lack of openness amongst Councillors and certain adjustment of e-mails to support their actions and directions. This situation is not covered in the standard NALC statutes and does not seem to have been considered.

G. Recommendation 7. Ensure that these negative actions are properly covered in the model statutes and guidelines produced for Parish Councils to prevent elite groups manipulating the democracy of smaller Parish Councils and to better provide a good basis for proper democratic local councils.

- h. Professional defamation and distorting the truth professional efforts of new Councillors. Following on from e. above, where the chairman, or the vice-chairman of a small Parish Council have held positions such as a Justice of the Peace for a long time, it seems that they have difficulty in accepting other viewpoints, particularly from other professionals of different disciplines who may have recently joined the Parish Council. Although the code of conduct for JPs clearly spells out that they should not use this position or former position to influence decisions and debates, it is very, very difficult to raise the subject of improper conduct either with the Borough Council all the Association of local councils as they automatically believe that this situation cannot possibly occur. It is important that councils are not run in an autocratic way and that due respect is given to the professional views of others, even if they differ from chairman's viewpoint.

H. Recommendation 8. Ensure that these negative actions are properly covered in the model statutes and guidelines produced for Parish Councils to prevent freedom of expression of thought and actions, particularly in the smaller Parish Councils.

Committee on Standards in Public Life consultation on local government ethical standards regime

Response on behalf of LB Sutton Standards Committee, May 2018

The Committee on Standards in Public Life (CSPL) has begun a review of the current arrangements for upholding high standards of conduct by members in local government. Its advertised terms of reference are to examine the structures, processes and practices in local government in England for:

- maintaining codes of conduct for local councillors
- investigating alleged breaches fairly and with due process
- enforcing codes and imposing sanctions for misconduct
- declaring interests and managing conflicts of interest
- Whistleblowing
- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
- make any recommendations for how they can be improved
- 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

This response was discussed at an informal workshop with the former and outgoing members of the local Standards Committee, including the Independent Chair and Independent Members and our three new Independent Persons. The Standards Committee was dissolved in May 2018 and its functions amalgamated into the new Audit and Governance Committee. Given the change in membership, the final response was signed off by the incoming Chair of the new Audit and Governance Committee, appointed at the Council AGM on 21 May 2018.

We have following the grouping of the consultation questions into 'conversations' and have only answered those questions where we feel we have something useful or distinctive to contribute.

Conversation 1 - Code 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.

We agree that the Seven Principles of Public Life have stood the test of time well and are the right principles to form the basis of local Codes of Conduct. They are reasonably well known and understood and we do not think there is merit in coming up with a different set of behaviours that would inevitably be less well known or understood.

We think the arrangements around registering and declaring councillors' interests are less clear and there may be merit in standardising these so that expectations of elected members are clear, both to them and to the public. We have covered this in more detail in Conversation 4.

We have had some experience of members of staff feeling that they had no option but to bring a complaint against an elected Member due to their behaviour in appearing to conflate officers' responsibility to implement the policies of the majority group who have been elected to run the Council with officers' personal actions and motivations. We think that it would be worth considering whether it is possible to strengthen Members' obligations and duty of care towards Council officers as their ultimate employer, and to set this out more explicitly in the Code itself.

Ad hominem attacks on officers by name in public forums is clearly spelt out as inappropriate in our local Member-Officer protocol. However, it is challenging for this to be raised by staff and dealt with through the Code of Conduct. It may be better dealt with through employment arrangements and contractual obligations, so that staff can be confident that they will not be attacked for simply doing their job, when the focus of any policy disagreement should be on the politicians who set that policy.

Conversation 2 - 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?
- 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?

The 2011 Localism Act arrangements in respect of the role of Independent Persons in advising both the Monitoring Officer and the member complained about are widely acknowledged to be a bit of an unhappy compromise, drafted in haste to secure the Act's passage through Parliament. We agree with this assessment. It is against the interests of natural justice to have the same person advising the person investigating a complaint and the person complained about, and we believe this has been used to challenge Standards Committee rulings on a procedural basis. Authorities, including Sutton, have got around this problem by recruiting more than one IP. However, it would be better to clarify the role in legislation for the avoidance of doubt.

We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process. Our current IPs, for example, include the IP for the City of London Corporation and a former JP, a Professor of Ethics, and a private sector corporate governance specialist, who all bring a wealth of experience to their role for the benefit of our borough.

We believe that it would improve confidence in any local regime if they were given a stronger voice, for example voting rights on Standards Committees and / or a majority vote on the Committee or Panel. This would avoid the charge that elected members may vote along party lines and not be sufficiently independent in reaching their decisions on standards complaints and investigations.

In relation to the Monitoring Officer's role, there is undoubtedly a risk that MOs could be subject to undue pressure over their role if members, particularly those in leading positions, are unwilling to follow general principles of good governance. This could be addressed if the issue of sanctions (covered below in Conversation 3) is addressed. At present, MOs are reliant on persuasion and appealing to members'

better nature and desire to do the right thing and to accept that they need to seek to achieve their political objectives within the rules that have been set. In Sutton's experience, happily, this is generally the case.

However there have been instances of a member refusing to accept MO advice and instead using attacks on the MO's personal life, for example, to undermine that advice and position. One of the issues is that if a member has major criticisms of the majority group administration, they may be unwilling to accept the Council's own rules, as they have in reality been agreed by that majority administration. This could be addressed through a clearly nationally mandated regime and set of rules as these would be seen to apply equally regardless of who controls the Council and its policies and political decisions.

Conversation 3 - 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?

Sutton Standards Committee, in particular the outgoing Independent Chair and Members and Independent Persons, wish to emphasise that this is the key concern we would want to raise regarding the current regime: the lack of effective sanctions to enforce the behaviours expected under the Code of Conduct.

