

Review of Local Government Ethical Standards: Stakeholder Consultation - Devon County Council Standards Committee Submission

Report of the County Solicitor

Recommendation: that the final submission to the Consultation, outlined below, be noted.

Introduction (Submission from Devon County Council Standards Committee)

Devon is an upper tier authority with 60 Councillors. There are eight district and borough councils in the area and two neighbouring unitary authorities (Plymouth and Torbay).

After 2012 and the changes to the national regime, Devon County Council retained a Standards Committee comprising 7 elected Members (including the Chair of the Council presiding as Chair of the Committee to demonstrate the independence of the position) and 5 co-opted members, some of whom were the Independent Members of the former Standards Committee (pre 2012). The Committee's current terms of reference include:

- Advising the County Council on the adoption of a Members' Code of Conduct with any appropriate local provisions and its subsequent monitoring and updating;
- Implementing the Code of Conduct including the training of members and officers;
- Advising members as to the declaration of interests and the grant of dispensations where appropriate to allow members to participate in matters in which they have interests;
- Supervising the Registers of Members' and Officers' Interests and of politically restricted officers;
- Receiving reports and advising the Council on any disciplinary sanctions imposed or consign action within the Council's own competence;
- Advising the County Council on disciplinary matters within its competence;
- Overseeing the Council's policy on the Proper Conduct of Business;
- Developing and adopting a Code of Practice on relations between members and officers;
- Responsibility for the Council's procedures for investigating and responding to complaints;
- Adopting contract conditions to apply the Council's complaints procedure to contractors;
- Approving a Local Planning code;
- Considering Findings of Maladministration by the Local Government Ombudsman;
- Undertaking such other functions as the Secretary of State may by regulations refer to a Local Authority Standards Committee.

The Standards Committee also produces annual reports.

The Council has defined processes for receiving, considering, investigating and determining complaints at <https://new.devon.gov.uk/democracy/councillors-nav/making-a-complaint-about-a-devon-county-councillor/>

Consultation questions

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

The current Code adopted was very much based on the former, reflecting the Nolan principles. There was an attempt across Devon to dovetail codes across the Districts and County (particularly around the declarations of interest) to try and have some consistency, which is especially helpful for those Members who are dual hatters. When a process is dependent on local determination it is not always possible to achieve common practice, which can lead to inconsistencies.

However, on the whole the structures, processes and practices in place are sufficient to ensure high standards of conduct.

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

As stated above, the structures are essentially adequate, but some Members feel that the current regime (and therefore Standards Committee) 'lacks teeth' ... but this will be referred to later in more detail when addressing sanctions.

It is felt there should be provision to legislate that Co-opted Members of the Standards Committee should be full voting members. Anything less, demeans the position and role.

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 Code forms part of the Constitution. Devon County Council carries out regular training both at Member Induction events and also at regular intervals throughout the administration to reinforce what is expected in terms of good behaviour / declarations of interests / meetings protocol / rules of debate to try and prevent some of the more common errors. The County Solicitor / Monitoring Officer takes a very active role in such events, emphasising its importance. Attendance is generally good. We endeavour to make training events interesting and take in some of the wider issues around good conduct, for example the webcasting of many Devon meetings. At the training we show videos of both Gloucester and Plymouth Councillors being reported in the Press,

emphasising the dangers of poor behaviour being shared widely (and quickly) across social media and the web.

<http://www.bbc.co.uk/news/av/uk-england-gloucestershire-40451898/gloucestershire-councillors-sleeping-during-meeting>

<http://www.bbc.co.uk/news/uk-england-devon-39105598>

Training also covers social media and in particular the issues and opportunities presented by it. A social media protocol for members is available.

In support of promoting and maintaining high standards of conduct by councillors and co-opted members and to monitor the operation of the Members' Code of Conduct, the Co-opted Members of the Committee attend meetings of the Council, its Cabinet and / or other Committees to observe how the meeting was conducted. They complete an assessment on issues such as Punctuality and Attendance of Members, Appearance and presentation, Speeches (clear, relevant, understandable, audio levels, use of microphones etc), Use of appropriate language, Members' Conduct & Behaviour, Clear identification and declaration of interests, Effective Chairmanship/conduct of meeting, Adherence to Agenda and Listening and responding to advice (from Officers) to monitor compliance with the Council's ethical governance framework and adherence by Members and Officers alike to that framework. This is then reported to the Standards Committee.

