

## **Briefing Note:**

# **The Government's Response to the Committee on Standards in Public Life review of local government ethical standards.**

## **1. Purpose**

The Committee on Standards in Public Life (CSPL) conducted a review of local government ethical standards, published in January 2019 (The 2019 Report). This document summarises the Government's response to the recommendations as found in Local government ethical standards: government response to the Committee on Standards in Public Life report (Government Response).

## **2. Background**

The 2019 report considered 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 need 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.

The CSPL made 24 recommendations and identified best practice to improve ethical standards in local government. These included a number of changes to primary legislation, to secondary legislation and the Local Government Transparency Code.

Kemi, Badenoch MP, Minister of State for Equalities and Levelling Up Communities, summarised in the Government Response that *"The Government agrees with the Committee's conclusion that there have been benefits from local authorities being responsible for ethical standards, including the flexibility and 2 discretion to resolve standards issues informally. However, we also recognise the role of Government in ensuring that the system is robust.... The Government believes that some of these suggestions do not need a legislative response but can be more appropriately, effectively, and swiftly taken forward by local authorities as best practice. The Committee will recognise that the Government and Parliament has taken a different view on these matters when it legislated for the Localism Act 2011"*.

## **3. Discussion**

For ease of reference, the recommendations published by the CSLP along with a summary of the Governments Response are set as follows:

### **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.*

The Localism Act 2011 requires authorities to adopt a code of conduct for their councillors. Authorities can determine the content of their own code of conduct as long as it conforms the seven 'Nolan' principles. The 'Nolan' principles set the standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. The Local Government Association published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted

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.*

The Government agrees with the principle behind this recommendation and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it. It will engage with interested parties further. Addresses should be registered internally with monitoring offers to avoid conflicts of interest.

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.*

The Government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media. It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

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.*

The Government agrees with the principle. The Local Government Association have updated their own suggested code of conduct on this. The Government will keep this matter under review but has no immediate plans to amend the regulations.

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.*

The Government will keep this matter under review but has no immediate plans to amend the regulations. Unpaid roles may need to be declared if it is relevant to council business, and councillors should recuse themselves if necessary if discussions relate to private bodies, they are involved in. The Government is mindful that councillors have a right to a private life, and rights of freedom of association outside their role as a councillor.

Recommendation 6:

*Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record 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.*

Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The Government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available. The Local Government Association suggested Code of Conduct includes a requirement for registering gifts.

Recommendation 7:

*Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to the matter".*

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

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.*

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

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.*

The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices.

Recommendation 10:

*A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.*

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline.

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.*

The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation. Some local authorities already provide legal indemnity for Independent Persons.

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.*

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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 Government Response is the same as the summarised response set out beneath Recommendation 12 above.

Recommendation 14:

*The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.*

The Government Response is the same as the summarised response set out beneath Recommendation 12 and 13 above.

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.*

The Government believes that this is better addressed as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled. The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

Recommendation 16:

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

The Government Response is the same as the summarised response set out beneath Recommendation 12, 13 and 14 above.

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.*

The government will consider this further. The criminal law provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.

Recommendation 18:

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

The Government does not agree with this recommendation, but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption.

Recommendation 19

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

This recommendation not dealt with in the Government Response.

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.*

The Government does not agree that this is necessary and has no plans to repeal Section 27(3) of the Localism Act 2011. The Government considers that the adoption of the principal authority's code or the new model code is a matter for local determination.

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.*

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

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.*

The Government agrees in principle with this recommendation. The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

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*

The Government agrees with the principle that openness is essential. The Government recommends to adopt the local authority's whistleblowing policy and procedure as best practice. The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.

Recommendation 24:

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

Local councillors would not meet the criteria of being external to an individual's workplace in relation to matters affecting the council and could therefore not be considered as a 'prescribed person' for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament.

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.*

This recommendation not dealt with in the Government Response.

Recommendation 26:

*Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.*

This recommendation not dealt with in the Government Response.

#### 4. Next Steps

To discuss the Governments Response to the CSPL's recommendations and consider whether any further actions are required.

<b>CSPL's Recommendation</b>	<b>Summary of Government's Response relevant to Local Authority options for further action</b>
1	LA to determine own Code of Conduct based on Nolan Principles. LA can adopt the LGA's published Code of Conduct 2021
2	Government to engage with Interested Parties. Monitoring Officers to register addresses internally
3	LAs to consider whether their own code of conduct addresses the appropriateness of social media use.
4	No action by the Government. LAs to consider the LGA's updated code of conduct.
5	No action by the Government.
6	LAs to set gifts and hospitality requirements in their own codes of conduct. A register of gifts and hospitality should be publicly available. The LGA suggested Code of Conduct includes a requirement for registering gifts.
7	No action taken by the Government.
8	No action taken by Government. Best practise recommendation to be implemented by LAs.
9	No action taken by Government as it does not agree.
10	No action
11	The Government endorses providing legal indemnity for Independent Person as local authority best practice. No action by Government.
12	No action
13	No action
14	No action
15	LA can implement best practice of a regular pattern of annual reporting by Standard Committees of the cases and complaints handled
16	No action
17	No action. LAs to use criminal law remedies.
18	The Government does not agree.
19	Not dealt with by the Government Response.
20	No action as the Government does not agree. LAs to determine the principle in its own Code of Conduct.or the LGA's new suggested code.
21	No action taken.
22	The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

23	The Government recommends LAs to whistleblowing policy and procedure as best practice. DLUHC will support LAs.
24	LA disclosures can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament.
25	Not dealt with by the Government Response.
26	Not dealt with by the Government Response.