

LOCAL GOVERNMENT ETHICAL STANDARDS

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| Relevant Portfolio Holder | Councillor David Thain |
| Portfolio Holder Consulted | YES |
| Relevant Head of Service | Claire Felton, Head of Legal, Equalities and Democratic Services |
| Ward(s) Affected | n/a |
| Ward Councillor(s) Consulted | n/a |
| Key Decision / Non-Key Decision | Non-Key Decision |
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1. SUMMARY OF PROPOSALS

The purpose of this report is to consider a Review by the Committee on Standards in Public Life (CSPL) into Local Government Ethical Standards.

2. RECOMMENDATIONS

The Committee is asked consider and review the changes to the Code of Conduct to reflect the CSPL Best Practice Recommendations and to RECOMMEND to Council that the changes be approved and that authority be delegated to the Head of Legal and Democratic Services to update the constitution accordingly.

3. KEY ISSUES

Background

- 3.1 In January 2019 Authorities received the Review by the Committee on Standards in Public Life (CSPL) into Local Government Ethical Standards.
- 3.2 The CSPL concluded that high standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.
- 3.3 Their evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.
- 3.4 The committee were also concerned 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.

- 3.5 The CSPL best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which they expect that all local authorities can and should implement. CSPL will review the implementation of best practice in 2020. An updated draft Code of Conduct with 'track changes' is attached at appendix 1 of this report. A clean copy of the updated draft Code of Conduct with the 'track changes' accepted is attached at appendix 2 of this report.

Codes of Conduct

- 3.6 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. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. The CSPL report records that many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment.
- 3.7 There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The committee recommends that the updated model code that they intend to propose should therefore be voluntary and able to be adapted by local authorities. The committee also recommend that 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.
- 3.8 The Worcestershire Councils to date had already taken the decision to agree a Code of Conduct that is used by all such Councils, for consistency and to assist those Councillors that due to multiple roles are subject to the Code of Conduct at more than one authority. It is that Code of Conduct previously agreed by all Worcestershire Councils that has been updated in Appendixes 1 and 2 to reflect the recommendations of the CSPL report.

List of Recommendations

| Number | Recommendation | Responsible body |
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| 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 amended | Government |

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| | 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 | Government |

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| | proportionate sanction. | |
| 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. These powers should be put beyond doubt in legislation if necessary. | Government |
| 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 | Government |

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| | principal authority. | |
| 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 1988. | 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 |

List of Best Practice

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.

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.

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.

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.

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.

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

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

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.

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.

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.

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.

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.

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.

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.

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

The full report is attached electronically using this link;

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

Financial Implications

- 3.9 It is not anticipated that amending the Code of Conduct in line with the recommendations will have any financial implications.
- 3.10 Failure to comply adopt the recommendations into our Code of Conduct, may leave us more vulnerable to an appeal against any decision made, this may have cost implications should any appeals be successful.

Legal Implications

- 3.11 CSPL have made a number of recommendations and identified best practice to improve ethical standards in local government. Their recommendations are made to government and to specific groups of public officeholders. They recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which could be implemented more swiftly.
- 3.12 In the meantime Councils are expected to consider the findings and recommendations and compliance with them or failure to comply with them would be a consideration upon any process involving the code such as a review or an appeal.

Service / Operational Implications

- 3.13 None.

Customer / Equalities and Diversity Implications

- 3.14 No Equality Impact Needs Assessment has been undertaken.

4. RISK MANAGEMENT

None.

5. APPENDICES

Appendix 1 - Proposed draft Code of Conduct with 'track changes' to show amendments to the current Code of Conduct.

Appendix 2 - Proposed draft Code of Conduct with 'track changes' accepted.

6. KEY

Non-key.

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