The sanctions we currently have include:

- removing or restricting access to council facilities or resources;
- removing a member from committees if their party group agrees (which leaves a gap in relation to members not in a group of some kind);
- 'name and shame' censure by the Committee or Full Council;
- requiring the Member to undergo training, although if the Group does not enforce this, it is unclear what powers we have to compel it.

All of these sanctions are open to the accusation of political votes since they require politicians to set aside party allegiances in what may be a highly charged and sensitive atmosphere and vote purely on the evidence. While this is obviously not unusual in local government (Planning and Licensing Committees, for example, are

expected to do this all the time), it is nonetheless open to such an accusation, even if it is unfounded, and this could undermine the perception of the right decision being seen to be made.

When the sanctions available are in reality so limited, there is then a question about the legitimacy of spending increasingly scarce public resources on the process of a full investigation, when the action that may be taken at the end of such an investigation if a complaint is upheld is so meagre. In other words, the cost and potential length of any investigation are disproportionate in relation to the sanctions available at the end of the process.

We are mindful, when considering what action to take in response to a complaint, of both past Sutton experience and experience from other Councils who have followed lengthy and expensive investigatory processes, only for the sanction in effect to be just a minor slap on the wrist, which can be - and is - ignored in future behaviour. Evidence from elsewhere suggests that the reliance of the Localism Act regime on the electorate not rewarding breaches of the Code of Conduct is not borne out as members have been re-elected even following several complaints and investigations. Our practice has therefore been to seek informal resolutions to complaints - an apology; an explanation; a commitment not to repeat; or some other resolution acceptable to the complainants.

In its current form, we believe that the regime does not provide an effective deterrent, sanction or mechanism to enforce compliance with the Code, nor does it act as a driver for learning and improving behaviour. It is heavily reliant on Members self-regulating their behaviour, which is fine as a general rule because this is what most Members do, but it does not provide a mechanism for dealing with those Members who do not.

We believe that the power to enforce suspension and removal of allowances from a member should be returned to local Standards Committees. This would extend the options available for sanctions if a complaint is upheld and is serious enough to warrant such action. We accept that sanctions of course need to be proportionate to the nature of the offence and context, including repetition or patterns of behaviour as opposed to a single lapse of judgement.

If these more serious sanctions were available to Standards Committees, we accept that this could require some kind of external / independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London Councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the

Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.

Our earlier suggestions about strengthening the role of Independent Persons, or bringing back the role of voting Independent Members of Standards Committees - either on the full Committee or perhaps in a more limited way on the hearing Panels alone - could also provide safeguards for Members against the risk of a politically motivated process and ensure public confidence in the standards regime was maintained.

Conversation 4 - Interests

- 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.

The current provisions on pecuniary interest are clear and robust, but they do seem designed to discourage complaints / prosecution because of the hugely higher bar of a criminal offence. We understand that there has only been one successful prosecution since 2011. We think it is appropriate to have this criminal sanction for the most serious financial misconduct cases to ensure there is sufficient deterrent against corruption in public office. However, we think it is odd to have this single extremely draconian sanction for one aspect of the ethical conduct regime and virtually nothing at all for the rest: it is out of proportion.

We think that the provisions on 'other' interests are less clear. Members find them hard to understand and we have repeated examples of members forgetting to declare non-pecuniary interests in meetings. The 'interests' that tend to call a member's participation in business into question are often not 'personal' but 'relational' - to do with community links and activities. It is a positive thing for members to be connected to their communities and to have a good understanding of and relationship with local organisations and community groups. However, these

relationships can then be what is criticised as an 'interest' when members' judgement and ability to act in the public interest is questioned.

Possible measures to address this could include adding a 'full disclosure' or 'for transparency' declaration requirement to the Code. This would be required to be used where it is not an 'interest' in the sense of membership or holding a position of control but where a member's association with an individual, organisation or issue could be misconstrued. We are considering adding this to our local Code but feel it would add weight for this to be part of the national expectations of Members.

Conversation 5 - Structures, Processes and Practices

- 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?

See above in response to Conversation 3: the most significant gap is a lack of effective sanctions to enforce the ethical standards expected by the regime.

Conversation 6 - Intimidation towards 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 think this is probably an under-reported and under-estimated issue. We very much endorse the sentiments expressed by Baroness Britton in the CSPL report: "We seem to have lost in this country in the past 15 to 20 years the ability to disagree well... We can have robust debate, but it is about the level of personal abuse and deliberately trying to undermine people."

It is vital that there is challenge to the majority administration, in the interests of good governance. However it is about the way that this is done. We are aware anecdotally of some instances of councillors and candidates being abused or intimidated, particularly on social media. Examples include pictures of their homes being published online, statements like "we know where you live" being made, or other comments which make it clear the councillor was being watched as they went about their private life.

Councillors are particularly vulnerable as they live locally and are by their nature very visible and active in the community. The debasement of political debate into personal abuse, which social media in particular has enabled to grow, is a key reason why we believe the Code of Conduct needs to be more effective and have more teeth, so that we can ensure Members are seen to be providing leadership and acting as role models for a more courteous form of political debate.

We run training for our Members on personal safety and resilience, and work with our Groups around their pastoral care role. We are also considering surveying all candidates in the recent local government elections to understand their experience as a candidate and some of the things we could potentially do differently to better support all candidates, again this is something that would carry more weight if there was a national approach.

Conversation 7 - Whistleblowing

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

We have not considered this as it falls outwith the remit of the Standards Committee

Conversation 8 - 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?

We think we have covered this in our earlier responses. The key action required is from central government - to amend the Localism Act to provide more effective sanctions to enforce compliance with the Code of Conduct and ethical standards.

