

CONDUCT COMMITTEE

23 September 2020

**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	
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Ward Councillors	N/A	

DECISION RECOMMENDATIONS

That the Committee:

- i) Note the position in respect of 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 Draft Code of Conduct provided by the LGA. <https://www.local.gov.uk/sites/default/files/documents/LGA%20Model%20Member%20Code%20of%20Conduct.pdf>
- iii) Request a further meeting of this Committee once the LGA have published a final version of the Model Code

1 PURPOSE OF THE REPORT

- 1.1 Following the last meeting of the Committee in September 2019 The Report provides an update on the position in relation to the Report of the Committee on Standards in Public Life and the draft Code of Conduct produced by the LGA.

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. The LGA have then also consulted on a draft Model Code of Conduct.

2.2 As previously reported the Report of the CSPL notes that:

- the vast majority of councillors and officers are committed to maintaining high ethical standards
- there is 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.
- The operation of the existing mechanisms is identified as opaque in some cases.

2.3 The Government are yet to provide a formal response to the Report despite it being published in January 2019. Recently attention has obviously been diverted owing to the pandemic

2.4 One of the recommendations included that the LGA produce a Model Code of Conduct. The LGA has done this and consulted on the draft Model. This consultation closed on 17 August 2020.

2.5 While there was not the capacity to call a Committee within the Consultation period the Monitoring Officer fed into discussion and the consultation (through agencies such as Lawyers in Local Government and other channels). This feedback was informed by the support of this Committee at its last meeting for the recommendations provided by the Committee for Standards in Public Life.

2.6 Some of the feedback provided to the LGA by these bodies was:

- a) Existing sanctions and those proposed under the Local Government Association's draft Model Code of Conduct fall below the expectations of complainants.
- b) Strong support was expressed in the response for the need to be able to prevent councillors from attending council offices (for the most prolific or serious offenders) and to withdraw facilities which have been misused in breach of the code (i.e. council technology);
- c) Mandatory adoption of the code across authorities to address the issue of councillors working across tiers who currently may have to juggle a variety of codes. This would reduce confusion for councillors, staff and members of the public as well as making it easier for councillors operating across County, District, Parish and Town councils.
- d) 'civility' should be replaced with 'respect' in the code.
- e) It needed to be explicit that any breach of councillor impartiality would have a presumption of seriousness at the investigation stage.

- f) Supported the CSPL recommendation that 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”. This mirrors the previous prejudicial interests test and has been voluntarily adopted by many councils who still utilise it.
- g) Supports the recommendation of the CSPL for the role of the Local Government & Social Care Ombudsman as an appeal authority where robust and effective sanctions are in place.
- h) Social media should be included explicitly within the code (98% of its membership agreed).

2.7 The response of the LGA to the consultation on the Model Code of Conduct and the Government response to the CSPL Report are awaited at this time and it is suggested that a further meeting of this Committee is called once either of these responses is known.

3. CONSULTATION

3.1 The CSPL carried out consultation as part of its review as detailed at paragraph 3 of the report, the LGA Consulted on the Model Code of Conduct and the outcome of this is awaited.

4. ALTERNATIVE OPTIONS

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

5. FINANCIAL IMPLICATIONS

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

6. LEGAL AND GOVERNANCE CONSIDERATIONS

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

7. DATA PROTECTION IMPLICATIONS

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

8. EQUALITY IMPACT ASSESSMENT

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

9. CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 9.1 The Committee note the recommendations and request a further meeting once either the response of the LGA or the Government is known.

10. BACKGROUND PAPERS

- 10.1 None

11. APPENDICES

- 11.1 Appendix A: CSPL - Recommendations
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.