

APPENDIX 1 TO REPORT

Committee on Standards in Public Life – Review of Local Government Ethical Standards (January 2019)

&

Government Response (March 2022)

Highlights and recommendations

This summary is comprised of 3 sections:

- A) highlights of the review,
- B) recommendations to Government and other responsible bodies to bring about change and
- C) best practice recommendations to local authorities.

A. Highlights of the review

1. This is the 20th report of the Committee and was not prompted by any specific allegations of misconduct, but to assure the committee that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.
2. The following paragraphs provide a summary of the findings and an overview of discussions on particular areas including Code of Conduct, Independent Persons, sanctions, register of interests and parish councils.
3. The findings are summarised below:
 - a. The vast majority of councillors and officers want to maintain the highest standards of conduct.
 - b. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour.
 - c. A small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.
 - d. Concerns arose 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.
 - e. 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.
 - f. The Committee have made a number of recommendations to government and identified best practice to improve ethical standards in local government. This includes recommendations that a number of

changes should be made to primary legislation, which would be subject to Parliamentary timetabling.

- g. The Committee will review the implementation by local authorities of the best practice recommendations in 2020.

4. Code of Conduct:

- a. 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 creating confusion among the public and councillors. 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 to enhance the consistency and quality of local authority codes.
- b. There are benefits to local authorities being able to amend and have ownership of their own codes of conduct so the updated model code should 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.
- c. Several new provisions are recommended to be included in the new model code of conduct:
 - i. Cllrs must not participate in a discussion or vote in a matter 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*".
 - ii. prohibitions on bullying and harassment, including a definition of bullying and harassment (plus list of examples of the sort of behaviour covered).
 - iii. Councillors must comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.
- d. 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.
- e. The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.
- f. The Code of Conduct should be reviewed annually and council should seek the views of the public, community organisations and neighbouring authorities.
- g. The Code of Conduct should be readily accessible – in prominent position on website and available in council offices.

- h. Straightforward and accessible guidance on how to make a complaint, the process for handling complaints and estimated timescales for investigations and outcomes should be on website.

5. **Register of Interests:** The following recommendations were made regarding Register of Interests:

- a. Cllrs should not be required to register their home address.
- b. Cllrs should register 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.
- c. Publish gifts and hospitality register at least quarterly and in an accessible format.

6. **Independent Persons (IP):**

- a. IP should be consulted on whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations the MO is minded to dismiss as being without merit, vexatious, or trivial.
- b. Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed.
- c. IPs to be appointed for two year fixed term, renewable once.
- d. The view of the IP in relation to a decision on which they are consulted should be published in any formal decision notice.

7. **Sanctions**

- a. The current sanctions available to local authorities are insufficient which 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.
- b. Local authorities should be given the power to suspend councillors, without allowances, for up to six months **but** only where the IP agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.
- c. Government to clarify (and legislate if necessary) whether councils may lawfully bar councillors from council premises or withdraw facilities as sanctions.
- d. Councillors (including parish Cllrs) should be given the right to appeal to the LGO if suspended (but not for lesser sanctions). The LGO should be given the power to investigate and decide upon an allegation

of a code of conduct breach and the appropriate sanction - including the ability to overturn the suspension. The Ombudsman's decision to be binding on the local authority.

- e. After a decision has been made on an allegation of misconduct, should publish a decision notice asap on website - including brief statement of facts, the provisions of the code engaged by the allegations, the view of the IP, the reasoning of the decision-maker and any sanction applied.
- f. Requirement to publish annual report on number of complaints, what they relate to, outcomes and any sanctions applied.
- g. The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

8. Parish Councils:

- a. Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.
- b. Parish Councils should be required to adopt the code of conduct of their principal authority and a principal authority's decision on sanctions for a parish councillor should be binding.
- c. 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.
- d. 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.

9. Miscellaneous

- a. 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.
- b. Councils should report, as part of their annual governance statement, on separate bodies they have set up or which they own, and give a full picture of their relationship with those bodies.
- c. 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.

B. Recommendations

This section sets out the full list of recommendations. The responsible body for the majority of these recommendations is central government.

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

Government Response (GR) – 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 (Localism Act 2011).

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.

GR – The Government agrees with the principle behind this recommendation – which safeguards elected representatives – and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it. The Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address.

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.

GR – 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.

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.

GR – The LGA's Model Code of Conduct provides the following suggested wording on this matter: the code applies when "[a member's] actions could give the impression to a reasonable member of the public with knowledge of all the facts they [they] are acting as a [member]".

It is for individual local authorities to ensure that their codes of conduct are regularly updated and elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code.

The Government has no immediate plans to amend the regulations.

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.

GR – The government has no immediate plans to amend the regulations. Unpaid roles need to be declared if it is relevant to council business and recuse themselves if appropriate. Councillors have a right to a private life and be involved in local organisations outside of their role as councillors.

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.

GR - The LGA's Model Code of Conduct provided for members to record any gifts or hospitality with an estimated value of at least £50 but contained nothing re a cumulative amount.

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

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".

GR – No immediate plans to repeal s31 Localism Act 2011. The principle of integrity requires that any such interests should be declared and resolved.

8. The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

GR – This would be unworkable and was not accepted. In practice most local authorities would find this rate of turnover unachievable.

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.

GR – The Government does not agree with this. The Transparency Code is a statutory requirement to publish information, it does not regulate the content of council's minutes or decision notices. It should not be necessary to publish details of an unfounded complaint.

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.

GR – These proposals would effectively reinstate the previous flawed regime which allowed politically motivated and vexatious complaints and it was a deliberate policy decision to differentiate from the previous regime and have no provision for a sanction to suspend a councillor.

The government will engage with all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity.

This response also applies to recommendations 12, 13, 14 and 16.

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.

GR – The government endorses this as local authority best practice but sees no need to amend secondary legislation.

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.

GR – See 10 above.

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.

GR – see 10 above.

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.

GR – see 10 above.

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.

GR – This is better addressed through a best practice of an annual report of the cases and complaints handled and there is no need to prescribe the form and content of such reports.

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

GR - See 10 above.

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.

GR – The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment. The government will consider this further.

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

GR – It is a criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints. The Govt does not therefore agree with this recommendation.

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

GR – There was no comment re this recommendation within the Government's response.

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.

GR – The government does not agree and has no plans to repeal s27(3) Localism Act 2011. It is a matter for local determination.

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.

GR – There are no current plans to repeal s28(11) Localism Act 2011 but the govt will give this matter further consideration.

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.

GR – 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 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.

GR – Most local authorities already publish their whistleblowing policy, procedure and a named contact on their websites

24. Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1998.

Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. Local councillors would not meet the criteria of being external to an individual’s workplace in relation to matters affecting the council and could therefore not be considered as a ‘prescribed person’ for the purposes of the Public Interest Disclosure Act 1998. However, the govt is open to further representations on the matter on how local accountability can be strengthened in this regard.

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

C. Best Practice Recommendations for local authorities

This section sets out the best practice recommendations that are directed to local authorities. The Committee expects local authorities to fully implement them and intends to review the implementation of these in 2020.

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.
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.
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.
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.
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.

6. Councils should publish a clear and straightforward public interest test against which allegations are filtered.
7. Local authorities should have access to at least two Independent Persons.
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.
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.
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.
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.
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.
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.
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.
15. Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.