

## **CONSULTATION ON ETHICAL STANDARDS**

**Summary:** To advise Members of the current review by the Committee on Standards in Public Life (“CSPL”) of local government ethical standards, and to seek the views of the Committee in relation to the consultation questions.

**Options considered:** To respond/to not respond.

**Conclusions:** To respond to the consultation.

**Recommendations:** It is recommended that:

1. Members of the Committee resolve to issue a collective response to the consultation.
2. The response to be formulated by the Monitoring Officer following discussion by the Committee.

**Reasons for Recommendations:** Legal Implications - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan principles. The current consultation exercise requires the Committee to consider the efficacy of that statutory duty. Any changes to the standards regime resulting from the current consultation may require legislative change.

### **LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW**

*(Papers relied on to write the report, which do not contain exempt information and which are not published elsewhere)*

<https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

#### **1. Background**

1.1 The CSPL is undertaking a review of local government ethical standards. Its terms of reference are to:

1.2 (i) examine the structures, processes and practices in local government in England for:

- a. maintaining codes of conduct for local 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 interest;
- e. whistleblowing;

(ii) assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;

(iii) make any recommendations for how they can be improved;

(iv) 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. Current Standards Regime**

2.1 The current Standards Regime is as set out in Chapter 7 of the Localism Act 2011. It is worth bearing in mind that local arrangements may exceed existing statutory requirements. The main statutory requirements are:

2.2

- a. All 'relevant authorities' (which include parish councils) have a duty to promote and maintain high standards of conduct by members;
- b. All relevant authorities must have a code of conduct;
- c. Codes of conduct must be consistent with the Nolan principles;
- d. Codes of conduct must require the registration of pecuniary interests, and such non-pecuniary interests as the relevant authority deems appropriate;
- e. Registers of interests must be published;
- f. Members may not, without a dispensation, participate in discussion or voting on matters affecting their registrable pecuniary interests;
- g. All relevant authorities except for parish councils must have in place arrangements by which allegations can be investigated and under which decisions can be made. (However, parish councils are otherwise subject to the arrangements of their principal authority);
- h. Such arrangements must include provision for the appointment of an Independent Person whose views must be taken into account before making a decision on an allegation it has decided to investigate;
- i. Failure to comply with the provisions as to the registration of pecuniary interests and participating in discussion are an offence, punishable by unlimited fines and disqualification for up to 5 years;
- j. A decision by a relevant authority on finding a breach of the code of conduct after an investigation may include sanctions.

2.3 Sanctions available to the relevant authority are:

- i. Censure of the member;
- ii. Removal of the member from committees or subcommittees;
- iii. Removal of the member from outside appointments;
- iv. Restricting the Member's access to the relevant authority's resources;
- v. Requiring the Member to apologise;
- vi. Requiring the Member to undergo training; and
- vii. Requiring the Member to undertake conciliation.

2.3 This Council has a Standards Committee, but it is not a legislative requirement.

### **3 Former Standards Regime**

- 3.1 Prior to the Localism Act, the Local Authorities (Model Code of Conduct) Order 2007 prescribed a model code of conduct to relevant authorities. Relevant authorities were required to have Standards Committees, who could disqualify members for up to six months.
- 3.2 Standards for England (previously the Standards Board) was responsible for a national overview of local investigations into member conduct allegations. In certain cases the Board itself investigated allegations. It could not impose sanctions on members, but it could refer cases to the First-Tier Tribunal (previously the Adjudication Panel) or to the relevant authority's own standards committee for determination. The Tribunal could disqualify members for up to five years.
- 3.3 The Standards Board was abolished as a result of the Localism Act.
- 3.4 Criticisms of the former regime were that it was over-centralised, was a vehicle for vexatious complaints, and that it was largely unnecessary because poor behaviour can be expected to meet its end in the ballot box. Criticisms of the new regime however are that it has gone too far in removing the capacity for, or the likelihood of, effective sanctions against councillor misconduct to be applied. Serious sanctions such as disqualification can result from criminal offences such as the failure to declare interests, but not from unacceptable personal behaviour of councillors, which is different but which can be equally as corrosive.

### **4 Consultation Questions**

- 4.1 The CSPL's call for evidence is attached at Appendix 1. It asks about the following issues:
- (a) Whether the existing set-up ensures high standards of conduct and if not why not;
  - (b) What significant gaps exist in the standards regime;
  - (c) Whether local codes of conduct are clear and cover appropriate behaviours;
  - (d) Whether the requirement for the local code of conduct to be consistent with the Nolan Principles, and to include appropriate provision for registering and declaring interests, is appropriate;
  - (e) Whether misconduct allegations are investigated fairly and with due process (and asks about the roles of the Independent Person and the Monitoring Officer).
  - (f) Whether existing sanctions are sufficient to enforce compliance or what additional sanctions should be available;
  - (g) Whether the arrangements for declaring and managing conflicts of interest are satisfactory;
  - (h) Whether whistleblowing arrangements are satisfactory;
  - (i) What steps could be taken by either local authorities or central government to improve standards; and
  - (j) The problem of intimidation of local councillors and any measures that could be put in place to address it.

