

Standards Committee

22 March 2018



**Review of Local Government
Ethical Standards: Stakeholder
Consultation**

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

Purpose of the Report

1. To advise Members of the current review by the Committee on Standards in Public Life ("CSPL") of local government ethical standards, and to seek the views of the Committee in relation to the consultation questions.

Background

2. The CSPL is undertaking a review of local government ethical standards. Its terms of reference are to:
 - (i) 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;
 - (ii) assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
 - (iii) make any recommendations for how they can be improved;
 - (iv) 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.

Current Standards Regime

3. The current Standards Regime is as set out in Chapter 7 of the Localism Act 2011. It is worth bearing in mind that local arrangements

may exceed existing statutory requirements. The main statutory requirements are:

- a. All 'relevant authorities' (which include parish councils) have a duty to promote and maintain high standards of conduct by members;
 - b. All relevant authorities must have a code of conduct;
 - c. Codes of conduct must be consistent with the Nolan principles;
 - d. Codes of conduct must require the registration of pecuniary interests, and such non-pecuniary interests as the relevant authority deems appropriate;
 - e. Registers of interests must be published;
 - f. Members may not, without a dispensation, participate in discussion or voting on matters affecting their registrable pecuniary interests;
 - g. All relevant authorities except for parish councils must have in place arrangements by which allegations can be investigated and under which decisions can be made. (However, parish councils are otherwise subject to the arrangements of their principal authority);
 - h. Such arrangements must include provision for the appointment of an Independent Person whose views must be taken into account before making a decision on an allegation it has decided to investigate;
 - i. Failure to comply with the provisions as to the registration of pecuniary interests and participating in discussion are an offence, punishable by unlimited fines and disqualification for up to 5 years;
 - j. A decision by a relevant authority on finding a breach of the code of conduct after an investigation may include sanctions. Sanctions available to the relevant authority are:
 - i. Censure of the member;
 - ii. Removal of the member from committees or sub-committees;
 - iii. Removal of the member from outside appointments;
 - iv. Restricting the Member's access to the relevant authority's resources for up to six months;
 - v. Requiring the Member to apologise;
 - vi. Requiring the Member to undergo training; and
 - vii. Requiring the Member to undertake conciliation.
4. This Council has a Standards Committee, but it is not a legislative requirement.

Former Standards Regime

5. Prior to the Localism Act, the Local Authorities (Model Code of Conduct) Order 2007 prescribed a model code of conduct to relevant authorities. Relevant authorities were required to have Standards Committees, who could disqualify members for up to six months.
6. Standards for England (previously the Standards Board) was responsible for a national overview of local investigations into member conduct allegations. In certain cases the Board itself investigated allegations. It could not impose sanctions on members, but it could refer cases to the First-Tier Tribunal (previously the Adjudication Panel) or to the relevant authority's own standards committee for determination. The Tribunal could disqualify members for up to five years.
7. The Standards Board was abolished as a result of the Localism Act. Criticisms of the former regime were that it was over-centralised, was a vehicle for vexatious complaints, and that it was largely unnecessary because poor behaviour can be expected to meet its end in the ballot box. Criticisms of the new regime however are that it has gone too far in removing the capacity for, or the likelihood of, effective sanctions against councillor misconduct to be applied. Serious sanctions such as disqualification can result from criminal offences such as the failure to declare interests, but not from unacceptable personal behaviour of councillors, which is different but which can be equally as corrosive.

Consultation Questions

8. The CSPL's call for evidence is attached at **Appendix 2**. It asks about the following issues:
 - (a) Whether the existing set-up ensures high standards of conduct and if not why not;
 - (b) What significant gaps exist in the standards regime;
 - (c) Whether local codes of conduct are clear and cover appropriate behaviours;
 - (d) Whether the requirement for the local code of conduct to be consistent with the Nolan Principles, and to include appropriate provision for registering and declaring interests, is appropriate;
 - (e) Whether misconduct allegations are investigated fairly and with due process (and asks about the roles of the Independent Person and the Monitoring Officer)
 - (f) Whether existing sanctions are sufficient to enforce compliance or what additional sanctions should be available;

- (g) Whether the arrangements for declaring and managing conflicts of interest are satisfactory;
- (h) Whether whistleblowing arrangements are satisfactory;
- (i) What steps could be taken by either local authorities or central government to improve standards; and
- (j) The problem of intimidation of local councillors and any measures that could be put in place to address it.

Commenting on the questions

9. Members are asked to comment on the consultation questions. The CSPL's identification of stakeholders recognises that individual councillors or Standards Committees may wish to give a separate response from that of their local authority corporately. The Committee are therefore asked to decide whether they wish to respond separately, as a Standards Committee, or if they would prefer to feed into the Council's corporate response (which under constitutional arrangements is delegated to Chief Officers – Table 1, paragraph 4 (c) (j)).
10. It is considered appropriate for the Standards Committee to respond in its own right, as this would reflect the governance regime within the Council and the importance of the issues raised.

Recommendation

11. It is recommended that
 - 11.1 Members of the Committee resolve to issue a collective response to the consultation;
 - 11.2 The response to be formulated by the Monitoring Officer following discussion by the Committee.

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Appendix 1: Implications

Finance - None

Staffing – the report itself carries no staffing implications; however, any changes to the standards regime resulting from the current consultation may require additional resources in future.

Risk – the report itself carries no risk implications; however any changes to the standards regime resulting from the current consultation may have risk implications.

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights – the report itself carries no Human Rights implications; however, any changes to the standards regime resulting from the current consultation may do so.

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. The current consultation exercise requires the Committee to consider the efficacy of that statutory duty. Any changes to the standards regime resulting from the current consultation may require legislative change.

Appendix 2: CSPL Call for Evidence
