



STANDARDS COMMITTEE

Notice of a Meeting, to be held in the Council Chamber - Ashford Borough Council on
Monday, 18th March, 2019 at 7.00 pm.

The Members of the Standards Committee are:-

Councillor Dehnel (Chairman)
Councillor Mrs Bell (Vice-Chairman)

Cllrs. Chilton, Knowles, Link, Michael, Pickering, White

Mrs C Vant – Independent Person
Mr R Brasier, Mr D Lyward – Parish Council Representative

Agenda

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To receive notification of Substitutes in accordance with Procedure Rule 1.2(iii)	
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To declare any interests which fall under the following categories, as explained on the attached document:	
a) Disclosable Pecuniary Interests (DPI)	
b) Other Significant Interests (OSI)	
c) Voluntary Announcements of Other Interests	
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8th March 2019

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Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency reasons alone, such as:

- Membership of outside bodies that have made representations on agenda items, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute either an OSI or in some cases a DPI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Corporate Director (Law and Governance) and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

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Standards Committee

Minutes of a Meeting of the Standards Committee held in Committee Room No.1, Civic Centre, Tannery Lane, Ashford on the **10th May 2018**.

Present:

Cllr. Dehnel (Chairman);
Cllrs. Hicks, Knowles.

Mrs C Vant – Independent Person
Mr R Brasier – Parish Council Representative.

Apologies:

Cllrs. Mrs Bell, Chilton, Howard-Smith, Mr D Lyward.

Also Present:

Monitoring Officer, Senior Member Services Officer.

457 Minutes

Resolved:

That the Minutes of the Meeting of this Committee held on the 12th February 2018 be approved and confirmed as a correct record.

458 Review of Local Government Ethical Standards Stakeholder Consultation by Committee on Standards in Public Life

The Monitoring Officer introduced the report which contained a draft response on behalf of the Council to a stakeholder consultation by the Committee on Standards in Public Life (CSPL) on their review of Local Government Ethical Standards. The Chairman said he had thought it was important for the Committee to meet and agree its response prior to the consultation deadline of 18th May 2018.

The CSPL consultation had posed a series of questions and draft responses to each of the eight subjects were outlined within the report. The Committee discussed each in turn and the following comments were made under each heading; -

General Questions

The lack of current effective sanctions available for those who breached the Code of Conduct and the legal scope of Disclosable Pecuniary Interests (DPI) were seen as the two key overarching points and these had been picked up separately under the relevant questions. Other key points were considered to be a need to update codes

in response to relatively modern phenomena like social media, despite the common difficulty in deciding when the Code applied and when a Member was 'acting as a Councillor' when using social media. It was considered that clear National guidance was required here to aid clarity.

Codes of Conduct

The ability to adopt the Kent Model Code rather than a prescribed national code was seen as a positive in terms of consistency and responding to the local agenda, although national guidance on certain issues would be helpful. Additionally, any possibility involving adoption of stronger sanctions would be welcomed. A Parish Council Representative considered arrangements in Ashford were particularly good in that the Borough Council made Code of Conduct training available to all local Town and Parish Councils and similarly there was a good training programme through the Kent Association for Local Councils (KALC). The Committee considered that something should be added to the response to reflect this point.

Investigations and Decisions on Allegations

Current arrangements adopted by the Council were seen as comprehensive and gave Local Authorities greater flexibility to manage complaints at a local level. There were clearly issues about the range of available sanctions which would be addressed under the next question. It was considered important that: - the Monitoring Officer retained the ability to advise and guide in the event of matters being referred for investigation; the role of the Independent Person continued in its current form; and local determination of cases remained.

Sanctions

The Committee agreed that stronger and more effective sanctions were needed and that the lack of meaningful sanctions was the most significant gap in the current ethical standards regime for Local Government. It was also worth noting that the CSPL had themselves already expressed its doubts about whether the new arrangements were sufficient as early as 2013. When considering additional sanctions the Committee however, did consider there needed to be a degree of pragmatism applied as suspension or even removal from Committees could only serve to penalise those who the Councillor was elected to represent. Sanctions did need to be reserved for only serious or serial misconduct and be proportionate, but it was considered that the option of a stronger mechanism was needed. Under the former national regime, it was possible to suspend or disqualify a Councillor in serious cases and although these were rarely used, they did provide options in the most serious or persistent cases. Other potential options included the right of 'recall' (whereby a Councillor would have to seek re-election), temporary or partial suspension, limiting access to resources, requiring training to be given or recommending removal from certain Committees or roles (although the latter relied on co-operation of Group Leaders etc.)

Declaring Interests and Conflicts of Interest

As referred to above, the Committee considered one of the most important points to make as part of the Council's response was that more clarity was needed over the legal scope of DPIs. The legislation was currently unclear in some circumstances and this was particularly unsatisfactory bearing in mind that criminal liability could arise from a breach of DPI rules. The Council's response emphasised that it was imperative for the rules to be clear, clearly understood and consistently applied. At present, this was not the case.

Whistleblowing

The Committee had nothing to add to the draft response in the report.

Improving Standards

There was some discussion about making Code of Conduct training compulsory for newly elected Councillors, however the difficulties of enforcing mandatory training were well known. This was seen as something perhaps more suitable for discussion at a local level rather than part of this consultation. A Member said that the measures the Council took to provide both Borough and Parish Councillors with copies of the Code of Conduct and the opportunity to attend training on it, were in her view more than sufficient.

Intimidation of Local Councillors

This was again considered a relatively modern phenomena, driven by increased use of, and accessibility via, social media. Five particular suggestions to help remedy this situation had been supported in the Council's response.