London Borough of Sutton Standards Committee

May 2018

**SUBMISSION TO THE LOCAL GOVERNMENT ETHICAL STANDARDS
COMMITTEE ON STANDARDS IN PUBLIC LIFE by SIMON RANDALL
CBE**

INTRODUCTION

1. This submission is written in a personal capacity by Simon Randall, a solicitor and consultant with Winckworth Sherwood LLP specialising in local government. He has been a councillor for London Borough of Bromley and the former Greater London Council, and has advised a range of government ministers on local government issues on behalf of the former London Boroughs Association.
2. During both his political participation in London and his professional career, he has been involved in handling many cases relating to the behaviour of elected members at all levels of local government. Most recently (in a professional capacity) he advised on local government issues arising from the recently decided case of R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) ("the Ledbury Case"). The judgment in this case is attached as it is a detailed and clear summary of the state (and limitations) of local government legislation in this area. This submission only deals with the legal issues arising from the Ledbury Case rather than the detailed circumstances leading to the proceedings.
3. Thus Simon Randall's experience in the area of elected member conduct spans the years before the enactment of the Localism Act 2011 ("the 2011 Act") and, in particular, local authorities with strong party political groupings.

SUMMARY OF THE ISSUES

4. The essence of the Ledbury Case, and those cases quoted within the text of the judgment, relates to the interaction between handling Code of Conduct referrals under the 2011 Act and grievances by local authority employees about the behaviour of elected members. Accordingly the judge opined that the effect of the legislation is that any behaviour which breaches the Nolan Principles, upon which the Code of Conduct of all local authorities is based, must be the subject to the complaint procedure under the 2011 Act. Even if a complaint is upheld the sanctions against the elected member generally amount to no more than a requirement to apologise to any injured party or a wrap over the knuckles. This affords little comfort to the employee involved who might otherwise feel they have little option but to resign and issue proceedings in the employment tribunal for constructive dismissal, with all the potential associated damages and legal costs. Indeed it may be that local authorities lose valuable members of staff as a result.
5. Whilst the 2011 Act abolished the Standards Board for England and devolved code of conduct issues for local decision-making involving independent scrutiny, the effect has been to seriously reduce the protection for local authority employees and inappropriately combine employee grievances within the Code of Conduct deliberations. In addition, custom and practice between authorities varies to such a degree that there tends to be a lack of consistency and transparency in managing the procedure.

THE PROCEDURE DEALING WITH COMPLAINT AND IMPLICATIONS

6. In the Ledbury Case (paragraph 129 of the judgment), the judge indicated that any complaint against an elected member, whether involving a member of the public or an employee, required potentially a four stage process under Section 28 (11) of the 2011 Act namely:

- (i) The making of an allegation
- (ii) (optionally) a non-formal investigatory or mediation stage or a pause pending other relevant steps being taken
- (iii) A formal stage, involving an independent person, leading to a decision on breach
- (iv) (if breach is found) a formal stage, again involving the independent person, dealing with action

Prior to the enactment of the 2011 Act, the Standards Board for England had significant powers which included the right to exclude an elected member from office and a restriction on that party being able to stand for elected office for a designated period.

7. The leading case on this issue is R (Lashley) v Broadland DC [2001] EWCA Civ 179 ("the Lashley Case"), which is frequently quoted in the Ledbury Case judgment and paragraph 93 draws attention to the Third report of the Nolan Committee which noted that authorities did not have any power to take actions against councillors which, for example, barred them from particular meetings, access to particular papers, or restricted their contacts with named staff. However, the judge in the Lashley Case also suggested that "the sanction of recommending to a full authority to remove a councillor from a committee might be intra vires". However in the Ledbury Case it is clear from the judgment that there are few actions which an authority can take beyond "naming and shaming" an elected member for unreasonable behaviour.
8. It is clear that the abolition of the old regime, involving the Standards Board, carried with it the inability to disqualify and suspend, but otherwise the powers are undefined unless the breach involves any impropriety in relation to pecuniary interests where criminal issues may arise. The arguments for abolishing the old regime provided somewhat limited justification, apart from the then coalition government's desire to abolish a quango, namely the desirability to devolve such matters to local level and to prevent plethora of unnecessary referrals. Experience seems to show that referrals have not reduced and devolvement does cause further issues.
9. Most larger authorities create their own internal standards committee arrangements to handle complaints and such authorities have active political groupings which can handle disciplinary matters including removing their councillors from committees or otherwise restricting them from certain decision-making or outside bodies. In the case of parish councils they rely on a standards committee created by their senior or principal authority which would be either a district or county council (as was the position in the Ledbury Case) and rarely have a political group able to administer any sanctions. Indeed as was recognised in the Ledbury Case the limited sanctions available under the legislation can only then be taken following any breach of the Code of Conduct when recommended by the principal authority.
10. In the Ledbury Case neither the full investigation report nor the full report of the standards committee report was published (see paragraph 154 of the judgment)

although such practice varies from authority to authority. Such secrecy is unacceptable and there should be full transparency dealing with Code of Conduct cases from the point of view both of the complainant and the elected member involved. This is particularly the case if the complaint relates to a grievance from an employee which, as the law now stands, has to be handled under the 2011 Act. As acknowledged by the judge in paragraph 166, non-elected public servants acting in an official capacity must expect some criticism as their actions may involve scrutiny, although some alleged behaviour may fall outside the scope of “scrutiny” requiring a different approach.