## **5 Commenting on the questions**

5.1 Members are asked to comment on the consultation questions. The CSPL's identification of stakeholders recognises that individual councillors or Standards Committees may wish to give a separate response from that of their local authority corporately. The Committee are therefore asked to decide whether they wish to respond separately or as a Standards Committee.

5.2 It is considered appropriate for the Standards Committee to respond in its own right, as this would reflect the governance regime within the Council and the importance of the issues raised.

## **6 Conclusion**

It is recommended that:

1. Members of the Committee resolve to issue a collective response to the consultation.
2. The response to be formulated by the Monitoring Officer following discussion by the Committee

## **7 Implications and Risks**

**8 Financial Implications and Risks - NONE**

**9 Sustainability - NONE**

**10 Equality and Diversity - NONE**

**11 Section 17 Crime and Disorder considerations - NONE**

## **Appendix 1**

### **Review of Local Government Ethical Standards: Stakeholder Consultation**

The Committee on Standards in Public Life is undertaking a review of local government ethical standards.

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

As part of this review, the Committee is holding a public stakeholder consultation. The consultation is open from 12:00 on Monday 29 January 2018 and closes at 17:00 on Friday 18 May 2018.

#### **Terms of reference**

The terms of reference for the review are to:

1. Examine the structures, processes and practices in local government in England for:
  - a. Maintaining codes of conduct for local 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 interest; and
  - e. Whistleblowing.
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
3. Make any recommendations for how they can be improved; and
4. 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.

The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London).

Local government ethical standards are a devolved issue. The Committee's remit does not enable it to consider ethical standards issues in devolved nations in the UK except with the agreement of the relevant devolved administrations. However, we welcome any evidence relating to local government ethical standards in the devolved nations of the UK, particularly examples of best practice, for comparative purposes.

Submissions will be published online alongside our final report, with any contact information (for example, email addresses) removed.

The Committee will publish anonymised submissions (where the name of the respondent and any references to named individuals or local authorities are removed) where a respondent makes a reasonable request to do so.

## **Consultation questions**

The Committee invites responses to the following consultation questions.

Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to give evidence about only one local authority, several local authorities, or local government in England as a whole. Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

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

### **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?
- 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.

### **Investigations and decisions on allegations**

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
  - i.i. 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?
  - ii.
  - iii.ii. 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?
  - iv.
  - v.iii. 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?

### **Sanctions**

- f. Are existing sanctions for councillor misconduct sufficient?
  - i. i. 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?
- ii.
  - iii. ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

### **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.
  - i. i. 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?
  - ii.
  - iii. ii. 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.

### **Whistleblowing**

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

### **Improving standards**

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

### **Intimidation of local councillors**

- k. What is the nature, scale, and extent of intimidation towards local councillors?
  - i. What measures could be put in place to prevent and address this intimidation?

### **Who can respond?**

Anyone with an interest may make a submission. The Committee welcomes submissions from members of the public.

However, the consultation is aimed particularly at the following stakeholders, both individually and corporately:

- Local authorities and standards committees;
- Local authority members (for example, Parish Councillors, District Councillors);
- Local authority officials (for example, Monitoring Officers);
- Independent Persons appointed under section 28(7) of the Localism Act 2011;
- Think tanks with an interest or expertise in local government;
- Academics with interest or expertise in local government; and
- Representative bodies or groups related to local government.

### **How to make a submission**

Submissions can be sent either in electronic format or in hard copy.

Submissions must:

- State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;
- Include a brief introduction about yourself/your organisation and your reason for submitting evidence;
- Be in doc, docx, rtf, txt, ooxml or odt format, not PDF;
- Be concise – we recommend no more than 2,000 words in length; and
- Contain a contact email address if you are submitting by email.

Submissions should:

- Have numbered paragraphs; and
- Comprise a single document. If there are any annexes or appendices, these should be included in the same document.

It would be helpful if your submission included any factual information you have to offer from which the Committee might be able to draw conclusions, and any recommendations for action which you would like the Committee to consider.

The Committee may choose not to accept a submission as evidence, or not to publish a submission even if it is accepted as evidence. This may occur where a submission is very long or contains material which is inappropriate.

Submissions sent to the Committee after the deadline of 17:00 on Friday 18 May 2018 may not be considered.

Submissions can be sent:

1. Via email to: [public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)
2. Via post to:

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

If you have any questions, please contact the Committee's Secretariat by email ([public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)) or phone (0207 271 2948).