

<p><b>Local Government Ethical Standards - Report of the Committee on Standards in Public Life on the subject of ethical standards in local government</b></p>	
<p><b>STANDARDS COMMITTEE</b></p> <p><b>16 September 2019</b></p>	<p><b>CLASSIFICATION:</b></p> <p><b>Open</b></p>
<p><b>WARD(S) AFFECTED</b></p> <p><b>All Wards</b></p>	
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**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 29<sup>th</sup> January 2018 and 18<sup>th</sup> May 2018. On the 30<sup>th</sup> January 2019, the CSPL published its findings and recommendations from the consultation.
- 1.5 On the 18<sup>th</sup> 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**  
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## **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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