SUGGESTIONS FOR FURTHER CONSIDERATION

11. The abolition of the previous Standards Board for England which created a useful bank of precedents (which are no longer available) and the devolvement of the arrangements to more local level has not been particularly successful in that there appears to have been no reduction in the number of complaints under the Code of Conduct. The individual standards committees operate under differing procedures, occasionally have not appointed independent people with sufficient expertise and knowledge and are not transparent in reporting their deliberations. Thus ideally there would be merit in seeking independent people who are legally qualified, creating a common code of practice for operating such committees and ensuring full transparency with publication of all investigations and conclusions.
12. There would be some merit in creating regional standard committees covering a range of county council areas (in the case of parish council cases) so that such bodies would gain sufficient knowledge and expertise enabling them to handle all cases within their respective areas.
13. When complaints are made by local authority employees against the conduct of an elected member, those that involve employment issues, such as a grievance matter, should be dealt with in accordance with employment legislation which would take precedent over but, if necessary, run in parallel with any complaint under a Code of Conduct. Local authority employees need to be protected against (and elected members held accountable for) any conduct which involves other than reasonable criticism, and of course should be able to retain their employment rights at all times.
14. One of the advantages of the pre-2011 Act procedures was the opportunity to have the ultimate sanction of disqualifying a councillor from office for particularly reprehensible behaviour. The legislation should be amended to incorporate such a sanction and permit other sanctions which are not available in those authorities with strong political groupings and this would be handled on the basis that if the principal authority considered that the complaint was justified the parish council involved could decide upon its own sanctions to deal with the complaint against the elected member concerned. The parish council is best able to make decisions in this area having experienced at first hand the conduct complained of.
15. Any legislative changes could be achieved reasonably quickly – parliamentary time permitting – utilising the Henry VIII provisions within the 2011 Act.

Simon Randall CBE
29 May 2018

Bredhurst Parish Council

50 Park Road, Sittingbourne, Kent, ME10 1DY



Review of Local Government Ethical Standards

Committee on Standards in Public Life

GC:07

1 Horse Guards Road

London

SW1A 2HQ

26th April 2018

Dear Sir/Madam,

Bredhurst Parish Council submits the following response to the Review of Local Government Ethical Standards.

1. Bredhurst is a small parish in Kent between Maidstone and Medway and the council has seven members.
2. The council has adopted the Maidstone Borough Council Code of Conduct and members strive to promote and maintain high standards of behaviour.
3. However, members are aware that not all councillors from other parishes maintain these same high standards.
4. Members are aware of cases of parish councillors not declaring interests; saying they do not require training, either on the Code of Conduct or other council procedures; bullying other members or officers; and generally behaving in a way not consistent with the seven principles of public life.
5. As the district authority for this area, Maidstone Borough Council has a duty to monitor parish councils and investigate allegations of misconduct. This is done through the Monitoring Officer and the Standards Committee.
6. Members of Bredhurst Parish Council have in the past been reported to the Monitoring Officer. Often, this has been as a result of a malicious complaint from a member of the public. Whilst this is distressing to the member concerned, it is appreciated that stakeholders must have the ability to complain and confidence that due process will be followed.
7. In all cases, the Monitoring Officer has investigated thoroughly and fairly and come to a conclusion that is objective and reasonable. Bredhurst Parish Council therefore has confidence in the judgement and remit of the Monitoring Officer.
8. However, a complainant can become vexatious and persistent and this can waste the time and resources of the Monitoring Officer who must always investigate thoroughly. It would be helpful if the Monitoring Officer had the power to assess complaints at an early stage and sift out those which are vexatious or spurious.
9. In the interests of transparency, Bredhurst Parish Councils believes the name of the complainant should be made public, as should the report, even if the case does not go before the Standards Committee, and the public should also be made aware of the cost of the case. This should discourage vexatious complaints.

10. Where an issue arises between members and an officer, the Standards Committee does not always appreciate the difference between a large borough council and a small parish council with only one employee.
11. When cases of parish councillor misconduct are taken before the Monitoring Officer and/or the Standards Committee, there can be a conflict of interests as some parish councillors could have been borough councillors and may therefore be personally known to those on the committee. This can lead to a lack of confidence in a fair and impartial judgement.
12. Where the case is between a councillor and an officer, being comprised of councillors, the Standards Committee could have a tendency to take the part of the councillor over the officer, either finding in the councillor's favour or suggesting both parties are equally at fault.
13. The Standards Committee also hears only from the party accused of the breach and not from the party making the accusation. This can lead to a judgement which only takes account of one side of the case.
14. If the Standards Committee finds a councillor guilty of a breach of the Code of Conduct, the sanctions that can be imposed are extremely limited. A councillor can be removed from a committee, but not from the council as a whole; if equipment has been misused it can be taken away; or training can be recommended but not enforced.
15. For a small parish council with no committees and no equipment given to individual councillors, the guilty party therefore walks away with no sanctions imposed and is free to continue their misconduct, particularly if they refuse to attend any recommended training.
16. Whilst we hope every parish councillor would try to improve their behaviour after being found guilty of such a breach, it is unfortunately true that some merely continue in their ways and no improvement is made, sometimes leading to another complaint.
17. The Standards Committee should therefore have the ability to suspend or remove a councillor who has been found guilty of breaching the Code of Conduct, particularly in cases of repeated breaches with no attempt to improve. This would ensure high standards are maintained, even at parish level, and would deter others from similar misconduct.
18. Declarations of interests rely on councillors' own honesty and transparency and are rarely, if ever, checked or monitored. Only if a complaint is made is the situation investigated.
19. However, we do appreciate that it would be unfeasible to check every councillor and every meeting and there is a necessity for this aspect of regulation to be 'self-policing' and reliant on the councillors' and officers' integrity.
20. In summary, Bredhurst Parish Council would like to see stronger sanctions available to deal with those who are guilty of misconduct, particularly repeat offenders.

Dear Lord Bew,

Thank you for your letter of 16 April inviting comments on the review into Local Government ethical standards. You will hopefully by now have seen the Local Government Association's (LGA) corporate response which the Liberal Democrat Group had an input into.

I apologise for the delay in sending a further reply from the Liberal Democrat Group and for any inconvenience this may cause.

In addition to the LGA comments, we wish to highlight a few key concerns from the Liberal Democrat Group:

The principles of natural justice must be followed, both in ensuring the public have the confidence in democratically elected local government and that those accused are treated fairly.