The Committee thanked the Monitoring Officer for his comprehensive draft response and, subject to the additional points raised at the meeting for an inclusion of examples of possible sanctions and an elaboration of what Ashford Borough Council did to involve local Town and Parish Councils in its Code of Conduct training, the response was agreed for submission to the CSPL.

Resolved:

That the suggested response to the CSPL consultation, including the additional points made at the meeting, be submitted as the Council's response.

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**Standards Committee
18 March 2019**

**Council
25 April 2019**

**Annual Report Of The Council's
Monitoring Officer – 2018**

A. Introduction

1. The principal purpose of my Annual Report is to assess activity in probity matters, in particular in relation to formal complaints about alleged breaches of protocols and codes of conduct by borough and parish councillors. The report provides an opportunity to review the effectiveness of current procedures based on real data. This report deals with the calendar year 2018 in relation to these matters.
2. The Council's current code of conduct for councillors was adopted on 20 July 2012 and has since been the subject of minor amendments. This code is based on Localism Act principles and was developed as a collaborative project by Kent Monitoring Officers in consultation with task groups of councillors within individual councils. The vast majority of district and parish councils in Kent have adopted this "Kent Model Code of Conduct".
3. When it adopted the Code of Conduct in 2012, the Council also adopted new procedural "Arrangements" for handling code of conduct complaints. Again this was developed on a Kent-wide basis with the objective of simplifying procedures and removing unnecessary bureaucracy which had beset the previous standards regime.
4. The Council has also adopted a "Good Practice Protocol for Councillors Dealing with Planning Matters". This sets out detailed best practice rules for this specialist and sensitive area of the Council's work which go beyond the general rules set out in the code of conduct. The Protocol was substantially revised and updated in October 2015 to reflect changes in the law and government guidance. The first formal complaint of breach of the Protocol was dealt with in 2017.
5. My Annual Report also includes data on Ombudsman complaints as these are also handled by or on behalf of the Monitoring Officer. The Standards Committee monitors any issues of probity raised in Ombudsman investigations. In terms of Ombudsman complaints the relevant period relates to the most recent data provided by the Ombudsman namely that for the period 1st April 2017 to 31 March 2018.

B. Code of Conduct and Related Matters 2018

6. Complaint activity in Ashford has been very low since adoption of the new code of conduct in 2012. For example, during 2016 no new formal complaints were submitted, whilst in previous years the few complaints made, mainly at Parish Council level, had been resolved informally. No complaints had been taken to

formal investigation and hearing up to the end of 2016. However both 2017 and 2018 have been more challenging. One formal complaint from this period which was referred for investigation awaits a final decision.

7. A number of further Code of Conduct complaints have arisen during 2018. These involve both borough and parish councillors. In some cases, submission of the official complaint form has been requested and is awaited. Details of the remaining complaints are set out in Table 1 below.
8. There has also been a significant volume of informal complaint activity and in contact with the Monitoring Officer regarding parish council activity. Some of this may yet result in further formal complaints. There has been a noticeable increase in requests for advice from and meetings with the Monitoring Officer in this regard. Subjects have ranged from allegations of non-declaration of interests to complaints about disruptive and bullying behaviour. Several of these informal complaints have been resolved by the Monitoring Officer without the need for formal complaint or investigation.
9. Although there is no obvious single reason for the increase in incidence of complaints, the increased use/misuse of social media has given rise to complaints about personal and defamatory attacks. For this reason, the Standards Committee have asked me to prepare a Social Media Guidance Note for Councillors in time for the new Council in May. The draft Guidance Note is being considered by the Standards Committee at its March meeting. The Council has also agreed the Code itself should be amended to include a prohibition on offensive or abusive use of social media. Again this will be in place for the new Council.

C. The Committee on Standards in Public Life

10. During 2018, the influential Committee on Standards in Public Life (CSPL) undertook a comprehensive review of the Local Government Ethical Standards system. Its report was published on 30 January 2019. The CSPL has made 26 formal recommendations to the Prime Minister and 15 'Best Practice' recommendations. The Government should respond to the report within 3 months. Many of the recommendations, if agreed, would require primary legislation changes.
11. A detailed report on the CSPL review is being considered by the Standards Committee at its March meeting. It is inevitable that the Council's Code of Conduct and adopted Arrangements for handling code complaints will require a fundamental review in the light of the Government's response. I will present a further report through the Standards Committee at the appropriate time as soon as the position going forward is clear.

Table 1

Formal Valid Code of Conduct Complaints Made or Resolved

Council Ref.	Allegation(s)	Decision(s)	Comments
ABC 17/06 and 17/09 Ashford Borough Council	Alleged defamatory or disreputable statement	Referred for Investigation	Investigator's Report under Consideration
ABC 17/08 Aldington & Bonnington Parish Council	Alleged bullying and disreputable behaviour	Referred for Investigation. No Breach	No Further Action
ABC 18/005 Bilsington Parish Council	Alleged bullying and intimidating behaviour and disclosure of confidential information	Still under consideration	

D. Ombudsman Complaints 2017/18

16. Since April 2013, complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government Ombudsman (LGO).
17. For Members' information the analysis of the complaints resolved by the LGO in 2017/18 are attached (Appendix A). The LGO's Annual Letter and Report are also included in Appendix A.
18. The number of complaints received by the Ombudsman in 2017/18 (16) was lower than in 2016/2017 (20). The number of complaints upheld was also lower (1 compared to 6 in 2016/17).
19. In next year's report, a column will be added to the Table of Ombudsman Complaints to capture any action taken internally as a result of a complaint.

