

TITLE OF REPORT: Local Government Ethical Standards Report

REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance

Purpose of the Report

1. To advise the Committee that on 30 January 2019 the Committee on Standards in Public Life published its report on local government ethical standards. The report contains recommendations on ethical standards in local government, following a year-long review and wide consultation.

Summary

2. The key recommendations include:
 - a new power for local authorities to suspend councillors without allowances for up to six months
 - revised rules on declaring interests, gifts and hospitality
 - local authorities retain ownership of their own Codes of Conduct
 - a right of appeal for suspended councillors to the Local Government Ombudsman
 - a strengthened role for the Independent Person
 - greater transparency about the number and nature of Code complaints.
3. The Committee concluded that whilst improvements could be made to the system of adjudicating on standards, there was no need to reintroduce a centralised body.
4. The Committee proposed Local Authorities should retain ultimate responsibility for implementing and applying the 7 Principles of Public Life in local government:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
5. The full 110 page report can be viewed at:
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

Context

6. The report was not prompted by specific allegations of misconduct with local government, instead the Committee wanted to be satisfied that the current framework, specifically the Localism Act 2011, remained conducive to promoting and maintaining the standards in public life.
7. High standards of conduct in local government are needed to protect the integrity of decision making, maintain public confidence and safeguard local democracy.
8. Much of the framework for local government standards evolved from a largely unregulated regime 1997 to a highly centralised system under the Standards Board. The Board was abolished in 2012 making way for the current, highly devolved, system.
9. There are a number of checks and balances in the current system to protect against poor ethical standards and impropriety. Each principal authority operates within its own constitution, creating a governance framework which ensures good administration and decision making. These arrangements are overseen by officers of the council, and particularly by three statutory officer – the Chief Executive, the Chief Finance Officer and the Monitoring Officer.

Findings

10. On the whole, the Committee found that the majority of councillors acted with integrity however there was a small minority of councillors who do not act in such a manner and there were examples of persistent and repeated harassment, bullying and disruptive behaviour. The Committee also found there was a small number of parish councils with a disproportionate number of complaints being made against them.
11. The Committee identified a risk to standards under the current arrangements as a result of the rules on declaring gifts, interests and hospitality in the context of increasingly complex local government decision-making.
12. Whilst consideration was given to a centralised body to deal with standards issues, which would improve consistency of standards across England, the Committee found that giving local authorities responsibility for ethical standards had the benefit of flexibility and discretion to deal with matters informally. As such, there is no need for a centralised body, however the consistency and independence of the current system could be enhanced.

The Committee's Recommendations

13. The Committee makes 26 recommendations (Appendix 1). These are made to the Government for a change in primary legislation as well as to specific groups of public office-holders for a change in secondary legislation and the Local Government Transparency Code, the latter of which could be implemented more swiftly.

14. The best practice recommendations are aimed at local authorities and should be considered a benchmark of good ethical practice (Appendix 2). The Committee expects local authorities to implement best practice and will review implementation of their best practice in 2020.

Matters considered in the body of the report

Codes of Conduct

15. Under s.27 Localism Act 2011, each local authority must adopt a code of conduct against which councillors' conduct may be assessed. The code should reflect the Seven Principles of Public Life (as set out above). The code should also include provisions for registering and declaring pecuniary and non-pecuniary interests.
16. Codes of conduct play an important role in maintaining ethical standards, making clear how values and principles should be put into practice. They enable councillors to be held to account for their actions by setting out clear expectations about how they should behave.
17. The Committee, whilst acknowledging that local authorities can determine their own code of conduct to address the expected behaviour of its councillors, found a wide variation between local authorities' codes of conduct in terms of quality, length and clarity. Many codes also failed to adequately address the use of social media, bullying and harassment. This invariably caused confusion for both members of the public and councillors.
18. The Committee proposes a model code of conduct is made available to enhance the consistency and quality of codes across the country, to be drafted by the Local Government Association.
19. A model code would reflect common expectations of the public. The implementation of the updated model code will be voluntary to allow individual authorities to amend the code to meet the needs of the authority, which is viewed as important in allowing councils to strengthen ownership of ethical standards within an authority.
20. Criteria for an effective code of conduct:
 - seen as relevant every day and not exceptional
 - proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle.
 - adapted to the needs and context of each organisation
 - clear about the consequences of not complying with the code, both for the individual and others
 - wherever possible, frames positive
 - written in plain English
21. The Committee found that whilst codes of conduct could only apply to councillors when acting in their capacity as a councillor (as per the Localism Act), a councillor could not be found to be in breach of the code, or sanctioned

