

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.

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&MIId=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/government-response-to-the-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

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.

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

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