

CONDUCT COMMITTEE

3 September 2019

**COMMITTEE ON STANDARDS IN PUBLIC LIFE – REVIEW OF
LOCAL GOVERNMENT ETHICAL STANDARDS****Report of the Monitoring Officer**

Strategic Aim:	All	
Exempt Information	No.	
Cabinet Member(s) Responsible:	N/A	
Contact Officer(s):	P Horsfield, Deputy Director: Corporate Governance	01572 758154 phorsfield@rutland.gov.uk
Ward Councillors	N/A	

DECISION RECOMMENDATIONS

That the Committee:

- i) Note the recent report of the Committee on Standards in Public Life, (CSPL), arising from its review of the effectiveness of the current arrangements for ethical standards amongst councillors in English local authorities.
(<https://www.gov.uk/government/publications/local-government-ethical-standards-report>)
- ii) Note the recommendations of the CSPL (attached at Appendix A) and the identified best practice (at Appendix B).
- iii) Consider whether, on behalf of the Rutland County Council Conduct Committee, to make any formal comment on the recommendations, (i.e. to MHCLG), and if so request that the Monitoring Officer in consultation with the Chair of the Conduct Committee and Group Leaders prepare a letter to be sent; and
- iv) Consider whether to request the Monitoring Officer to undertake a comparison of the current arrangements with a view to identifying whether they conform to the best practice identified by the CSPL report.

1 PURPOSE OF THE REPORT

- 1.1 To inform the Committee of the outcome of a recent review of the effectiveness of the current arrangements for ethical standards amongst councillors in English local authorities by the Committee on Standards in Public Life.

2 BACKGROUND

- 2.1 In January 2019 the Committee on Standards in Public Life (CSPL) published a report setting out its findings from a review of Local Government Ethical Standards which it had undertaken over the preceding 12 months. This report is the 20th report of the CSPL and was prompted due to a desire by the members of the Committee to reassure themselves that the current arrangements, enacted by the Localism Act 2011 and implemented in 2012, are conducive to promoting and maintaining the standards expected by the public.
- 2.2 The report notes that the vast majority of councillors and officers are committed to maintaining high ethical standards but that there are a small minority of councillors who engage in bullying or other disruptive behaviour. It also notes that a small number of Parish Councils give rise to a disproportionate number of complaints.
- 2.3 The operation of the existing mechanisms is identified as opaque in some cases and it is suggested that greater openness as to how decisions are made at a local level would elicit greater public confidence in the ethical standards present in local authorities.
- 2.4 The report also identifies a number of risks in the sector including the current rules on conflicts of interest and gifts and hospitality and concludes that these are exacerbated by the increasing complexity of local government.
- 2.5 The reports expresses support for the model of devolved self-regulation and the positive promotion of high ethical standards as opposed to a solely punitive approach. However, the report identifies a need for appropriate mechanisms by which councils can address issues when they arise. In particular, it is recommended that the power to suspend a councillor be re-introduced at a local level in order to enhance the effectiveness of local accountability. By way of balance it is suggested that the role of the Independent Person should be enhanced and a right of appeal for councillors should be introduced to ensure fairness and avoid malicious abuse of the complaints system. It also concludes that the current criminal sanctions relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.
- 2.6 The report also identifies the obligation on Monitoring Officer (MO) to be responsible for implementing the system and the promotion of high standards of ethical conduct within their councils. The Committee concluded that in some instances fulfilling these obligations may prove challenging for the MO and in this should be addressed through the introduction of extended employment protection for the MO to ensure that they are able to act in the public interest and without fear or favour.
- 2.7 In total the report contains 26 recommendations, set out in Appendix A, the majority of which would require primary legislation to bring in to effect.

- 2.8 The report also sets out a list of what it describes as ‘best practice’, set out in Appendix B, which the CSPL proposes should be used as a benchmark for local authorities against which they might assess their local arrangements.

3. METHODOLOGY

- 3.1 The CSPL has had a longstanding interest in local government which was the subject of its third report which was issued in 1997. Since then, the CSPL has considered various aspects and maintained a watching brief keeping itself updated through regular correspondence received from a variety of sources.
- 3.2 The purpose of the review was to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011. In undertaking the review the CSPL consulted widely across English local authorities and received 319 written submissions in response to its consultation. Two roundtable sessions were held, 30 individual stakeholder meetings and visits to five local authorities across different English regions and tiers of local government (Rutland’s MO was a member of one of the roundtables).