For example, complaints should be dealt with in a timely fashion (weeks not months) and unless there are exceptional circumstances they should be time limited. Also it is important that the person being investigated is notified as to who has made the complaint.

An individual councillor may often have little or no support compared to a local authority and its officers.

For example, who looks after the councillor's interests when officers and the monitoring officer are the people who have tabled the complaint?

Legal costs are another material factor for an individual councillor who is seeking to defend themselves against a complaint but they may not have the resources to do so. Councils pay officers fees in such matters consideration should be given to elected members to have the same provision.

Harassment and intimidation can be much greater than is currently recognised, including on social media.

It is understandable that many decent people, considering public service, look at what others have to deal with and decide they do not want to pursue elected public office. This needs addressing if we are to have the widest possible pool of people serving as elected councillors.

There have been several instances where a Standards Committee has agreed that the councillor in question has broken the Code of Conduct but there is little the committee can do otherwise. So there is a case for looking at what sanctions could be made available.

We would not wish to see powers created for Monitoring Officers or other senior council employees to suspend or disqualify a councillor. Equally they should not have the power to withhold part or all payment of allowances. If such powers were created it would negatively affect the strong working relationships which exist widely across local government.

Town and Parish Councils, as with other cases, on this level of government it is important to ensure that these should have a definite time line. There should also be the ability to have an independent investigator if needed, agreed by both sides.

We understand there have been some serious instances of Councillors bullying Clerks (and sometimes vice versa) and long running disputes which bring the term 'elected' into disrepute.

There is bullying between councillors and the adherence to declaring an interest is not always thought important.

There appears to be no way any of these can be dealt with properly without legal intervention. Monitoring Officers in Principal Councils sometimes have little interest, resources or time to act.

Again there are currently no sanctions beyond the most serious cases.

As you would expect, we very much believe that the electorate are always the ultimate judge of their elected representatives. But we must ensure that councillors operate in a system that builds confidence, not one that leaves many unanswered questions and deters people from seeking election.

Yours Sincerely

A solid black rectangular box used to redact the signature of the councillor.

Councillor Howard Sykes MBE



LOCAL GOVERNMENT ETHICAL STANDARDS: STAKEHOLDER CONSULTATION

Introduction

Transparency International UK (TI-UK) has been researching corruption risks and practice in planning and development decisions made by local authorities across the UK. TI-UK defines corruption as the abuse of entrusted power for private gain, which includes both activity that is illegal under UK law e.g. bribery, and activity that is legal but ethically questionable or in breach of civil codes of conduct e.g. holding conflicts of interest. This submission contains the initial findings of our research.

We are yet to have our findings fully peer-reviewed and request that, unless specified otherwise, the Committee considers the contents of this submissions as provisional. We would be happy to provide an advanced embargo copy of the final report to the Committee when it is available.

KEY RECOMMENDATIONS

To prevent both real and perceived conflicts of interest in the local government planning process, TI-UK recommends that:

1. Cabinet members and members of planning committees should **be prohibited from holding other employment that involves advising on local planning decisions** or representing those who may reasonably be thought to have an immediate or future interest in local planning decisions.
2. Local authorities should **adopt model Codes of Conduct** that prohibit councillors who sit on planning committees or hold substantive roles relating to planning and redevelopment from accepting any gifts and hospitality.
3. There should be **greater transparency and consistency in the reporting of gifts and hospitality** across the UK by introducing a standard reporting threshold and councils publishing these details as open data.

Overview

Using a convenience-based open source sample, we initially collected data on reported incidents of corruption in local government planning decisions over the last 10 years.

We identified **27 cases** across **22 local authorities** where there have been alleged **breaches of codes of conduct or undue influence** exerted over planning processes across the UK. These allegations relate to **£19.2 billion worth of developments** and around **47,000 new housing units**.

Three of these cases involve bribery, with two cases ongoing and one councillor already having served jail time for taking an illicit payment. Eight cases involve questionable lobbying tactics that have resulted in decisions being awarded to clients of the PR firms involved. Fourteen cases involve instances where a conflict of interest is alleged to have influenced the planning process either directly or by individuals using personal networks to lobby for certain decisions to be taken.

To understand the scale of unreported corruption risks in planning decisions and what is being done to mitigate these, we sought to identify:

1. How many councillors involved in planning decisions hold a potential conflict of interest.
2. How many councillors have received gifts and hospitality from organisations and individuals potentially seeking planning permission.
3. Any weaknesses in the frameworks for managing corruption risks in the planning process.

To do this we examined a stratified sample of 55 local authorities with planning responsibilities across the UK to understand the policies, procedures and mechanisms councils have in place to detect, deter and sanction corruption in planning decisions. This assessed arrangements for Codes of Conduct for councillors, including specific rules for those involved in planning decisions, and how they deal with: gifts and hospitality received by councillors, councillors' pecuniary interests, the movement of councillors between their elective roles and the private sector (the 'revolving door'), and breaches of the Code of Conduct. Due to resource constraints we did not include similar rules for council officers within the scope of this research.

Alongside this standards assessment we undertook open source research into potential conflicts of interest held by sitting councillors, and analysed gifts and hospitality data reported by London councillors and those in five other major UK cities: Birmingham, Leeds, Sheffield, Manchester and Glasgow. We have outlined our findings below and our emerging recommendations based on this evidence.

1. Gifts and hospitality

We analysed data on the gifts and hospitality provided to councillors across London to identify potential breaches of Codes of Conduct and good practice standards on engaging with lobbyists who represent clients in the property and construction industry.

- In London we found **£79,000** had been spent by **more than 200 developers, lobbyists and others involved in the property industry** on **723 lunches, dinners and all-expenses paid trips** for **105 councillors**.
- **413 of these gifts and hospitality** were registered by councillors in **Westminster**.
- **Robert Davis** – a Westminster councillor – reported **receiving 162 gifts and hospitality over a three year period**. According to analysis by The Guardian, in 2016 Davis received hospitality from **58 successful applicants for planning permission**.¹

Outside of London, we assessed gifts and hospitality registers in five other major UK cities: Birmingham, Leeds, Sheffield, Manchester and Glasgow. Only gifts and hospitality records of planning committee members and council leaders were examined.

