



Standards Sub-Committee

6 November 2019

**Subject: Committee On Standards In Public Life – Report On
Local Government Ethical Standards**

Report by:

Monitoring Officer

Contact Officer:

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Purpose / Summary:

This report is to inform Members of the review into Local Government Ethical Standards, its findings and recommendations.

RECOMMENDATION(S):

The Committee is asked to: -

- (a) consider and provide comments in relation to the Report on Local Government Ethical Standards published by the Committee on Standards in Public Life.
- (b) consider the best practice recommendations it wishes to introduce in the light of the report; and
- (c) request that Officers bring back a further report to a meeting of the Committee in the early new year (2020) setting out any new proposed practices to be introduced in light of resolution (b) above.

IMPLICATIONS

Legal:

The report sets out which CSPL recommendations will require statutory implementation and those which may be implemented by the Council as best practice.

Financial :

There are no financial implications as a result of this report.

(N.B.) All committee reports MUST have a Fin Ref

Staffing :

There are no staffing implications as a result of this report.

Equality and Diversity including Human Rights :

N/A

Data Protection Implications :

N/A

Climate Related Risks and Opportunities:

N/A

Section 17 Crime and Disorder Considerations:

N/A

Health Implications:

N/A

Title and Location of any Background Papers used in the preparation of this report :

Wherever possible please provide a hyperlink to the background paper/s
If a document is confidential and not for public viewing it should not be listed.

Risk Assessment :

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Back Ground and Introduction

- 1.1 The Committee on Standards in Public Life (CSPL) advises the Prime Minister on ethical standards across the whole of public life in England. It is an independent advisory non-departmental public body.
- 1.2 The CSPL's Terms of Reference are as follows: -
1. To examine structures, processes and practices of local government in England for:
 - a) maintaining codes of conduct for councillors
 - b) investigating alleged breaches fairly and with due process
 - c) enforcing codes and imposing sanctions for misconduct
 - d) declaring interests and managing conflicts of interests
 - e) whistleblowing
 2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct
 3. Make recommendations for improvement
 4. Note any evidence of intimidation of councillors and make recommendations to prevent and address such intimidation
- 1.3 During 2018, the CSPL undertook a review of local government ethical standards. *"The review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public."*
- 1.4 The Localism Act 2011 introduced significant changes to the way that conduct of elected Councillors was handled. It abolished a national framework headed by a regulator and a national Code of Conduct and removed powers to suspend or disqualify Councillors for serious breaches of the Code of Conduct. Instead it placed a duty on Councils: to adopt their own local Code; to put local procedures in place to investigate allegations the Code may have been broken (with principal authorities carrying out that duty for parish councils; and to appoint at least one Independent Person (IP) whose views they had to take into account when considering matters under investigation.
- 1.5 This report summarises the key findings of the review and recommendations that have been made.

2. Overview of the Report and General Findings

- 2.1 The report of the CSPL was launched on 30 January 2019. A copy of the full report is appended to this report.
- 2.3 CSPL found there was no appetite to return to a centrally-regulated system as local arrangements on the whole were most effective at handling the majority of cases and that standards were high. However, there were issues with a small handful of serious or persistent offenders and with governance arrangements in some Parish Councils.
- 2.3 There also needed to be a more consistent approach taken to standards and MOs and Councils needed some more effective tools to allow them to handle those serious cases.
- 2.4 The CSPL says that high standards of conduct are needed to demonstrate that the decisions taken by local authorities are made in the public interest and to maintain public confidence.

- 2.5 It found that the vast majority of councillors and officers want to maintain the highest standards of conduct but identified some specific areas of concern. It concluded that a minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.
- 2.6 The CSPL concluded that the current rules around conflicts of interest, gifts and hospitality are inadequate and the increased complexity of local government decision-making is putting governance under strain.
- 2.7 It also concluded that the devolved arrangements should remain, but that more robust safeguards are needed to strengthen a locally determined system.
- 2.8 The CSPL made a series of recommendations to government for legislative changes to be made and a series of best practice recommendations for local authorities to be considered as a benchmark of good ethical practice.
- 2.9 The CSPL will review the implementation of its best practice recommendations in 2020.
- 2.10 A summary of the CSPL's findings, recommendations for legislative change and best practice recommendations for each of the areas reviewed are set out below. Those areas of best practice previously adopted to date by WLDC and prior to the review, are highlighted green in the following tables.

