



STANDARDS COMMITTEE

Monday, 16th September, 2019

at **7.30 pm**

or on the rise of the Cabinet meeting

(which commences at 6.00pm)

whichever is the later.

Council Chamber, Hackney Town Hall, Mare
Street, London E8 1EA

Committee Membership:

Deputy Mayor Anntoinette Bramble (Chair)
Councillor Jessica Webb (Vice-Chair)
Councillor Soraya Adejare
Councillor Humaira Garasia
Councillor Katie Hanson
Councillor Anna Lynch
Councillor Sem Moema
Councillor Carole Williams

Co-opted Members

Onagete Louison
Adedoja Labinjo

Tim Shields
Chief Executive

6 September 2019

Contact:

Clifford Hart

Governance Services Officer

Tel: 020 8356 3597

Email: clifford.hart@Hackney.gov.uk

The press and public are welcome to attend this meeting

AGENDA

Monday, 16th September, 2019

ORDER OF BUSINESS

Item No	Title	Page No
1	Confirmation of the appointment of the Chair and Vice Chair of the Standards Committee for the Municipal Year 2019/20	
2	Apologies for Absence	
3	Urgent Business The Chair will consider the admission of any late items of Urgent Business. Late items of Urgent Business will be considered under the agenda item where they appear. New items of unrestricted urgent business will be dealt with under Item 14 below. New items of exempt urgent business will be dealt with under Item 16 below.	
4	Declarations of Interest - Members to declare as appropriate	

A Member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

(i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and

(ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A Member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 8.1-15.2 of Section Two of Part 5 of the Constitution and Appendix A of the Members' Code of Conduct.

A Member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

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Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 8.1-15.2 of Section Two of Part 5 of the Constitution and Appendix A of the Members' Code of Conduct.

5	Deputations/Petitions/Questions	
6	To Confirm the Unrestricted Minutes of The Standards Committee held on 18 February 2019	1 - 10
7	Standards Committee Terms of Reference	11 - 12
	To note the terms of reference of the Standards Committee.	
8	Standards Committee Work Programme 2019/20	13 - 22
	To consider the proposed work programme of the Standards Committee for 2019/20.	
9	Draft Standards Committee Annual Report 2018/19	23 - 38

	To consider and agree the Draft Standards Committee Annual Report 2018/19.	
10	Request for Members' Dispensation in respect of membership of the Local Government Pension Scheme	39 - 42
	This report seeks Standards Committee's agreement to a dispensation for any member of the Council belonging to the Local Government Pension Scheme.	
11	Recruitment of Co-opted Members to Standards Committee 2019	43 - 60
	To consider and agree the process for the recruitment of Co-opted Members to sit on Standards Committee.	
12	Local Government Ethical Standards - Report of the Committee on Standards in Public Life on the subject of ethical standards in local government	61 - 196
	To consider recommendations arising from the findings of the Committee on Standards in Public Life on Local Government Ethical Standards. The Director of Legal & Governance will give a short power-point presentation to the Committee in respect of the findings.	
13	Dates of Standards Committee for the remainder of the Municipal Year 2019/20	
	13 FEBRUARY 2020 – AT 6.30PM	
14	Any Other unrestricted business the Chair considers to be urgent	
	Any unrestricted urgent business items will be considered at this juncture.	
15	EXCLUSION OF THE PUBLIC AND PRESS	
	<u>Note from the Governance Services Manager</u> In the event that there may be urgent exempt items of business to be considered the Chair shall move the following resolution: THAT the press and public be excluded from the proceedings of the Standards Committee during consideration of Exempt item 16 on the agenda on the grounds that it is likely, in the view of the nature of the business to be transacted, that were members of the public to be present, there would be disclosure of exempt information as defined in one or more of the exemption paragraphs 1-7 as defined in Part 1 Schedule 12A to the Local Government Act 1972 as amended.	
16	ANY OTHER EXEMPT BUSINESS THE CHAIR CONSIDERS TO BE URGENT	
	Any exempt urgent business items will be considered at this juncture.	

Access and Information

Location

Hackney Town Hall is on Mare Street, bordered by Wilton Way and Reading Lane, almost directly opposite Hackney Picturehouse

Trains – Hackney Central Station (London Overground) – Turn right on leaving the station, turn right again at the traffic lights into Mare Street, walk 200 metres and look for the Hackney Town Hall, almost next to The Empire immediately after Wilton Way.

Buses 30, 48, 55, 106, 236, 254, 277, 394, D6 and W15.

Facilities

There are public toilets available, with wheelchair access, on the ground floor of the Town Hall. Induction loop facilities are available in the Assembly Halls, rooms 101, 102 & 103 and the Council Chamber. Access for people with mobility difficulties can be obtained through the ramp on the side to the main Town Hall entrance.

Copies of the Agenda

The Hackney website contains a full database of meeting agendas, reports and minutes. Log on at: www.hackney.gov.uk

Paper copies are also available from the Governance Services Officers whose contact details are shown on page 1 of the agenda.

Council & Democracy- www.hackney.gov.uk

The Council & Democracy section of the Hackney Council website contains details about the democratic process at Hackney, including:

- [Mayor of Hackney](#)
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RIGHTS OF PRESS AND PUBLIC TO REPORT ON MEETINGS

Where a meeting of the Council and its committees are open to the public, the press and public are welcome to report on meetings of the Council and its committees, through any audio, visual or written methods and may use digital and social media providing they do not disturb the conduct of the meeting and providing that the person reporting or providing the commentary is present at the meeting.

Those wishing to film, photograph or audio record a meeting are asked to notify the Council's Monitoring Officer by noon on the day of the meeting, if possible, or any time prior to the start of the meeting or notify the Chair at the start of the meeting.

The Monitoring Officer, or the Chair of the meeting, may designate a set area from which all recording must take place at a meeting.

The Council will endeavour to provide reasonable space and seating to view, hear and record the meeting. If those intending to record a meeting require any other reasonable facilities, notice should be given to the Monitoring Officer in advance of the meeting and will only be provided if practicable to do so.

The Chair shall have discretion to regulate the behaviour of all those present recording a meeting in the interests of the efficient conduct of the meeting. Anyone acting in a disruptive manner may be required by the Chair to cease recording or may be excluded from the meeting. Disruptive behaviour may include: moving from any designated recording area; causing excessive noise; intrusive lighting; interrupting the meeting; or filming members of the public who have asked not to be filmed.

All those visually recording a meeting are requested to only focus on recording councillors, officers and the public who are directly involved in the conduct of the meeting. The Chair of the meeting will ask any members of the public present if they have objections to being visually recorded. Those visually recording a meeting are asked to respect the wishes of those who do not wish to be filmed or photographed. Failure by someone recording a meeting to respect the wishes of those who do not wish to be filmed and photographed may result in the Chair instructing them to cease recording or in their exclusion from the meeting.

If a meeting passes a motion to exclude the press and public then in order to consider confidential or exempt information, all recording must cease and all recording equipment must be removed from the meeting room. The press and public are not permitted to use any means which might enable them to see or hear the proceedings whilst they are excluded from a meeting and confidential or exempt information is under consideration.

Providing oral commentary during a meeting is not permitted.

ADVICE TO MEMBERS ON DECLARING INTERESTS

Hackney Council's Code of Conduct applies to **all** Members of the Council, the Mayor and co-opted Members.

This note is intended to provide general guidance for Members on declaring interests. However, you may need to obtain specific advice on whether you have an interest in a particular matter. If you need advice, you can contact:

- The Director of Legal & Governance;
- The Legal Adviser to the committee; or
- Governance Services.

If at all possible, you should try to identify any potential interest you may have before the meeting so that you and the person you ask for advice can fully consider all the circumstances before reaching a conclusion on what action you should take.

1. Do you have a disclosable pecuniary interest in any matter on the agenda or which is being considered at the meeting?

You will have a disclosable pecuniary interest in a matter if it:

- relates to an interest that you have already registered in Parts A and C of the Register of Pecuniary Interests of you or your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner;
- relates to an interest that should be registered in Parts A and C of the Register of Pecuniary Interests of your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner, but you have not yet done so; or
- affects your well-being or financial position or that of your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner.

2. If you have a disclosable pecuniary interest in an item on the agenda you must:

- Declare the existence and nature of the interest (in relation to the relevant agenda item) as soon as it becomes apparent to you (subject to the rules regarding sensitive interests).
- You must leave the room when the item in which you have an interest is being discussed. You cannot stay in the meeting room or public gallery whilst discussion of the item takes place and you cannot vote on the matter. In addition, you must not seek to improperly influence the decision.
- If you have, however, obtained dispensation from the Monitoring Officer or Standards Committee you may remain in the room and participate in the meeting. If dispensation has been granted it will stipulate the extent of your

involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a pecuniary interest.

3. Do you have any other non-pecuniary interest on any matter on the agenda which is being considered at the meeting?

You will have 'other non-pecuniary interest' in a matter if:

- i. It relates to an external body that you have been appointed to as a Member or in another capacity; or
- ii. It relates to an organisation or individual which you have actively engaged in supporting.

4. If you have other non-pecuniary interest in an item on the agenda you must:

- i. Declare the existence and nature of the interest (in relation to the relevant agenda item) as soon as it becomes apparent to you.
- ii. You may remain in the room, participate in any discussion or vote provided that contractual, financial, consent, permission or licence matters are not under consideration relating to the item in which you have an interest.
- iii. If you have an interest in a contractual, financial, consent, permission or licence matter under consideration, you must leave the room unless you have obtained a dispensation from the Monitoring Officer or Standards Committee. You cannot stay in the room or public gallery whilst discussion of the item takes place and you cannot vote on the matter. In addition, you must not seek to improperly influence the decision. Where members of the public are allowed to make representations, or to give evidence or answer questions about the matter you may, with the permission of the meeting, speak on a matter then leave the room. Once you have finished making your representation, you must leave the room whilst the matter is being discussed.
- iv. If you have been granted dispensation, in accordance with the Council's dispensation procedure you may remain in the room. If dispensation has been granted it will stipulate the extent of your involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a non pecuniary interest.

Further Information

Advice can be obtained from Suki Binjal, Director of Legal & Governance, on 020 8356 6237 or email suki.binjal@hackney.gov.uk



FS 566728



UNRESTRICTED MINUTES OF A MEETING OF THE STANDARDS COMMITTEE

MONDAY, 18TH FEBRUARY, 2019

Councillors Present:	Deputy Mayor Anntoinette Bramble in the Chair Cllr Jessica Webb (Vice-Chair), Cllr Sem Moema, Cllr Anna Lynch and Cllr Humaira Garasia
Co optees Present	Onagete Louison and Adedoja Labinjo
Also in Attendance:	Jonathan Stopes-Rowe – Independent Person Standards Committee
Apologies:	Councillor Caroline Woodley and Councillor Katie Hanson
Officers in Attendance:	Ms Dawn Carter-McDonald – Head of Legal & Governance Mr Rob Miller – Director – ICT Services Mr Bruce Devile – Head of Business Intelligence & Member Services Mr Clifford Hart – Governance Services Officer

1 APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillors Hanson and Woodley.

NOTED

1 URGENT BUSINESS

There were no items of urgent business.

NOTED

3 DECLARATIONS OF INTEREST - Members to declare as appropriate

There were no declarations of interests.

NOTED

4 DEPUTATIONS/PETITIONS AND QUESTIONS

There were no deputations, petitions or questions.

NOTED

5 UNRESTRICTED MINUTES OF THE STANDARDS COMMITTEE HELD ON 2 JULY 2018

The Clerk to the Committee – Mr Hart advised of an amendment to the attendance details of the meeting held on 2 July 2018 to include the attendance of the Independent Person – Mr Stopes Roe.

There being no other amendments on a MOTION by the Chair it was:

RESOLVED

That the unrestricted minutes of the Standards Committee held on 2 July 2018 be confirmed as accurate record of the proceedings subject to the inclusion of Mr Stopes-Roe – Independent Person, in the attendance record.

6 Annual Report on Compliance with Guidance on Members' Use of ICT

The Chair asked for a brief introduction to the report which was given by Rob Miller – Head of ICT.

Mr Miller highlighted that Hackney Council's Member Code of Conduct provided that a Member must act in accordance with the Council's requirements and ensure that Council resources were not used for any unauthorised or political purpose (unless that use reasonably facilitated discharging the Council's functions). This included Information & Communications Technology (ICT) resources with Members' use of the Council's systems and information being covered by the Council's policies for *Using Systems and Data* and *Information Classification and Marking* which was updated in 2017 as part of the 2017 Annual Report to Standards Committee.

Mr Miller commented that following the municipal elections in May 2018 all Members were contacted to arrange appointments for setting new Members up with ICT access and to arrange the transfer of returning Members onto the Council's new email and productivity systems (based on Google G Suite). The ICT Services team also participated in the Members' Induction event to help inform Members about the services and support provided. Mr Miller advised that currently some Members had not yet arranged appointments to complete the migration to the Council's new email service (3 Members) and / or security updates to laptop computers (4 Members). These were being followed up through Member Services and group whips. Also a further 22 Members had iPads which had not yet been updated to the Council's new device management standard. As these already had security controls in place which allowed remote deletion of data in the event of a device being lost or stolen it was proposed to address this as part of the planned refresh of Members' ICT hardware.