- Based on the sample we examined, there appears to be **substantially fewer gifts and hospitality recorded** by councillors **outside of London**.
- The **majority of councillors** we looked at in these five local authorities **did not record any gifts and hospitality at all**.
- **Record keeping** appears to be **poor in Birmingham and Manchester**. The gifts and hospitality registers for some members of these authorities' planning committees were not published online at all or appeared to be very out of date.

¹ <https://www.theguardian.com/society/2018/mar/08/westminster-deputy-leader-took-gifts-in-50-of-his-planning-cases> [Accessed 31 May 2018]

- **Only one councillor outside London**, in Sheffield, **declared gifts and hospitality related to a developer, lobbyist or others involved in the property industry**.

As part of our assessment of corruption risk mitigation across 55 local authorities, we found that:

- There are **varying reporting thresholds for gifts and hospitality** given to councillors across the UK, making it difficult to understand how much is actually being received and who is providing it.
- **Nine authorities we assessed had a reporting threshold of £100** meaning thousands of pounds in gifts and hospitality could be received without being made publicly available.
- The **current gifts and hospitality registers** are **not fit for purpose**. They are often very difficult to find, seemingly contain incomplete data and require a lot of manual data entry and cleansing on behalf of the viewer to be analysable.

Recommendation

- 1.1. To help prevent the perception of undue influence over planning decisions, the CSPL should consider proposing that local authorities adopt model Codes of Conduct that prohibit councillors sitting on planning committees or with substantive roles relating to planning and redevelopment from accepting any gifts and hospitality.
- 1.2. To help present a clear and consistent view of corruption risks across different local authorities, the CSPL should consider proposing that the reporting threshold for gifts and hospitality be standardised for local authorities across the UK. A reporting threshold of one-off gifts and hospitality of £50 or more could be appropriate, which is the same level for local government candidates reporting donations they receive towards their campaigns for office. The accumulation of gifts and hospitality from single donors which individually amount to under £50 but accumulate to exceed £100 in a year could also be recorded.
- 1.3. To help increase transparency over these risks, councils should publish registers of gifts and hospitality as structured open data e.g. CSV format and maintain them in a central location on their websites.
- 1.4. To ensure data in the register of gifts and hospitality is complete and accurate, the monitoring officer should have the function of monitoring and ensuring compliance with the rules, and those who have received no gifts or hospitality should be required to sign an annual declaration confirming this, with sanctions in place for submitting a false declaration.

2. Conflicts of interest

Using a convenience-based open source sample, we collected data on conflicts of interest held by councillors who either sat on local Planning Committees or held a brief directly related housing and redevelopment e.g. because of their position within Cabinet.

- In total we found **108 councillors** working for **51 different PR firms** who represent property developers.
- Of these we identified **41 councillors** working as **advisors for private developers** whilst also sitting on planning committees or holding a brief directly related to housing and redevelopment.

As part of our standards assessment, we also found that **only two local authorities** had guidelines on how to deal with councillors' movement through the **revolving door** between public and private employment. This presents a risk that councillors thinking of leaving public office could make decisions based on what they think would be favourable to prospective employers, or use their privileged access and influence to benefit those they go on to work for at the public expense.

Recommendations

- 2.1. To help prevent the potential for real or perceived conflicts of interest in the planning process, the CSPL should consider recommending that Cabinet members and members of Planning Committees be prohibited from holding other employment that involves advising or representing those who may

reasonably be thought to have an immediate or future interest in local planning decisions, regardless as to whether or not their clients are seeking planning permission in that local authority area.

- 2.2. Other members which do not hold these council positions but still work for these types of organisation should have to disclose their major clients in their registers of interests.
- 2.3. Former councillors who have held roles of planning responsibility – by sitting in the Cabinet or on a relevant committee – may be required to seek permission from an appropriate council official before accepting a role in which they could be expected to use contacts and influence gained while at the council.
- 2.4. The CSPL should consider measures requiring private entities and their agents seeking planning permission to disclose former councillors they employ or consult, giving details of what procedures are in place to ensure former members cannot exert undue influence over the process.

3. Oversight and enforcement of Codes of Conduct

As part of our assessment of 55 local authorities we identified some issues regarding the activities and transparency of their Standards Committees.

- **Almost a quarter (13)** of Standards Committees sit **less than three times a year** on average.
- **Less than half (20 out of 50)²** of the Standards Committees **provided details about the conclusions of investigations into alleged breaches.**³

Recommendations

- 3.1. To ensure Standards Committees are providing sufficient checks on potential misconduct, Councils should ensure they are held on a regular basis with items of business on the agenda including reviewing the code of conduct, agreeing an annual report on their activities and conducting investigations into breaches.
- 3.2. To increase transparency around the enforcement activity of Standards Committees, all of their decisions regarding substantiated breaches should be made public, including details of the breach, the individual involved and any sanction imposed.
- 3.3. To provide transparency about the activities of Standards Committees, as a minimum basic details of all investigations should be published annually, including the number of ongoing investigations, the stage of these investigations and a summary of concluded investigations.

² We did not include Belfast, Glasgow, Aberdeenshire, Edinburgh and Stirling in this figure because their investigations are dealt with by the Standards Commission for Scotland and the Local Government Commissioner for Standards.

³ We are currently clarifying with these local authorities whether or not this is because they did not have any investigations or whether they are not publishing this information.

About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.

Review of Local Government Ethical Standards: Stakeholder Consultation

Manchester City Council's Response

Please find below (in italics) Manchester City Council's response to the Committee on Standards in Public Life's consultation "Review of Local Government Ethical Standards: 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.