3 Codes of Conduct

3.1 Findings

- Inconsistent
- Don't cover bullying effectively
- Problems regarding scope – social media, claiming to or appearing to act as a councillor
- Nolan only codes inadequate
- Need to be reviewed
- Hard to find on Local Authority websites

3.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
1	Local Government Association should create an updated model code, in consultation with representative bodies of councillors and officers of all tiers of local government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publically accessible social media
4	Councillors presumed to be acting in an official capacity in their public conduct

3.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
1	Local Authorities should include prohibitions on bullying and harassment in codes of conduct including a definition and a list of examples
2	Local Authorities should include in their code a requirement for councillors to co-operate with formal standards investigations and to prohibit trivial or malicious allegations by councillors
3	Local Authorities should review their code annually and regularly seek the views of the public, community organisations and neighbouring authorities
4	Code should be readily accessible to Councillors and the public in a prominent position on the council's website and available at council premises

4 Interests

4.1 Findings

- Disclosable Pecuniary Interests (DPIs) too narrow, unclear and criminalisation is disproportionate
- Registers disclose home addresses exposing councillors to intimidation
- List of people whose interests need to be registered is too narrow
- But current list of pecuniary interests is acceptable
- Need to include non-pecuniary interests in codes
- Unsatisfactory arrangements on registers of gifts and hospitality
- Requirements to declare DPIs and withdraw are too narrow

4.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
2	Amend Disclosable Pecuniary Interest (DPI) regulations so that a councillor's home address is not registrable
5	Amend DPI regulations to include unpaid directorships, trusteeships, charity / public body roles and lobbying organisations
6	Local Authorities should have a register of gifts and hospitality with a requirement in the code to register gifts / hospitality over £50 or totalling over £100 p.a. from a single source
7	Abolish s31 Localism Act, and require a section in the code to require councillors to leave room if a member of the public would reasonably regard their interest as so significant that it is likely to prejudice their consideration or decision making in relation to the matter
18	Abolish DPI criminal offences

4.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
5	Local Authorities to update registers of gifts & hospitality quarterly and publish it in an accessible form

5 Investigations and Safeguards and IPs

5.1 Findings

- Use a public interest test for filtering complaints
- No role specification, term, formal powers or legal protection for Independent Persons (IP)
- IP views not public
- Many Local Authorities are not transparent on numbers of complaints and details of decisions
- Standards Committees should have voting independent and parish members
- No current right of appeal after hearings

5.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
8	2 year fixed term of office for IPs, renewable once
9	IPs views to be recorded in decision notice and minutes
10	IP must agree with the finding of a breach and that a suspension is proportionate
11	Local Authorities to provide legal indemnity to IPs
12	Local Authorities may have voting independent and parish members on standards committees
13	Right of appeal to Local Government Ombudsman (LGO) if a councillor is suspended
14	If a councillor is suspended and appeals to the LGO, LGO should have the power to investigate the breach and sanction, their decisions will be binding
15	Local Authorities required to publish complaints data and outcomes annually

5.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
6	Local Authorities to adopt (and publish) a public interest test for filtering complaints
7	Local Authorities should have at least 2 IPs
9	Local Authorities should publish full hearing decisions including a statement of facts, breaches, views of the IP, the reasons for the decision and the sanction applied
10	Local Authority websites should have clear complaints guidance and information

6 Sanctions

6.1 Findings

- Lack of serious sanctions:
 - Prevents enforcement of lower level sanctions

- Damages public credibility
- Makes cost of investigations disproportionate to outcome
- Removes means of Local Authorities containing reputational damage
- Credibility of current regime undermined by lack of serious sanctions
- Party group discipline can fill the gap but lacks transparency, consistency and checks on impartiality of a standards system
- Suspension preserves the ballot box which is insufficient in itself
- Legal uncertainty of premises bans

6.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
16	Local Authority power to suspend without allowances for up to 6 months
17	Government / legislation to put beyond doubt lawfulness of premises bans
18	Decriminalise DPLs (see interests)

6.3 Best Practice (Can be implemented without changes to legislation)

There were no best practice recommendations for this area.