With regard to the monitoring of compliance with the guidance for Members' use of ICT Mr Miller advised that this was carried out by Corporate ICT staff. There were no incidents relating to Members' use of the Council's ICT systems recorded during the 2018 calendar year.

In respect of the planned refresh of Members' ICT hardware, Mr Miller commented that as reported in the 2018 report, the ICT equipment provided to Members was based on the findings of a pilot of upgraded ICT equipment in early 2016. Members were given a choice of either being provided with a laptop PC or iPad, with Members who preferred to use their own equipment being able to do so. Members' response to these upgrades had been positive and the same model was used for new Members joining the Council following the municipal election in 2018. Members would continue to have access to the Council's free wifi service

which provided fast, consistent wifi across the core Council campus (Hackney Town Hall, Hackney Service Centre, Annex and Christopher Addison House).

Mr Miller further commented that as a result of the low attendance by Members at support and advice sessions which were offered in July and October 2018 with a total of 2 Members attended the 2 evening sessions, ICT support for Members was now based on access to telephone, online and bookable 1:1 support.

Mr Miller briefly commented that the ICT Services team presented outline recommendations for future changes to Members' ICT provision to the Member Reference Group in November 2018. Members' feedback would now be used to inform the direction taken for proposed hardware upgrades later in 2019, and it was proposed that the devices that the Council had provided for Members (laptop PCs or iPads) would be refreshed as a full upgrade for all Members. Members would continue to be offered a choice of iPad or laptop devices. Other legacy equipment retained by some Members would be recovered where there was an ongoing cost to the Council (eg mobile phones, which have call plans) and retained by Members where there was no ongoing cost if they wish (eg printers – noting that repairs and consumables would not be provided by the Council).

Mr Miller concluded that Members would continue to be provided with access to email, calendar and Committee papers on the same basis as was currently available. The support offer would continue on the current basis with options of telephone, online and bookable in-person support in the Council offices.

The Committee, in welcoming the report, commented particularly on the timing and location of the roll out of the proposed training, to ensure accessibility and full participation, and take up by all Members, and asked that officers take account of this during the scheduling of the roll out.

There being no further points of clarification on a **MOTION** by the Chair it was:

RESOLVED

- i. That the update on Members' use of ICT as detailed in section 6 of the report be noted;**
- ii. that the follow up work taking place for a small number of Members to ensure that standard access and security arrangements were in place as referred to in paragraphs 6.5 and 6.6 of the report be noted;**
- iii. that the proposed direction for Data Protection guidance and Members' ICT provision as referred to in paragraphs 7 and 8 of the report be noted; and**
- iv. that the comments expressed by Members in relation to the timing and location of the roll out of proposed training be noted and officers be asked to take account of this during the scheduling of the roll out.**

7 Review of the Members' Training and Development Programme

The Chair asked for a brief introduction to the report.

The Head of Business Intelligence & Member Services – Mr Devile advised the Committee that the report provided the Committee with an update on the Members' Training & Development Programme, the aim of which was to provide the necessary training and tools to members to enable them to reach their full potential in their various roles as councillors. Mr Devile commented that the training 'offer' continued to

focus on a more bespoke and individual approach to training to meet individual needs and aspirations as detailed in the body of the report.

Mr Devile also advised of the dedicated members training web page had been introduced to ensure all the relevant information was easily accessible and in one place. This included links to all the main components such as LGA/LGIU & the learning hub, dates of briefings, PDP templates and guidance, as well as key contacts. It would continue to be the main landing page for all training and development for members and they should be able to find either the information or a link to it.

Mr Devile referred to the particular needs of new Members and focussed support in their role. Induction programmes were run at the start of each term of office with additional one off introductory sessions run when needed. Where new councillors started during administrations following by elections, particular attention was needed to be given to these members to ensure they were able to start their role as fully and as quickly as possible as the cycle of council meetings normally did not break for by elections.

Mr Devile also referred to the Members Induction Event which was held following the election in May 2018. Members were invited to attend the Town Hall to meet and engage with Directors, senior staff and key officers from services across the Council. The event provided an opportunity for new and returning members to network, gain information and updates from services and an insight into the key projects taking place.

Mr Devile further commented that Members also had available to them, alongside more wider training courses, to help them undertake their role as a councillor, as detailed in the report.

The Committee undertook a wide ranging discussion of the report and expressed the following main comments and concerns, to be taken account of by officers:

- Clear guidance on mandatory and non mandatory training
- Refresher courses on annual basis i.e code of conduct, and declarations/register of interests
- training courses that could be offered on a collective, individual or online basis
- An ability to record an absence where a date was offered and a member was unable to attend through a previously arranged other commitment
- The timing of training courses and review of commence time with possible training sessions in a morning or lunch time
- Possible 1:1 sessions and walk in mornings or evenings
- Possibly other locations other than the Town Hall
- The concerns of co-opted members of the lack of guidance and training, and the need for better understanding and invitation to co-opted members for both mandatory/non mandatory training sessions in future

The Chair then summarised and it was:

RESOLVED

- i. That the update with regards to the Council's member training and development programme be noted; and
- ii. That the comments and concerns of members expressed during discussion be noted and taken account of particularly in relation to:
 - Clear guidance on mandatory and non mandatory training
 - Refresher courses on annual basis i.e code of conduct, and declarations/register of interests
 - training courses that could be offered on a collective, individual or online basis
 - An ability to record an absence where a date was offered and a member was unable to attend through a previously arranged other commitment
 - The timing of training courses and review of commence time with possible training sessions in a morning or lunch time
 - Possible 1:1 sessions and walk in mornings or evenings
 - Possibly other locations other than the Town Hall
 - The concerns of co-opted members of the lack of guidance and training, and the need for better understanding and invitation to co-opted members for both mandatory/non mandatory training sessions in future

8 REVIEW OF THE REGISTER OF MEMBERS' AND CO-OPTES' DECLARATION OF INTEREST FORM & REVIEW OF THE CODE OF CONDUCT

The Chair asked for a brief introduction of the report.

The Head of Legal & Governance – Ms Carter-McDonald advised the meeting that The Localism Act 2011 required all local authorities to adopt a Code of Conduct for its elected Members and voting co-optees. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 required all Members to complete a declaration of interests form on their election to office, and for voting co-optees to complete a form on their appointment to office. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 provided that Members and co-optees must complete a declaration of interest form. Ms Carter-McDonald informed the meeting that the Council's Code of Conduct implemented the Regulations and provided that all Members and co-optees (including non-voting co-optees) must complete a declaration of interest form.

Ms Carter-McDonald further informed the meeting that Standards Committee further required regular review of compliance with the Regulations and the Code of Conduct by the Monitoring Officer. The Localism Act 2011 placed an obligation on all local authorities to promote high ethical standards in public office. Regulations also required Members and co-optees to be transparent and declare all disclosable interests on their declaration of interest form. The declaration of interests forms were held in a hard copy register and on the Council's website as

well.

Ms Carter-McDonald advised the meeting that following on from the Municipal election in May 2018 , all elected Members were required to complete an ROI form within 28 days of taking up office. Governance and Member Services ensured that this was done. Appropriate advice and guidance was sent to Members following their election in May 2018. Ms Carter-McDonald suggested that a quarterly email be sent from member services to remind members to review and update their form and advise Governance Services accordingly. It had been common practice to also keep Members updated as and when necessary, on case law relating to declarations of interest. Following on from the election in May 2018 all Members of the Council were required to, and attended mandatory training on the Members Code of Conduct.

Ms Carter-McDonald further advised that following the review by Central Government in early 2018 of standards in public life in England and Wales, as defined in the Localism Act 2011, the key findings and recommendations of that review were published on 30 January 2019. The headline findings would form part of a verbal update later in this agenda. Ms Carter-McDonald informed the Committee that it was likely that the review findings, if brought into effect by central government, would require revisions to Localism Act 2011, and subsequently revisions will be required to the existing Members Code of Conduct. It will be suggested that Members receive a further report in the early summer of 2019, following an in-depth review of the key findings and their implications.

The Chair, in thanking Ms Carter-McDonald for her succinct introduction, welcomed the suggestion to advise Members in a quarterly email from member services to remind members to review and update their form and advise Governance Services accordingly.

Following comments by Members in terms of declaring interests on the ROI and the assumption that it was safer to declare a matter rather than not and that by not doing so a member may then find that they were 'politically' exposed Ms Carter-McDonald advised that if there were doubts or ambiguities then Members were advised to seek clarification, via both Governance Services and herself.

The Chair then summarised and it was:

RESOLVED

- i. That the report be noted; and
- ii. That a quarterly email will be sent from member services to remind members to review and update their form and advise Governance services accordingly.

9 Review of the Member complaints process and form/toolkit

The Chair asked for a brief introduction of the circulated report.

Monday, 18th February, 2019

The Head of Legal & Governance – Ms Carter-McDonald, commented that as the Committee were aware under the requirements of Section 28 of the Localism Act 2011 Hackney Council had arrangements in place to investigate complaints made against Members under the Members' Code of Conduct. As it had been some time since the process had been reviewed, the Standards Committee at its last meeting in July, asked officers to review this process and the accompanying documents.

Ms Carter-McDonald advised that the review had now been completed and the documents refreshed. As part of the review, a flowchart of the process had been included and this should help officers and members of the public in following the process through. The Localism Act 2011 placed an obligation on the Council to ensure that high ethical standards were promoted and maintained among its Members.

The Committee, in welcoming the review expressed (in summary) in relation to the flow chart circulated, some further revisions in box form, and to be further circulated to Members:

- outcomes as regards to findings of investigation
- whether the complaint findings warrant consideration by a Review Committee
- possible outcomes/decision of the Review Committee
- Informing the subject member and advertising/reporting of the decision to Full Council

The Chair then summarised and it was:

RESOLVED

That the updated complaints procedure and complaints form attached as appendices 1-3 to this report be noted and agreed, and that a revised flow chart be circulated to the Committee for information including boxes showing:

- **outcomes as regards to findings of investigation**
- **whether the complaint findings warrant consideration by a Review Committee**
- **possible outcomes/decision of the Review Committee**
- **Informing the subject member and advertising/reporting of the decision to Full Council**

10 Verbal Review of the number of complaints about Members

RESOLVED

That the verbal update regarding the number of complaints received against members for the Municipal Year commencing May 2018 to date be noted.

11 Verbal update on the outcome of the Committee of Standards in Public Life Consultation

The Chair asked for a verbal update to the Committee on this item.

The Head of Legal & Governance – Ms Carter-McDonald Dawn informed the Committee of the Government's Committee on Standards in Public Life's recently published report and

recommendations on ethical standards in local government, following a year-long review and wide consultation.

Ms Carter-McDonald advised Members that the main headline findings of the report were:

- 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.

Ms Carter-McDonald, in reference to how the Committee might further wish to consider the implications of the outlined proposals, suggested that the Committee may agree that it has further discussion in the early summer when officers have had time to evaluate the findings and recommendations so that the Council will be prepared for their implementation once the recommendations come in to being. Ms Carter-McDonald also advised that given the Government's current legislative timetable it was unlikely that this would hit statute until early 2020 at the earliest but that it was of considerable benefit to work on the implications of the key findings at this juncture.

The Committee welcomed the verbal summary, and on a **MOTION** by the Chair it was:-

RESOLVED

- i. **That the verbal update with regard to the Government's Committee on Standards in Public Life's recently published report and recommendations on ethical standards in local government, following a year-long review and wide consultation, be noted; and**
- ii. **that a further report be brought to the Standards Committee in July 2019 detailing a full evaluation of the findings and recommendations, and the implications for the LB Hackney and covering the main headline issues arising from the review as follows:**
 - **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.**

12 TO CONSIDER ANY UNRESTRICTED ITEMS OF BUSINESS THE CHAIR CONSIDERS TO BE URGENT

There were no items of urgent business.

NOTED

13 DATES OF FUTURE MEETINGS

NOTED that there were no other scheduled meetings of Standards Committee in the current Municipal Year 2018/19, and that the provisional 2019/20 meetings of the Standards Committee were scheduled to take place on:

1 July 2019
13 February 2020

14 EXCLUSION OF THE PUBLIC AND PRESS

There were no exempt matters to be considered.

NOTED

15 TO CONSIDER ANY EXEMPT ITEMS OF BUSINESS THE CHAIR CONSIDERS TO BE URGENT

Nil items

Duration of the meeting: 18:30hrs- 19.35hrs

Signed

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Chair of Committee

Contact:
Clifford Hart, Governance Services

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Standards Committee Terms of Reference

The Standards Committee is responsible for promoting and maintaining high ethical standards at the Council. The Standards Committee is responsible for the following functions:

1. To review and maintain oversight of the Council's ethical framework and procedures and make reports and recommendations accordingly;
2. To review and maintain oversight of the conduct of Members and co-opted members of the Council and assist them in upholding high ethical standards;
3. To advise Full Council and its Committees on the adoption of a Members' Code of Conduct, codes of practice and protocols relating to ethical governance matters;
4. To hear and consider complaints made against Members and co-opted members under the Code of Conduct, codes of practice or protocols;
5. To adopt procedures for considering complaints made under the Code of Conduct, codes of practice or protocols;
6. To consider whether to grant applications for dispensation to Members and co-opted members, in accordance with Members' Code of Conduct; and
7. To maintain oversight of ethical governance training provided to Members and co-opted members and make reports and recommendations accordingly.

