

Committee:	Standards	Date:	7 June 2019
Title:	Local Government Ethical Standards: A Review by the Committee on Standards in Public Life		
Report Author:	Simon Pugh, Assistant Director, Governance and Legal. 01799 510416	Item for decision:	Yes

Summary

1. The Committee on Standards in Public Life has now published its report on Local Government Ethical Standards. This report sets out the Executive Summary from the report and its recommendations and best practice suggestions.

Recommendations

2. That officers report back periodically to the Standards Committee on implementation of the recommendations and best practice suggestions set out in the Committee on Standards in Public Life's report.

Financial Implications

3. None direct.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Local Government Ethical Standards: A Review by the Committee on Standards in Public Life – the full report. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

Impact

- 5.

Communication/Consultation	UDC's consultation response is attached to this report. The full CSPL report summarises consultation responses. The CSPL report has been submitted to the Prime Minister and there is no current indication of further consultation.
Community Safety	None direct
Equalities	Promotion of ethical standards in local government includes promoting and respecting equalities principles and legislation. The Code directly prohibits breach of the Equality Act 2010.
Health and Safety	None.
Human Rights/Legal Implications	The report sets out recommendations requiring legislative change.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	Promotion of ethical standards in local government is an important part in ensuring a respectful workplace environment. The Code directly prohibits bullying.

Situation

6. The Committee on Standards in Public Life has now issued its report on Ethical Standards in Local Government. The Standards Committee considered how to respond to the consultation which preceded the report on 16 April 2018. This led to the response from the Council reproduced in Appendix D to this report.
7. The executive summary of the report is set out in Appendix A. The report's recommendations are set out in Appendix B. Best practice suggestions from the report are set out in Appendix C. Appendices B and C also include comments from the author of this report.
8. The report has been submitted to the Prime Minister. It is the CSPL's final report and comments are not being invited from local authorities. It is possible that the Government will consult further regarding the implementation of recommendations for legislative change but no announcements have been made.

9. Some of the recommendations accord with the views expressed by the Standards Committee. Members will be pleased by the recommendation that sanctions are strengthened to include the power to suspend for up to six months. However, this will require primary legislation. It should also be noted that a right of appeal to the Local Government Ombudsman is recommended and that this will involve re-investigation of the complaint.
10. The proposed removal of criminal sanctions in relation to breach of the disclosable pecuniary interests rules is welcome. There have been few prosecutions and, importantly, the rules are unclear and members may breach them unintentionally. The proposal that members can speak and/or vote if they have a non-prejudicial disclosable pecuniary interest is sensible and aligns with UDC's approach to personal interests.
11. The proposal for a revised model Code is sensible, although UDC has of course developed a much improved Code of Conduct itself. Best practice recommendations for the content of a model Code are sensible and go beyond UDC's current Code. However, it might be sensible to review UDC's Code in the light of a new model Code when available.
12. There are some helpful comments about the importance of promoting an ethical culture. However, it is much simpler to do this within a primary authority such as Uttlesford DC than it is for UDC's Standards Committee and Monitoring Officer to promote an ethical culture within 50+ town and parish councils. In fact, the report proposes very little change with regard to parish councils beyond recommending that clerks hold a professional qualification. In the report writer's experience, the bulk of complaints originate from parish level.
13. Some of the recommendations and best practice suggestions can be implemented without a need for legislative change. Some will amendment of secondary legislation (statutory instruments). Some will involve amendment of primary legislation (Acts of Parliament). It is unclear what capacity there is for the Government to undertake legislative change or what priority the report's recommendations will be given.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
That elected members (UDC, town and parish) do not act in an ethical manner and in compliance with their Code of	3	3	Promoting an ethical culture within UDC and town and parish councils within UDC's area. Taking effective measures to deal with

Conduct			unethical behaviour and breach of the Code of Conduct.
---------	--	--	--

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix A: Executive summary from CoSPL Report

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our 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.

We are 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.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We 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 we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

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. Many codes of conduct fail to address adequately important

areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. 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.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of

behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.