E. Recommendations

1. That the Annual Report of the Monitoring Officer for 2018 be received and noted.
2. That the Monitoring Officer report to future meeting(s) of the Standards Committee in relation to the recommendations of the CSPL Report.

T W MORTIMER
Director of Law and Governance & Monitoring Officer
February 2019

Appendix A – Analysis of Ombudsman Complaints

The Ombudsman investigates complaints about Council services to remedy personal injustice caused by maladministration (or “fault”) or service failure.

Between 1st April 2017 and 31st March 2018 the Local Government Ombudsman (LGO) received 16 complaints, with the following outcomes:

Not referred to the Council by the LGO

Incomplete or invalid complaint 2

Advice Given by LGO 1

Referred back for local resolution 5

8

Investigated by the LGO

Closed after initial enquiries

Not upheld 7

Upheld 1

0

8

TOTAL

16

When the LGO has issued a report on a completed investigation, these are generally published in the Complaints Outcomes section of the LGO website www.lgo.org.uk. The published information does not name the complainant or any individual involved with the complaint.

The outcomes of the 8 complaints investigated by the LGO in 2017/18 are detailed below:-

Closed after initial enquiries – out of jurisdiction or no further action	7
Not upheld: No Maladministration	1
Upheld: Maladministration & Injustice	0
Total	8

Attached is a table providing further details and outcome on these complaints.

I have also attached the Ombudsman's Annual Review letter 2017/18.

During this period one complaint was received by the Housing Ombudsman. The decision by the Housing Ombudsman was that there was no Maladministration by the Council.

Local Government Ombudsman Complaints 1st April 2017 – 31st March 2018

Reference	ABC Dept	Complaint details	LGO decision	LGO final comment
16 018 419	Environmental Services	Nuisance, inconvenience and rubbish at bottom of garden due to bus stop outside property	Closed after initial enquiries – no further action	n/a
16 013 550	Housing	Works undertaken on his house under a DFG	Not upheld: no maladministration	n/a
17 001 584	Housing	Council would not let them rejoin the housing register	Closed after initial enquiries – no further action	n/a
17 002 160	Planning & Development	Council failed to take action on a wrongly built drain on neighbour's property	Closed after initial enquiries – no further action	n/a
17 002 837	Environmental Services	The Council was wrong to issue him with a fixed penalty for littering as the alleged offence took place on private land	Closed after initial enquiries – no further action	n/a
17 008 426	Revs and Bens	The Council decided he was not entitled to housing benefit and council tax support	Closed after initial enquiries – out of jurisdiction	n/a

17 008 747	Planning & Development	Complaint about decisions made by the Council on planning applications submitted by the complainant. Alleged the Council has been unfair and inconsistent	Closed after initial enquiries – out of jurisdiction	n/a
17 016 079	Planning & Development	Complaint about the handling of his recent application. Also complaint about the Council's decision to grant prior approval for a change of use of agricultural buildings to residential dwellings.	Closed after initial enquiries – no further action	n/a

Housing Ombudsman 2016/17 – decision 20.10.17. Complaint about the reasonableness of the Council's decision not to reimburse their service charge. Decision found that there was no Maladministration by the Council.

18 July 2018

By email

Tracey Kerly
Chief Executive
Ashford Borough Council

Dear Tracey Kerly,

Annual Review letter 2018

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGSCO) about your authority for the year ended 31 March 2018. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

Complaint statistics

In providing these statistics, I would stress that the volume of complaints does not, in itself, indicate the quality of the council's performance. High volumes of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Low complaint volumes can be a worrying sign that an organisation is not alive to user feedback, rather than always being an indicator that all is well. So, I would encourage you to use these figures as the start of a conversation, rather than an absolute measure of corporate health. One of the most significant statistics attached is the number of upheld complaints. This shows how frequently we find fault with the council when we investigate. Equally importantly, we also give a figure for the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. Both figures provide important insights.

I want to emphasise the statistics in this letter reflect the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, some of whom may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside an annual review of local government complaints. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

Future development of annual review letters

Last year, we highlighted our plans to move away from a simplistic focus on complaint volumes and instead turn focus onto the lessons that can be learned and the wider improvements we can achieve through our recommendations to improve services for the many. We have produced a new corporate strategy for 2018-21 which commits us to more comprehensively publish information about the outcomes of our investigations and the occasions our recommendations result in improvements to local services.

We will be providing this broader range of data for the first time in next year's letters, as well as creating an interactive map of local authority performance on our website. We believe this will lead to improved transparency of our work, as well as providing increased recognition to the improvements councils have agreed to make following our interventions. We will therefore be seeking views from councils on the future format of our annual letters early next year.

Supporting local scrutiny

One of the purposes of our annual letters to councils is to help ensure learning from complaints informs scrutiny at the local level. Sharing the learning from our investigations and supporting the democratic scrutiny of public services continues to be one of our key priorities. We have created a dedicated section of our website which contains a host of information to help scrutiny committees and councillors to hold their authority to account – complaints data, decision statements, public interest reports, focus reports and scrutiny questions. This can be found at www.lgo.org.uk/scrutiny. I would be grateful if you could encourage your elected members and scrutiny committees to make use of these resources.

Learning from complaints to improve services

We share the issues we see in our investigations to help councils learn from the issues others have experienced and avoid making the same mistakes. We do this through the reports and other resources we publish. Over the last year, we have seen examples of councils adopting a positive attitude towards complaints and working constructively with us to remedy injustices and take on board the learning from our cases. In one great example, a county council has seized the opportunity to entirely redesign how its occupational therapists work with all of its districts, to improve partnership working and increase transparency for the public. This originated from a single complaint. This is the sort of culture we all benefit from – one that takes the learning from complaints and uses it to improve services.