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STANDARDS COMMITTEE WORK PROGRAMME 2019/20

STANDARDS COMMITTEE

16 September 2019

CLASSIFICATION:

Open

WARD(S) AFFECTED

All Wards

Suki Binjal – Director of Legal & Governance

1. INTRODUCTION

- 1.1 In line with established good practice, the Standards Committee sets out a work programme to help it focus its attention on promoting and maintaining high ethical standards among Members of the Council.
- 1.2 This report outlines the areas of work which the Committee will be undertaking to ensure that it maintains effective oversight of Member conduct and ensures that high ethical governance standards are maintained.
- 1.3 The report therefore invites the Committee to agree a work programme for the year 2019/20.

2. RECOMMENDATION

- 2.1 **Standards Committee is asked to agree the draft work programme for 2019/20 as detailed in Appendix 1 to this report.**

3. REASON FOR DECISION

- 3.1 Issues concerning ethical governance including the promotion and maintenance of high ethical standards among Members of the Council are within the remit of the Committee. Agreement of the Committee's work programme would therefore enhance the work of the Committee.

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 4.1 This report seeks agreement for the work programme of the Standards Committee and does not have financial implications outside of the approved budget of the Council.

5. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE

- 5.1 The work programme enables the Council to discharge its legal obligation under the Localism Act 2011, to promote and maintain high standards in public office.

6. BACKGROUND

- 6.1 The Localism Act 2011 places an obligation on the Council to ensure that high ethical standards are promoted and maintained among its Members. At the Council meeting on 28 March 2012, the Council appointed the Standards Committee to assist with promoting and maintaining high ethical standards in the Council.
- 6.2 The suggested work programme, attached at Appendix 1, is intended to help the Committee to focus attention on its responsibilities and duties, with particular attention on ensuring all Members receive appropriate training, complete their register of interests forms and continue to uphold high ethical governance standards. There is some flexibility to add items to the work programme subject to time and resources.

6.3 Complaints received in the year may necessitate additional meetings being held by a Sub-Committee of the Standards Committee.

Suki Binjal
Director of Legal & Governance

LIST OF APPENDICES

Appendix 1 –Standards Committee Work Programme 2019/20

BACKGROUND PAPERS

No documents which require listing been relied upon in the preparation of this report.

Report Author	Clifford Hart Governance Services Clifford.hart@hackney.gov.uk 02083563597
Comments on behalf of the Director of Legal and Governance	Michael Honeysett Director Financial Management 020 8356 3332 Michael.honeysett@hackney.gov.uk
Comments on behalf of the Director of Legal and Governance	Dawn Carter-McDonald Head of Legal & Governance 020 8356 4817 Dawn.CarterMcDonald@hackney.gov.uk

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STANDARDS COMMITTEE

16 September 2019

Standards Committee Work Programme 2019/20

Appendix 1

Work Programme 2019/20

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**STANDARDS COMMITTEE
WORK PROGRAMME 2019/20**

MEETING DATE	ITEM	ACTION	PURPOSE	RESPONSIBILITY
16/09/19				
Page 19	Standards Committee Terms of Reference	Noting	The Committee will be asked to note its terms of reference.	Monitoring Officer
	Standards Committee Annual Report 2019/20	Decision	The report will provide Members with an annual review of the Committee's work for comment and commendation to Council. It will also update Members on proposed areas of work for the future.	Monitoring Officer
	Draft Work Programme	Decision	The report will ask Members to agree the priorities for and work of the Committee for 2018/19.	Monitoring Officer
	Approval of process to appoint to the existing co-optee vacancies on Standards Committee	Decision	The report will ask Members to agree the recruitment process for the filling of the two co-optee vacancies on Standards Committee	Monitoring Officer
	Update on the review the Committee of Standards in Public Life Consultation	Decision	The report will ask members to consider the full evaluation of the findings and recommendations of the Government's Committee on Standards in Public Life's published report in January 2019 and recommendations on ethical standards in local government, following a year-long review and wide consultation, and the implications for the LB Hackney and covering the main headline issues arising from the review.	Monitoring Officer

**STANDARDS COMMITTEE
WORK PROGRAMME 2019/20**

<p>Special Standards Committee – late November/ Mid December 2019</p>	<p>Confirmation of the appointments to the existing co-optee vacancies on Standards Committee</p>	<p>Decision</p>	<p>To confirm the appointment of up to candidates two co-opted Members to Standards Committee, and recommend the appointments to Full Council for ratification, following a recruitment process during the summer and early autumn of 2019.</p>	<p>Monitoring Officer</p>
<p>13/02/2020</p>				
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 20</p>	<p>Review of the Register of Members' and Co-optees' Declaration of Interests</p>	<p>Information</p>	<p>The report informs the Committee on Members and Co-optees completion of their declaration of interests' forms</p>	<p>Monitoring Officer</p>
	<p>Review of the Members' Training and Development Programme</p>	<p>Information</p>	<p>The Committee will be asked to consider a report on training provided to Members especially with focus on ethical governance matters. The report will include an overview of the training and e-learning training provided, information on attendance and feedback received from Members. The Committee will be asked to provide comments and suggestions on any further training needs</p>	<p>Head of Business Development</p>
	<p>Annual Report on Compliance with Guidance on Members' Use of ICT</p>	<p>Information</p>	<p>The Committee will be asked to consider a report on Members' use of ICT especially with focus on ethical governance matters. The report will include an overview of the training and e-learning training provided, information on attendance and feedback received from Members. The Committee will be asked to provide comments and suggestions on any</p>	<p>Monitoring Officer</p>

**STANDARDS COMMITTEE
WORK PROGRAMME 2019/20**

			further training needs.	
	Update on the review the Committee of Standards in Public Life Consultation and implications for the LB Hackney	Information /decision	Further update on progress in relation to the implications of the findings and recommendations considered in July 2019	Monitoring Officer
	Review of the Code of Conduct and ROI Form	Decision	The Code of Conduct and Register of Interest Form will be reviewed to clarify the requirements	Monitoring Officer
Page 21	Update on complaints received in relation to members since February 2019 to date	Information	Update on any complaints received against Members in the past year	Monitoring Officer

The Standards Committee and Standards Sub-Committees may meet as and when required to consider complaints made under the Members' Code of Conduct.

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STANDARDS COMMITTEE DRAFT ANNUAL REPORT 2018/2019

STANDARDS COMMITTEE

16 September 2019

COUNCIL

30 October 2019

CLASSIFICATION:

Open

WARD(S) AFFECTED

All Wards

**Suki Binjal
Director Legal and Governance**

1. SUMMARY

- 1.1 This report gives an overview of the work and activities of the Standards Committee over the past year and provides information on the monitoring of the Members' Code of Conduct.

2. RECOMMENDATIONS

- 2.1 **That the Standards Committee considers the Annual Report for 2018/19, as attached at Appendix 1, and endorse it for submission to Full Council.**
- 2.2 **That Full Council notes the Standards Committee's Annual Report for 2018/19, as attached at Appendix 1.**

3. RELATED DECISIONS

- 3.1 This is the seventh Annual Report of the Standards Committee established by the Council on 1 July 2012.

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 4.1 This report sets out the work and activities of the Standards Committee over the previous municipal year and therefore does not contain any potential financial implications.

5. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE

- 5.1 The Council has a legal duty under the Localism Act 2011, to promote and maintain high standards of conduct of Members and co-opted Members in public office.
- 5.2 The Council therefore established a Standards Committee to help promote and uphold high standards of conduct amongst Members and co-opted Members.

6. BACKGROUND TO THE REPORT

- 6.1 This Annual Report is submitted to Council in line with best practice for the Council to maintain an overview of the work of the Standards Committee. This is the seventh Annual Report of the Standards Committee established by the Council following implementation of the Localism Act 2011 and the introduction of related ethical governance arrangements.
- 6.2 In upholding high standards the Committee monitors and makes recommendations on the Members' Code of Conduct and considers complaints made under the Code.

6.3 The Standards Committee during 2018/19 undertook work in the following areas, which are explained in further detail in Appendix 1 of this report:

- Annual Report on Compliance with Guidance on Members' Use of ICT
- Review of the Register of Members' and Co-optees Declaration of interests
- Review of the Members' Training and Development Programme
- Safety arrangements for Member surgeries
- Review of the Member complaints process and form/toolkit
- Review of the number of complaints about Members
- Update on the outcome of the Committee of Standards in Public Life Consultation

SUKI BINJAL
DIRECTOR, LEGAL & GOVERNANCE

APPENDICES

Appendix 1 – Standards Committee Annual Report 2018/19

Report Author	Clifford Hart , Governance Services 020 8356 3597 Clifford.hart@hackney.gov.uk
Comments for and on behalf of the Group Director, Finance and Corporate Resources	Michael Honeysett, Director, Financial Management 020 8356 3332 Michael.honeysett@hackney.gov.uk
Comments for and on behalf of the Director, Legal and Governance	Dawn Carter-McDonald Head of Legal and Governance 020 8356 4817 Dawn.CarterMcDonald@hackney.gov.uk

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STANDARDS COMMITTEE

16 September 2019

Draft Standards Committee Annual Report 2018/19

Appendix 1- Draft Report

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**STANDARDS COMMITTEE
DRAFT ANNUAL REPORT 2018/19**

Introduction from Councillor Anntoinette Bramble, Chair of the Committee for 2018/19 and Cabinet Member for ethical governance matters

This report provides an overview of the Committee's work in the 2018/19 Municipal Year, in what was the Committee's sixth year since its establishment by the Council following the introduction of the Localism Act 2011. This Annual Report outlines the key areas of work undertaken by the Committee during 2018/19 as well as looking at future work and challenges.

This is my third annual report since taking on responsibility for this Committee. I am happy to report that Members and co-opted members continue to uphold high ethical standards. I am also pleased to report that the refreshed Members' training programme which was launched in 2017/18 had positive feedback, and has continued to have a positive outcome since the local elections and influx of new members in May 2018.

It is yet again regrettable that the opposition parties decided not to take up their places on the Standards Committee for the 2018/19 Municipal Year. The Committee functions in an independent and non-party political way. It will continue to retain the place for the now sole opposition party for the duration of this new municipal administration in the hope that it will be taken up.

2. Membership

For 2018/19, membership of the Committee was as follows:

- Cllr Anntoinette Bramble, Deputy Mayor, Elected Chair of the Committee.
- Originally arising from appointments at annual council May 2018 seven non-executive Council Members – Councillor Humaira Garasia, Katie Hanson, Alex Kuye, Anna Lynch, Sem Moema, Jessica Webb (vice-chair); and Caroline Woodley
- Two non-voting co-opted members – Adedoja Labinjo and Onagete Louison (plus two vacancies).
- There remained One Conservative vacancy on the committee.

The table below outlines Members' and co-optees' attendance at meetings of the Standards Committee meetings during the 2018/19 Municipal Year. As

ever, Members and co-optees had a large number of alternative commitments such as other public meetings, ward commitments, representing the Council on outside bodies and work commitments, and were therefore not always available to attend every meeting of the Committee

Member	02/07/18	18/02/19
Cllr Anntoinette Bramble	P	P
Cllr Garasia Humaira	P	P
Cllr Katie Hanson	P	A
Cllr Alex Kuye	A	N/A
Adedoja Labinjo	P	P
Onagete Louison	P	P
Cllr Anna Lynch	P	P
Cllr Sem Moema	P	P
Jonathan Stopes-Roe	P	P
Cllr Jessica Webb (Vice Chair)	P	P
Cllr Caroline Woodley	P	A

Key:

P = Present

A = Apologies for absence

N = Not required to attend

3. Terms of reference 2018/19

The Standards Committee operated within the following terms of reference for 2018/19 Municipal Year, which went to the Standards Committee meeting on 10 July 2017:

The Standards Committee is responsible for promoting and maintaining high ethical standards at the Council. The Standards Committee is responsible for the following functions:

1. To review and maintain oversight of the Council's ethical framework and procedures and make reports and recommendations accordingly;
2. To review and maintain oversight of the conduct of Members and co-opted members of the Council and assist them in upholding high ethical standards;
3. To advise Full Council and its Committees on the adoption of a Members' Code of Conduct, codes of practice and protocols relating to ethical governance matters;
4. To hear and consider complaints made against Members and co-opted members under the Code of Conduct, codes of practice or protocols;
5. To adopt procedures for considering complaints made under the Code of Conduct, codes of practice or protocols;
6. To consider whether to grant applications for dispensation to Members and co-opted members, in accordance with Members' Code of Conduct; and
7. To maintain oversight of ethical governance training provided to Members and co-opted members and make reports and recommendations accordingly.

4. Members' Code of Conduct

Following the Municipal Elections in May 2018 all Members on their election to office, and co-optees on their appointment, were required to sign a declaration confirming that they will abide by the Members' Code of Conduct. It is important for them to have good knowledge of the requirements of the Code. Similarly, officers who work directly with Members and co-optees need to have a good understanding of the Code in order to give Members effective support.

The Committee is pleased with the continuing support and training provided to Members on the Code of Conduct and believes that it helps contribute to the high ethical governance standards demonstrated by Members and Co-optees of the Council. Newly elected and returning Members, and Co-opted Members where appropriate, attended refresher sessions during the Municipal Year 2018/19. The Committee will continue to monitor training on the Code of Conduct to ensure that high standards continue.