Appendix B: List of CoSPL recommendations

Number	Recommendation	Responsible body
1	<p>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.</p> <p>Comment: A clear and effective model code would help to ensure that local codes are fit for purpose and would encourage consistency nationally and at local and parish level. UDC has adopted its own Code which improves on the model codes promoted when the Localism Act, 2011, came into force. No legislative change is needed to implement this recommendation.</p>	Local Government Association
2	<p>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.</p> <p>Comment: A home address can be excluded from the register of interests if it is classed as a "sensitive interest". This will only be the case if disclosure of the information "could lead to you or a person connected with you being subject to violence or intimidation". The proposed change would align with the recent change in the law which means that the home addresses of election candidates are not included on nomination forms. The change would require the amendment of secondary legislation.</p>	Government
3	<p>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.</p> <p>Comment: The issue here is one of balance between legitimate expectations regarding the conduct of those in public life and respect for how they behave in private life.</p>	Government

In practice, it is not always clear whether a councillor is acting in an official capacity. This change would require the amendment of primary legislation.

- 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

Comment: See previous comment. The example given in the report is of a councillor threatening to cause someone a detriment by implying they would do so through their influence as a councillor. The conduct of an individual improperly purporting to act as a councillor does not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

- 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

Comment: This recommendation needs to be read alongside Recommendation No.7. This recommendation extends the class of disclosable pecuniary interest that need to be registered. UDC's Code already has requires registration of these interests as "personal interest". This change would require amendment of secondary legislation to make it mandatory nationally.

- 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

Comment: UDC's Code is in line with this recommendation for registering hospitality over £50 but it

does not include a requirement to register hospitality totalling over £100 over a year from a single source. It is not clear from the report whether this would involve amendment of primary or secondary legislation. No legislative change is needed for the LGA to create an updated model Code including this requirement. Whilst UDC could amend its Code to include a requirement to register hospitality totalling over £100 over a year from a single source, it might be better to do this as part of consideration of a new model Code.

- 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

Comment: At present, a councillor with a disclosable pecuniary interest cannot speak or vote and must withdraw from the meeting, even if the interest is trivial or insignificant. The proposal allows participation unless the interest is “prejudicial”. This is a return to the position preceding the Localism Act and is in line with UDC provisions relating to personal interests that are not disclosable pecuniary interests. This will require primary legislation.

- 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

Comment: This will require primary legislation. The basis for this recommendation is to ensure that the Independent Person’s judgment and independence is not compromised by a long period of involvement in a single authority. On the other hand, it can be difficult to recruit suitable Independent Persons. If done properly, being an IP requires a high degree of understanding of the Standards regime and of the work of councillors> Making

this mandatory risks losing good IPs and arguably this should be a matter for local discretion.

- 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

Comment: This would require secondary legislation. Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

- 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

Comment: This ties in with Recommendation 16, proposing a power to suspend councillors for up to six months. The report says that more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. The report recommends that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

- 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

Comment: This may need secondary legislation. The Council would also need to make sure that its insurance cover extended to such an indemnity.

- | | | |
|-----------|--|------------|
| 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 |
| | Comment: This would require primary legislation. It is in line with representations made by UDC to the Committee's consultation. | |
| 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 |
| | Comment: This would require primary legislation. It ties in with Recommendation 16. | |
| 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 |
| | Comment: This would require primary legislation. It ties in with Recommendation 16. It is worth noting that the Ombudsman will investigate as well as deciding whether suspension is justified. | |
| 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 |
| | Comment: This would require secondary legislation. Councils can adopt this on a voluntary basis. | |
| 16 | Local authorities should be given the power to suspend councillors, without allowances, for up to six months. | Government |
| | Comment: This will require primary legislation. It reflects | |

UDC's Standards Committee's strong view on the desirability of tougher sanctions.