7 **Town and Parish Councils**

7.1 Findings

- Parish councils (PCs) are highly dependent on the skills, experience and support of clerks – evidence of substantial difficulties where clerks are inexperienced, untrained, feel isolated and poor member behaviour
- 15% of PCs experience serious behaviour issues, 5% dysfunctional
- PCs should report complaints, not the clerk
- Some Monitoring Officers decline or lack resources to provide advice or accept parish complaints
- Variation in parish codes is a burden on the principal authority and confusing for dual hatted members
- PCs can ignore sanctions recommended by principal authority hearing
- PCs can take lawful protective steps short of sanctions

7.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
19	Parish clerks should hold an appropriate qualification
20	PCs must adopt the principal authority's code of conduct
21	Parish councillor sanctions to be determined by principal authority only

7.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
11	Standards complaints about the behaviour of a parish councillor towards a clerk should be made by the chair or PC as a whole
12	Monitoring Officer role and resourcing to include advice, support and management of PC cases

8 **Role of the Monitoring Officer (MO)**

8.1 Findings

- MO is the lynchpin for upholding standards
- Can be conflicts of interest in MO being involved in investigation of senior Members
- Confidence and support of Chief Executive is crucial to ensure MO has ability to uphold standards
- Some MOs have been forced to resign because of unwelcome advice or decisions
- Whistle-blowers could be deterred from reporting concerns to a private audit firm
- Whistle-blowers should be able to report concerns to councillors

8.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
22	Statutory protection for statutory officers to extend to all disciplinary action, not just dismissal
23	Local Authorities should be required to ensure whistleblowing policy and website specifies named contact for external auditor
24	Councillors to be “prescribed persons” in Public Interest Disclosure Act 1998

8.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
13	Local Authority should have investigation conflict procedures, including use of MOs from other LAs

9 **Council Governance, Leadership and Culture**

9.1 Findings

- Local Authorities now have complex governance – joint ventures, owned companies, LEPs
- Increased risk of conflicts of interest, lack of transparency
- 3 common threads in corporate failure:-
 - Unbalanced relation between members and officers
 - Lack of understanding of governance processes and scrutiny
 - Culture of fear or bullying

- Visible leadership essential in embedding ethical culture
- Early induction for councillors vital to set ethical tone

9.2 Recommendations (Need legislative changes to implement)

Number	Recommendation
26	LGA peer reviews to include standards processes

9.3 Best Practice (Can be implemented without changes to legislation)

Number	Best Practice
14	Local Authority annual governance statement should include reporting on related bodies; those bodies to publish agendas, minutes and annual reports and abide by Nolan Principles
15	Senior officers should meet regularly with political group leaders or group whips regarding standards issues

10. What next and Summary of West Lindsey's Position

- 10.1 The Government was expected to respond to the report in September 2019 setting out whether or not it accepts some or all of the recommendations. Some of the recommendations – for example increased sanctions, or the abolition of the DPI criminal offence, would require primary legislation, whilst others will require changes to regulations.
- 10.2 However, many other recommendations are best practice which Councils can just implement or adopt.
- 10.3 As previously advised, those areas of best practice previously adopted to date by WLDC and prior to the review, are highlighted green in the tables above.
- 10.4 Of the 14 best practice recommendations detailed within this report, West Lindsey has already adopted 10.
- 10.5 Best practice recommendations 3 and 6 are some Officers would recommend the Council pursue in the coming months.
- 10.6 West Lindsey has also made attempts to include additional provisions, which in light of this report may need to be further reviewed, in the absence of legislation to back up such changes, one example been the current reference to purporting to be a councilor within the Code.

11. Recommendation

- 11.1 The Committee is therefore asked to: -
- consider and provide comments in relation to the Report on Local Government Ethical Standards published by the Committee on Standards in Public Life.
 - consider the best practice recommendations it wishes to introduce in the light of the report; and

- (c) request that Officers bring back a further report to a meeting of the Committee in the early new year (2020) setting out any proposed new practices to be introduced in light of resolution (b) above