Complaint handling training

We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. In 2017-18 we delivered 58 courses, training more than 800 people. We also set up a network of council link officers to promote and share best practice in complaint handling, and hosted a series of seminars for that group. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Local Authority Report: Ashford Borough Council
For the Period Ending: 31/03/2018

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
0	3	1	0	1	0	6	5	0	16

Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
2	1	5	7	1	0	0%	16

Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.

The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
0	0

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**STANDARDS COMMITTEE
18 MARCH 2019**

**REPORT OF MONITORING OFFICER
SOCIAL MEDIA GUIDANCE FOR COUNCILLORS**

1. Last year the Council decided that the Code of Conduct for councillors should be amended to include of two specific provisions to emphasise the importance of appropriate use of social media. These changes will be put in place for the new Council following the May 2019 elections.
2. The Council also agreed that Social Media Guidance should be prepared to assist members in avoiding the potential pitfalls in use of social media. A draft Guidance Note is attached for consideration.
3. Elsewhere on this agenda I have reported on the Committee on Standards in Public Life (CSPL) review of the Local Government ethical standards framework. Some of the findings and recommendations of the CSPL are relevant to the use of Social Media by councillors. In particular the recommendation regarding the introduction of a presumption that a councillor using Social Media does so in capacity as a councillor. Depending on the Government's response to this, the Social Media Guidance may need to be reviewed and amended in due course. In the meantime IT IS RECOMMENDED that the Committee considers the draft Guidance attached and recommends to Council the adoption of the Guidance for inclusion in the Constitution.

Terence Mortimer
Director of Law and Governance and Monitoring Officer
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford TN23 1PL

Date March 2019

Ashford Borough Council

Social Media Guidance for Councillors

1 About this Guidance

- 1.1 Ashford Borough Council (**the Council**), recognises that social media is now one of the most popular communication tools. It provides unique opportunities for councillors to participate in interactive discussions with constituents and share information with communities about topics of interest.
- 1.2 However, your use of social media can also pose risks to your own and the Council's reputations if it is not used in the right way. Social media can also put confidential information at risk and jeopardise compliance with legal obligations. Accordingly, this Guidance has been adopted to protect both you and the Council from reputational damage, to minimise the risks to both through the use of social media and to minimise the risk of you being the subject of code of conduct complaints.
- 1.3 This Guidance applies to you when using all forms of social media, including Facebook, LinkedIn, Twitter, Wikipedia, Instagram, Snapchat, You Tube and all other social networking sites and blogs. It applies to use of social media for council purposes as well as personal use that may affect the Council in any way.

2 Social Media & the Council's Code of Conduct

- 2.1 The Council's adopted Code of Conduct applies whenever you are acting in your capacity as a councillor. It may also apply when you give the impression you are acting in this capacity. For example by referring to your councillor role in the course of communications or perhaps when making general political comment. But it is not always clear-cut, especially when you are using social media platforms. However you are likely to be regarded as acting in your capacity as a councillor when you are discussing Council or Ward business with residents or other stakeholders or if you sign off your posts as "Councillor"
- 2.2 In other circumstances the position may be less clear eg when you are expressing personal views on social or general or national political issues. If your social media profile refers to the fact you are an Ashford Councillor, you leave open the possibility that others may regard you as expressing views in that capacity. You may wish to ensure therefore that your profile makes clear that views expressed by you are solely in your personal capacity unless expressly given as councillor or in relation to Councillor ward business.
- 2.3 Since the position on capacity may not always be clear you should at all times be aware of the potential to be in breach of the code of conduct in

your use of social media eg: by bullying, by bringing your office or the Council into disrepute by what you say or do, by disclosing confidential information etc. Considerable care should be taken to avoid these risks and you should always seek advice from the Monitoring Officer or the Communications Team where you are unsure.

- 2.4 In February 2018, the Council decided to include two specific provisions in its Code of Conduct to emphasise the importance of avoiding these risks when using social media.

- you must not publish on social media material that a reasonable person would consider offensive or abusive.

- you should be aware that members of the public may perceive you to be acting as a councillor even when you consider you are acting in your personal capacity. This includes when you publish material on social media. You must make it clear in your social media profile and/or in any posts/tweets etc whether you are acting in your personal capacity or as a councillor.

DO always be aware that the Council's code of conduct may apply when you use social media and always ensure you do not say anything which could cause you to breach the code eg bullying or abusive language

DO ensure that when you use social media it is clear whether you are acting in your personal capacity or as a councillor eg: by making it clear in your profile (or posting) that the views you express are solely in your personal capacity unless specifically given as councillor

3 Business use of social media

- 3.1 You may wish to use social media to fulfil your responsibilities in your capacity as councillor. You must ensure that you use social media at all times in a professional and responsible manner.

- 3.2 If you are contacted for comments about the Council or about council business by the media for publication anywhere, including in any social media, you should normally direct the enquiry to the Communications Team in the usual way. You should not express views on behalf of the Council on social media unless you are specifically authorised to do so. For example, you could use a phrase such as 'speaking for myself only' or "I cannot speak for fellow councillors but" ... In the event of contact by residents on social media, it will often be advisable to liaise with the relevant service head before responding to ensure you have the latest up to date information on the matter.