4. THE KEY RECOMMENDATIONS IN DETAIL AND THEIR RATIONALE

- 4.1 **Introduce a Model Code of Conduct** – The current position where councils have a wide choice as to the content of their codes has resulted in a lack of consistency which can be confusing for councillors, officers and the public alike. In addition, some codes omit to mention key behaviours, such as bullying or the misuse of social media, which are a source of significant numbers of complaints.
- 4.2 The CSPL report suggests that a Model Code be produced by the Local Government Association in consultation with councillors and other relevant stakeholders. It is suggested that the Code should be accompanied by a rebuttable presumption that a councillor’s public behaviour is in their ‘official capacity’. The primary focus for this proposal is social media which is an area which has proved problematic due to the lack of clarity as to what actions should be regarded as within the scope of the code.
- 4.3 **Reintroduce Sanction of Suspension** – The report recommends that the sanctions for breach of the code available local authorities should include the power to suspend a councillor for up to 6 months. The CSPL tempered this proposal by suggesting that suspension should only be permissible where the Independent Person agrees that a breach has been proven and suspension is proportionate. It is also proposed that it be coupled to a right of appeal for a councillor to the Local Government Ombudsman.
- 4.4 **Revise the rules regarding Declaration of Interests** – The current provisions are described as unclear and too narrow and it is recommended that they be updated to include a category for non-pecuniary interests such as unpaid directorships; trusteeships; in charities or other public bodies and the provisions relating to declaration be amended to include an objective test in line with provisions in Wales etc.
- 4.5 Linked to the proposed widening of the categories of interest which require declaration is the suggested widening of the circumstances in which a councillor

must not participate in a discussion or vote on a matter being considered at a meeting. The proposed test is similar to the former 'Prejudicial Interest' test which was in place before the 2012.

- 4.6 **Removal of Criminal Offences for Failure to Declare Pecuniary Interest** - The report concludes that the current criminal sanctions for failure to declare 'Pecuniary Interests' are disproportionate in principle and ineffective in practice and should be abolished.
- 4.7 **Requirement for Register of Gifts and Hospitality** – In the interests of clarity and consistency it is recommended that local authorities be required to maintain register of gifts and hospitality received valued at £50 or more or totalling £100 or more in any 12 months from a single source.
- 4.8 **Protection for Statutory Officers** – Under the existing regime the local authority's Monitoring Officer are not considered by the Committee to be sufficient. The report suggests that these are strengthened.
- 4.9 **Greater Openness** – There is currently a wide variation in the nature and amount of information, relating to complaints against elected members, which local authorities disclose. Due to this lack of consistency CSPL makes a number of recommendations designed to formalise a basic level of disclosure. In particular it is recommended that local authorities publish annual reports setting out details of complaints against councillors and a requirement that the conclusions of the Independent Person in respect of any complaint should also be made available for the public.
- 4.10 The report doesn't address the issue of at what point information should be made available i.e. when a complaint is first received or when it is concluded. This is of particular relevance to frivolous or unfounded complaints the publication of which may cause reputational damage or upset but later be dismissed as unfounded.

5. NEXT STEPS

- 5.1 The CSPL has submitted its report to the Secretary of State for Local Government who, it is understood, is currently considering the findings and taking soundings from organisations such as the Local Government Association.
- 5.2 The majority of the recommendations would require legislation in order to bring them into effect and at this point, due to other matters occupying government it isn't envisaged that, Parliamentary time will be available in the near future.

6. ASSESSMENT OF EXISTING ARRANGEMENTS COMPARED TO THE CSPL BEST PRACTICE

- 6.1 In addition to its 26 recommendations the CSPL report also contains a list of what it considered to be 'best practice' from the arrangements it considered in preparing the report. In total there are 15 examples of best practice which fall in to three broad themes:-
- i) Greater Openness – including requirements that the code should be published prominently on the council's website with clear guidance on how to complain

and how complaints will be handled. In addition, CSPL consider that it is best practice to publish a notice of all decisions made in respect of alleged breaches and this should include brief details of the allegation and include a note of the Independent Person's view.

- ii) Content of the Code – The CSPL suggest that an authority's code should include specific prohibitions on bullying and harassment and include definitions of those activities. The codes should also contain a specific provision requiring councillors to comply with any investigation.
- iii) Accountability/Independence – Councils should be required to publish the public interest test against which complaints are filtered at the initial assessment stage and the Independent Person should be involved in the initial assessment of complaints.

7. CONSULTATION

- 7.1 The CSPL carried out consultation as part of its review as detailed at paragraph 3 of the report.

8. ALTERNATIVE OPTIONS

- 8.1 The Committee has a choice as to whether or not to accept the recommendations.

9. FINANCIAL IMPLICATIONS

- 9.1 The Council has a small budget set aside for Standards matters.

10. LEGAL AND GOVERNANCE CONSIDERATIONS

- 10.1 The Council has a duty under Section 27 of the Localism Act to promote and maintain high standards of conduct by members.

11. DATA PROTECTION IMPLICATIONS

- 11.1 A Data Protection Impact Assessment (DPIA) has not been completed as the report does not refer to individuals.

12. EQUALITY IMPACT ASSESSMENT

- 12.1 An Equality Impact Assessment (EqIA) has not been completed as there are no relevant service, policy or organisational changes being proposed.

13. CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 13.1 In view of the fact that CSPL has identified a set of best practice it is recommended that the Monitoring Officer be requested to undertake a review of the council's current procedures with a view to assessing whether they contain the relevant best practice and to identify any areas where they do not and to bring a report back to the Conduct Committee containing the outcome and any suggested changes.

14. BACKGROUND PAPERS

- 14.1 20th Report of the Committee on Standards in Public Life – Ethical Standards in English Local Authorities.

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

15. APPENDICES

- 15.1 Appendix A – CSPL Recommendations
- 15.2 Appendix B – Best Practice as Identified by the CSPL

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

CSPL - Recommendations

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

Best Practice as Identified by the CSPL

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.