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To: The Chair and Members  
of the Standards  
Committee

County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

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Date: 29 June 2022

Contact: Julia Jones

Email: [julia.e.jones@devon.gov.uk](mailto:julia.e.jones@devon.gov.uk)

### **STANDARDS COMMITTEE**

Thursday, 7th July, 2022

A meeting of the Standards Committee is to be held on the above date at 2.15 pm at Microsoft Teams to consider the following matters.

Phil Norrey  
Chief Executive

### **A G E N D A**

#### **PART I - OPEN COMMITTEE**

1 Apologies for absence

2 Minutes

Minutes of the meeting of the Committee held on 22 March 2022, previously circulated.

3 Items Requiring Urgent Attention

Items which in the opinion of the Chair should be considered at the meeting as a matter of urgency.

## **STANDING ITEMS**

4 **Ethical Governance Framework: Monitoring** (Pages 1 - 2)

Report of the County Solicitor ([CSO/22/9](#)) on co-opted members' attendance at meetings of the Council, Cabinet and Committee meetings, monitoring compliance with the Council's ethical governance framework, attached.

*Electoral Divisions(s): All Divisions*

## **MATTERS FOR INFORMATION**

5 **Local Government (Disqualification) Act 2022** (Pages 3 - 6)

Report of the Director of Legal and Democratic Services (CS/22/12) on the provisions of the Local Government (Disqualification) Act 2022, attached.

*Electoral Divisions(s): All Divisions*

6 **Committee on Standards in Public Life - Review of Local Government Ethical Standards and Government Response** (Pages 7 - 14)

Report of the Director of Legal and Democratic Services (CS/22/10) on the Government Response to the Committee on Standards in Public Life and their Review of Local Government Ethical Standards, attached.

*Electoral Divisions(s): All Divisions*

7 **Local Determination of Complaints**

County Solicitor to report on complaints or allegations of a breach of the Council's Members' Code of Conduct received since the last meeting, if any.

## **PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED**

NIL

*Members are reminded that Part II Reports contain exempt information and should therefore be treated accordingly. They should not be disclosed or passed on to any other person(s). They need to be disposed of carefully and should be returned to the Democratic Services Officer at the conclusion of the meeting for disposal.*

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## ETHICAL GOVERNANCE FRAMEWORK MONITORING

Report of the County Solicitor

**Recommendation:** that the report be noted.

1. The Standards Committee agreed previously that the independent, co-opted, members of the Committee should attend meetings of the Council, the Cabinet and Committees on an ad-hoc basis to observe and monitor compliance with the Council's ethical governance framework, in line with the agreed protocol.
2. Members have, since the report to the previous meeting, attended the following meetings virtually and their views/feedback are summarised below. With the current process of limiting numbers in the Committee rooms, the attendance rota for co-opted Members will be revisited in due course.

Meeting	Date	Co-opted Member/Observer
Investment and Pension Fund	25 February 2022	Mr Hodgins
Children's Scrutiny	15 March	Mr Hodgins
Development Management	30 March	Mr Hipkin
Farms	16 May	Mrs Saltmarsh
Cabinet	8 June	Mrs Mayes

3. The table below summarises feedback received from Members on a number of general issues common to all meetings.

Observations:	1 = Very Poor and 5 = Very Good				
	1	2	3	4	5
Punctuality and Attendance of Members					✓✓✓✓
Appearance and presentation					✓✓✓✓
Speeches: clear, relevant, understandable, audio levels, use of microphones etc.,			✓		✓✓✓

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Use of appropriate language					✓✓✓✓
Members' Conduct & Behaviour					✓✓✓✓
Clear identification and declaration of interests ( <i>where so declared</i> )					✓✓ N/A N/A
Effective Chairmanship/conduct of meeting					✓✓✓✓
Adherence to Agenda					✓✓✓✓
Listening and responding to advice (from Officers)					✓✓✓ N/A

4. While there were a number of other issues raised by co-opted members in their observations, as set out below, there were no reports of any specific actions or behaviors that might be felt to have resulted in a potential breach of the Code or warranted further action.
- Very clear reports and pertinent questioning from those presenting (Investment and Pension);
  - Interesting meeting with lots of good comments and well chaired (Children's Scrutiny);
  - Good discussion of issues and well chaired (Development Management);
  - Due to Broadband quality – it was not possible to make a fair comment of the meeting, however, it was possible that the use of microphones was intermittent contributing to poorer sound quality, despite reminders to use them (Farms Estate Committee)
  - Difficult to ascertain whether everyone was there. There was one apology for absence (Cabinet)
5. This Report has no specific equality, sustainability, legal or public health implications that have not already been assessed and appropriate safeguards and/or actions taken or included within the detailed policies or practices or requirements relating to the conduct of meetings, to safeguard the Council's position.