- | | | |
|-----------|---|-----------------|
| 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 |
| | Comment: This may require primary legislation. | |
| 18 | The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished. | Government |
| | Comment: This will require primary legislation. UDC's representations to the CSPL suggested this. There are various issues with the criminal element of the disclosable pecuniary interests regime. There are also other criminal offences that would cover corrupt behaviour by councillors. | |
| 19 | Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks. | Parish councils |
| | Comment: This is a good practice recommendation. UDC has been working with the Essex Association of Local Councillors to promote good governance at parish level and this recommendation supports this. | |
| 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 |
| | Comment: This will require primary legislation. Most UDC town and parish councils have adopted UDC's revised Code. It makes sense for codes to be consistent across Uttlesford. | |
| 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 |
| | Comment: This will require primary legislation. It would | |

remove an area of legal uncertainty and strengthen the role of the Standards Committee.

- 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

Comment: This would require secondary legislation. The statutory officers are Head of Paid Services (Chief Executive), Section 151 Officer (Director of Finance and Corporate Services) and Monitoring Officer (Assistant Director, Governance and Legal).

- 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

Comment: This would require secondary legislation but could be implemented on a voluntary basis. External auditors are listed as 'prescribed persons', under the Public Interest Disclosure Act 1998. This gives employment protections to officers who make public interest disclosures to external auditors. The recommendation is made because the evidence received by the Committee suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern. UDC's whistleblowing Code identifies "the External Auditor" as a person to whom disclosures may be made but does not include contact information. It would be simple to add this.

- 24 Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.** Government

Comment: This would require primary legislation. This would extend "whistleblower" employment protection to employees who make disclosures to councillors.

- 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

Comment: This does not involve legislation. Implementation is a matter for political groups and parties. Induction training will be provided for all new councillors following the elections in May.

- 26** **Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.**
- Local Government Association

Comment: This does not involve legislation.

Appendix C: List of CoSPL Best Practice Recommendations

The best practice recommendations are directed to local authorities, and the Committee on Standards in Public Life expects that any local authority can and should implement them. It intends to review the implementation of its best practice recommendations in 2020.

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.

Comment: UDC's Code includes prohibitions on bullying and harassment in its Code of Conduct but does not include a definition and examples. Ideally this would be picked up through a new model Code led by the Local Government Association. Whilst changing UDC's Code on a regular basis is relatively straightforward, ensuring that town and parish councils align their codes involves a greater amount of work.

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.

Comment: Again, ideally this would be picked up through a new model Code led by the Local Government Association. Whilst changing UDC's Code on a regular basis is relatively straightforward, ensuring that town and parish councils align their codes involves a greater amount of work.

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.

Comment: This is fine but it is not clear how this fits with a move to a model Code.

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.

Comment: It is straightforward to review and to implement any changes needed. UDC's Code is published on its website in section called: "Councillor Code of Conduct and Register of Interests" and "Complaints about councillors".

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.

Comment: UDC members are obliged to register hospitality received over the value of £50 but this is not currently published as a register.

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

Comment: UDC's procedure for standards complaints sets out the criteria by which complaints are assessed but and which is published on our website.

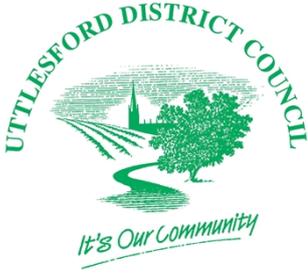
Best practice 7: Local authorities should have access to at least two Independent Persons.

Comment: UDC is fortunate to have three 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.

Comment: UDC has implemented this under its procedure for considering Code of Conduct complaints. An IP is consulted on whether to undertake a formal investigation in all cases.

Appendix D: UDC's representations to the Committee on Standards in Public Life



UTTLESFORD DISTRICT COUNCIL

Council Offices, London Road, Saffron Walden, Essex CB11 4ER
Telephone (01799) 510510, Fax (01799) 510550
Textphone Users 18001
Email uconnect@uttlesford.gov.uk Website www.uttlesford.gov.uk

Chief Executive: Dawn French

Review of Local Government Ethical
Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

Your ref:
Our ref: SRP / 010147
Please ask for Simon Pugh on 01799
510416
email: spugh@uttlesford.gov.uk

17 May, 2018

Dear Sir/Madam

Review of Local Government Ethical Standards: Stakeholder Consultation

I am responding on behalf of Uttlesford District Council. This response is sent with the approval of our Standards Committee. The response follows the form taken by the consultation document.

