

Appendices: 2



NORTHAMPTON
BOROUGH COUNCIL

STANDARDS COMMITTEE REPORT

Report Title	Local Government Ethical Standards – Committee on Standards in Public Life
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AGENDA STATUS: PUBLIC

Committee Meeting Date:	23 March 2020
Policy Document:	No
Service Area:	Borough Secretary and Monitoring Officer

1. Purpose

- 1.1 The purpose of the report is to update the Committee on the January 2019 review undertaken by the Committee on Standards in Public Life (the “CSPL”) regarding Local Government ethical standards and the recommendations of the Standards Working Group that met in January 2020 to discuss the recommendations.

2. Recommendations

The Committee is recommended to:

- 2.1 Note that the Standards Working Group supports the 25 recommendations of the Committee on Standards in Public Life and the 15 best practice recommendations as attached at Appendix 1 and Appendix 2.
- 2.2 That when published, the draft Member Code of Conduct, as produced by the Local Government Association, is presented to the Standards Committee for consideration.

3. Issues and Choices

3.1 Report Background

- 3.1.1 The CSPL is an independent advisory non-departmental public body that advises the Prime Minister on ethical standards across the whole of public life in the UK. *Local Government Ethical Standards – A Review by the Committee on Standards in Public Life* (the “Review”) was published in January 2019.

The CSPL undertook the review to assure itself that the current framework, particularly since the Localism Act 2011 is conducive to promoting and maintaining the standards expected by the public.

3.1.2 A copy of the CSPL report is available at:

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

3.1.3 Following their review, the CSPL made a number of recommendations which it states, “would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process”.

3.1.4 A number of the CSPL’s recommendations would involve legislative change which it believes the government should implement. However, it has also identified ‘best practice’ for local authorities which the CSPL states represents a benchmark for ethical practice which they expect authorities to implement.

3.2 Issues

3.2.1 The CSPL’s full list of recommendations from the review are set out at Appendix 1.

3.2.2 Key recommendations from the review include the following:

- a) A new power for local authorities to suspend councillors without allowances for up to six months and a right of appeal for suspended councillors (including parish councillors) to the Local Government Ombudsman.**

The CSPL state in their report that the current sanctions available to local authorities are insufficient, which damages public confidence in the standards system and leaves authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

- b) Revised rules on declaring interests, gifts and hospitality.**

The CSPL state that the current criminal offences relating to disclosable pecuniary interests (“DPIs”) are disproportionate in principle and ineffective in practice and should be abolished.

The CSPL also recommend that the current statutory rules on declaring and managing interests (specifically DPIs) should be repealed and replaced with an objective test so that all Codes of Conduct include a requirement that Councillors must not participate in discussion or vote in a matter if they have an interest, 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 the Councillor’s consideration or decision-making in relation to that matter.

The CSPL recommend that local authorities should be required to establish a register of gifts and hospitality with Councillors required to record any gifts or hospitality received over a value of £50, or totalling £100 over a year from a single source. (Northampton Borough Council's Code of Conduct currently requires Councillors to declare gifts and hospitality received over the value of £50 and a register is kept).

c) Local authorities retain ownership of their own Codes of Conduct.

The CSPL also recommended that an updated model Code of Conduct should be made available to local authorities that they could voluntarily adopt in order to enhance the consistency and quality of local authority Codes. The CSPL suggested that local authorities could choose to adopt the model code and adapt it as required.

The CSPL suggest that the scope of Codes is widened so that there is a rebuttable presumption that a Councillor's public behaviour, including comments made on publicly accessible social media is in their official capacity.

The current position in section 27 of the Localism Act 2011 is that a local authority must adopt a code "dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity". It is suggested this should be widened to state that an authority's Code of Conduct applies to a member when they claim to act or give the impression they are acting in their capacity as a member or representative of the authority.

d) A strengthened role for the statutory Independent Person.

The statutory Independent Persons appointed pursuant to the Localism Act 2011 help to provide a safeguard in the process for dealing with allegations that a Councillor has breached the Code of Conduct to ensure that decisions are made fairly and impartially. The CSPL recommend that if the sanction of suspension were introduced, that the role of Independent Person should be strengthened so that the local authority could only suspend a Councillor where the Independent Person agreed both that there had been a breach and that suspension was a proportionate sanction. The CSPL also recommended that Independent Persons should have fixed terms and legal protections.

e) Greater transparency about the number and nature of Code of Conduct complaints.

The CSPL recommended that 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 relate to broadly, the outcome of those complaints, including if they are rejected eg. as vexatious or trivial and any sanctions applied.

3.2.3 Many of the CSPL's recommendations ask for action from the Local Government Association ('LGA') or the Government, which may or may not act to implement the CSPL's recommendations. The LGA's response to the CSPL's recommendations, through its Chair, Lord Porter, was in summary:

- That standards across local government are very high.
- That a locally-led approach to standards underpinned by a national framework remains the right approach and that the LGA was happy to play a leading role in updating a code of conduct to help guide LGA members.
- That a number of adequate sanctions already exist to deal with the most serious issues and that care needs to be taken to avoid adding to the current regime and causing unintended consequences. It was stated that introducing a power of suspension could result in councillors losing their seat posing a risk to the democratic process leaving residents without a locally elected representative.

3.2.4 The CSPL has created a List of Best Practice recommendations. In its report, the CSPL states, *"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"*. The list of best practice recommendations is at Appendix 2.

3.2.4 The Committee established a Working Group to consider the best practice recommendations of the CSPL, the purpose of which was to recommend to the Committee any improvements to the Council's ethical standards arrangements that it considers are required. The Working Group met on 27 January 2020 and agreed to recommend to the Standards Committee:

"That the draft Member/Officer Protocol is agreed that it meets the objectives of the Audit Report and provides clarity for Members and Officers and that it is presented to the Standards Committee at its March meeting for its consideration.

That when published, the Draft Member Code of Conduct, as produced by the LGA, is presented to the Standards Committee for consideration."

3.3 Choices (Options)

3.3.1 The Committee can choose to accept the recommendations in this report or substitute its own resolutions.

4. Implications (including financial implications)

4.1 Policy

4.1.1 There are no policy implications arising directly from this report.

4.2 Resources and Risk

- 4.2.1 The only resource implication arising directly from this report is the officer resource required to support the Working Group.
- 4.2.2 In terms of risk, assessing the Council's ethical standards arrangements against the CSPL's best practice recommendations could assist the Council in minimising any potential risks arising from inadequate ethical governance arrangements.

4.3 Legal

- 4.3.1 There are no legal implications arising directly from this report. As mentioned above, some of the recommendations of the CSPL would require legislative change.

4.4 Equality

- 4.4.1 There are no equality implications arising directly from this report.

4.5 Consultees (Internal and External)

- 4.5.1 None.

4.6 Other Implications

- 4.6.1 None.

5. Background Papers

- 5.1 None.

Francis Fernandes
Borough Secretary and Monitoring Officer

List of the CSPL's recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government

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| 7 | Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”. | Government |
| 8 | The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once. | Government |
| 9 | The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes. | Government |
| 10 | A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction. | Government |
| 11 | Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed. | Government / all local authorities |
| 12 | Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions. | Government |
| 13 | Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct. | Government |

14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government

22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association

List of the CSPL's best practice recommendations

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.

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.