DO direct media enquires or requests for comments on Council business to the Council's Communications Team in the usual way. DO NOT express views on behalf of the Council (or give the impression you are so doing) on social media unless you are specifically authorised to do so

DO liaise with relevant service heads where necessary to ensure your information is up to date prior to responding to residents on social media

4 Personal use of social media

- 4.1 You must make sure that your personal use of social media does not involve unprofessional or inappropriate conduct and does not interfere with your responsibilities, duties and productivity as a councillor.
- 4.2 Although there may be advantages in councillors having separate social media accounts for purely personal use and councillor work, this may not be practical or desirable for everyone. Also, separate accounts may give the false impression that contentious or immoderate statements on a personal account are acceptable. In reality, such statements would be likely to be picked up by the media regardless of which "account" was being used. Therefore, it is more important to ensure that caution and common sense is used at all times on social media rather than focus on which accounts and capacity a councillor is using at the time.
- 4.3 If you do have separate social media accounts for purely personal use, you may wish to ensure appropriate privacy settings are used if you do not wish them to be accessed by the press and public. Your personal accounts should include only personal contact details such as your private email address rather than your councillor contact details.

DO be cautious and aware of the risks at all times when using social media whether in your private capacity or as a councillor.

DO consider carefully the use of appropriate privacy settings and contact details on purely personal social media accounts

5 Your responsibilities when using social media

- 5.1 Any social media profile or page that you use should state that any views on that page or in any of your postings are your own views and do not represent the views of the Council. You should not use Ashford's logo or other branding material.

- 5.2 It is important to bear in mind when using social media, that you become a publisher and subject to libel laws. What you post, if unprotected, can be seen around the world instantly. This can be so even if comments are later removed or deleted as screen grabs can be taken with a single click. Journalists scour social media hourly for stories. You alone are responsible for the content you publish on social media and you should ensure you do not give the media a story! Accordingly, you must never breach the code of conduct or any of the Council's other policies including ICT or internet use policies, when you use social media. In particular you must not:
- 5.2.1 make any social media communications that could damage your or the Council's interests or reputation, even indirectly. This means you should always consider carefully not only what you say yourself but also how it might be perceived if you share or "like" or "re-tweet" immoderate or offensive posts or comments by others
 - 5.2.2 use social media to defame or disparage the Council, other councillors, staff or any third party;
 - 5.2.3 harass, bully or unlawfully discriminate against anyone;
 - 5.2.4 make false or misleading statements;
 - 5.2.5 use insulting or offensive language or engage in any conduct that would not be professionally acceptable;
 - 5.2.6 use social media to post content which infringes anyone else's rights or content which is of an illegal, sexual or offensive nature;
 - 5.2.7 use social media in any way which is hateful or abusive, including using racist, sexist or other discriminatory language;
 - 5.2.8 use any images, text or other material which you do not have consent or the right to use (for example because the copyright belongs to someone else);
 - 5.2.9 express opinions on the Council's behalf via social media, unless expressly authorised in writing by the Council to do so.
 - 5.2.10 cite or reference or disclose personal data of any customers, partners, suppliers or other third parties who have a relationship with you or with the Council unless you have their express consent;
 - 5.2.11 post comments about sensitive or confidential council topics or do anything to jeopardise the Council's confidential

information and intellectual property. You must not include the logo or letterhead or any other similar Council device or 'brand' in any social media posting or in your profile on any social media.

- 5.3 If you are unsure whether something you want to post is appropriate, you should refrain from posting it until you have been able to speak to someone about the appropriateness of the post. If you have questions about what you should and shouldn't post, please contact the Communications Team.
- 5.4 Any misuse of social media, or any social media content published by councillors that infringes this Guidance should be reported to the Council's Monitoring Officer.

DO be aware of the legal and reputational risks of inappropriate use of social media, including libel, code of conduct breaches etc.

DO avoid doing any of the things listed in para 5.2 above when using social media

6 Online safety

- 6.1 You must be aware of your own safety and the safety of others whenever you post on social media and you must not post any information which could put your safety at risk. If you receive threats, abuse or harassment through social media, you should report this to the Communications Team and/or to the police.
- 6.2 You must use a secure password for all social media accounts and must never share your login details with anyone.

DO take account of safety issues when using social media.

DO use secure login details when using social media

7 Data protection

- 7.1 Always remember that as a councillor you are a data controller in your own right with regard to certain information you hold. Where you use social media in your capacity as councillor to collect and use personal data about users, you have obligations to protect that personal data. These obligations apply even if the information collected is publicly available (for example because a user has included it in a public post or a public profile).

- 7.2 Personal data includes any information that can be used to identify an individual.
- 7.3 You must always comply with your obligations under data protection legislation when collecting personal data through social media. This includes
- 7.3.1 only using personal data for purposes that you have told people about or that they would reasonably expect;
 - 7.3.2 taking measures to keep personal data secure, such as encrypting portable devices that you store data on and keeping hardcopy documents containing personal data locked away;
 - 7.3.3 not keeping personal data for longer than you need it;
 - 7.3.4 ensuring that you correct personal data if someone informs you it is inaccurate for example updating their name and/or address etc.; and
 - 7.3.5 complying with individuals' rights, such as their right to see copies of personal data you hold about them.
- 7.4 You should also remember never to post personal data that you obtain elsewhere on social media without that person's knowledge or permission. For example, you should not post a photograph of someone without their consent, or post a copy of a letter that someone has sent you without blanking out any identifying details first or disguising the identity of an individual or individuals in a photograph.
- 7.5 As well as this Guidance, you should also familiarise yourself with Ashford's Data Protection Policy, which details what constitutes personal data and what you should do to protect it.

DO be aware of your obligations regarding processing personal data when using social media and follow the 'rules' in this Guidance..

8 Breach of this Guidance

- 8.1 Failure to follow this Guidance may result in a complaint against you, including for breach of the Code of Conduct. You may also suffer civil or criminal action or a regulatory fine for example where this also amounts to defamation or a breach of your data protection obligations.