5. Member Induction, Training and Development Programme

The refreshed Member Training and Development Programme received positive feedback. The programme's aim was to provide the necessary training and tools to Members to enable them to reach their full potential in their various roles as Councillors. The change in approach had come about as a result of Mayor Philip Glanville's commitment in 2017 to launch a review of how Councillors are supported. The training has now more focus with the emphasis on a more individual approach to training to meet Members' needs and aspirations. A dedicated Members' training page was created and is live. It includes links to all the main components, including the Local Government Association and Local Government and Intelligence Unit learning hub, dates of briefings and back to floor session, PDP templates and guidance, as well as key contacts.

Committee members welcomed the new training programme. Work would continue to improve the various ways to support Councillors in their professional and personal development.

A Members Induction Event which was held following the election in May 2018. Members were invited to attend the Town Hall to meet and engage with Directors, senior staff and key officers from services across the Council. The event provided an opportunity for new and returning members to network, gain information and updates from services and an insight into the key projects taking place.

A number of courses have been run for the 2018/2019 Municipal year. The emphasis with newly elected Councillors was and continues to provide the necessary training and tools to members to enable them to reach their full potential in their various roles as councillors. As launched in 2017 the training 'offer' has continued to focus on a more bespoke and individual approach to training to meet individual needs and aspirations.

The dedicated members training web page had been introduced to ensure all the relevant information was easily accessible and in one place. This has included links to all the main components such as LGA/LGIU & the learning hub, dates of briefings, PDP templates and guidance, as well as key contacts. It will continue to be the main landing page for all training and development for members and they should be able to find either the information or a link to it.

In 2018/19 as part of our commitment we have also focused on the particular needs of new Members and support in their role. Induction programmes were run at the start of each term of office with additional one off introductory sessions run when needed. Where new councillors started during administrations following by elections, particular attention was needed to be given to these members to ensure they were able to start their role as fully and as quickly as possible as the cycle of council meetings normally did not break for by elections.

We also continued through the year to assess the effectiveness of the training programme. In February of this year when assessing the progress so far we commented on the following issues which officers have continued to review and assess:

- Clear guidance on mandatory and non-mandatory training
- Refresher courses on annual basis i.e code of conduct, and declarations/register of interests
- training courses that could be offered on a collective, individual or online basis
- An ability to record an absence where a date was offered and a member was unable to attend through a previously arranged other commitment
- The timing of training courses and review of commence time with possible training sessions in a morning or lunch time
- Possible 1:1 sessions and walk in mornings or evenings
- Possibly other locations other than the Town Hall
- The concerns of co-opted members of the lack of guidance and training, and the need for better understanding and invitation to co-opted members for both mandatory/non mandatory training sessions in future

6. Review of Register of Declaration of Interests Forms

We have continued to review the requirements of the The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which requires all local authorities to adopt a Code of Conduct and for all its all Members and voting co-optees to complete and return a declaration of interests form.

The Localism Act 2011 also places an obligation on all local authorities to promote high ethical standards in public office. Regulations also require Members and Co-optees to be transparent and declare all disclosable interests on their declaration of interest form.

The declaration of interests forms were held in a hard copy register and on the Council's website as well. Following on from the Municipal election in May 2018, all elected Members were required to complete an ROI form within 28

days of taking up office. Our Governance and Member Services ensured that this was done. We have agreed that quarterly email be sent from our member services to remind members to review and update their form and advise Governance Services accordingly. It had been common practice to also keep Members updated as and when necessary, on case law relating to declarations of interest. Following on from the election in May 2018 all Members of the Council were required to, and attended mandatory training on the Members Code of Conduct.

We have also been advised of and updated on the review by Central Government in early 2018 of standards in public life in England and Wales, as defined in the Localism Act 2011, the key findings and recommendations of that review were published on 30 January 2019. We noted that it is likely that the review findings, if brought into effect by central government, would require revisions to Localism Act 2011, and subsequently revisions will be required to the existing Members Code of Conduct. We have agreed to receive a further report in the early summer of 2019, following an in-depth review of the key findings and their implications.

We have also commented that in terms of declaring interests on the RoI and the assumption that it is always safer to declare a matter rather than not and that by not doing so a member may then find that they were 'politically' exposed. We noted advice that if there were doubts or ambiguities then Members should always seek clarification, via both Governance Services and the Director of legal and Governance.

7. Complaints about Member Conduct

Jonathan Stopes-Roe has continued to serve as the Council's Independent Person on ethical governance matters and he was reappointed by Full Council for a further 4 year term at its meeting on 26 July 2017.

There were no complaints received under the Members' Code of Conduct that were referred to the Standards Assessment Sub-Committee in the 2018/2019 Municipal Year.

8. Guidance for Members on Use of ICT – Annual Report

Throughout 2018/19 communications were provided to members to support them in compliance with the requirements for use of Council ICT systems. These included:

- Notification about new Using Systems and Data policy, invitation to attend Data Protection guidance sessions for members and contact details for queries
- Information about registration of Members as Data Controllers with the Information Commissioner's Office
- Invitation to attend ICT support and advice sessions

The Standards Committee noted that guidance sessions had been offered to all members through 2018 to support them in their understanding of Data Protection responsibilities. Feedback from these sessions had been positive and they had provided officers with additional understanding of members' work and helped to identify those ways that needed further improvement.

On data protection, the Standards Committee members noted that the Council had arranged to register each Member as a 'Data Controller' with the Information Commissioner's Office. This was a mandatory requirement for all Members and was renewed by the Council following the election in May 2018 and annually thereafter to ensure that Members' registration remains up to date.

We have noted that following the municipal elections in May 2018 all Members were contacted to arrange appointments for setting new Members up with ICT access and to arrange the transfer of returning Members onto the Council's new email and productivity systems (based on Google G Suite). ICT Services team participated in the Members' Induction event to help inform Members about the services and support provided. We noted that as of February 2019 the process to complete the migration to the Council's new email service and / or security updates to laptop computers was in its final stages with only a small number of members awaiting the migration process. We also noted that a further 22 Members had iPads which had not yet been updated to the Council's new device management standard. As these already had security controls in place which allowed remote deletion of data in the event of a device being lost

or stolen this will be addressed as part of the planned refresh of Members' ICT hardware.

We have also noted that with regard to the monitoring of compliance with the guidance for Members' use of ICT there were no incidents relating to Members' use of the Council's ICT systems recorded during the 2018/19 calendar year.

We have been updated in respect of the planned refresh of Members' ICT hardware the ICT equipment provided to all Members was based on the findings of a pilot of upgraded ICT equipment in early 2016, when Members were given a choice of either being provided with a laptop PC or iPad, with Members who preferred to use their own equipment being able to do so. The same model was used for new Members joining the Council following the municipal election in 2018. Members would continue to have access to the Council's free wifi service which provided fast, consistent wifi across the core Council campus (Hackney Town Hall, Hackney Service Centre, Annex and Christopher Addison House).

We also were updated in February that ICT support and advice sessions were now offered was now based on access to telephone, online and bookable 1:1 support, following the initial roll out of the training offer in July 2018.

We have further been advised that outline recommendations for future changes to Members' ICT provision were considered at the Member Reference Group in November 2018. Members' feedback would now be used to inform the direction taken for proposed hardware upgrades later in 2019, and the devices that the Council had provided for Members (laptop PCs or iPads) would be refreshed as a full upgrade for all Members. Members would continue to be offered a choice of iPad or laptop devices.

In welcoming the ICT updates we commented particularly on the timing and location of the roll out of the proposed training, to ensure accessibility and full participation, and take up by all Members, and we have asked that officers take account of this during the scheduling of the proposed roll out.

9. Dispensation Requests

Under the Council's dispensation Procedure, the Standards Committee is responsible for considering requests for dispensations on the grounds that it is in the interests of residents or that it is otherwise appropriate to grant dispensation for some other reason.

We agreed in July 2018 to a dispensation for all Members to withhold their private addresses from the published Register of Interest Forms on the London Borough of Hackney's website.

10. Review of the Member complaints process and form/toolkit

In February this year (2019) we considered the findings of the review of the Member complaints process and form/toolkit, which we agreed to undertake in July 2018.

Under the requirements of Section 28 of the Localism Act 2011 Hackney Council had arrangements in place to investigate complaints made against Members under the Members' Code of Conduct. The Localism Act 2011 placed an obligation on the Council to ensure that high ethical standards were promoted and maintained among its Members.

As part of the review findings, we agreed some revisions to the documents we publish on line regarding the Member complaints process, particularly in respect of the flowchart of the process to be included to assist officers and members of the public in following the process through.

We also agreed to include:

- outcomes as regards to findings of investigations
- whether the complaint findings warrant consideration by a Review Committee
- possible outcomes/decision of the Review Committee
- Informing the subject member and advertising/reporting of the decision to Full Council

11. Committee of Standards in Public Life

The Government's Committee of Standards in Public Life went out to consultation on Local Government Ethical Standards in early 2018. The consultation closed in late 2018 and in February this year we were advised of the findings and recommendations on ethical standards in local government.

We noted that the main headline findings of the report were:

- 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.

We have agreed to have further discussion in June of this year after officers have had time to evaluate the findings and recommendations so that the Council will be prepared for their implementation once the recommendations come in to being.

We have noted that given the Government's current legislative timetable it is unlikely that this would hit statute until early 2020 at the earliest, however but we feel that it is of considerable benefit to work on the implications of the key findings at this juncture.

12. Conclusion

The Standards Committee has now been in operation for seven years following its establishment by Council. The Committee remains dedicated to maintaining high ethical standards in Hackney and supporting Members and co-optees in doing so. The Committee is pleased to see that the current framework is operating successfully and the Committee believes that Council Members and co-optees continue to demonstrate high ethical standards.

The Committee's ongoing focus will be to support Members to ensure that they are fully aware of the principles of the Code of Conduct and to monitor attendance at training and completion of Register of Interests' forms.

I thank the two co-optees of the Committee for their assistance and hard work on the Committee and the Independent Person, Mr Jonathan Stopes-Roe, for his contribution to our work.

Councillor Anntoinette Bramble
Chair of Standards Committee 2018/19



Request for Members' Dispensation	
STANDARDS COMMITTEE 16 September 2019	CLASSIFICATION: OPEN
WARD(S) AFFECTED ALL WARDS	
Suki Binjal Director of Legal & Governance	

1. SUMMARY

- 1.1 The Localism Act 2011 requires all local authorities to adopt a Code of Conduct for its elected Members and voting co-optees.
- 1.2 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 requires all Members to complete a declaration of interests form on their election to office, and for voting co-optees to complete a form on their appointment to office.

2. RECOMMENDATION

- i. That Standards Committee agree a dispensation for any member of the Council belonging to the Local Government Pension Scheme (LGPS) either in a contributing, or in receipt capacity, for the LB Hackney, or any other Local Authority Pension Scheme, when they are in attendance at any Council meetings where matters pertaining to the Local Government Pension Scheme are being considered/discussed; and

- ii. That the dispensation if granted, will remain in place until the first meeting of the Standards Committee or any committee which has the functions of the Standards Committee, following the commencement of the newly elected administration in May 2022.

3. REASONS FOR THE DECISION/BACKGROUND

- 3.1 As part of the formal consideration of business of the various bodies of the Council, the matter of the Local Government Pension scheme (LGPS) is periodically considered/discussed e.g at Full Council, Audit Committee, Pensions Committee, and the Pensions Board.
- 3.2 It is noted that a number of elected members may be contributing in their elected member capacity to the London Borough of Hackney Pension Scheme, or are in receipt of a pension from the London Borough of Hackney (as a result of previously contributing to the scheme and had reached pensionable age). An elected Member may also currently be contributing to the LGPS at another Local Authority as an employee, or in receipt of a pension from another Local Authority where they were formerly an employee.
- 3.3 In accordance with the Council's Members Code Conduct as detailed in Part 5 of the constitution, the declarations of interests' rules require a Member to declare as a disclosable non-pecuniary interest, any contribution to or being in receipt of an LGPS pension. It is also a requirement of each Member to declare such interests on their individual Register of Interests form (ROI).
- 3.4 Consequently as the various bodies of the Council would require such declarations to be made each time pensions issues are discussed, it is felt that as this declaration has already been detailed in individual Members ROI's it is not necessary to then have to disclose such interests on each occasion and therefore it is appropriate to seek a Member wide dispensation to not have to make such declarations with immediate effect. The dispensation will remain in place until the first meeting of the Standards Committee or any committee which has the functions of the Standards Committee in 2022.
- 3.5 Under the Localism Act 2011 all Councils are required to promote high ethical standards in public office. Members and co-optees complete the ROI forms when they take office and all members are reminded quarterly to review their ROI form content. Part of the ROI form details the requirement to declare membership of the LGPS.

4. COMMENTS OF GROUP DIRECTOR FINANCE AND CORPORATE RESOURCES

- 4.1 This report seeks the Committee's consent to a dispensation for the remainder of the municipal administrative term. There are no financial implications in this.

5. COMMENTS OF THE DIRECTOR OF LEGAL & GOVERNANCE

- 5.1 All Members and voting Co-optees are required under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 to complete a declaration of interests form.