for that breach, for behaviour in a private context. This was found to be too narrow, especially when dealing with the use of social media. There needs to be a balance between the right of democratic representatives to exercise free speech with the public interest demands to meet certain responsibilities of that role. The Committee therefore recommends a rebuttable presumption that a councillor's behaviour in public is in an official capacity whilst an individual's behaviour in private, in a personal capacity, should remain outside the scope of the code.

Declaring and Managing Interests

22. To ensure the integrity of decision making, councillors should be free from undue influence, which includes conflict of interests.
23. The Committee found current arrangements are unclear. Not all registerable interests will present a conflict of interests. The purpose of the register is to make transparent an individual's financial and non-financial interests and relationships that are most likely to lead to a potential conflict. An interest only needs to be managed where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interests.
24. The existing requirements for registering interests should be updated and widened to include the registering of non-pecuniary interests. The current rules should be repealed and replaced with an objective test for whether a councillor should recuse themselves from a discussion or vote. This is the practice in Scotland, Wales and Northern Ireland.
25. The question to be asked is:
"if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in relations to that matter".

Investigations and Safeguarding

26. The standards process has three strands:
 - The Monitoring Officer will filter and investigate alleged breaches of the code of conduct, as officer with responsibility for standards and governance.
 - The Standards Committee will advise on standards issues, review the decision of the Monitoring Officer and can play a role in deciding on alleged breaches and sanctions (or a combination of both). It is recommended that Independent members should be able to vote on these matters.
 - The Independent Person ensures that decisions are made fairly and impartially. The Council must take into account the view of an Independent Person before a decision is made on an alleged breach, following a formal investigation. This role should be strengthened. A local authority should only be able to suspend a councillor where the Independent Person agrees there has been a breach of the code and suspension is the appropriate sanction. The role should have legal

protection and be for a fixed term. The decision of the Independent Person should be published in any formal decision notice.

27. These roles can be defined by an authority's own standards procedures according to their own needs and resources, which means that whilst authorities' standards arrangements have commonalities, in practice they can be implemented very differently.
28. The Committee found that in strengthening to role of independent members of the standards committee and the Independent Person, it is possible to strengthen safeguards within a framework of local responsibility for maintaining standards – thus negating the need for a centralised body.

Sanctions

29. Sanctions serve four purposes in the standards framework:
 - motivating observance of standards arrangements
 - deterring damaging behaviour
 - preventing further wrongdoing
 - maintaining public confidence
30. Presently the authority may impose a sanction, which cannot include suspension or disqualification. The sanctions can include an apology, training, censure or withdrawal of certain facilities or access to council buildings. Where there is a positive action required of the councillor however, for example to apologise or to attend training, there is no mechanism for the authority to impose the sanction.
31. The lack of serious sanctions has the following consequences:
 - prevents local authorities from enforcing lower level sanctions if the councillor will not take the positive action required of them
 - damages public credibility of the standards system – leads to public frustration in a system which cannot deal with misconduct in a robust or effective way.
 - Makes the cost and resources of undertaking an investigation disproportionate in terms of the sanctions available.
 - Gives local authorities no effective means of containing reputational damage or preventing reoccurrence.
32. Political party discipline can play a positive role in upholding ethical standards within a local authority, allowing matters to be dealt with on an informal basis where it is appropriate to do so. It can however have its drawbacks when political interests override public interests.
33. The Committee found that current sanctions are insufficient and need to be strengthened. Local authorities should be given the power to suspend a councillor for up to 6 months without allowances, however there was no compelling evidence to introduce a power of disqualification. The power to suspend should be used rarely and only in the cases of the most serious breaches. Suspended councillors, including parish councillors, should have the right to appeal to the Local Government Ombudsman, who in turn should

be given the power to investigate alleged code of conduct breaches on appeal. The Ombudsman's decision should be binding.

34. The Committee found that the criminal sanctions regarding Disclosable Pecuniary interests are disproportionate in principle and ineffective in practice and as such should be abolished.