Furthermore, there are regular opportunities for Councillors to speak with officers on matters such as declarations of interests, with the County Solicitor / Monitoring Officer making herself available at a regular time slot on Council days to talk through issues.

- 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.

Whilst the provision is appropriate, there appears to be a lack of clarity on declaring interests where a family member might be affected. The revised standards ask Members to declare the interest of their spouse as if it were their own, but there could be occasions where a family member is affected by a proposal (for example a brother owns a property affected by a planning decision) and in the eyes of the law they don't need to declare that. Of course, we advise that there is a public perception issue and an interest needs to be declared, but the guidance is not transparent in relation to family members.

Members are clear on where to seek advice on issues such as DPI's, personal interests and / or pre-determination.

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?

On receipt of a complaint, the Monitoring Officer will carry out a preliminary assessment of whether the alleged behaviour falls within the Code of Conduct – and collect any information deemed necessary. Following consultation with the Independent Person, if the complaint is not progressed, the Monitoring Officer will notify the complainant in writing of that fact, with reasons and also write to the subject member.

If the Monitoring Officer is of the view that local settlement is unlikely / unachievable, or the complaint warrants it, they will, following consultation with the IP arrange the conduct of a formal investigation and report the findings (together with the views of the Independent Person) to the full Standards Committee for hearing and determination.

The Monitoring Officer may also refer the complaint to an Assessment Sub-Committee to determine whether or not the allegation appears to disclose a failure to observe the Members' Code of Conduct and whether the matter merits investigation. This is helpful and provides an additional safeguard as to whether an investigation is necessary.

Investigations are carried out by suitably qualified Officers or a person external of the Authority, if required. The subject member is given the opportunity to give his/her input to the investigation before the findings are reported to the Standards Committee.

Findings are reported to the Standards Committee.

The processes for the consideration, investigation and determination of complaints is open, fair and transparent and it is right and proper that the Independent Person is separate from the Standards Committee and should remain this way.

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

This process allows sufficient objectivity.

In addition, investigations are undertaken by suitably qualified persons, are thorough and based on evidence. Subject members are also part of the process and are sent copies of any final report. Also by presenting the finding to a full meeting of the

Standards Committee allows for appropriate scrutiny of the Report and for relevant challenge to be made.

- 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?

It is unlikely that the Monitoring Officers would be subject to such conflicts of interest but if that occurred then it would be a case of asking the Deputy Monitoring Officer to deal with. The role of the Deputy Monitoring Officer is therefore important in this context.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?

Members of the Standards Committee requested input into this section of the Consultation raising the issue of sanctions, stating that current sanctions are not felt to be sufficient. They said that there are so few actual sanctions including the ability to suspend pending an investigation as well as imposing an effective sanction afterwards once a breach is established. Their view was that the process leaves it to the individual to do the right thing or the media to highlight the poor conduct but there should be the ability for a Standards Committee to offer some meaningful sanction if the idea is to maintain and enforce Codes of Conduct and give meaningful support to those who are on the receiving end of wrong doing. The representations made by Members of the Committee felt that the most recent changes to the regime were a retrograde step.

They also said that Officers have no control over members' behaviour, with the exception of the Monitoring Officer advising or 'having a word', but it is felt that the Standards Committee has 'no teeth'.

Whilst it is accepted that Councillors can be 'voted out' at the next election, Devon County Council elections are every four years, therefore that opportunity could be years ahead. Public memory may fade and in the meantime the Council is supporting and council taxpayers are paying for a Councillor who is deemed to have broken the Code in some aspect. This makes a mockery of both the Code and the procedure of investigating the complaint and there is a danger that Complainants may wonder why they placed their heads above the parapet if very little happens.

In a nutshell, the Member who made the representations felt that current sanctions were not sufficient to deter breaches and/or to enforce compliance.

However, it is also important to look at proportionality and there is an argument that to suspend prior to an investigation might be seen as 'harsh' or premature. However, this

Council does feel there is merit in standards committees having suspension available at the point of sanction.

- 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 the most part, sanctions such a training / review of positions / restricting access to buildings etc are normally sufficient.

However, for a very serious breach / misconduct the current sanctions do not appear to reflect appropriately the gravity of a serious complaint / allegation, as reflected above.

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

As above, Members of the Committee have said that the ability to suspend pending an investigation or remove from current committees (depending on the nature of the allegation) should be available. For serious misconduct and for some sanctions, there is a reliance on group leaders to enforce which isn't always effective.