- 5.2 Under the Council's Constitution - Part 5 – Code of Conduct - Section 14 sets out the rules regarding dispensations as follows:

14.1 A Member or co-optee may submit a written request for dispensation relieving them from the restrictions on a participation in and on a disclosable pecuniary interest.

14.2 Dispensation may be granted if:

(a) the number of persons prohibited from participating in the meeting would be so great a proportion as to impede the transaction of the business

(b) without the dispensation the balance of political groups on the committee would be affected and affect the outcome of any

(c) granting dispensation is in the interests of residents

(d) each member of the executive would be prohibited from participating in any particular business to be transacted by the executive

(e) it is otherwise appropriate to grant a dispensation.

Applications under sections 14.2(a)(b) and (d) above shall be made to the Monitoring Officer. All other applications shall go to Standards Committee.

- 5.3 A dispensation to not have to declare membership of and contribution to or receipt of a pension from a LGPS (which is recorded on the Register of Interest Form published on the web), is such a dispensation that can be determined by the Standards Committee as advised by the Monitoring Officer.

- 5.4 Accordingly the Monitoring Officer is asking the Standards Committee to grant a blanket dispensation for the term of office (until May 2022) for all

Members that would be affected under the provision of the dispensation in accordance with rule 14.2 (e) above.

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Comments for and on behalf of the Group Director of Finance and Corporate Resources	
Comments for and on behalf of the Director of Legal & Governance	Dawn Carter-McDonald Tel: 020 8356 4817 Email: dawn.carter-mcdonald@hackney.gov.uk



RECRUITMENT OF CO-OPTED MEMBERS TO STANDARDS COMMITTEE 2019

<p>STANDARDS COMMITTEE</p> <p>16 September 2019</p>	<p>CLASSIFICATION:</p> <p>Open</p>
<p>WARD(S) AFFECTED</p> <p>All Wards</p>	
<p>Suki Binjal Director of Legal and Governance</p>	

1. SUMMARY

1.1 This report seeks the approval of the Standards Committee to the commencement of a recruitment process to appoint up to four co-opted member vacancies on Standards Committee. The resulting recruitment process will require formal agreement of Full Council.

2. RECOMMENDATIONS

- 2.1 That Standards Committee agrees to the recruitment process for the appointment of up to four current co-opted member vacancies to Standards Committee for a period of four years from their confirmed date of appointment;
- 2.2 That Standards Committee agree the contents of the draft recruitment pack as detailed, as attached at Appendix 1, and to agree the process of recruitment as detailed in paragraph 6.3 below;

- 2.3 That Standards Committee agree that the Interview Panel to shortlist and interview candidates will be drawn from the Membership of the Standards Committee as follows, and to agree those members to be appointed:

Chair of Standards Committee
Two Members of Standards Committee
One current co-opted Member (Advisory Capacity non-voting)
Independent Person – Standards Committee (Advisory Capacity non-voting)

Officers in attendance

Head of Legal & Governance
Clerk to Standards Committee

- 2.4 That Standards Committee note that a special Standards Committee will be convened in late November to mid December 2019 to endorse the recommendations of the Interview Panel regarding proposed appointments, and recommend to Full Council the endorsed appointments, at its meeting on 22 January 2019, for a term of four years.

3. RELATED DECISIONS

- 3.1 N/A

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 4.1 The costs of the recruitment exercise outlined in this report, along with allowances for those appointed, will be met from within current approved budgets and therefore the recommendations within this report have no further financial implications.

5. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE

- 5.1 In accordance with Section 27 - Chapter 7, of Part 1 of the Localism Act 2011, and as provided for in the Council's Constitution at Article 8 (The Standards Committee and Independent Person), the Council is able to appoint up to six non-voting co-opted members to its Standards Committee.

6. BACKGROUND TO THE REPORT

- 6.1 This report seeks agreement of Standards Committee to a recruitment process to appoint up to four vacant non-voting co-opted member

positions (of which there 6 on the Standards Committee). There are currently two co-opted members appointed to the Committee. The term of office is for four years and co-opted members receive a stipend of £113.10 per meeting attended.

- 6.2 It is proposed to carry out the recruitment process as follows:
- i. Advertisement in the Hackney Gazette, Hackney Today and the Council's internet – to run from late September to mid October 2019
 - ii. Closing date for candidates applications – 18 October 2019
 - iii. Interview Panel to shortlist between 28 – 30 October
 - iv. Interviews mid November 2019
 - v. Outcome of Interviews and recommended appointments to Special Standards Committee – late November 2019 to mid December and recommendation to Full Council to confirm appointments
 - vi. Full Council confirms appointments – 22 January 2020 – and Co-opted Members commence appointment for four years to 22 January 2024
- 6.3 The Membership of the Interview Panel as proposed in recommendation 2.3 will allow for three Councillors (voting) and the Independent person, and one current co-opted member.
- 6.4 It is recommended that a special Standards Committee be convened in late November to Mid December 2019 to endorse the candidates appointed, and recommend to Full Council these appointments.
- 6.5 Full Council will then confirm the appointments at its meeting on 22 January 2020 and appointments will commence for a four year period from that date.

Suki Binjal
 Director of Legal & Governance

APPENDICES

Appendix 1 – Recruitment Pack Co-opted Members

Report Author	Clifford Hart, Governance Services 020 8356 3597 Clifford.hart@hackney.gov.uk
Comments for and on behalf of the Group Director, Finance and Corporate Resources	Michael Honeysett Director, Financial Management 020 8356 3332 Michael.honeysett@hackney.gov.uk
Comments for and on	Dawn Carter-McDonald

**behalf of the Director,
Legal and Governance**

Head of Legal & Governance
020 8356 4817

STANDARDS COMMITTEE

16 September 2019

RECRUITMENT OF CO-OPTED MEMBERS TO STANDARDS COMMITTEE 2019

Appendix 1- Recruitment Pack

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Recruitment Pack for
Appointment of
Co-opted Members of
the
Standards Committee

Contents

1. Draft Advertisement
2. Draft Press Release
3. Draft Letter to Respondents
4. General Principles
5. Draft Person Specification
6. Draft Role Description
7. Draft Application Form

Draft advert

STANDARDS COMMITTEE

CO-OPTED MEMBERS REQUIRED

We are looking to appoint up to four Co-opted members to join the London Borough of Hackney's Standards Committee. Every local authority is required to appoint a Standards Committee to oversee the conduct of councillors. The Committee must include totally independent members (who are not councillors or local authority employees). The Standards Committee currently consists of seven councillors, and two Co-opted members. The Committee meets twice a year (although this will vary depending upon matters that arise). There are currently four vacancies for Co-opted members on the Committee.

The Standards Committee may be called upon to investigate complaints against Councillors and impose sanctions. Key attributes are honesty, integrity and fairness. Candidates will need to show that they can assess matters objectively and impartially and deal sensitively with other people. Some knowledge of local government procedures and/or experience in working for a large organization – ideally with experience of investigatory or disciplinary work, is desirable but not essential.

The appointment is not open to anyone who is employed by or a member of any local authority (which includes District, County and Parish Councils and the Police Authority) or who is a relative or a close friend of a member or officer of Hackney Council.

This position carries a small remuneration of £113.10 per meeting and reasonable expenses in attending meetings will also be paid.

For further information and an application form, please contact Dawn Carter- McDonald, Head of Legal & Governance - telephone 0208 356 4817, LONDON BOROUGH OF HACKNEY, HACKNEY TOWN HALL, MARE STREET, LONDON E2 1EA

CLOSING DATE: - - - - -

Disabled applicants who meet the essential criteria for the job will be guaranteed an interview.

Smoke free working environment.

We welcome applications from all sections of the community.

DRAFT PRESS RELEASE

Hackney Council seeks Co-opted members Member for its Standards Committee

Hackney Council is seeking up to four persons who are totally independent of the Council to serve on its Standards Committee which is responsible for promoting and maintaining high standards of conduct for Members and co-opted Members of the authority.

Four Co-opted members are required to join the London Borough of Hackney's Standards Committee. Every local authority is required to appoint a Standards Committee to oversee the conduct of councillors. The Committee must include totally independent members (who are not councillors or local authority employees). The Standards Committee currently consists of seven councillors, and two Co-opted members. The Committee meets twice a year (although this will vary depending upon matters that arise). There are currently four vacancies for Co-opted members on the Committee.

The appointments are not open to anyone who is employed by or a member of Hackney Council or who is a relative or a close friend of a member or officer of Hackney Council.

This position carries a small remuneration of £ of £113.10 per meeting and reasonable expenses in attending meetings will also be paid.

For further information and an application form, please contact Dawn Carter- McDonald, Head of Legal & Governance - telephone 0208 356 4817, LONDON BOROUGH OF HACKNEY, HACKNEY TOWN HALL, MARE STREET, LONDON E2 1EA

The closing date for applications is - - - - -

DRAFT LETTER TO RESPONDENTS

Dear

Appointment Co-opted Member of the Standards Committee.

Thank you for your recent enquiry about becoming an Independent Member of the Standards Committee. I am pleased you have expressed an interest on the position.

I enclose some further information and an application form. With this letter you should receive:-

1. The current Code of Conduct for Members
2. The current Terms of Reference for the Standards Committee
3. An application and reference form.

You must return the application form together with the reference form duly completed by close of business on - - - - - . Your application will be then be considered and a shortlist of candidates for interview will be produced. You will be notified if you have been short listed and invited for interview. Interviews will be held during October and will take place at Hackney Town Hall, Mare Street, London E8 1EA. If there are any dates when you are not available for interview, please let me know when returning the application form.

The interview takes the traditional form of questions and answers and there will not be any other tests or activities.

I hope that having read this letter and the enclosures, you will wish to apply to join the Standards Committee in discharging its important role. If you would like to be considered, please complete the form and return it to me.

If you want to know anything more about the process, please contact the Council's Head of Legal & Governance - Dawn Carter- McDonald, Head of Legal & Governance - telephone 0208 356 4817, London Borough of Hackney, Hackney Town Hall, Mare Street, LONDON E2 1EA—email dawn.carter-mcdonald@hackney.gov.uk

Yours sincerely

Dawn Carter-McDonald
Head of Legal & Governance

GENERAL PRINCIPLES OF HOLDING PUBLIC
OFFICE
[THE RELEVANT AUTHORITIES (GENERAL PRINCIPLES) ORDER
2001

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

**Honest and
Integrity**

2. Members should not place themselves in situations where honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behavior.

Objectivity

3. Members should make decisions on merit, including when making appointments awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

**Personal
Judgement**

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

**Respect for
Others**

7. Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

**Duty to Uphold the
Law**

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership and by example and should act in a way that secures or preserves public confidence.

DRAFT

CO-OPTED MEMBER OF STANDARDS COMMITTEE

PERSON
SPECIFICATION

	Essential	Desirable
Qualifications: No specific qualifications or background is required.		
<p>Knowledge and Skills: A good communicator with questioning skills Assertive Inquisitive, open minded and non-judgmental Understanding of the Standards Committee's main functions. General understanding of the principles behind the Members' Code of Conduct. Awareness of the background to the introduction of the new ethical framework for local government.</p>		
<p>Experience: A demonstrable interest in local issues Experience in Committee working. An interest in public service, particularly local government Live and/or work in the area.</p>		
<p>Competencies: A person in whose impartiality and integrity the public can have confidence. Understand and comply with confidentiality requirements Able to make a significant contribution to the work of the Committee</p>		
<p>Other Requirements: To formally agree to observe the Local Code of Conduct for Members including completing a Declaration of Financial and Other Interests. Able to attend approximately four/five programmed meetings and ad hoc if required, and devote preparation time for each meeting. Must not be disqualified from standing for election as a Councillor, i.e. been adjudged bankrupt or been sentenced to a term of imprisonment for a period of not less than three months in the past five years. Must not currently have and must not enter into any contractual relations with the Council under which he/she will gain personally. Will have disclosed to the Council any matter in his/her background which, if it became public, might cause the Council to reconsider the appointment. Will not be an active member of any political party or have a public profile in relation to political activities. Will not have been an officer or a member of either a principal council [i.e a county, district or unitary council] or parish council within five years of the date of his/her written application. Committed to the four year term</p>		

CO-OPTED MEMBER OF STANDARDS COMMITTEE

ROLE DESCRIPTION

Responsible to: The Standards Committee and to the Council

Liaison with: Members of the Standards Committee, Officers and Members of the Standards Committee, Independent Members of the Standards Committees, key stakeholders within the community.

1. To attend regularly and participate in meetings of the Standards Committee and any sub-committees [Note:- meetings will normally be held at 6.30pm].
2. To participate in and/or chair hearings in relation to complaints of Member misconduct under the Code of Conduct.
3. To actively promote ethics and standards within the District Council and within Town and Parish Councils within the district area.
4. To develop and apply knowledge of the Code of Conduct in relation to matters brought before the Standards Committee, including the determination of allegations of Member misconduct.
5. To analyse and exercise fair and impartial judgement on conduct issues and to set standards of ethical behaviour.
6. To provide a view on the governance of the Council from an external perspective which will better enable the Committee, including the determination of allegations of Member misconduct.
7. To develop a sound understanding of the ethical and wider regulatory framework within which the Council operates and to contribute to the overall effectiveness of the full scope of the work of the Committee.
8. To be aware of the views of the local community on ethical standards and to reflect these in activities of the Committee.
9. Be prepared to undertake training and to participate in training events organised by the Committee to promote awareness of the Code of Conduct.
10. To attend meetings of the Council and civic and other functions in order to raise the profile of ethics and standards within the authority.
11. In the absence of the Chair, to participate in any forum established for co-opted Members of the Standards Committee.