ANDREW YENDOLE

[Electoral Divisions: All]

## **Local Government Act 1972: List of Background Papers**

Contact for Enquiries: K Strahan

Tel No: 01392 382264 Room: G31

<b><u>Background Paper</u></b>	<b><u>Date</u></b>	<b><u>File Reference</u></b>
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Nil

## **The Local Government (Disqualification) Act 2022**

Report of the County Solicitor (Interim)

### Recommendation:

That the Committee be asked to consider and note the new legislation regarding the updated disqualification criteria for Councillors.

### Summary

The Local Government (Disqualification) Act 2022 updates the disqualification criteria for local authority Members to explicitly disqualify individuals who are subject to relevant notification requirements or orders due to sexual offences from standing for or remaining in office.

### 1. Introduction and Background

- 1.1. The Local Government (Disqualification) Act 2022 was given Royal Assent on 28 April 2022 and came into force on 28 June 2022. It makes provision about the grounds on which a person is disqualified from being elected to or holding certain positions in local government in England.
- 1.2. The previous disqualification criteria for Councillors are set out in various legislation including The Local Government Act 1972. Regarding criminal activity not related to election practices, a person is disqualified from standing for election or holding public office if they have been convicted of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine.
- 1.3. Previously, some offences like certain sexual offences which did not result in a custodial sentence therefore enabled Members to be able to retain their role if elected or run for election even if recently convicted.
- 1.4. In 2017, the Ministry of Housing, Communities and Local Government, now the Department of Levelling up, Housing and Communities, consulted on proposals to update the disqualification criteria for Councillors and Mayors to bring it into line with modern sentencing practice. The Committee submitted a response to the consultation  
<https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=159&MID=2119#AI9239>
- 1.5. The Government published its response to the consultation in 2018. The Ministerial Foreword stated that the purpose of the proposals was to “update

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the disqualification criteria for councillors and Mayors to bring it into line with both modern sentencing practice and the values and high standards of behaviours the electorate have a right to expect of the elected members that represent them.”

## 2. The Legislation

- 2.1 The legislation gives councils the power to prevent individuals from standing as a Councillor or Mayor at the point they trigger the disqualification criteria.
- 2.2 Its provisions include disqualifying a person who is subject to “any relevant notification requirements” or “a relevant order” (defined at Sections 2 and 3 of the legislation) and depending on the status of the relevant order or notification (to include time periods for appeal), from being elected or being a Member of a local authority or the Mayor for the area of a combined authority in England.
- 2.3 An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil orders:
  - Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of sexual offences listed in Schedule 3 of the Sexual Offences Act 2003.
  - Sexual Harm Prevention Orders are civil orders intended to protect the public from offenders convicted of sexual or violent offences and result in notification requirements.
  - Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Notification Orders result in notification requirements.

## 3. Response

- 3.1 The Local Government Association (LGA) has supported the objective of the new legislation to ensure the highest standards of integrity and conduct in public life and agree that individuals convicted of sexual offences should be disqualified from running for public office or retaining their seat if already elected. However, it has expressed its concerns that the proposals will not include Police and Crime Commissioners and Members of the House of Commons and House of Lords. It has urged the Government to bring forward separate legislation to include Members of Parliament and Police and Crime Commissioners (PCCs).” and warned that “The Bill would create further discrepancies in the disqualification and standards regime that applies to local and national politicians.”
- 3.2 The Council will also ensure that pre-election information is updated with these new details and requirements.



This Report has no specific equality, sustainability, legal or public health implications.

**[Electoral Divisions: All]**

Contact for Enquiries: Julia Jones, Deputy Democratic Services Manager  
Email: [julia.e.jones@devon.gov.uk](mailto:julia.e.jones@devon.gov.uk)

<b><u>Background Paper</u></b>	<b><u>Date</u></b>	<b><u>File Reference</u></b>
Nil		



## **Committee on Standards in Public Life - Review of Local Government Ethical Standards and Government Response**

Report of the County Solicitor (Interim)

### **Recommendation**

That the Committee be asked to note the Governments response to the Committee on Standards in Public Life Review of Local Government Ethical Standards.