The Council's Response: It is considered that the existing structures, processes and practices in place in Manchester City Council work to help ensure high standards of conduct, insofar as is possible given the current statutory ethical standards regime for local government.

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

The Council's Response: It is considered that, arguably, the most significant gap within the current regime is the lack of significant sanctions that are ultimately available in the event of a finding of a breach of the 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?

The Council's Response: It is considered that Manchester City Council's Code of Conduct for Members, which is based in part on the former statutory code, while necessarily technical in places, is reasonably easily understood by members; although it is acknowledged that it could be simplified in places. It is considered that the Code covers the appropriate range of behaviours in relation to member conduct. Members receive training on conduct issues when they are inducted and the Monitoring Officer issues guidance on specific conduct issues as appropriate. The content of the member induction process is periodically reviewed.

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 Council's Response: It is considered that these requirements are appropriate as they stand.

Investigations and decisions on allegations

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

The Council's Response: It is considered that in Manchester City Council allegations of councillor misconduct are 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 Council's Response: Manchester City Council's 'Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members' set out a complaint process consisting of up to three stages – initial assessment; investigation; and hearing (before a Hearing Panel). The Monitoring Officer has produced procedural guidance for the investigation stage and the Council's Standards Committee has approved a detailed hearing procedure. The investigation guidance has recently been reviewed and updated. At each stage the both parties are given the opportunity to make representations and submit evidence. The Hearing Panel at the hearing stage is chaired by an independent member of the Standards Committee. One of the Council's two Independent Persons will also be involved at each stage of the member complaint process. It is considered that the processes in place meet the requirements of 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?

The Council's Response: The current requirement in relation to Independent Person involvement, when considered alongside the particular procedures that Manchester City Council has in place, is considered to be sufficient to ensure objectivity and fairness.

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 Council's Response: In Manchester the Monitoring Officer does have involvement in decisions-making at certain stages of the member complaints process (for example the Initial Assessment decision is

made by the Monitoring Officer in consultation with the Independent Person), although the decision made at the final hearing stage is made by the Hearing Panel. In the event that the Monitoring Officer did consider that there was a risk of a conflict of interest she would recuse herself from involvement in the complaint and the Deputy Monitoring Officer would deal with the matter.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

The Council's Response: It is considered that there is a case to be made that the sanctions under the current standards regime are insufficient.

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 Council's Response: The sanctions available under Manchester's Arrangements are as follows.

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code, it will –

- Publish its findings in respect of the Subject Member's conduct;*
- And it may -*
- Report its findings to Council for information;*
- Recommend to Council that the Member be censured;*
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;*
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;*
- Instruct the Monitoring Officer to arrange training for the Member;*
- Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;*
- Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or*
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.*

It is suggested that the deterrent value of these sanctions is limited.

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

The Council's Response: It is considered that there may, arguably, be a case for additional and more substantial sanctions, potentially including (in the most serious cases) suspension of a member for a

limited period (a sanction that was available under the former local authority standards regime). However, if more substantial sanctions were to be available, there would also have to be corresponding safeguards.

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.

The Council's Response: It is considered that the current arrangements are broadly 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?

The Council's Response: These statutory duties are considered to be broadly appropriate. However, there may be room for improvement around the operation of dispensations.

While government guidance suggests that there should be no need for members to apply for dispensations in respect of the setting of the council tax (where, on the face of it, any member liable for council tax in the area would have a disclosable pecuniary interest) this does not appear to be reflected in the current standards regime. If there is no need for dispensations to be issued in these circumstances this should be clearly stated in 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's Response: In addition to the (statutory) category of "disclosable pecuniary interests" the Council's Code of Conduct also recognises two other categories of interest - "personal interests" and "prejudicial interests."

Whistleblowing

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

The Council's Response: The Council has a Whistleblowing Policy in place. These arrangements are considered satisfactory.

Improving standards

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

The Council's Response: It is considered that local authorities generally could take steps to increase the visibility of their Member Codes of Conduct and the accessibility of their member complaint processes. Also, many authorities lack an effective filter mechanism for dealing with manifestly groundless complaints made against members.

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

The Council's Response: It is considered that there may be an argument for central government to provide for more substantial sanctions for breaches of the code of conduct (along with appropriate safeguards).

Intimidation of local councillors

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

The Council's Response: It is noted that members may face intimidation in the course of their duties as councillors.

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

The Council's Response: The Council notes the proposals the Committee on Standards in Public Life has published in "Intimidation in Public Life: A Review by the Committee on Standards in Public Life".

Jacqui Dennis
(Interim) Monitoring Officer
Manchester City Council

RESPONSES TO CONSULTATION ON CURRENT STANDARDS OPERATIONS

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 absence of any independent influence (and possibly chairmanship of committees) is a noticeable omission from the present structure. Having independent members (pre Localism) actually made it easier for elected members to take part freely in reviewing their contemporaries' behaviour when the need arose. It helped to overcome party obligations. Members would follow the lead given by an independent. Predetermination and bias should be included within the Code of Conduct and associated structures and processes.

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

Apart from the above, there appears to be no case to deny a vote to members of a Standards Committee drawn in to provide a different perspective, such as town and parish council representatives. Such members of the Committee are not able to exercise a right to vote due to existing constraints under the Local Government Act. District Council members are appointed to standards committees annually, whereas town and parish council representatives often serve for longer periods and are a reserve of experience and continuity.

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 are plenty of examples where the types of interest are not clearly understood. There is potential for confusion when a code of conduct attempts to adopt the statutory Disclosable Pecuniary Interests and also use other categories of interest to fill the gaps (for instance, interests pertaining to close family rather than a member's spouse or partner).

Members declaring they have been lobbied but take part with an open mind then immediately speak for or against the motion don't demonstrate open-mindedness and this needs to be tidied up.

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.

