

Committee: Standards and General Purposes Committee

Date: 25 July 2019

Wards: All

Subject: Report published by the Committee on Standards in Public Life on Local Government Ethical Standards

Lead officer: Paul Evans, Monitoring Officer

Lead member: Councillor Peter McCabe, Chair, Standards and General Purposes Committee

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Recommendations:

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1. That the Committee notes the recommendations of the Committee on Standards in Public Life
 2. That the Committee agree the best practice actions described in paragraph 3.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report outlines the key recommendations to Government and ‘best practice’ recommendations to local authorities from the Committee on Standards in Public Life report on Local Government Ethical Standards, published on 30th January 2019.
- 1.2. The Report suggests changes to the current Standards framework contained in the Localism Act 2011, which Councils have to comply with. Some of the recommendations in the Report would need legislative changes.

2 DETAILS

- 2.1. The Committee on Standards in Public Life is an advisory non-departmental public body sponsored by the Cabinet Office. The Chair, Lord Evans of Weardale, and members are appointed by the Prime Minister. The Committee was established in 1994 and is responsible for promoting the seven principles of public life (“the Nolan Principles”). Its Terms of Reference have evolved since its formation. The Committee is committed to ensuring high standards of conduct in local government in order to protect the integrity of decision-making, maintain public confidence and safeguard local democracy.
- 2.2. The Report is the 20th to be published by the Committee since its formation and its primary focus was to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011. The Terms of Reference for this review were:
 - a. Examine the structures, processes and practices in local government in England for:-
 - i. Maintaining codes of conduct for councillors
 - ii. Investigating alleged breaches fairly and with due process
 - iii. Enforcing codes and imposing sanctions for misconduct

- iv. Declaring interests and managing conflicts of interest
 - v. Whistleblowing
- b. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
 - c. Make any recommendations for how they can be improved; and
 - d. Note any evidence of intimidation of councillors and make recommendations for any measures that could be put in place to prevent and address such intimidation
- 2.3 Overall the CSPL found that the majority of Councillors maintain high standards of conduct. They found evidence of misconduct by some Councillors and the majority of these cases related to bullying or harassment or other disruptive behaviour. Although the report identifies some issues with current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making, there are no calls for a return to a centralised ethical framework.

The report makes 26 separate recommendations, mainly to Government but some to the Local Government Association, local authorities, parish councils and political parties/groups. A number of the report's recommendations would require changes to primary and secondary legislation. Of particular significance are the recommendations for:

- a new model code of conduct (Recommendation 1);
- the proposed repeal of Section 31 of the Localism Act (pecuniary interests) (Recommendation 7);
- Local authorities to have power to appoint a standards committee with voting independent members (Recommendation12);
- the power for Councils to suspend councillors, without allowances, for up to six months (Recommendation 16); and
- the proposed abolition of the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests (Recommendation 18).

- 2.4 The full list of recommendations are attached at **Appendix 1**

The full report is available here:

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

3 BEST PRACTICE RECOMMENDATIONS

- 3.1 The report also makes 15 best practice recommendations which are set out below with an assessment of Merton Council's current practice against these. It

is considered that Merton's approach to ethical standards is largely compliant with these recommendations, although further minor amendments are recommended to be fully compliant with all 15 best practice recommendations.

Recommendation	Compliant	Work to be undertaken to be fully compliant
<p>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.</p>		<p>Merton's code of conduct incorporates a Member officer protocol which refers to bullying and harassment but does not specifically provide examples</p> <p>ACTION – develop a definition of bullying and harassment for incorporation in the code of conduct appendix 2</p>
<p>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.</p>		<p>ACTION - Update current code of conduct to include provisions</p>
<p>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.</p>		<p>ACTION - the code of conduct is brought to committee on an annual basis and consider consultation with the public on this.</p>
<p>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.</p>	<p>✓</p>	<p>The code of conduct forms part of the Council's constitution and there is a designated page on the website informing residents how to complain about a councillor.</p>

<p>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</p>	<p>✓</p>	<p>Functionality on the Council's website allows members to register gifts and hospitality at any point. This can be viewed on the Council website. The Committee recently reminded all Councillors of their duty to register any gifts and hospitality received.</p>
<p>6. Councils should publish a clear and straightforward public interest test against which allegations are filtered</p>	<p>✓</p>	<p>The standards regime complaints procedure is on the Council's website and includes the criteria for investigation which covers what would be included in a "public interest test".</p>
<p>7. Local authorities should have access to at least two Independent Persons.</p>	<p>✓</p>	<p>The Council has appointed two Independent Persons.</p>
<p>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.</p>	<p>✓</p>	<p>This is already part of the standards regime complaints process. The Independent person is consulted as part of an initial assessment of every code of conduct complaint submitted to the Council.</p>
<p>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</p>	<p>✓</p>	<p>The current standards regime complaints process provides for decision notices to be reported to committee and published following a formal investigation.</p>

provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.		
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.	✓	An accessible complaint form is available from the Council website which has a link to Part 4 of the Council Constitution and the Code of Conduct. Guidance on the procedure used is published on the Council's website including timescales.
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.		Not Applicable
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 provide with adequate training, corporate support and resources to undertake this work.		Not Applicable
13. A local authority should have procedures in place to address any conflicts when undertaking a standards	✓	The Monitoring Officer may appoint an appropriate investigations officer

investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.		from a different authority where a conflict exists.
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.		The Council accounts and annual governance statement identify external bodies and relationship with the Council. ACTION – review publication of board agendas and minutes requirement to comply with the Nolan principles.
15. Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	✓	The Monitoring Officer has regular meetings with political group leaders.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. To be determined at Committee.

5 TIMETABLE

5.1 Report to be brought to the next Committee meeting on 5 September 2019, to agree a recommendation to Council.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None specific to this report

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. The Review by the Committee on Standards in public life suggests changes to the current Standards framework contained in the Localism Act 2011. There are no specific legal implications from the report at this stage.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. The report seeks to ensure that the Council maintains high standards of service. There are no equality issues arising from this report.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None specific to this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None specific to this report

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – List of Recommendations
- Appendix 2

12 BACKGROUND PAPERS

None

APPENDIX 1

List of recommendations

- 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 Appendix 2

APPENDIX 2

1. Do not bully or harass any person.

Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It is the impact of any behaviour rather than the intent which is the key. The examples in the following list are, by no means, exhaustive:

- Unwelcome physical, verbal or non-verbal conduct;
- Intimidatory behaviour including verbal abuse or the making of threats;
- Making someone's working life difficult;
- Disparaging, ridiculing or mocking comments and remarks;
- Physical violence; and
- Deliberately excluding an individual from conversations, work or social activities, in which they have a right or legitimate expectation to participate.

Harassment can occur through verbal or written comments (including ones made online). The following list provides some examples but it is, by no means, exhaustive:

- Unwelcome physical contact such as touching or invading 'personal space';
- Inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes (such as ones of a racial, sexual or sectarian nature);
- Intrusive questioning, including the persistent discussion of a person's Sexual practices, misogynistic behaviour, sexual orientation or religious beliefs (either directly or with others); and

- Sending unwelcome emails, messages or notes; circulating or displaying explicit or inappropriate images.

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