### **Summary**

1. In March 2018, the Monitoring Officer advised the Standards Committee of a Consultation from the Committee on Standards in Public Life's in relation to its review of Local Government Ethical Standards.
2. The Council submitted a response to that Consultation and a formal report from the Committee on Standards in Public Life was published in 2019. This made a number of recommendations and identified best practice to improve ethical standards in Local Government. This included a number of changes to primary legislation (subject to Parliamentary timetabling); but also to secondary legislation and the Local Government Transparency Code. The best practice recommendations for Local Authorities included in the report were there as a benchmark of good ethical practice, which they hoped all local authorities could and should implement.
3. A number of the recommendations outlined in the Report involved legislative change which would be a matter for Government to implement, which is the focus of this response.
4. The Government's response is that many of these suggestions do not need a legislative response but can be more appropriately, effectively, and swiftly taken forward by local authorities as best practice.
5. The Committee on Standards in Public Life expressed its disappointment that many of its recommendations had not been accepted, given the evidence supported their call to strengthen arrangements to support high ethical standards, whilst respecting the benefits of a localised approach.

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## Introduction and Background

6. In the original Report, there were 26 recommendations which included issues such as:
  - a. an updated model code of conduct,
  - b. public disclosure of home address,
  - c. clarity around acting in an official capacity in public conduct (including social media),
  - d. amendments to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012,
  - e. establishment of a register of gifts and hospitality,
  - f. new requirements on declarations of interests,
  - g. the role of the Independent Persons to be strengthened and new requirements for their terms of appointment,
  - h. powers of suspension for an Authority,
  - i. powers to establish decision-making Standards Committees,
  - j. Councillors having a right of appeal to the Ombudsman,
  - k. updating the Local Government Transparency Code to require Councils to publish annually details of complaints,
  - l. clarification of the legal position regarding barring Councillors from Council premises or withdrawal of facilities,
  - m. abolishment of criminal offences in the Localism Act 2011 on Disclosable Pecuniary Interests,
  - n. new requirements for Parish Council clerk qualifications and Parish Council Codes of Conduct,
  - o. disciplinary protections for statutory officers,
  - p. whistleblowing policies and named contacts for external auditors,
  - q. Councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998 and requirements to attend formal induction training and peer reviews.
  
7. On receipt of the Report, many Local Authorities reviewed their approach and adopted the best practice points from therein, which were in addition to the recommendations. The Standards Committee will recall that a Report was brought to the Standards Committee outlining those best practice initiatives and what the Council proposed to do to adopt them. The Report can be viewed here.  
<https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=159&MId=2798&Ver=4>

## Recommendations and Response

8. This Government response confines itself to the Committee's recommendations directed at Government, other than with regards to the first recommendation. A summary of the recommendations and Government response is set out below. The full Government response can be accessed here: [Government response to the Committee on Standards in Public Life review of local government ethical standards \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/standards-committee-on-standards-in-public-life-review-of-local-government-ethical-standards)
  
9. **Recommendation 1** - The Local Government Association (LGA) should create an updated model code of conduct.

**In response** - the Localism Act 2011 states that authorities must promote and maintain high standards of conduct and requires them to adopt a code of conduct. However, Authorities can determine the content of their own code of conduct as long as it conforms to the 'Nolan' principles. Government has noted that the LGA published its updated code of conduct, but it remained a local decision on whether the model code is adopted.

10. **Recommendation 2** - Government should ensure that candidates standing for / accepting public offices are not required publicly to disclose their home address (the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 be amended).

**In response** - this issue was raised during work on intimidation in public life, and Government has already taken forward several steps and is open to further steps to help prevent intimidation. Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address. Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

11. **Recommendation 3** - Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media, therefore Section 27(2) of the Localism Act 2011 should be amended.

**In response** - the Government's view is that it is for individual Local Authorities to consider if their Code is adequate in addressing inappropriate use of social media, striking a balance between strongly felt political debate and unacceptable acts of abuse or intimidation. It is important to recognise the boundary between an elected representative's public life and their private or personal life.

12. **Recommendation 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.

**In response** - Government will keep this matter under review but has no immediate plans to amend the regulations.

13. **Recommendation 5** - The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of organisations that seek to influence opinion or public policy.