- a. ***Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.***

We do not agree that the existing structures, processes and practices are adequate. The main issues, on which we will expand later in this response, are:

- The absence of meaningful sanctions.
- The weak legal obligations placed on local authorities with regard to standards and the adoption of adequate codes.
- Uncertainty over the nature of “disclosable pecuniary interests” and the associated obligations on members.
- Weak accountability of parish councils.
- The narrow limits of the applicability of the regime with regard to private life.
- Uncertainty over the respective powers of parish and district councils to impose sanctions, such as they are.
- The desirability of strengthening the role of the Independent Persons.

The Standards Board regime had its faults but we suggest that a good starting point would be to examine the changes made by the Localism Act 2011 and to review whether the changes have made things better or worse.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?**

See above.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?**

They are likely to vary. The legal requirements for a code of conduct, set out in section 28, Localism Act, 2011, are minimal and the content largely left to local authorities. Whilst some discretion is welcome, codes are likely to vary in form and content. In many cases, councils will have kept the old model code and will have bolted on provisions regarding disclosable pecuniary interests.

The absence of a model code will lead to a lack of consistency between councils, which will not encourage public confidence. The quality of drafting will also vary. A poorly drafted code will lead to uncertainty and lack of confidence and will increase the risk of non-compliance.

One specific issue regarding the appropriate range of behaviours is that the code's application is limited to behaviour whilst acting, or purporting to act, as a councillor. This goes back to **Livingstone v Adjudication Panel for England** [2006] EWHC 2533 (Admin). Whilst clearly it is important to respect private life, behaviour in a private capacity can be very damaging for the reputation of local authorities and can severely damage public confidence. We encourage the Committee to give its consideration to this issue.

Uttlesford DC has recently overhauled its Code of Conduct. We regard it as a good model, in both scope and clarity. We append a copy.

We suggest a return to a model code, drafted in plain language, setting out minimum standards of behaviour. Local authorities could, if they wished, supplement this.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.**

The definition of a disclosable pecuniary interest in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations is wide. The circumstances in which the restriction on speaking and voting apply are uncertain. (Section 31(1)(b) refers to having an interest “in any matter to be considered, or being considered, at the meeting”.) The scope of this is not always clear in practice. This is undesirable, given that speaking and voting, when this is precluded by section 31, is a criminal offence. The lack of clarity regarding the circumstances in which a member holds a DPI presents an unjustified risk to members who inadvertently may find themselves referred to the Police or facing criminal proceedings.

We invite the Committee to consider whether the “disclosable pecuniary interests” regime is appropriate and whether breach should carry a criminal sanction. We suggest that it would be more appropriate to address corrupt behaviour through the general criminal law. The Model Code’s definitions of “personal” and “personal and prejudicial” interests worked well in regulating participation by members.

Investigations and decisions on allegations

- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*

What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

We have recently reviewed our processes to ensure clarity and fairness. A copy is appended. Key provisions include early involvement of Independent Persons, scope for filtering out trivial or vexatious complaints, the separation of investigatory and advisory roles to ensure fairness at the hearing stage and a clear procedure for hearings.

Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

The legal requirement is for an Independent Person to be consulted “before it makes a decision on an allegation that it has decided to investigate”. There is discretion to involve the IP at an earlier stage and it is our practice to consult when complaints are received. There is a strong argument for the IP to have a role in deciding whether a complaint should be investigated or what alternative steps should be taken.

Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

The involvement of the IP provides a safeguard at the stage of deciding whether to investigate a complaint. Monitoring Officers should not then proceed to investigate and decide upon Code breaches. The roles must be separate. Similarly, when a member panel or committee decides upon an alleged Code breach, the roles of investigator and clerk to the hearing should be kept separate.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

- *What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?*
- *Should local authorities be given the ability to use additional sanctions? If so, what should these be?*

Our clear experience is that existing sanctions are woefully inadequate. The available sanctions go no further than censure or reprimand. Censure by the district council is often disregarded, and may be seen as a “badge of honour”, particularly at parish council level. Standards Committees or similar can make recommendations regarding membership of committees but have no power to enforce. Where political proportionality rules apply, allocation of committee places rests in practice with the political group and not the Council.

