

**Report to:** Annual Standards Committee

**Date of Meeting:** 16<sup>th</sup> May 2019

**Report Title:** Local Government Ethical Standards

**Report By:** Chris Barkshire-Jones  
Chief Legal Officer and Statutory Monitoring Officer

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### **Purpose of Report**

For information to the Standards Committee that there will be future changes in legislation and best practise that will affect the Standards Procedure.

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### **Recommendation(s)**

1. To note the proposed recommendations and content of the report Local Government Ethical Standards published January 2019.

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### **Reasons for Recommendations**

To inform the Standards Committee of proposed changes in procedure.

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## 1. Introduction

- 1.1 The Localism Act 2011 brought fundamental changes to the Standards regime undertaken by local authorities. Previously there had been a regulatory board (the Standards Board of England, hearings were chaired by an Independent person who had voting rights and the system had ‘teeth’ in the sanctions that it imposed. All Local Authorities adhered to the same system.
- 1.2 The new system lost much of that including any meaningful sanctions. Local Authorities just had to introduce their own codes and the consistency or practice was lost. Early 2018 saw the Committee on Standards in Public Life undertake a review of local government standards. It produced a report entitled ‘Local Government Ethical Standards’ published in January 2019 which made recommendations and identified best practice to improve ethical standards in local government as some aspects of the current system are not working. <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

## 2. Currently

- 2.1 Breaches of codes are dealt with by the Council in the following way; Allegations of misconduct are usually first considered by the Monitoring Officer, who may decide that a formal investigation is necessary. This will be undertaken by the Monitoring Officer, a deputy, or by an external investigator.
- 2.2 Where a complaint is formally investigated, the views of an Independent Person must be taken into account before a decision is made.
- 2.3 A decision can be made by the Monitoring Officer, but many council’s maintain a Standards Committee to make decisions on allegations or to review decisions taken by the Monitoring Officer.
- 2.4 The authority may impose a sanction – which cannot include suspension or disqualification – but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions which require positive action by the councillor, for example, an apology or training.

2.5 The Recommendations (excluding those that relate to Parishes) are as follows:

- 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.
- 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
- 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
- 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.
- 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.
- 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.
- 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.
- The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of 2 years, renewable once.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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
- 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.
- Local Authorities should be given the power to suspend councillors, without allowances, for up to six months.
- 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.
- The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

- 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.
- 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.
- Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.
- 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.
- Local Government Association corporate peer reviews should also include consideration of a Local Authority's processes for maintaining ethical standards.

#### **List of suggested best practice (excluding those that relate to Parishes)**

- 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.
- 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.
- 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.
- 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.
- Local Authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

- Councils should publish a clear and straightforward public interest test against which allegations are filtered.
- Local Authorities should have access to at least two Independent Persons.
- 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.
- 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 of any sanction applied.
- 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.
- 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.
- 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.
- Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

### 3. Sanctions

- 3.1 Currently when a councillor is found to have broken the code of conduct there is no requirement to comply with remedial action. This is a significant weakness in the system, as is the lack of more punitive sanctions to address more serious breaches or

repeated breaches of the code. Removing the ability to suspend or disqualify councillors has had disciplinary and reputational consequences. Party disciplinary processes frequently fill the gap, but have a number of drawbacks. Ultimately, public confidence will only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are seen to be imposed fairly and in a timely way. There are strong reasons to introduce a power of suspension without allowances for up to six months for significant breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests or in cases of repeated breaches or repeated non-compliance with lower level sanctions. Local Authorities also need clarification if they can lawfully impose other sanctions such as barring councillors from council premises or withdrawing facilities.

#### 4. Conclusion

- 4.1 High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy. Let's hope that the proposed recommendations and best practice suggestions bring this about.

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#### Wards Affected

None

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#### Policy Implications

[Have you checked this report for plain English and readability? Yes](#)

[Climate change implications considered? Yes](#)

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Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

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#### Additional Information

Report Template v29.0



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## Officer to Contact

Christine Barkshire-Jones  
[cbarkshire-jones@hastings.gov.uk](mailto:cbarkshire-jones@hastings.gov.uk)  
01424 451731

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