Again, some Members of the Standards Committee made the point that if the position is that a Councillor is elected and cannot be removed, even on a temporary basis, then, apart from publicity and a telling off, there is no effective sanction. They feel the ability of a Standards Committee to impose a suspension should be restored as to do nothing brings the Council into disrepute and deters people from bringing concerns and complaints forward.

As stated above, the issue of proportionality always needs to be considered.

Declaring interests and conflicts of interest

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

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

Yes, the current statutory duties are appropriate, in terms of the legal duty to register any pecuniary interests (or those of their spouse or partner), but guidance could be clearer around conflicts of interests, as alluded to earlier.

- 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.

Yes, the process is fine, but Local Authorities can never be 100% sure about the robustness of declaring interests.

Each Councillor's register of interest is published on the County Council's website, as well as a paper record in the offices of the County Solicitor, which includes pecuniary interests, as well as other bodies which they might be part of either by virtue of their Councillor position or in a private capacity (Any other body exercising functions of a public nature or directed to charitable purposes).

At meetings, Members must declare the interest at that point in the meeting and complete a form to give to the Democratic Services Officer in attendance and of course leave the meeting if they have a DPI. We record the interest both in the minutes and on the public website for transparency for members of the public.

The Constitution also provides further guidance on conflict of interest as outlined in the Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012 requiring any Member of an Executive (Cabinet) to declare any conflict of interest when taking a decision, either collectively (at Cabinet) or individually under existing procedures, and any dispensation made by the Council.

Rather than the current statutory requirements being inadequate, which is not the case, there is work for Local Authorities to promote a culture of openness and transparency in declaring interests, undertake appropriate and regular training and provide opportunities for Members to speak to Officers if they

have any concerns. This is the aspect that is harder to solve, but the advice we give is that whilst it is a matter for individuals, it is better to be cautious and declare.

Furthermore, the Monitoring Officer has ensured that the general dispensation is as wide reaching as possible to protect Members accordingly.

Whistleblowing

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

A whistleblowing policy is in place at Devon County Council, it forms part of the Constitution and has been reviewed recently.

This policy was discussed with the relevant trade unions and professional organisations and has their support. It is available to officers, school staff and the general public.

The policy makes it clear that it covers concerns that fall outside the scope of other procedures (i.e it is not intended as recourse against financial or business decisions made by the Council or as an alternative to disciplinary or grievance procedures). There is of course potential for overlap with other corporate policies for dealing with complaints, with Member or Officer Codes of Conduct and with protocols for good working relationships within the Authority.

Members of the public are signposted through the corporate complaints procedure.

In relation to Councillors, Members can speak to senior officers at any time (including the leadership group) about any matter. The Council has always operated in that manner and Members are aware they can do this.

If Members are unsure of the best place to go or the right person to speak to, then either democratic services or member support services provide this signposting function.

To my knowledge, there has never been an instance where a Councillor has not been able to escalate an issue to 'the top'.

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?

Whilst nothing springs to mind in respect of central government action, on a local level if there was some sort of direction to work together on a local code, that might prevent inconsistencies across the County.

Intimidation of local councillors

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

This question was asked fairly recently following the May 2017 elections.

On a general level the nature, scale, and extent of intimidation towards local councillors is low, but nevertheless the Council shared the recent Review by the Committee on Standards in Public Life regarding Intimidation in Public Life with the Standards Committee.

Of note was the widespread use of social media which had been the most significant factor enabling intimidatory behaviour and the recommendations aimed at social media companies were welcomed.

The Committee further welcomed the recommendations aimed at all those in public life to not engaging in or tolerate intimidatory behaviour, uphold high standards of conduct, adhere to the Principles of Public Life and recognising the rights of others to participate in public life.

In light of the need for leadership by the largest political parties, Members were asked to share the Report with their own political parties.

There is provision, through the Monitoring Officer, to remove the personal details of individual members from the web if there is a threat or risk of intimidation. The Council has never been approached or asked to consider this.

In November 2017, the Council ran a training session called 'Looking after yourself and your Community' following a number of requests to provide more information to support Members with issues they might encounter in communities. It covered a number of key areas providing an overview of subjects, such as Domestic Violence, but also explored how Members could manage personal safety while fulfilling the community role.

It is however noted that serious matters may require police intervention.