- 8.2 You may also be asked on behalf of the Council to remove social media content which is in breach of this Guidance.
- 8.3 Councillors are therefore urged to seek advice or guidance at the earliest opportunity if they are unsure about any issues regarding use of social media.

9 Questions about this Guidance

- 9.1 If you have any questions about this Guidance, please direct them to the Council's Monitoring Officer/Director of Law & Governance or the Council's Communications Team.

STANDARDS COMMITTEE

18 MARCH 2019

REPORT OF COMMITTEE ON STANDARDS IN PUBLIC LIFE (CSPL)

LOCAL GOVERNMENT ETHICAL STANDARDS

REPORT OF THE MONITORING OFFICER

1. On 30 January 2019 CSPL published its long-awaited report into a review on Local Government Ethical Standards. The report makes 26 substantive recommendations for change and 15 'Best Practice' recommendations. A full copy of the report is available on the following web link - <https://www.gov.uk/government/publications/local-government-ethical-standards-report>.
2. The background to the review is that substantial changes to the national ethical framework were made by the Localism Act 2011. Ashford adopted its 'new' code of conduct and Arrangements for handling complaints in July 2012. The Government promised a review after 5 years of operation of the new system. The CSPL launched its review in early 2018 and called for evidence. Ashford's response to the Committee dated 10 May 2018 is attached for information.
3. The Localism Act removed the old national system overseen by the independent Standards Board. It was replaced with a local system of self-regulation which relied more on public censure through the democratic process and on political parties for upholding standards of conduct than strong powers of sanction such as suspension of councillors or removal from office. Late in the Localism Act legislative process, a limited 'Independent Person' role was introduced. New criminal offences were created in the Localism Act in relation to non-declaration of 'Disclosable Pecuniary Interests'. No code of conduct was prescribed nationally and the establishment of Standards Committees was no longer a statutory requirement.
4. The CSPL has maintained a watching brief over the 'new' system. It has expressed reservations in the past regarding the issues of sanctions, inconsistencies in the absence of national parameters and the limited role of independent persons.
5. Copies of the 26 substantive and 15 Best Practice recommendations are attached to this report. The CSPL report has been presented to the Prime Minister. Normally Government would respond within 3 months.

6. In the meantime there is an opportunity for this Committee to consider the 26 substantive recommendations in principle and convey any initial views to Government in order to encourage as swift a response as possible. Many but not all of the recommendations would require changes to primary legislation. In terms of the best practice recommendations, I suggest that I bring a detailed report to a future meeting of this Committee for discussion.
7. In terms of the 26 recommendations, I have included a brief comment/observation in the attached table which members may find helpful.
8. It is recommended that;
 - a. The Committee considers the substantive recommendations in principle and conveys its support or otherwise to Government for the taking forward of the 26 recommendations.
 - b. The Monitoring Officer present further reports to a future meeting of this Committee in relation to the Best Practice recommendations in the CSPL report, and in relation to the Government's response to the CSPL report in due course.

Terence Mortimer
Monitoring Officer
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford TN23 1PL

Date March 2019

LIST OF RECOMMENDATIONS

Number	Recommendation	Responsible body	Comments
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	SUPPORTED. Greater consistency and clearer expectations could then develop although we consider any such model code should be optional rather than compulsory since local variations may still be justified.
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	SUPPORTED as part of the anti-intimidation agenda. The Government has now changed election law as well with effect from May 2019.
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	CAUTIOUSLY SUPPORTED. In principle would bring much needed clarity but the grounds on which the presumption could be rebutted will be all important in ensuring a fair approach.
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	Government	SUPPORTED. This was the position prior to the Localism Act

	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.		and it worked well and was well understood by councillors and public.
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 memberships of any organisations that seek to influence opinion or public policy.	Government	SUPPORTED. The current categories are narrow. Not all Councils have included such matters in 'other interest' provisions of codes so consistency of approach would be achieved.
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	NO OBJECTION to a clearer, slightly wider rule on hospitality.
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	SUPPORTED subject to clarification. It appears to propose a return to a statutory formulation of the old 'prejudicial interest' test prior to the Localism Act. This is in effect captured already in

Number	Recommendation	Responsible Body	Comments
7. cont.			the Kent code under 'Other Significant Interest' provisions but the Kent Code does allow representations to be made at meetings before a councillor then leaves the meeting. It is not clear whether the proposal here involves an ability to speak or a requirement to leave. Clarification is required.
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	The case for this restriction is unproven. Further assessment should be made before universally abandoning the use of experienced IPs.
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	SUPPORTED. There is no reason to withhold this information.
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	Government	SUPPORTED. This helps avoid the risk or perception of unfairness or

	councillor would be a proportionate sanction.		political motivation in the use of this serious sanction.
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	SUPPORTED. The proposal is to put in place similar protections as already exist for councillors in some circumstances.
12	Local authorities should be given the discretionary power to establish a decision-	Government	SUPPORTED. This was the position pre – Localism Act. An
12. cont.	making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.		enhanced role for IPs is likely to increase public confidence
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	SUPPORTED. Appropriate safeguards for use of such a sanction are critical.
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 who has had a suspension imposed. The Ombudsman’s decision should be binding on the local authority.	Government	This appears to be, in effect a right of appeal to the Ombudsman in the case of suspension. This is an appropriate safeguard. SUPPORTED.
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	Government	The Kent Code’s Arrangement does already require some transparency so this recommendation is SUPPORTED.

