

**STANDARDS COMMITTEE  
10 MAY 2018**

**REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS  
STAKEHOLDER CONSULTATION  
BY COMMITTEE ON STANDARDS  
IN PUBLIC LIFE (CSPL)**

**REPORT OF DIRECTOR OF LAW AND GOVERNANCE  
AND MONITORING OFFICER**

**1. Introduction**

The Localism Act 2011 fundamentally changed the local government standards regime in England. Some six years after the new regime came into effect in mid-2012, the CSPL, which advises the Prime Minister on ethical standards across the whole of public life, is undertaking a review of local government ethical standards. As part of this review, CSPL is holding a public stakeholder consultation. The consultation closes on Friday 18 May 2018.

**2. Terms of Reference of Review**

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).

### 3. **The Consultation Questions and Suggested Responses**

The CSPL has posed the following specific questions. Comments prepared by the Monitoring Officer and based on experience over the past six years, are provided in bold text after each question or set of questions. This is intended to assist members of the Standards Committee in their consideration not to limit the views members may wish to submit in any response. Members are therefore asked to provide any further views so that a final response can be prepared.

#### *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, although 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 DPIs. 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.**

*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.

#### *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.

#### 4. Recommendation

**IT IS RECOMMENDED** that the suggested responses to the CSPL Consultation be considered and amended or supplemented as appropriate prior to submission.