

Standards Committee

1 December 2017

Standards Update



Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Purpose of the Report

1. To inform Members of the 'national picture' on Standards issues affecting Local Government.

Background

2. This report is for information, to update the Committee on national developments, consultations and court cases which relate to the work of the Committee. It is anticipated that this will be a standing agenda item with a quarterly update to the Committee.

Consultations

Committee on Standards in Public Life: Parliamentary intimidation

3. The Committee on Standards in Public Life is conducting a review on the subject of intimidation of Parliamentary candidates with a call for evidence earlier this year. On 15 November it published the evidence received from online media networks and from several political parties (available at <https://www.gov.uk/government/collections/intimidation-of-parliamentary-candidates-review-evidence>).
4. Suggestions from the parties included
 - a. extending "imprint" rules to electronic material, which would prevent anonymous campaigning;
 - b. apply the code of practice under the Digital Economy Act 2017 to set out arrangements on responding to complaints of intimidating or bullying behaviour;
 - c. extend restrictions on publishing candidates' home addresses;
 - d. clearer CPS/Police guidance;
 - e. tougher laws against election intimidation; and
 - f. better self-regulation by political parties..

5. The Committee will also consider the broader implications of its review for other candidates for public office and other public office holders (such as Councillors).
6. The review will:
 - Examine the nature of the problem and consider whether measures already in place to address such behaviour are satisfactory to protect the integrity of public service; and whether such measures are (a) effective, especially given the rise of social media, and (b) enforceable;
 - Produce a report for the Prime Minister, including recommendations for action focused on what could be done in the short- and long-term and identifying examples of good practice.

The review will recognise the important role of legitimate scrutiny of those standing for public office by the public and the press.

Law Commission: Misconduct in Public Office

7. The Law Commission launched a second consultation on the law of misconduct in public office on 5 September 2016. The consultation period has closed and the Commission is analysing the responses, with a view to publishing a final report in 2017.
8. The stated reform objectives are to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended, and to pursue whatever scheme of reform is decided upon.
9. Misconduct in public office is a common law offence: it is not defined in any statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts him or herself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification.
10. The offence is widely considered to be ill-defined and has been subject to recent criticism by the Government, the Court of Appeal, the press and legal academics.
11. In general terms, those consultees who responded to the background paper agreed with the Law Commission that the law is in need of reform, in order to ensure that public officials are appropriately held to account for misconduct committed in connection with their official duties.

DCLG: Disqualification criteria for Councillors and Mayors

12. This consultation runs from 18 September to 8 December 2017, and is discussed elsewhere on the Committee's agenda.

Case Reports

Hussain v Sandwell MBC [2017] EWHC 1641

13. An attempt to prevent a local authority from continuing an investigation into alleged wrongdoing by elected council members has failed. The High Court decided that an investigation into wrongdoing allegations against councillor Mahboob Hussain of Sandwell Council and others should go ahead.
14. The Councillor was alleged (among other things) to have procured the sale of council assets to family friends at a substantial undervalue. He was also alleged 'to have used his power and influence as a senior politician within the council to have parking tickets issued to his family expunged'. There had been various media allegations of 'serial and longstanding wrongdoing by elected members, especially in relation to the disposal of council property'.
15. The Council conducted a 'pre-formal' investigation, that is, outside of the formal provisions of the Localism Act 2011, and the councillor challenged its power to do so. The Court dismissed the challenge on the basis that section 111 of the 1972 Act (incidental powers) can be used in connection with the duty to obtain best consideration when disposing of land (under section 123) and the duty to have proper financial administration arrangements (under section 151). The Council was therefore entitled to conduct the 'pre-formal' investigation.
16. Other challenges based on bias, pre-determination and the unfair publication of documents were also dismissed. The Council's Standards hearing was due to have been convened in September but was postponed.

Governance Review

17. DCLG appointed Mary Ney, the former chief executive of Greenwich LBC, to review the governance arrangements of Local Enterprise Partnerships. Her review was published on 1 November (available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655188/Review_of_local_enterprise_partnership_governance_and_transparency.pdf) and recommends that LEPs should tighten their governance over actual or perceived conflicts of interest, including a

requirement to keep a publicly-available register of interests. Regional disparities in approach were found to exist. DCLG indicates that it will seek to implement all of the recommendations.

'Right to Recall'

18. Thurrock Council has written to the Communities Secretary Sajid Javid to request legislation for a new 'Right to Recall' councillors in the event of significant conduct or ethical breach, similar to that put in place for Members of Parliament by the Recall of MPs Act 2015.
19. The council said that it is also looking into the possibility of introducing its own recall scheme and has asked its monitoring officer to investigate ways that this could be established without new legislation.
20. The Council's deputy leader is quoted as saying: "The council's Monitoring Officer has been looking into the legalities of such a change, and I'm pleased there were many voices across the council chamber who were in favour of a higher form of accountability."
21. "If changes were to be implemented then, should a councillor fall foul of an agreed set of criteria – like not attending meetings, conviction of a crime or breaching the members code of conduct – voters would have the choice to recall their representative and go to the ballot box to choose another candidate.
22. "As councillors, we are effectively immune from our residents calling time on any bad practices until a future election. It is the belief of this council that significant lapses of judgement and behaviour do warrant sanction far sooner in some instances, and that our bosses – the electorate – should have a say in calling time on such elected representatives."
23. No reply from Mr. Javid (if any) has been published.

Recommendation

24. Members are asked to note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated.

Appendix 1: Implications

Finance - None

Staffing - None

Risk - None

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation - None

Procurement - None

Disability Issues - None

Legal Implications - 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. Keeping Members aware of the national picture on Standards issues is expected to facilitate compliance with this duty.