	those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.		
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government	This is SUPPORTED provided appropriate safeguards are put in place to ensure fairness.
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	This is SUPPORTED.
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government	This is SUPPORTED. The current regime provides a disproportionate focus on a very limited range of DPIs.
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils	This is SUPPORTED. Parish Councils increasingly require levels of expertise.
19. cont.			and training in governance matters.
20	Section 28(11) of the Localism Act 2011 should be amended to state parish councils must adopt the necessary amendments, or the new model code.	Government	This is SUPPORTED in the interests of consistency.
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a	Government	This is SUPPORTED. There have been

	parish councillor following the finding of a breach is to be determined by the relevant principal authority.		examples elsewhere in the country where Parish Councils have refused to impose sanctions determined by principal Councils.
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	This is SUPPORTED. The amended regime introduced in 2015 dilutes the protection in a way widely regarded as inappropriate.
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	This is SUPPORTED. ABC's policy already includes these different contact options.
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government	This is SUPPORTED.
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	This would ensure a broader roll-out of important training for councillors. Whether it should be mandatory to the extent suggested is something the Standards

			Committee may wish to discuss.
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association	This is SUPPORTED. External review of ethical frameworks would be helpful and worthwhile.

**Corporate Director (Law and Governance) and
Monitoring Officer – T W Mortimer LLB Solicitor**

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Direct Line 01233 330210
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ASHFORD
BOROUGH COUNCIL

The Committee on Standards
In Public Life

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AshfordBoroughCouncil

Our Ref TWM/Wrk 18
Your Ref
Date 10 May 2018

Dear Sirs,

**COMMITTEE ON STANDARDS IN PUBLIC LIFE CONSULTATION ON LOCAL
GOVERNMENT ETHICAL STANDARDS**

I set out below the Consultation Response on the above matter on behalf of Ashford Borough Council's Standards Committee:

General Questions

- 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?

ABC Response

ABC currently has 43 members and operates the 'strong leader' model of executive government. Structures are determined locally, driven by the provisions of primary legislation. There is no longer a national body to oversee arrangements or provide guidance on ethical standards. In



Ashford, a ‘Kent Model’ of Code of Conduct and Arrangements for Dealing with Complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations. The Council has also adopted – and recently reviewed – a Good Practice Protocol for councillors dealing with planning matters.

The Council’s processes for receiving, considering and investigating complaints are therefore tried and tested and regarded as sound and effective. Although the level of complaint has been low since the new regime came into effect, during 2017 numbers of complaints did rise, principally on account of social media use/misuse by councillors.

Probity and Code of Conduct training is provided for all Members upon election and the Council has in place an experienced Independent Person to fulfil the statutory role required. The Council’s Standards Committee is the principal forum for consideration of probity and ethical issues and receives and considers the Monitoring Officer’s Annual Report each year on Code of Conduct, probity and Ombudsman complaint matters.

In relation to gaps in the local government regime the Council is aware of ongoing concerns nationally regarding (a) the effectiveness of the current range of sanctions available in the event of findings of breach of the Code of Conduct and (b) the legal scope of Disclosable Pecuniary Interests. These matters are picked up separately under the relevant questions 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?
- 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.

ABC Response

The ABC Code follows a ‘Kent Model’ developed in line with the former national Code. It is very much based upon the Seven Principles of Public Life and it is considered to cover an appropriate range of conduct and declaration of a wider range of interests than just the statutory DPs. The ‘Kent Model’ requires declaration of ‘Other Significant Interests’

(OSIs) and non-participation in decisions where such interests arise. Having said this, Codes of Conduct must be kept up to date with social developments and changes in public perception and opinion. For this reason ABC recently agreed to promote amendments to its Code to better capture the risks inherent in the growing use of social media by councillors. Comprehensive induction programmes are provided for all borough councillors upon election, including code of conduct and probity training. Parish Councils are invited to participate where possible.

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?

ABC Response

The 'Arrangements' adopted by the Council for dealing with Code breach complaints are comprehensive and were developed as a Kent-wide model based upon experience with earlier standards regimes. As such they are considered robust, proportionate and fair. The involvement of the Independent Person at appropriate stages is safeguarded in the adopted Arrangements. In general the arrangements under the new regime work better and in a more proportionate way by giving councils greater flexibility to manage complaints. It is considered important that the Monitoring Officer retains an ability to advise and guide Standards Committee and any Hearing Panels in the event of matters being referred for investigation. For this reason, investigations should be carried out independently either by suitably qualified staff or by external investigators.

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?

ABC Response

Under the former national regime, a wider range of sanctions was available in the event of a breach of the Code of Conduct. In particular, it was possible in serious cases to suspend a councillor or even disqualify. Although these were rarely used, they did provide options in the most serious or persistent cases. Under the current regime, the range of sanctions is set out in the adopted Arrangements but is more limited and relies upon public censure as the principal sanction. Other possible sanctions are limiting access to resources, requiring training to be given or recommending removal from certain committees or roles. However, the latter requires co-operation from group leaders and full Council and so relies upon party discipline. Criminal prosecution for certain failures regarding pecuniary interest declaration is obviously available only in a very narrow context and is not a sanction available to Standards Committees.

Discussion about the appropriateness of the more limited range of sanctions has been ongoing nationally ever since the new regime was introduced in 2012. There is a school of thought that depriving councillors of their representative role – through suspension or disqualification – is inappropriate for an elected office. On the other hand, having nothing stronger than censure in cases of serious or persistent misconduct is seen as equally inappropriate by many. The options of suspension, or perhaps some kind of ‘recall’ right (whereby a councillor would have to seek re-election) are therefore seen by some as necessary for use in the most serious cases, provided appropriate safeguards are put in place.