CO-OPTED MEMBER OF STANDARDS COMMITTEE

NOTES ON ELIGIBILITY

By Regulations:-

A person may not be appointed as a Co-opted Member of a Standards Committee of any authority or Sub-Committee of the Standards Committee unless the appointment is:-

- (a) approved by a majority of the Members of the authority;
- (b) advertised in one or more newspapers circulating in the area of the authority;
- (c) of a person who has submitted an application to the authority;
- (d) of a person who has not within a period of five years immediately preceding the date of the appointment;
- (e) of a person who is not a relative or close friend of a Member or Officer of the authority.

By Primary Legislation:

A person may not be appointed as a Co-opted Member of a Standards Committee if he/she is currently an Officer or Member of any relevant authority [including Town, Parish or District Councils].

[The Local Government Act 2000 Section 53 (4) (b)]

APPLICATION FOR POSITION OF CO-OPTED MEMBER ON THE
HACKNEY COUNCIL
STANDARDS COMMITTEE

Name and Address of
Applicant

Tel.

e-mail :

Please return this form
to

Dawn Carter-McDonald,
Head of Legal & Governance
London Borough of Hackney Council
Room 118, Hackney Town Hall
Mare Street,
LONDON E8 1EA

Relevant experience and Interests (Continue on a separate sheet if
necessary)

Please give the name and address of TWO Referees who may be contacted

1.

2.

CONFIDENTIAL INFORMATION

Have You ever been convicted of a Criminal Offence ?

YES

NO

I wish to apply to be a Co-opted Member of the Council's Standards Committee. In submitting this application, I declare that:-

I am not and have not during the past five years been a Member or Officer of the Council.

I am not related to, or a close friend of, any Member or Officer of the Council. I am not actively engaged in local party political activity.

Signed

Date



<p>Local Government Ethical Standards - Report of the Committee on Standards in Public Life on the subject of ethical standards in local government</p>	
<p>STANDARDS COMMITTEE</p> <p>16 September 2019</p>	<p>CLASSIFICATION:</p> <p>Open</p>
<p>WARD(S) AFFECTED</p> <p>All Wards</p>	
<p>Suki Binjal Director Legal and Governance</p>	

1. SUMMARY AND PURPOSE OF THE REPORT

- 1.1 To provide the Council’s Standards Committee with an update of the findings and recommendations from the Government’s Committee on Standards in Public Life (CSPL) review on the subject of local government ethical standards.
- 1.2 By way of background the CSPL is an advisory non-departmental public body sponsored by the Cabinet Office. The CSPL was established in October 1994 to examine concerns of conduct of all holders of public office and make recommendations as to any changes needed.
- 1.3 The CSPL is not a regulator nor can it investigate individual cases. In 1997 its remit was expanded to include political parties and funding arrangements and in

2013 to include those delivering public services. The Prime Minister appoints the chair and members of the CSPL.

- 1.4 The CSPL conducted a consultation exercise on the subject of Local Government Ethical Standards between 29th January 2018 and 18th May 2018. On the 30th January 2019, the CSPL published its findings and recommendations from the consultation.
- 1.5 On the 18th February 2019, the Councils' Standards Committee received an oral report from the Head of Legal & Governance, which highlighted the main headlines of the review. This report now gives a summary of the recommendations published and sets out the next steps for the Council. A copy of the full report is attached at Appendix 1 for information. Alternatively, the report can be directly downloaded <https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- 1.6 For ease of reference the list of recommendations arising from the findings of the CSPL review on the subject of ethical standards in local government is attached at Appendix 2.
- 1.7 In addition to the above list of recommendations, the CSPL also identified and recommended 'best practice' which represents a benchmark for ethical practice. These are attached at Appendix 3.

2. RECOMMENDATIONS

That the Standards Committee:

- 2.1 note the Report from the Committee on Standards in Public Life (CSPL) on the subject of local government ethical standards which is attached at Appendix 1;**
- 2.2 notes the recommendations of the CSPL that are attached at Appendix 2 and the identified 'best practice' which is attached at Appendix 3;**
- 2.3 Consider whether, on behalf of the Council, Hackney's wishes to make any formal comment on the recommendations (i.e. to MHCLG), and if so request that the Monitoring Officer, in consultation with the Chair of the Standards Committee, prepares a letter to be sent;**
- 2.4 Requests the Monitoring Officer to undertake a comparison of the current Council's current Ethical Standards arrangements in place with a view to identifying whether they conform to the best practice identified by the CSPL report. The comparison analysis is reported back to the Standards Committee for its consideration;**

- 2.5 Requests that the Monitoring Officer carries out a review the Council's current Member Code of Conduct and considers any amendments to reflect the outcomes of the CSLP report. Any suggested changes to the Code are to be reported back to the Standards Committee for its consideration; and**
- 2.6 Agrees that a further report be brought to this Committee at the point of confirmation of the Parliamentary process for consideration of the CSPL recommendations and any subsequent changes to primary and secondary legislation.**

3. BACKGROUND TO THE REPORT

- 3.1 Following the introduction of the Localism Act 2011, the Standards Board for England and the associated standards regime were abolished and replaced with the current standards regime. Local authorities must have a Code of Conduct, which is based on the Nolan Principles but there is no longer a Model Code, which authorities must adopt. Local Authorities must have arrangements for dealing with alleged breaches of the Code but are generally free to decide how these should operate.
- 3.2 The intention was to streamline the complaints process and give Monitoring Officers greater flexibility in how they deal with complaints. The sanctions of suspension and disqualification were removed on the basis that local Councillors would be held accountable at the ballot box.
- 3.3 The current arrangements do provide a greater degree of flexibility, which enables complaints to be considered and resolved more quickly than previously. However, there is a concern that the removal suspension and disqualification as possible sanctions means that it can be very difficult to effectively deal with serious breaches of the Member Code of Conduct such as bullying and harassment and/or persistent low-level bad behaviour.
- 3.4 There are also concerns that in a number of Parish and Town Councils a large number of seats are uncontested. In such circumstances the public are not choosing to exercise their judgment and as a result there is no opportunity for electoral accountability to influence ethical standards.
- 3.5 Consequently, the CSPL conducted a consultation exercise on the subject of Local Government Ethical Standards between 29 January 2018 and 18 May 2018. The CSPL also had a desire prompted by the members of the Committee to reassure themselves that the current arrangements, enacted by the Localism Act 2011 and implemented in 2012, are conducive to promoting and maintaining the standards expected by the public.

".....The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations

of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence....”

4. Summary of the key findings of CSPL Report on Local Government Ethical Standards

- 4.1 On the 30th January 2019 the CSPL published its report setting out its findings from the review of Local Government Ethical standards.
- 4.2 The CSPL made 26 recommendations intended to improve local government ethical standards and to improve public confidence in the arrangements.
- 4.3 The CSPL report noted that the vast majority of Councillors and officers are committed to maintaining high ethical standards but that there are a small minority of Councillors who engage in bullying or harassment or, other disruptive behaviour. It also notes that a small number of Parish Councils give rise to a disproportionate number of complaints about poor behaviour.
- 4.4 The findings found that the operation of the existing mechanisms is identified as opaque in some cases and it is suggested that greater openness as to how decisions are made at a local level would elicit greater public confidence in the ethical standards present in local authorities.
- 4.5 Consideration was given whether there was a need for a centralised body to govern and adjudicate on standards. The CSPL concluded that whilst the consistency and independence of the system could be enhanced, there was no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying local government ethical standards.
- 4.6 The report also identified a number of risks in the sector including the current rules around conflicts of interest, gifts and hospitality, which are currently unclear and too narrow. It also identified that the increased complexity of local government decision-making is putting governance under strain.
- 4.7 The report expresses support for the model of devolved self-regulation and the positive promotion of high ethical standards as opposed to a solely punitive approach. However, the report identifies a need for appropriate mechanisms by which Councils can address issues when they arise. In

particular, it is recommended that the power to suspend a Councillor be re-introduced at a local level in order to enhance the effectiveness of local accountability.

- 4.8 By way of balance it is suggested that the role of the Independent Person should be enhanced and a right of appeal for Councillors should be introduced to ensure fairness and avoid malicious abuse of the complaints system.
- 4.9 It also concludes that the current criminal sanctions relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.
- 4.10 The report further identifies the obligation on Monitoring Officers (MO) to be responsible for implementing the system and the promotion of high standards of ethical conduct within their Councils. The Committee concluded that in some instances fulfilling these obligations may prove challenging for the MO and in this should be addressed through the introduction of extended employment protection for the MO to ensure that they are able to act in the public interest and without fear or favour.

5. Key CSLP recommendations from the report on Local Government Ethical Standards.

- 5.1 The CSPL recommended to Government to maintain a locally based system and to strengthen the framework, especially:
- The Codes of Conduct
 - Sanctions
 - Rules around declaration of interests and hospitality
 - Safeguards for Councillors and Officers and
 - Strong Leadership and ethical culture.
- 5.2 The following paragraphs provide some detail for the rationale applied by the CSPL around the recommendations.

i. To introduce a Model Code of Conduct

The report found that there is considerable variation in the length, quality and clarity of local authority codes of conduct. In addition, some social media, which is a source of significant numbers of complaints.

It therefore recommended that the Local Government Association in consultation with representative bodies of Councillors, Officers from all tiers and Stakeholders draft an updated model code.

An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

However, the report concluded that there are benefits to local authorities being able to amend and have ownership of their own codes of conduct. So, the Committee recommended that the updated model code should therefore be voluntary (as opposed to being mandatory) and thus able to be adapted by local authorities.

The CSLP also recommended that Town and Parish Councils adopt the Code of Conduct of their principal authorities or the new model code.

ii. Presumption of Official Capacity

The Code of Conduct only applies when a Councillor is acting in or gives the impression that they are acting in their official capacity. The report found that the current understanding of public and private capacity is too narrow and thus undermining public confidence.

Therefore, it is proposed that there is a rebuttable presumption that a Councillor will be acting in his/her official capacity (i.e. the Councillor will be deemed to have been acting in their official capacity unless they can demonstrate otherwise).

The primary focus for this proposal is social media which is an area which has proved problematic due to the lack of clarity as to what actions should be regarded as within the scope of the current code of conduct.

iii. Revise the rules regarding Declaration of Pecuniary Interests.

The CSPL report concluded that the current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of Councillors or the public.

The current requirements for registering interests should be updated to include categories of non-pecuniary interests. Accordingly, the CSPL recommended that current rules on declaring and managing interests should be repealed and replaced with an objective test.

An updated category for non-pecuniary interests such as relevant unpaid commercial interests for example directorships, trusteeships in charities or membership of other public bodies and/or organisations that seek to influence opinion or public policy to be included.

Linked to the proposed widening of the categories of interest, which require declaration, it is also suggested to widen the circumstances in which a Councillor must not participate in a discussion or vote on a matter being considered at a meeting.

The CSPL has recommended an objective test for Councillors is included clarifying the position when they are forbidden from voting/participating in discussion on matters in which they have an interest. It recommended that Councillors be required to refrain from voting and withdraw whenever they have any interest at all (whether registered or not) where a member of the public would reasonably regard as so significant as to likely prejudice the Councillors decision-making.

The proposed objective test is similar to the former 'Prejudicial Interest' test that was in place before 2012 changes.

iv. Removal of Criminal Offences for Failure to Declare Pecuniary Interest

The report concludes that the current criminal sanctions for failure to declare 'Pecuniary Interests' are disproportionate in principle and ineffective in practice and should therefore be abolished.

v. Requirements to have in place a Register of Gifts and Hospitality.

In the interests of clarity and consistency it is recommended that all local authorities be required to maintain a register of gifts and hospitality received valued at £50 or more or totalling £100 or more in any 12 months from a single source.

vi. Sanctions, Investigations and Safeguards

The report concluded that the current sanctions are insufficient and the lack of robust sanctions damages public confidence in the standards system, which leaves local authorities with no means of enforcing lower level sanctions or of addressing serious or repeated misconduct.

Accordingly, the CSPL has recommended a power for local authorities to be able to suspend Councillors without allowances for a period of up to six months.

The CSPL tempered this proposal by suggesting that suspension should only be permissible where the Independent Person agrees that a breach has been proven and a suspension is a proportionate action.

It is also proposed that it be coupled to a right of appeal for a Councillor to the Local Government Ombudsman.

vii. Strengthen the role of the Independent Person

The Committee concluded that any ethical standards process should have safeguards in place to ensure that decisions are made fairly and impartially, and that Councillors are protected against politically motivated, malicious, or unfounded allegations of misconduct. The Committee concluded that accordingly the role of the Independent Person (IP) is an important safeguard in the current system.

The CSPL has suggested that the Independent Persons should have a fixed term of appointment of up to two years and legal protections (i.e. a legal indemnity) should be provided.

It also has suggested that Independent Persons of a decision-making (when considering issues on alleged breaches and/or sanctions for breaching the Code), Standards Committees should be able to vote.

viii. Supporting officers

The CSPL concluded that the Monitoring Officer is the lynchpin of the current standards arrangements.