Town and Parish Councils

35. Only a principal authority has the power to undertake a formal investigation and make decision on an alleged breach of a parish council's code of conduct. It does not therefore follow that a parish council can adopt its own code of conduct but then lack the authority to investigate and enforce that code. There has to be a balance between the need for autonomy for parishes with the responsibility of the principle authority in investigating breaches.
36. The Committee determined that principle authorities should retain the responsibility for investigating complaints for alleged code breaches by parish councillors. Parish councils should adopt the code of conduct of the principle authority (or the new model) and the decision on sanctions should be binding. Clerks should hold the appropriate qualification to support the Monitoring Officer to uphold governance within their parish council.

Supporting Officers

37. As mentioned above there are three statutory officer roles in local government - the Chief Executive, the Chief Finance Officer and the Monitoring Officer.
38. It is the role of the Monitoring Officer that is pivotal in upholding ethical standards in an authority. It involves a broad set of skills.
39. The Monitoring Officer's role is key within the current standards system. The Committee identified that this role may be exposed to conflict, however this is manageable with the support of other statutory officers. Monitoring officers should be provided with the necessary training. The statutory officer role should be given extended employment protection and officers should be provided with training on local authority governance.
40. The Committee considered whistleblowing provisions and recommended that councillors should be listed as "prescribed persons" for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor. A "prescribed person" means that the disclosure of information to them in the public interest will attract employment protections. This would allow an officer to make such disclosures to a councillor and it would attract employment protections for that officer.

Councils' corporate arrangements

41. The Committee found that decision making within councils is becoming more complex with increased commercial activity and partnership working. This can lead to governance challenges, eg identifying who is accountable for particular decisions.

42. When setting up separate bodies, steps should be taken to prevent and manage conflicts of interests, especially if a councillor sits on one of these new bodies. These bodies should be transparent and accountable to the council and the public.
43. The Committee found that there was a strong link between failings in ethical standards and corporate failure by councils, eg where low level breaches of ethical standards go unaddressed. A common threat in cases of corporate governance failings is the failure to uphold the Seven Principles in Public Life.

Leadership and Culture

44. Leadership is seen as being essential in embedding an ethical culture, from a range of senior individuals as well as the local authority's standards committee, through the continual reviewing of ethical standards within the council.
45. Whilst political parties play a role in maintaining ethical culture, they should be seen to sit between direct advice from officers and formal processes by the council, rather than a parallel system to the local authorities' standards process. Political groups should set clear standards for the behaviour of their members and work with senior officers to resolve matters informally where appropriate. The tone of engagement should be civil and constructive.
46. Senior officers should model the expected behaviours, which installs and maintains an ethical culture through a present, visible and accessible leadership.
47. The Committee found that expected standards of behaviour should be embedded through effective induction and continued training. Political parties should require members to attend code of conduct training provided by a local authority.
48. An impartial and objective Monitoring Officer must maintain the day to day ethical standards. This role must be supported by the councillors and the Chief Executive.
49. Local authorities should welcome and foster opportunities for scrutiny and see it as a way to improve decision making. An ethical culture will be an open culture. The scrutiny function within a local authority is vital to ensure effective and ethical decision-making.

Conclusion

50. The recommendations are seen as an opportunity to reform local government standards through strengthening and providing clarity to the existing framework. Whilst some recommendations require primary legislation change, it is hoped that where secondary legislative changes are required, these can happen relatively quickly. With local authorities implementing the best practices without delay, the uptake of which will be reviewed by the Committee in 2020.

Recommendation

51. The Committee is asked to note the Committee on Standards in Public Life's report on local government ethical standards and to receive update reports on the implementation of its recommendations.

List of recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government

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| 6 | Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct. | Government |
| 7 | Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”. | Government |
| 8 | The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once. | Government |
| 9 | The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes. | Government |
| 10 | A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction. | Government |
| 11 | Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed. | Government / all local authorities |

12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those	Parish councils

provided by the Society of Local Council Clerks.

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| 20 | Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. | Government |
| 21 | Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority. | Government |
| 22 | The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal. | Government |
| 23 | The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website. | Government |
| 24 | Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998. | Government |
| 25 | Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules. | Political groups
National political parties |
| 26 | Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards. | Local Government Association |

List of best practice

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.