Councils should ensure that changes to members' interests are sought regularly. Codes could be revised to make some aspects of the Nolan Principles applicable at all times rather than just when acting or purporting to act as a councillor.

Investigations and decisions on allegations

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

Yes, but in the absence of a standardised process, this could vary between neighbouring councils.

- 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?

Locally adopted process for investigating and determining complaints is fit for purpose and as 'light touch' as possible while still maintaining integrity. This council appoints two Independent Persons in order to make sure there is a separate IP for the subject member to consult – this should be standardised.

- 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?

Yes, but the process would benefit from greater independent input at committee stage. The Independent Person should have credibility and be totally impartial. It could be argued that initial findings or an investigation should be put before the Standards Committee to determine whether the complaint should be proceeded with, although this may necessitate a return to multiple sub-committees and excessive delays in 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?

By having formal or informal swap arrangements with a neighbouring authority, but this would rely on standardisation of certain elements of procedure.

Monitoring Officers under undue pressure due to the sensitive circumstances of a complaint may be assisted by the referral of the complaint to committee for consideration at any stage of the process.

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?

No. For example, removing a member from a committee is prevented by having to maintain political balance.

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

The power to suspend a member for a period of time has to be restored as a deterrent at least.

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.

Declaration of interests forms that adopt the statutory descriptions of Disclosable Pecuniary Interests are often misunderstood, and may fail to capture other relevant interests held.

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, although the scope of the interests that must be declared is not wide enough. Ideally there should be one definitive list of all declarable interests with consistent terminology to be adopted by all authorities. Interests declarable by law should include categories previously referred to as personal and prejudicial interests.

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.

Local code of conduct covers interests previously identified as personal or prejudicial interests.

Whistleblowing

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

The Council has a separate whistleblowing policy covering common situations. Anonymity for complainants may increase the number of vexatious or malicious complaints and make investigation difficult.

Improving standards

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

This Council has considered the matter in some detail, and works as proactively as possible to educate and inform members of their obligations. Ultimately it is commonly understood that there are no sanctions of any consequence, so a breach of the required standards is not as serious a matter as it was previously.

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

Revision to legislation as implied above.

Intimidation of local councillors

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

Not aware of any cases of intimidation, although some members of the public are extremely persistent and unnecessarily confrontational and/or abusive in relation to issues they perceive as important.

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

Possibly a reporting procedure with ability to escalate and refer if serious or repeated.

SUBMISSION 318

Response by Lauren Haslam Monitoring Officer Leicestershire County Council to the consultation on the Review of Local Government Ethical Standards

1. This response is submitted by me in my personal capacity as Monitoring Officer (MO) of Leicestershire County Council and Leicestershire and Rutland Combined Fire Authority. It represents my personal views and should not be seen as representing the views of the County Council or any elected member of this Authority.

2. Taking the consultation issues in order:

Consultation point

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.

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

In my view the lack of appropriate sanctions represent the most significant gap with the effect that the process can easily be undermined by a member who refuses to engage or accept wrongdoing or who is responsible for serious or persistent breaches of the code.

I was pleased to see the relatively recent consultation on extending the disqualification criteria for members which I think will assist in promoting high standards and in securing public confidence in the office.

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 believe the Council's Code is easily understood and clear and covers the range of behaviours expected. We offer mandatory training as part of the induction on 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.

Yes I think it is right that the Code is consistent with the Nolan principles.

I think the regulations in relation to the requirements to register and declare a DPI are inadequate relating as they do to the elected member and his /her spouse or civil partner only. I think the obligation to declare the interest should apply also to the elected members children, other close

family members, friends /associates etc

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?

I believe the processes (approved by Committee of the council) are adequate and fair. The only potential issue that I may wish to consider further is the lack of a right of appeal /review to a member and/or exercisable by the complainant)and I may wish to revisit this at some point .

I think this is an appropriate safeguard which should be retained.

I think it is preferable for the investigation (after the initial assessment and filter) to be undertaken externally and not by the MO because of the potential for conflict but also because of the need for the MO to maintain good ongoing working relationships with elected members and to avoid this objective being undermined .

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?

No – see above.

We have a range of possible sanctions including a formal letter to the member, censure , restriction of access to resources, requirement to apologise , requirement to undergo training and requirement to participate in conciliation .

No please see above in relation to the Are existing arrangements to declare councillors' interests and manage conflicts of interests of the members children and other Interests satisfactory? If not please say why. family members or close associates etc 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.

Our Code requires registration and declaration of 'personal interests' defined in our code broadly to be the (1) members interest as member of another body (2) the interest of someone from whom the member has received a gift /hospitality over a £50 threshold in the last 12 months and

(3) interests affecting the wellbeing or financial position of the member or his/her family or close associates . This is overlaid with an objective test such that if the personal interest is so significant that a member of the public would think it likely to prejudice the members ability to judge the public interest then this would be a personal interest that might lead to bias which would require the member to leave the room and not participate in the decision making .

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

We have a whistleblowing policy which applies to staff . It does not explicitly apply to elected members and I would expect the member to simply raise an issue with me or other senior colleagues if he or she had a concern rather than using the WB procedure.

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

I suppose we could give greater publicity to complaints etc to show that we are taking this seriously but I would be concerned about the potential for this to lead to an improve local government ethical standards?

increase in the vexatious and persistent complaints we sometimes have to manage.

I think the position for 'dual-hatted' members can be complex and it would help if there were a national mandatory code applicable to all LAs so members did not have to get to grips with different code requirements and if there were some explicit guidance on how to manage the issues that affect a member in both capacities.

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?

i.

I am not aware of any issues like this having occurred here. If this did arise I would expect the issue to be referred to the police and would also offer support through colleagues in legal services.

I hope the above will assist and look forward to hearing about any recommendations from the Committee in due course.

Lauren Haslam

Leicestershire County Council

17th May 2018