Requiring local authorities to take a range of steps to prevent and manage conflicts of interest that can arise when decisions are made in more complex and potentially less transparent contexts such as Local Partnerships and setting up of Local Authority Controlled Companies.

The CSPL concluded that Local authorities setting up separate bodies risk a governance 'illusion' and should take steps to prevent and manage potential conflicts of interest, particularly if Councillors sit on these bodies.

They should also ensure that these bodies are transparent and accountable to the Council and to the public.

Employment protections for statutory officers should be extended and statutory officers should be supported through training on local authority governance.

ix. Leadership and culture

The CSPL concluded that an ethical culture requires leadership, one that is an open and starts with a tone. Whilst there will always be robust disagreement in a political arena the tone of engagement should be civil and constructive.

Fostering an ethical culture and practice by requiring Councillors to attend formal induction training by their political groups with national parties adding the same requirements to their group rules. Training is an essential part of embedding a strong ethical culture.

Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all Councillors and who is professionally supported by the Chief Executive.

x. Greater Openness

There is currently a wide variation in the nature and amount of information relating to complaints against elected members, which local authorities disclose. As a result due to this lack of consistency the CSPL made a number of recommendations designed to formalise a basic level of disclosure.

In particular it is recommended that local authorities publish annual reports setting out details of complaints against Councillors and a requirement that the conclusions of the Independent Person in respect of any complaint should also be made available for the public.

The report does not address the issue of at what point information should be made available i.e. when a complaint is first received or when it is concluded. This is of particular relevance to frivolous or unfounded complaints the publication of which may cause reputational damage or upset but later be dismissed as unfounded.

The report also concluded that Local authorities should welcome and foster opportunities for scrutiny and see it as a way to improve decision-making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes.

The report emphasises that whilst local press can play an important role in scrutinising local government however, openness must be facilitated by a local authority's own processes and practices.

The CSPL also made various recommendations in respect of Town and Parish Councils that are not relevant for Hackney.

6. Methodology used by the CSPL.

- 6.1 The CSPL has had a longstanding interest in local government, which was the subject of its third report, which was issued in 1997. Since then the CSPL has considered various aspects and maintained a watching brief keeping itself updated through regular correspondence received from a variety of sources.
- 6.2 The purpose of this review was to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011. In undertaking the review the CSPL consulted widely across English local authorities and received 319 written submissions in response to its consultation. Two roundtable sessions were held, 30 individual stakeholder meetings and visits to five local authorities across different English regions and tiers of local government.

7. Next Steps for the CSPL

- 7.1 The CSPL has submitted its report to the Secretary of State for Local Government who, it is understood, is currently considering the findings and taking soundings from organisations such as the Local Government Association and is holding a number of roundtable discussions with a nationally represented group of MO practitioners.
- 7.2 The majority of the recommendations would require legislation in order to bring them into effect and at this point, due to other more pressing matters occupying government it is not envisaged that, if Government accepted the recommendations, it is unlikely that they would be brought into effect in the near future.

8. Assessment of the Council's Existing Ethical Standards Arrangements Compared to the CSPL Best Practice

- 8.1 In addition to its 26 recommendations the CSPL report also contains a list of what it considered to be 'best practice' from the arrangements it considered in preparing the report. In total there are 15 examples of best practice which fall in to three broad themes:-
- i) Greater Openness – including requirements that the Code should be published prominently on the Council's website with clear guidance on how to complain and how complaints will be handled. In addition, CSPL consider that it is best practice to publish a notice of all decisions made in respect of alleged breaches and this should include brief details of the allegation and include a note of the Independent Person's view.

- ii) Content of the Code – The CSPL suggest that an authority’s Code should include specific prohibitions on bullying and harassment and include definitions of those activities. The Codes should also contain a specific provision requiring Councillors to comply with any investigation.
- iii) Accountability/Independence – Councils should be required to publish the public interest test against which complaints are filtered at the initial assessment stage and the Independent Person should be involved in the initial assessment of complaints.

8.2 In view of the fact that CSPL has identified a set of best practice it is recommended that the Monitoring Officer be requested to undertake a review of the Council’s current procedures with a view to assessing whether they contain the relevant best practice and to identify any areas where they do not and to bring a report back to the Standards Committee containing the outcome and any suggested changes.

8.3 It is also proposed that the Standards Committee review the Council’s Member Code of Conduct and consider amendments to reflect the outcomes of the report, in particular the recommendation that Codes should include examples of what might constitute bullying and harassment.

9. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

9.1 There are no immediate financial implications arising from this report.

10. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE

10.1 The Council has a duty under s 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles.

10.2 Most of the CSPL recommendations (attached at Appendix 2) will require primary legislation and therefore any changes will be subject to Parliamentary timetabling. The changes relating to registrable interests will require secondary legislation and therefore could be implemented more quickly.

10.3 The CSPL also identified and recommended ‘best practice’ (attached at Appendix 3) for local authorities, which represents a benchmark of good ethical practice. The CSPL expects that all local authorities can and should implement these recommendations. The CSPL will review the implement of its best practice recommendation in 2020.

10.4. The Council has the discretion to review and update its Code of Conduct for Members to reflect some of the identified good practice prior to legislation being introduced.

11. Consultation

11.1 There is no statutory requirement for the Council at this stage to carry out a consultation process.

11.2 However, the CSPL did carry out a consultation exercise, which took place between 29 January and 18 May 2018.

11.3 The Council's Standards Committee and any other Committees, if appropriate to do so, will be consulted on any proposed changes to the Council's Code of Conduct or arrangements for dealing with complaints arising out of the CSPL report.

12. Equality and Diversity / Public Sector Equality Duty

12.1 There are no equality and diversity implications arising out this report.

Background papers

None

Suki Binjal
Director of Legal & Governance

APPENDICES

Appendix 1

Local Government Ethical Standards - Report of the Review by the Committee on Standards in Public Life on the subject of ethical standards in local government

Appendix 2

List of Recommendations arising from the findings of the Committee on Standards in Public Life on the subject of ethical standards in local government

Appendix 3

Best Practice as identified by the findings of the Committee on Standards in Public Life on the subject of ethical standards in local government

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STANDARDS COMMITTEE

16 September 2019

Appendix 1

**The Report of the
Committee on
Standards in Public Life
on Local Government
Ethical Standards
January 2019**

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Local Government Ethical Standards

**A Review by the
Committee on
Standards in Public Life**

**Committee on
Standards in
Public Life**





Local Government Ethical Standards

Committee on Standards in Public Life

Chair: Lord Evans of Weardale KCB DL

January 2019





The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

Lord Evans of Weardale
Chair, Committee on Standards in Public Life





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Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



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
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



Number	Recommendation	Responsible body
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



Number	Recommendation	Responsible body
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 provided by the Society of Local Council Clerks.	Parish councils
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



Number	Recommendation	Responsible body
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

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

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.



Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.¹

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were to:

1. Examine the structures, processes and practices in local government in England for:

- a. Maintaining codes of conduct for local councillors
- b. Investigating alleged breaches fairly and with due process
- c. Enforcing codes and imposing sanctions for misconduct
- d. Declaring interests and managing conflicts of interest
- e. Whistleblowing

2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government

3. Make any recommendations for how they can be improved

4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Goolden of Wilkin Chapman LLP for his support and advice throughout.



Chapter 1: Overview of standards

Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as 'parish councils' for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.²

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

² Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

The current system

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.



Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

1997 The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

1998 The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.³ The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

³ Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



2005 In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

2007 Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



2010 In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.⁴ The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”⁵

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



Chapter 2: Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.⁶

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

Variation, consistency, and clarity

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

⁶ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.⁷

Monitoring Officer, North Hertfordshire District Council

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.¹⁰

Ashford Borough Council

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

Model code of conduct

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.⁸

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.⁹

Worcestershire County Council

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.¹¹

INLOGOV, University of Birmingham

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.¹² A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.¹³ We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

Recommendation 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.

Bullying and harassment

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

¹² Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

¹³ Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10



which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

Example of a bullying provision

Extract from Newcastle City Council code of conduct¹⁴

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated “[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance”.¹⁵

¹⁴ Newcastle City Council Code of Conduct. Available at: https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf
¹⁵ Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient” .¹⁶

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities¹⁷

¹⁶ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

¹⁷ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.¹⁸

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

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.

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

Intimidation of councillors

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.¹⁹

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.²⁰

Local Government Association

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

¹⁸ Equality Act 2010, section 26

¹⁹ Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

²⁰ Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.²¹

Association of Police and Crime Commissioners

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.²² We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.²³

City of Westminster, *Guidance note to members on Register of Interests.*

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

Recommendation 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.

Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.²⁴ This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.²⁵

Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

²³ City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

²⁴ Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

²⁵ Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.²⁶

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".²⁷ This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."²⁸

26 Ministerial Code, paras 7.13, 7.18

27 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

28 Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in a official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.²⁹

The *High Court, in Heesom v Public Service Ombudsman for Wales*,³⁰ considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

Recommendation 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.

Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.³¹ The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.³²

Hoey Ainscough Associates

*MC v Standards Committee of LB Richmond*³³ drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

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.

Compliance with standards processes

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

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.

Writing codes of conduct

The Committee has previously outlined 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

³² Written evidence 212 (Hoey Ainscough Associates)

³³ *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- 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, framed positively³⁴

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.³⁵ The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.³⁶

**Jonathan Goolden,
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.³⁷

**Jonathan Goolden,
Wilkin Chapman LLP**

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.

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.³⁷

³⁴ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

³⁵ DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

³⁶ Jonathan Goolden, Roundtable, 18 April 2018

³⁷ Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

Example of a clear code of conduct

Extract from Plymouth City Council code of conduct³⁸

Disrepute

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

Misuse of position

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

Use of council resources

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

Advice of Monitoring Officer and Responsible Finance Officer

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

Giving reasons for decisions

Councillors must give reasons when required to by the law or by any council procedures.

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.

Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

Integrity: Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only 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 interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

The Disclosable Pecuniary Interests (DPI) arrangements

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.³⁹

Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.⁴⁰

Mid Sussex District Council

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPs.⁴¹

London Borough of Croydon

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.⁴²

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



Recommendation 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.

Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.⁴³

Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.⁴⁴

Recommendation 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.

43 Written evidence 315 (Transparency International UK)

44 Available online at: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf, 20



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.

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

Cabinet Office principles for accepting gifts or hospitality

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider’s relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.⁴⁵

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.⁴⁶

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: “[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.”⁴⁷

Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have “[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”. The test of having a ‘disclosable

pecuniary interest *in* any matter’ is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest ‘in’ that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.⁴⁸

North Hertfordshire District Council

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.⁴⁹

Ashford Borough Council

47 Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

48 Written evidence 22 (North Hertfordshire District Council)

49 Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an 'objective test' for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

Tests for actively managing interests in the devolved codes

Scotland

"Whether 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 your role as a councillor."⁵⁰

Wales

"[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest."⁵¹

Northern Ireland

"An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents."⁵²

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

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 discussion or decision-making in relation to that matter”.

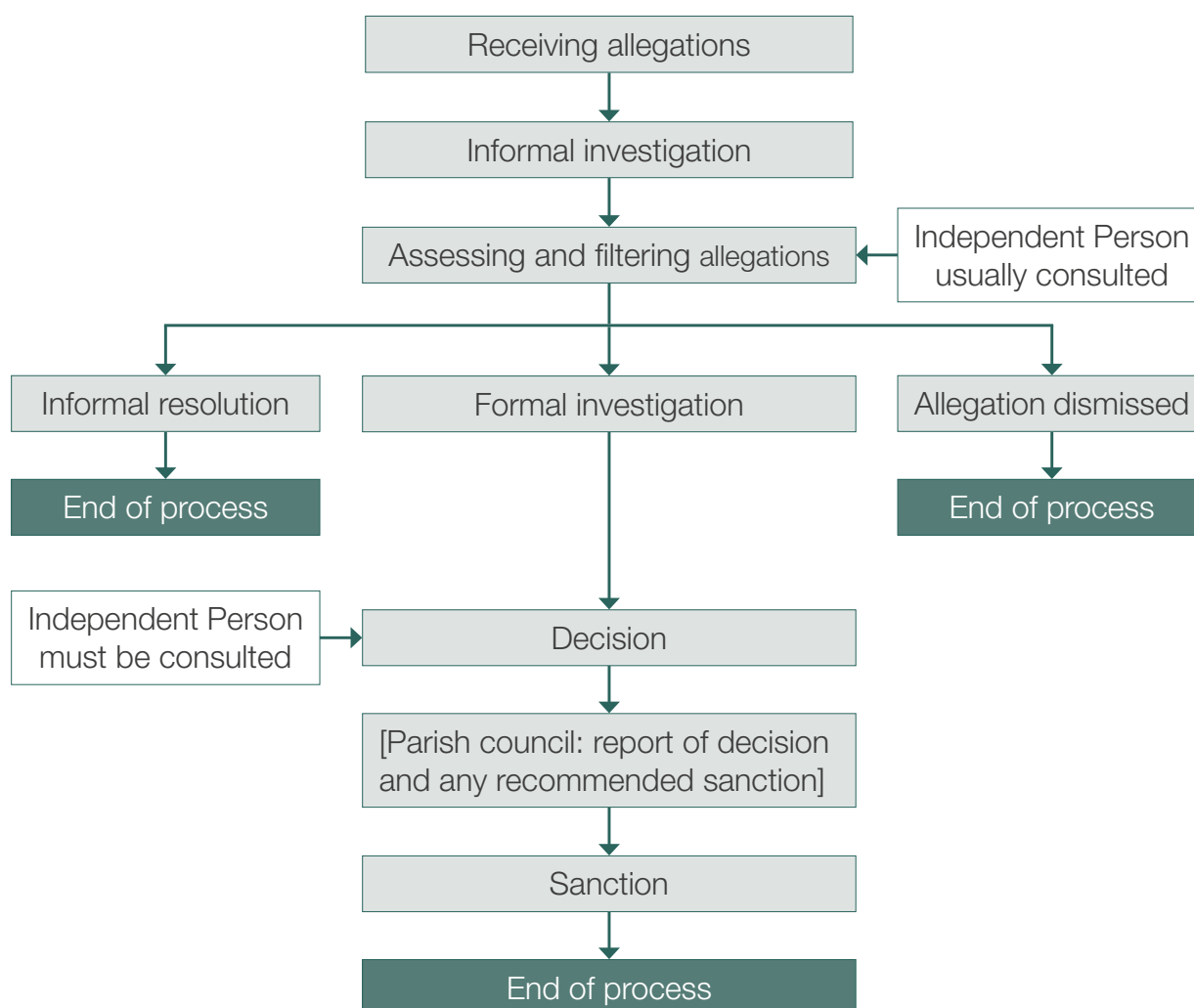


Chapter 3: Investigations and safeguards

Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

The current investigation process





Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

Northern Ireland Local Government Commissioner for Standards public interest test

1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?⁵³

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

Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

53 Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.⁵⁴
Cllr Dan Cohen, Leeds City Council

Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for ‘independence’ specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be ‘taken into account’, they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title ‘Independent Person’ creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...]⁵⁵
Richard Stow, Independent Person

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority’s code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority’s Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.⁵⁶

London Borough of Sutton

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

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

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

56 Written evidence 311 (London Borough of Sutton)



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.

