



Standards and Constitutional Oversight Committee
26 February 2019

REPORT TITLE:	Committee on Standards in Public Life review of Local Government Ethical Standards
REPORT OF:	Director of Governance and Assurance

REPORT SUMMARY

This report informs Members of the outcome of the Committee on Standards in Public Life review of Local Government Ethical Standards.

RECOMMENDATION/S

That the Committee agrees:

- (1) To note the report and the contents of the review.
- (2) To endorse the actions contained within paragraph 3.6 in relation to Best Practice recommendations

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

To keep Members abreast of developments with the ethical standards regime and seek approval for immediate actions to be taken in light of the review.

2.0 OTHER OPTIONS CONSIDERED

None

3.0 BACKGROUND INFORMATION

- 3.1 On 25 May 2010, the coalition government announced its intention to abolish the Standards Board regime set out in Part 3 of the Local Government Act 2000. The government accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected members to office had the right to expect the highest standards of behaviour. However, it considered that the standards regime under the LGA 2000, under which all local authorities by law had to adopt a national code of conduct and a standards committee to oversee the behaviour of members and receive complaints, regulated by Standards for England, was ineffective, bureaucratic and encouraged petty complaints or harmful accusations. It therefore proposed that, through the Localism Act 2011, local authorities would draw up their own local codes of conduct and it would

become a criminal offence for members to deliberately withhold or misrepresent a financial interest.

3.2 However, concerns were raised by the Committee on Standards in Public Life (CSPL) in various reports, following the implementation of the Localism Act 2011, as to whether the sanctions for breach of standards were adequate and that it would therefore be monitoring the implementation of the new local government standards regime.

3.3 The CSPL undertook a review with the following terms of reference:

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

3.4 The 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. They did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London.

3.5. CSPL Review

The review report runs to over 100 pages and the list of recommendations is as follows:

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	Government

	amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	
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
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
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.	Government

	These powers should be put beyond doubt in legislation if necessary.	
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
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

3.6 Best Practice

In addition to the above recommendations the Review published a list of best practice recommendations which they expect should be implemented and they intend to review the implementation of their 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.

- Comment: Our code requires Members to treat other with respect but does not prohibit bullying and harassment and does not contain any definition or examples of the sort of behaviour covered by such a definition.
- Recommendation: The Committee prioritises reviewing the Code of Conduct as part of it's work programme in the new Municipal Year.

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.

- Comment: Our code does not include specific provisions but provisions are included in the Protocol for investigating complaints/allegations under the Members Code of Conduct.
- Recommendation: No action at this juncture.

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.

- Comment: We do not review our Code of Conduct on an annual basis.
- Recommendation: Subject to any forthcoming announcement of a review by the Local Government Association in producing a revised model, a recommendation will be forthcoming from the Liverpool City Region monitoring officers' group. The group are currently considering whether it would be beneficial if there were a common Code across all of the City Region authorities. The Combined Authority Members Code has already been drafted as an amalgam of the member authorities' current codes and adopted as part of the LCR CA constitution. This work was carried out on advice from Weightmans Solicitors as part of the establishment of the CA and provides a useful combined position for discussion.

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.

- Comment: We comply with this best practice.

- Recommendation: No further action at this juncture.

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.

- Comment: The register is regularly updated and is published on the Council's website under the Members Register of Interests.
- Recommendation: No further action at this juncture.

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

- Comment: The Committee is currently reviewing the Protocol for dealing with complaints/allegations which has been revised to include assessment criteria which the Monitoring Officer can utilise when assessing initial complaints. The Protocol and assessment criteria are not currently published.
- Recommendation: Publish the revised Protocol on the Council's website.

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

- Comment: We have four Independent Persons.
- Recommendation: No further action at this juncture.

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.

- Comment: Independent Persons are consulted at this early stage in the process if the Monitoring officer is minded not to deal with a complaint on the basis that it is without merit, vexatious or trivial.
- Recommendation: No further action at this juncture.

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.

- Comment: In accordance with our procedures for dealing with complaints the Standards Panel decision and the minutes of the meeting are published on the website.
- Recommendation: No further action at this juncture.

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.

- Comment: We do not currently comply with this best practice.
- Recommendation: The committee agrees the recommendation contained in the report regarding the Protocol for dealing with Complaints to publish that Protocol on the Council's website.

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.

- Comment: Wirral does not have any parish councils.
- Recommendation: No action required.

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.

- Comment: Wirral does not have any parish councils.
- Recommendation: No action required.

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.

- Comment: Whilst this is not specifically written into our code it is not prohibited and the Monitoring Officer has the ability to seek assistance from third parties.

- Recommendation: No further action at this juncture.

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.

- Comment: Our annual governance statement does include reference to separate bodies wholly owned by the Council. The Council has wholly and jointly owned companies. It is considered that the minutes of the company board meetings contain commercially sensitive information which should not be subject to routine publication. The companies are however, subject to the provision of the Freedom of Information Act 2000.
- Recommendation: No further action at this juncture.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

- Comment: The Chief Executive and senior officers regularly meet with the political group leaders.
- Recommendation: No further action at this juncture.

3.7 Conclusion

The CSPL believe their recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of the recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – they 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 they 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. Ultimately, they believe that, 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

4.0 FINANCIAL IMPLICATIONS

There are no direct financial implications associated with the adoption of the best practice recommended in the CSPL report when making decisions in relation to complaints/allegations made under the Members' Code of Conduct

5.0 LEGAL IMPLICATIONS

The Council must act in accordance with the legislative requirements of Chapter 7 (Standards) of the Localism Act 2011 when dealing with ethical standards.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

There are no resource implications arising from the recommendations within the report.

7.0 RELEVANT RISKS

Adopting the best practice recommended in the CSPL report will ensure robust standards arrangements are in place to safeguard local democracy, maintain high standards of conduct, protect ethical practice in local government and will reduce the risk of legal challenge. It will also provide clarity and transparency for the general public.

8. EQUALITY IMPLICATIONS

There are no equality implications.

REPORT AUTHOR:

Vicki Shaw (Deputy Monitoring Officer) and Philip McCourt (Monitoring Officer)

telephone: (0151) 691 8569

email: vickishaw@wirral.gov.uk / philipmccourt@wirral.gov.uk

Background Papers:

Report – Local Government Ethical Standards; A Review by the Committee on Standards in Public Life:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>