**In response** - Government will keep this matter under review but has no immediate plans to amend the regulations.

**Recommendation 6** - Local Authorities should be required to establish a register of gifts and hospitality, with councillors required to record gifts and

# Agenda Item 6

hospitality over £50 or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.

**In response** - Local authorities have the autonomy to set gifts and hospitality requirements in their own Codes. Government accepts there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register should be publicly available.

14. **Recommendation 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 the matter".

**In response** - The Committee's report reflects concerns that the disclosable pecuniary interest arrangements infringe on the privacy of a Councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should be declared and resolved. The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

15. **Recommendation 8** - The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

**In response** - The Government does not accept this recommendation on the basis that it is likely to be unworkable. It may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh", however, discussions with Monitoring Officers indicate that in practice most Local Authorities would likely find servicing this rate of turnover unachievable.

16. **Recommendation 9** - the Local Government Transparency Code should be updated so that the view of the Independent Person in relation to a decision on which they are consulted be formally recorded in decision notices or minutes.

**In response** - Government does not agree with this. The Transparency Code is a statutory requirement to publish information, not to regulate the content of councils' minutes or decision notices. Where there is no case to answer from an unfounded complaint, it should not be a legal requirement to publish the details.

17. **Recommendation 10** - A Local Authority should only be able to suspend a Councillor where the Authority's Independent Person agrees both with the finding or a breach and that suspending would be a proportionate sanction.

**Recommendation 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.

**Recommendation 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.

**Recommendation 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, an appeal by a Councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.

**Recommendation 16** - Local authorities should be given the power to suspend Councillors, without allowances, for up to six months.

**In response (to 10, 12, 13, 14 and 16)** - There is no provision in current legislation for a sanction to suspend and this was a deliberate policy decision to differentiate from the previous Standards Board regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline. All Councillors are ultimately held to account via the ballot box.

The Government will engage with sector representative bodies of councillors and officers to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity but involve serious incidents of bullying and harassment or disruptive behaviour.

18. **Recommendation 11** - Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed and Government should require this through secondary legislation if needed.

**In response** - The Government agrees in principle and endorses providing legal indemnity for Independent Persons as best practice, but does not currently see the need to require this through secondary legislation.

19. **Recommendation 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 relate to and outcome, including if they are rejected as trivial or vexatious; and any sanctions applied.

**In response** - Government believes that this is better addressed through best practice of regular annual reporting by Standard Committees.

20. **Recommendation 17** - 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.

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**In response** - criminal law provides for more appropriate and effective action against breaches of public order, anti-social behaviour, and against harassment, however, we will consider this further.

21. **Recommendation 18** - The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

**In response** - Government does not agree with this recommendation and believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

22. **Recommendation 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.

**In response** - The Government does not agree this is necessary and has no plans to repeal Section 27(3). Government considers that adoption of the principal authority's code or the new model code is a matter for local determination.

23. **Recommendation 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.

**In response** - The Government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

24. **Recommendation 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.

**In response** - the three statutory officers are the Monitoring Officer, the Head of Paid Service (Chief Executive) and the Chief Finance Officer (Section 151 Officer). Government agrees in principle with this recommendation and will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

25. **Recommendation 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.

**In response** - Government agrees that openness is essential and most local authorities publish their whistleblowing policy and a named contact and



Government is recommending that this is adopted as best practice. The UK National Action Plan for Open Government 2021 – 2023 included a commitment on local transparency and the Department for Levelling Up Housing and Communities (DLUHC) will work with local government to develop a set of actions to advance transparency in the sector.

26. **Recommendation 24** - Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

**In response** - Prescribed persons are individuals / organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. Local Councillors would not meet the criteria of being external to an individual's workplace in relation to matters affecting the Council. Disclosures can be made to the other parties (external auditor, National Audit Office or Member of Parliament). However, Government recognises this may provide a further check and balance against Council corruption / wrongdoing and is open to further representations on how local accountability can be strengthened in this regard.

## Conclusion

27. The Committee is asked to note the response of the Government to the recommendations made in response to the Committee on Standards in Public Life Review of Local Government Ethical Standards.
28. This Report has no specific equality, sustainability, legal or public health implications that have not already been assessed.

ANDREW YENDOLE  
[Electoral Divisions: All]

### Local Government Act 1972: List of Background Papers

Contact for Enquiries: K Strahan  
Tel No: 01392 382264 Room: G31

<u>Background Paper</u>	<u>Date</u>	<u>File Reference</u>
Nil		