The role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.⁵⁷

**Dr Peter Bebbington,
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

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.

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.⁵⁸

Hoey Ainscough Associates

Recommendation 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.

⁵⁷ Dr Peter Bebbington, Roundtable, 18 April 2018

⁵⁸ Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

Recommendation 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.

We have noted recent First Tier Tribunal cases⁵⁹ which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

Recommendation 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.

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017_0220 (GRC)



Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.⁶⁰

⁶⁰ Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.⁶¹

Wychavon Borough Council

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

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.

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

Appeals and escalation

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

⁶¹ Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.⁶²

Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.⁶³

London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.⁶⁴ This is an under-appreciated safeguard within the current system.

Common issues with local authority standards processes considered by the Local Government Ombudsman⁶⁵

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.⁶⁶

Local Government Ombudsman

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

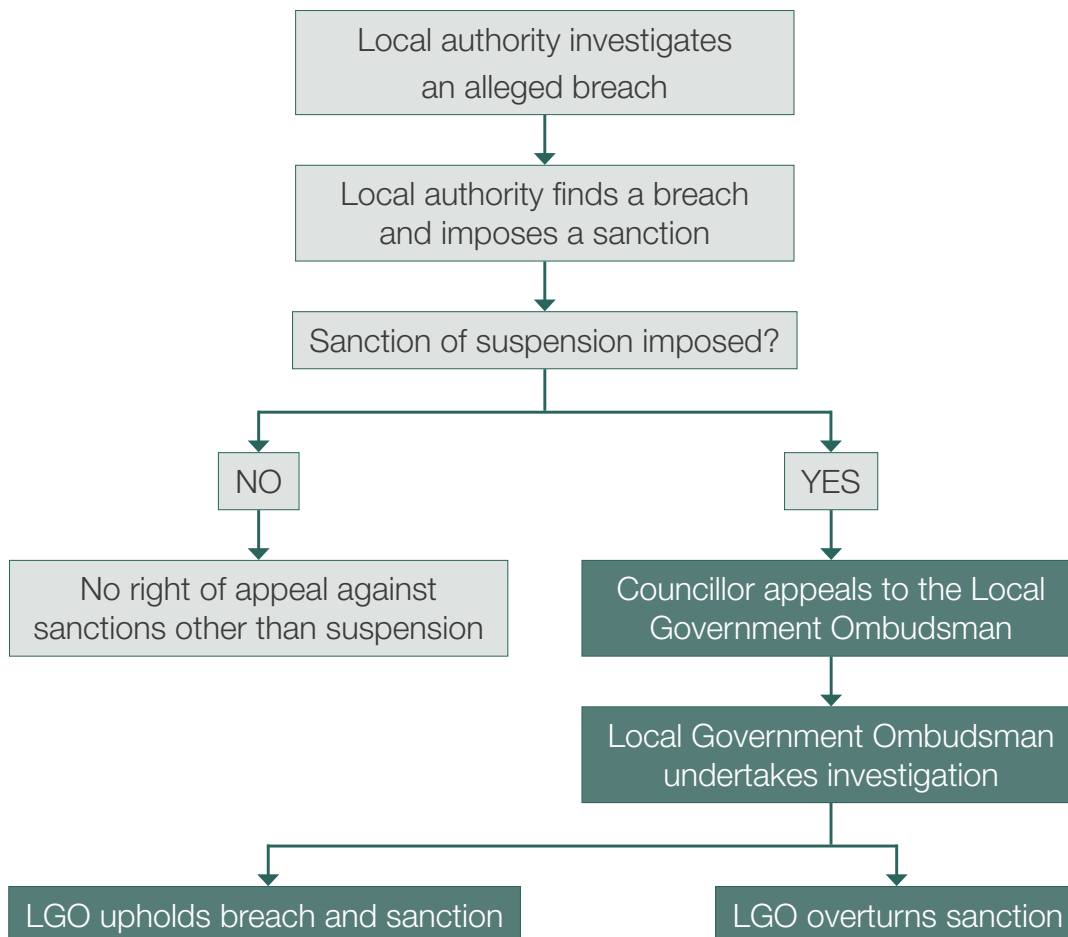
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



Proposed appeals process





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.

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

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

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

Promoting openness and transparency

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

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 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.



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.

Avoiding legalisation

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”⁶⁷

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”⁶⁸

The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.⁶⁹ In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

67 Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

68 Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

69 Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

The current sanctions arrangements

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.⁷⁰

Tonbridge and Malling Borough Council

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.⁷¹

Taunton Deane Borough Council

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.⁷²

Hoey Ainscough Associates

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.⁷³

David Prince CBE

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

Party group discipline

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.⁷⁴

Hoey Ainscough Associates

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.⁷⁵

**Andrew Maughan, Monitoring Officer,
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

Examples of political party disciplinary process used as an alternative to the formal standards process

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.⁷⁶

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

76 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.⁷⁷

**Cllr Rory Love, Chairman,
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.⁷⁸

**Cllr Simon Henig CBE, Chair,
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

The sanction of the ‘ballot box’

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.⁷⁹

**Sandwell Metropolitan Borough
Council**

⁷⁷ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

⁷⁸ Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

⁷⁹ Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.⁸⁰

Wycombe District Council

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”⁸¹ Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].⁸²

Cllr David Gaye

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.⁸³

Cornwall Council

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).⁸⁴

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.⁸⁵

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.⁸⁶ However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

84 Written evidence 106 (Standards Commission for Scotland)

85 Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

86 Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

Giving legal certainty to councils

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

Recommendation 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.

Criminal offences in the Localism Act 2011

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.⁸⁷

Taunton Deane Borough Council

87 Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

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

Disqualification of councillors

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

Current law on the disqualification of councillors

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



Chapter 5:

Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.⁸⁸

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create an increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

⁸⁸ Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.⁸⁹

Cornwall Association of Local Councils

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

89 Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.⁹⁰

Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.⁹¹

Hoey Ainscough Associates

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.⁹²

Society of Local Council Clerks

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

90 The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

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.

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.⁹³

Society of Local Council Clerks

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

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.

Investigations and sanctions in town and parish councils

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.⁹⁴

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.⁹⁵

Cornwall Council

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

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.

Following *Taylor v Honiton Town Council*,⁹⁶ a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.⁹⁷

Wychavon Borough Council

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

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.

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,⁹⁸ which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.⁹⁹ The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.¹⁰⁰ We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313_99_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



Chapter 6: Supporting officers

Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.¹⁰¹

Max Caller CBE

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.¹⁰² Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.¹⁰³

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.¹⁰⁴

101 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

102 For example, in sections 59, 60, 66 of the Local Government Act 2000

103 Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

104 Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.¹⁰⁵

Lawyers in Local Government

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

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.

¹⁰⁵ Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

Standing of statutory officers

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.¹⁰⁶ The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.¹⁰⁷

Lawyers in Local Government

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

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.

¹⁰⁶ Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

¹⁰⁷ Written evidence 228 (Lawyers in Local Government)



Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.¹⁰⁸

Max Caller CBE

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.¹⁰⁹

Dame Stella Manzie DBE

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.¹¹⁰

Protect

¹⁰⁸ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰⁹ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

¹¹⁰ Written evidence 305 (Protect)



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.

We therefore see benefits to councillors being 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.

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

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.¹¹¹

Protect

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

111 Written evidence 305 (Protect)



Chapter 7:

Councils' corporate arrangements

A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.¹¹² The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

¹¹² National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.¹¹³

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that “[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability.”¹¹⁴

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

Responding to the new governance challenges

Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance ‘illusion’, that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.¹¹⁵

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

113 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

114 “What next for care and health?”, *Municipal Journal*, 22 February 2018, 16

115 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.¹¹⁶

Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)*

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

Potential advantages of council nominees as board directors or trustees

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

¹¹⁶ Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected¹¹⁷

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.¹¹⁸

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.¹¹⁹

Audit Scotland, *Councils' use of arm's-length external organisations*

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".¹²⁰ However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

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.

Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.¹²¹

Nicola Greenan, Director, East Street Arts, and LEP board member

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, “[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation”.¹²²

The report also identified a need to consider “[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications”.¹²³ Ney recommended that “[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

121 Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

122 Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

123 Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".¹²⁴

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.¹²⁵

Ethical standards and corporate failure

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)¹²⁶

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

¹²⁴ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

¹²⁵ Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

¹²⁶ PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)¹²⁷

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".¹²⁸ The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

¹²⁷ Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

¹²⁸ Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



Northamptonshire County Council (events taking place between 2015-17; report by Max Caller CBE, Best Value Inspector, 2018)¹²⁹

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.¹³⁰

Dame Stella Manzie DBE

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

129 Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf

130 Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.¹³¹

Max Caller CBE

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

¹³¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Chapter 8: Leadership and culture

Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.¹³²

Dame Stella Manzie DBE

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

¹³² Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.¹³³

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.¹³⁴

**Dawn French, Chief Executive,
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.¹³⁵

Dame Stella Manzie DBE

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

¹³³ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁴ Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

¹³⁵ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.¹³⁶

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.¹³⁷

Dame Stella Manzie DBE

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

¹³⁶ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁷ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.¹³⁸

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

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

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

Building an ethical culture

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

¹³⁸ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

Recommendation 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.

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.¹³⁹

**Max Caller CBE, Commissioner,
Northamptonshire County Council**



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.¹⁴⁰

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.¹⁴¹

**Andrew Maughan, Monitoring Officer,
Camden Council**

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.¹⁴²

Darryl Chamberlain, editor, 853 blog

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

¹⁴⁰ House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

¹⁴¹ Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

¹⁴² Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.¹⁴³

**Barry Quirk CBE, Chief Executive,
Royal Borough of Kensington &
Chelsea**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says 'these people are elected and have entitlement to know and there are some rules about confidentiality'. They can't pursue cases where they have individual reasons for not being involved.¹⁴⁴

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

143 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

144 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Membership of the Committee, as of January 2019

Lord (Jonathan) Evans of Weardale KCB DL,
Chair

The Rt Hon Dame Margaret Beckett DBE MP
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah

(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
 - research on the legal framework for local government standards
 - analysis of a sample of 20 principal authority codes of conduct
 - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

*Follow-up telephone conversation

Committee on Standards in Public Life

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January 2019

STANDARDS COMMITTEE

16 September 2019

**Recommendations arising from
the findings of the Committee on
Standards in Public Life on Local
Government Ethical Standards and
implications for
LB Hackney**

Appendix 2

**RECOMMENDATIONS ARISING
FROM THE REVIEW**

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APPENDIX 2

STANDARDS COMMITTEE – 9 JULY 2019

Local Government Ethical Standards - Committee on Standards in Public Life

RECOMMENDATIONS ARISING FROM THE REVIEW

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.

Responsible – 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - Government

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.

Responsible body - 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".

Responsible body - 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.

Responsible Body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - Government

16. Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Responsible body - 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.

Responsible body - Government

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

Responsible body - Government

19. Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

Responsible body – Parish Councils

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.

Responsible body - 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.

Responsible body - 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.

Responsible body - 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.

Responsible body - Government

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

Responsible body - 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.

Responsible body – 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.

Responsible – Local Government Association

STANDARDS COMMITTEE

16 September 2019

RECOMMENDATIONS ARISING FROM THE FINDINGS OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE ON LOCAL GOVERNMENT ETHICAL STANDARDS AND IMPLICATIONS FOR LB HACKNEY

Appendix 3

Best Practice as Identified by the CSPL

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Appendix 3

Best Practice as Identified by the CSPL

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.