

## **Appendix 2: 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.

The legal framework established by the Localism Act 2011 ensures high standards of conduct by local councillors to a large extent but there are structural limitations, both in terms of the standards of behaviour set and the processes for enforcing compliance.

First, the lack of statutory provision for non-pecuniary interests.

Second, the absence of any meaningful sanctions to address serious and/or persistent misconduct (which is in breach of the members' code of conduct but does not constitute a criminal offence) is a conspicuous weakness.

That said, the less prescriptive nature of the current standards enforcement regime works better. For example, the removal of the requirement for a statutory standards committee provides local authorities with the flexibility to establish stand-alone or multi-purpose committees, with or without independent or co-opted members, to best fit local decision making structures and needs.

Similarly, the discretion local authorities have to make their own arrangements to investigate and decide allegations of misconduct, with a greater role for the Monitoring Officer, is working better too.

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

Sanctions for persistent and/or serious breaches of the member's code of conduct as detailed below.

#### *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?

The code adopted by Brent Council requires its members (including non-voting co-opted members) to maintain a high standard of conduct and, in particular, comply with

the Seven Principles of Public Life. The code then sets out the general obligations members must comply with which covers a wide range of behaviours. The remainder of the code relates to interests: statutory disclosable pecuniary interests and personal and prejudicial interests that the council elected to carry forward from the former statutory code of conduct. The different types of interests are defined and the registration requirements and the decision making consequences of having an interest are explained.

The section of the code on interests is long, complex and not easy for members to understand. This is partly a structural issue arising from the fact that the statutory rules make provision for *pecuniary* interests only. However, there are many other potential conflict of interest situations arising from non-pecuniary interests, especially in a regulatory decision making context, which in our view any effective code would need to regulate. Otherwise, there would be gaping holes in the robust standards arrangements needed to safeguard local democracy and maintain high standards of conduct.

For that reason, the single code is forced to accommodate two completely separate sets of rules.

The statutory rules on 'disclosable pecuniary interests' which apply only to members and their spouses/civil partners and co-habitees. As well as the former (but re-adopted) statutory rules on personal and prejudicial interests which safeguard against decisions affecting the well-being or financial position of members, a member of their family or their friends.

Whether members can participate, vote or even remain in a meeting when they have an interest will vary depending on whether their interest is personal, prejudicial or a pecuniary interest.

In the interests of consistency and greater assurance, it is suggested that the statutory rules should make comprehensive provision for both pecuniary and non-pecuniary interests.

The alternative practice of relying on the Seven Principles of Public Life and the law on bias and pre-determination without any specific rules on interests would cause uncertainty and there would be a lack of transparency and accountability. In the council's assessment a code based largely on general and legal principles without the support of detailed requirements and practical guidance would serve members and the public less well.

Under the council's code, training on the code and standards in general is mandatory. Further, the code is supplemented by planning and licensing codes of practice which provide members with more specific and practical guidance.

- 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.

See previous response.

In addition, the current statutory rules do not require members to update their register of disclosable pecuniary interests until the interest has arisen at a meeting. Although, the council's code requires its members to notify the Monitoring Officer of any change to a registered interest or new interest within 28 days of becoming aware of it, a statutory obligation to do so would achieve greater robustness and consistency.

#### *Investigations and decisions on allegations*

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

The council has a written and approved procedure (published on its website) which ensures that allegations of misconduct are investigated and decided fairly and properly. The council has a complaints form and initial assessment or admissibility criteria (which ensures that complaints are dealt with proportionately and in the public interest). The initial assessment is carried out by the Monitoring Officer or, in her absence, a Deputy Monitoring Officer after consulting one of the council's Independent Persons. The outcome can range from no further action to requiring an investigation to a finding of breach in straightforward cases.

There are limited rights of review to the initial decision and once again an Independent Person is consulted before reconsidering the complaint.

If a complaint merits investigation, the Monitoring Officer will appoint an investigating officer to produce a report which will be considered by the Standards Committee following consultation with an Independent Person. The main options open the Standards Committee are (1) that no further action is required; (2) find that there has been a breach of the code but decide that a hearing is not necessary or (3) direct that there be a hearing.

If the Standards Committee decides that there should be a hearing before the complaint is determined, the rules set out in its published complaints procedure is followed.

It would be a rarity for the Monitoring Officer to carry out an investigation herself as that role would more appropriately be undertaken by another officer of the council or by an external investigator. The Monitoring Officer would be all too aware of the potential conflict of interest risks and the practical application of the council's arrangements for the investigation and determination of complaints are informed by the rules of natural justice and principles of good practice.

### *Sanctions*

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

The existing sanctions are insufficient. Obvious sanctions include various forms of censure, apology, training and, in appropriate cases, limiting access to council facilities or even officers. If a Member, for example, refuses to apologise or undertake training, other than censure, no further action can be taken. There are no sanctions which are a sufficient response to very serious breaches.

In response to the Government's consultation to update the disqualification criteria in section 80 of the Local Government Act etc. last year, the council commented on the pressing need to legislate to address serious and/or persistent misconduct, after being elected, which falls short of even the proposed disqualification criteria. In other words, to empower local authorities to impose meaningful sanctions for code breaches.

When the Government implemented the Localism Act 2011, and thereby abolished the Standards Board and Adjudication Panel, the sanctions of suspension and disqualification were abolished too.

The council notes that others have already made similar representations to the Government on this important issue and supports this call for action.

The reinstatement of the full range of sanctions available under the former standards regime should be seriously considered by the Government.

In addition, currently the rules on political balance mean that councillors who are members of a political group cannot be removed from committees without the consent of their political group. This should be reviewed.

Finally, if it is considered appropriate to make available to local authorities the ultimate sanctions of suspension and disqualification in cases of serious and/or persistent misconduct,

consideration should also be given to the forfeiting of allowances: a special responsibility allowance and perhaps even some or all of a members' basic allowance.

#### *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. 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. 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.

See above.

#### *Whistleblowing*

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

The council has a staff whistleblowing policy and procedures and members of the public and members are able to bring disclosures under other arrangements within the council. The council's procedures for dealing with complaints of breach of its code covers how anonymous complaints, and those from individuals who do not want to be identified, are handled.

#### *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?

See above.

The council takes the issue of standards seriously. Members receive training and other forms of support, advice and guidance to ensure their conduct is in accordance with the Seven Principles of Public Life and the other behaviours mandated by its code of conduct as well as the standards set by the law.

#### *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?

Complaints of intimidation are rare and incidents are isolated. That said, the justification for requiring members to publish their *full* home address unless it is considered 'sensitive' (because the member or a person connected with them could be subject to violence or intimidation) should be reviewed carefully.

### **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).