Local authorities should have, at the least, a power of suspension from committees or Council participation. Possibly powers should be graduated to increase in severity in the event of further breach or non-compliance with recommendations (such as to undertake training). In these circumstances triggering a “right of recall” procedure might be an effective sanction, as well as a power of suspension, although this would need careful thought.

There is some uncertainty whether powers of sanction in relation to parish councillors rest at district or parish level. The law should be clarified to give district councils direct power of sanction, rather than being confined to making recommendations which can be ignored at parish level. See **R. (on the application**

of Taylor) v Honiton Town Council, [2016] EWHC 3307 (Admin) and paragraph 36 on this specific point.

The case of R (on the application of Harvey) v Ledbury Town Council (Claim No: CO/3680/2017) before the High Court (judgment reserved) also suggests a need for greater clarity over the circumstances in which sanctions may be imposed. The claim, in this case, is that Herefordshire Council's jurisdiction over standards complaints prevented the Town Council imposing sanctions on a councillor accused of bullying members of its staff.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.*
- A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?*
 - What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.*

The possession of a disclosable pecuniary interest means that a member can take no part in the meeting, and cannot exercise speaking rights available to the public. However, the provisions of the Model Code allowed the exercise of public speaking rights where a member had a personal and prejudicial interest. Where the substance of the Model Code has been retained locally, this leads to a lack of clarity as to speaking rights, depending on the nature of the interest and the nature of the business under consideration. This must be confusing for the public. We suggest allowing those with a DPI to exercise public speaking rights.

We have retained, as a class of lesser interests, the Model Code's classification of "personal" and "personal and prejudicial" interests. We commend this approach. There is no legal obligation to do this, and there is no statutory regulation, in the Localism Act or elsewhere, of participation of members with non-pecuniary personal interests, which may be very strong.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?*

We have a Whistleblowing Code and procedures for employees, but not for councillors or the public. We can see the merits of expanding arrangements to cover the public and councillors.

Improving standards

- i. What steps could **local authorities** take to improve local government ethical standards?*

Local authorities need to promote a culture in which ethical behaviour is seen as the norm and codes of conduct are respected. They also need to ensure that councillors receive proper training on their Code of Conduct and on ethical behaviour.

Local authorities should also actively promote a culture of openness, both internally and externally.

- j. What steps could **central government** take to improve local government ethical standards?*

Independent members cannot vote. We recommend that councils should have discretion to permit independent members to vote when dealing with standards-related issues in committee and at hearings.

Serious consideration should be given, by central government working with representative local government bodies, to the effectiveness of governance arrangements and accountability at parish level. Short of judicial review, there is no independent oversight. It is parish councils that generate by far the majority of complaints. Often these are “badged” as standards complaints but, in essence, are complaints of maladministration or poor governance. The Local Government Ombudsman has no power to consider complaints at parish council level and this leaves a gap.

We consider that the changes made by the Localism Act 2011 were a backward step. Central Government should review the impact of the changes made and consider reversing the changes made with a view to more comprehensive and consistent codes, effective sanctions and possibly a role for an independent body similar to the Standards Board.

Intimidation of local councillors

k. *What is the nature, scale, and extent of intimidation towards local councillors?*

What measures could be put in place to prevent and address this intimidation?

Locally, this is quite limited but it can be an issue, especially with social media campaigns. We support the recommendations made in the CSPL report "Intimidation in Public Life".

Conclusion

We very much welcome this consultation and look forward to following the Committee's deliberations and to receiving its conclusions. If there is any way in which we can be of assistance to the Committee, please let me know.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S.PUGH.' with a period at the end. The signature is written in a cursive, slightly stylized font.

Simon Pugh
Assistant Director - Governance and Legal