The Council is aware that in the past CSPL has itself expressed doubts about whether the new “slimmed down arrangements” would prove sufficient (for example in its publication “Standards Matter” in January 2013). Also in its Annual Report in September 2014 the Committee considered that:

“the effectiveness of the sanctions regime for non-adherence to local authority codes of conduct, which apart from criminal prosecution provides only for censure or suspension from a particular committee, remains an issue of concern. We are aware that there have been recent individual cases that illustrate this, in particular the lack of a sanction to suspend councillors who have seriously breached the Code of Conduct. In contrast to the recent public debate on parliamentary standards calling for greater sanctions, tightening of codes and a greater independent element, local government is now largely self-regulated with no systematic approach to conduct issues and limited sanctions. There remains in our view a significant risk under these arrangements that inappropriate conduct by local authority members will not be dealt with effectively, eroding public confidence and trust in local government”.

It is worth noting as well that in 2013 in Thanet an Independent Members Report to the Council identified that there had been occasions then where councillors had stated they did not intend to comply with standards hearing outcomes because of the absence of meaningful sanctions.

Whilst this Council has no experience of the problems alluded to in these other reports, it recognises there is a credible argument to consider the introduction of a more powerful sanction such as temporary or partial suspension provided appropriate safeguards and procedures are put in place to ensure its use only in the most serious cases. Other options for consideration include a possible “right of recall” for Local Councillors or the introduction of greater local discretion on the range of sanctions available.

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.

ABC Response

As already indicated, the Council's Code of Conduct does include a duty to declare interests – and withdraw from meetings – on a significantly wider basis than just the statutory DPIs. Indeed the Council has adopted very much best practice in this regard by ensuring each agenda for each public committee meeting has a first item under which members must declare interests in these categories or indeed other interests on a voluntary basis for transparency reasons. Each agenda includes a detailed explanation of the rules on declarations. This process helps promote an effective, open culture of declaration of interests.

However, there remains significant concern among practitioners and some members about the lack of clarity about the legal scope of the DPI regime in some circumstances. This is particularly unsatisfactory bearing in mind that criminal liability can arise from breaching the statutory DPI rules and it is imperative therefore that the rules are clear, clearly understood and consistently applied. At present this is not the case.

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI “in any matter to be considered at a meeting”. Under the former regime, the situation was much clearer as an interest arose where a matter under consideration “relates to or is likely to affect” the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.

The problem is best illustrated by a simple and common situation from the standard planning application decision-making process. **Example:** A councillor who is a member of the Council's Planning Committee lives next to a development site. He owns his home and believes the development is likely to materially affect his amenity and value of his house. The application comes before the Committee for decision. Many Monitoring Officers would not regard the councillor's land interest as a DPI in this situation. This is because the councillor's land is not the subject of the decision, albeit that the decision would affect his land interest. However, some Monitoring Officers do regard the councillor's land interest as a DPI in the planning decision on the basis the interest could be said to be “in the matter to be considered” since it would be affected by it and the public might have expected the legislation to apply in this way.

It is particularly unsatisfactory that such lack of clarity should surround a key part of the current ethical standards regime. It is imperative that the matter should be clarified and resolved in the public interest, especially since criminal liability may turn on the interpretation in a particular case.

Whistleblowing

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

ABC Response

A whistleblowing policy is in place at the Council. It is primarily available to officers (and employees of contractors). Members of the public would normally be directed to the Council's complaints procedures or to statutory officers for specific areas of complaint. The Council has no experience of a councillor being unable to raise and pursue a concern through normal internal channels. The arrangements are considered 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?

ABC Response

Increasing the visibility and accessibility of the code of conduct and complaint process as part of website redesign and digital transformation projects would raise awareness and make the system easier to use.

Also providing more structured guidance around the risk of misuse of social media could help reduce the incidence of complaints.

ABC is proposing to take steps on each of these matters.

In terms of central government, early consideration of the issue of sanctions, and the legal scope of the DPI regime would help raise confidence and provide greater clarity in the system.

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?

ABC Response

The personal contact details of members are generally in the public domain but in exceptional cases these can be removed if there is evidence of a risk of intimidation or violence. Details have been removed or withheld in a small number of cases at Ashford.

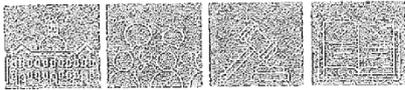
In December 2017 the CSPL published a report “Intimidation in Public Life”. This arose principally from the level of intimidation experienced by parliamentary candidates at the 2017 General Election. Widespread use of social media platforms were seen as the most significant factor driving intimidating behaviour. The report makes a number of recommendations relevant to the local government sector and in particular the following measures are supported:

- proposed legislation to shift some balance of liability for illegal content to social media companies and to ensure removal of intimidatory content.
- establishment of social media reporting teams during election campaigns to ensure swift action on intimidatory content
- political parties themselves setting clear expectations in a joint code of conduct about behaviour expected of their members prohibiting intimidatory behaviour.
- possible creation of new electoral offences on intimidating behaviour.
- better response mechanisms and training for police on intimidation in election campaigns.

Yours faithfully



Corporate Director (Law and Governance)
& Monitoring Officer



List of best practice

List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

Best practice 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.

Best practice 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.

Best practice 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.

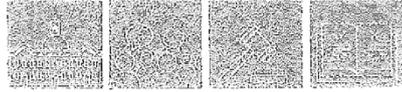
Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 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.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 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.



List of best practice

Best practice 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 provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 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.

Best practice 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.

Best practice 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 provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: 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.

Best practice 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.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

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