

Report of	Meeting	Date
Monitoring Officer	Governance Committee	20 March 2019

LOCAL GOVERNMENT ETHICAL STANDARDS: A REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

PURPOSE OF REPORT

1. To update members on the report Local Government Ethical Standards prepared by the Committee on Standards in Public Life.

RECOMMENDATION(S)

2. That the formal recommendations are noted.
3. A working group formed from Governance Committee be established to consider the Best Practice recommendations and make recommendations on the adoption and incorporation of them into the Code of Conduct or council procedures as necessary.

EXECUTIVE SUMMARY OF REPORT

4. Since the introduction of the local code of conduct through the Localism Act 2011 there has been no formal review of the operation of local codes or investigatory processes. The Committee for Standards in Public Life (the Committee) were commissioned to undertake a review on the effectiveness of the current arrangements. Terms of Reference for the review are detailed at paragraph 12.
5. As a result of the review the Committee were tasked with making recommendations for improvements both to the form of the codes themselves but also in relation to their operation and investigation into complaints. The Committee were specifically tasked with identifying evidence where Councillors were being intimidated and measures which could prevent this.
6. The Committee have broken up their report into defined areas of consideration
 - a. Codes of Conduct and Declaring and Managing Interests
 - b. Investigations and Safeguards
 - c. Sanctions
 - d. Town and Parish Councils
 - e. Supporting Officers
 - f. Council's Corporate Arrangements
 - g. Leadership and Culture.
7. Within these categories the Committee made a list of 26 formal recommendations which would require actioning by the Local Government Association, Central Government, Local and Parish Council's and Political Groups. As a result, these are not easily implemented directly by the Council and some will require changes to legislation.
8. The Committee also made a series of 15 Best Practice recommendations. These are capable of being adopted by the Council without any further intervention from third parties. Members should be aware that the intention is to assess authorities against the implementation of these Best Practice Recommendations.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

9. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy homes and communities		An ambitious council that does more to meet the needs of residents and the local area	X

BACKGROUND

10. Following the introduction of the Localism Act in 2011, Chorley Council with all other local authorities in the country adopted a Local Code of Conduct for members and local arrangements for the investigation and consideration of complaints. Whilst this has worked well locally, the changes have posed challenges for some authorities which have included:-
- Limited availability of sanctions;
 - The criminalisation of certain behaviours;
 - Conflicting local codes covering the same area (Parish, District and County);
 - Inconsistent approaches nationally.
11. Due in part to the passage of time since implementation the Committee for Standards in Public Life were commissioned to undertake a review of the effectiveness of current arrangements for standards. The Review is clear that this was not driven by any specific allegations of misconduct or council failure. The report can be accessed using the following link
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF.

Terms of Reference

12. The terms of reference for the review were limited to
- Examine the structures, processes and practices in local government in England for:
 - Maintaining codes of conduct for local councillors;
 - Investigating alleged breaches fairly and with due process;
 - Enforcing codes and imposing sanctions for misconduct;
 - Declaring interests and managing conflicts of interest; and
 - Whistleblowing.
 - Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
 - Make any recommendations for how they can be improved.
 - 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.

STRUCTURE OF THE REPORT

13. The report addresses each theme in a chapter. Within the chapter it references the evidence it has considered and makes as appropriate a Formal Recommendation or Best Practice Recommendation. Members are asked to note that the evidence base for the findings of the review has been drawn not just from Local Government but partner third sector organisations, the private sector and professional bodies. This is a comprehensive assessment on how the approach to the code of conduct and standards set out by the Localism Act 2011 works in practice.
14. This report is set out in a similar format. Each chapter is referenced with the recommendations or best practice proposals drawn out with a brief explanation as to why

they are made. Members are encouraged to read the full Report to best understand the reasons for the proposals.

CHAPTER 2: CODES OF CONDUCT AND INTERESTS

15. Variation, Consistency and Clarity

A consequence of local codes of conduct was of course a variation between codes within different organisations not just in quality but also in length. Even codes that were substantially the same can lead to difficulties both for Members who may be dual or even triple hatted and for the public who are seeking to make a complaint.

The review recognises that there was a move away from a single national code of conduct but proposes the re-introduction of a non-mandatory model code which is capable of being modified locally. Members may recall the council decided to adopt the proposed LGA code of conduct in 2011.

Recommendation 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.

16. Bullying and Harassment

Evidence provided to the Committee suggested that most complaints related to bullying and harassing behaviours. Whilst this conduct is prohibited by most codes only 2 specifically identified what behaviours would constitute bullying and harassment.

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.

17. Intimidation of Councillors

There are in the report several examples of situations where Councillors have been confronted by members of the public. This reflects the position that Councillors are at present required to publish their home address, leaving them and their families vulnerable to this type of intimidatory behaviour. The Committee have previously recommended that this legal obligation to disclose their home address be removed.

Recommendation 2

The government should ensure that candidates standing for or accepting public offices are not required to publicly 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.

18. Scope of the Code of Conduct

The application of the code of conduct, the split between acting as a councillor and not, has been debated on several occasions by this committee. This is an issue which is recognised within the report particularly in relation to the use of social media. The conclusion of the Committee is that there should be a rebuttable presumption that a councillor's behaviour in public is in an official capacity.

Recommendation 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.

19. Purporting to act as a member or a representative

This issue was raised due to a court decision which stated that purporting to act as a member is not the same as purporting to act as a representative of the authority. It is proposed therefore to remove this distinction.

Recommendation 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.

20. Compliance with standards processes

There is no formal requirement either in the legislation nor codes of conduct requiring members to co-operate with standards processes. This could of course be a breach of the code but this would be under an associated obligation rather than a specific breach. Also, it is suggested that there be an obligation on members not to misuse the code of conduct for the purposes of political gain.

Best Practice 2

Council's 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.

21. Writing codes of conduct

The report recognises concerns raised by investigators that some codes are not prescriptive enough with insufficient detail on consequences of breach or what constitutes a breach. Further, some authorities are not reviewing their codes considering issues highlighted during investigations. However, it also recognises that codes should be written in plain English, recognising the users of the codes will be councillors and members of the public.

This council has revised our procedures in accordance with learning and experience gained through the consideration of complaints. It should also be noted that the code of conduct and associated procedures are available on the council website.

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.

22. Councillors interests

The report properly sets out the reasons for maintaining a register of interests, that this will ensure transparency and integrity in decision making. It also distinguishes between the disclosure and management of the interest, recognising that the existence of an interest does not in itself preclude participation in the decision making process (although this a decision based on 'fact and degree')

The report goes onto consider the different interests to be disclosed and the categories of interest. It concludes that the definition of disclosable pecuniary interest and the registration requirements are drawn too narrowly to be fully effective.

Recommendation 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.

23. Gifts and hospitality

The report recognises that there is no legal requirement to maintain and publish a register of gifts and hospitality received by members. However, this authority do.

Recommendation 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 over £100 over a year from a single source. This requirement should be included in an updated model code of conduct.

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.

24. Partner and family interests

The report concludes that the current declarations required for members and spouses/partners are suitable.

25. Declaring and managing interests

The report concludes that a lack of clarity in the Localism Act has led to some uncertainty on the part of councillors as to what obligations they have in relation to the declaration and managing of interests. Currently there is no requirement for the DPI to be affected by the matter being discussed only that it exists. Again, this is felt to be too narrowly drafted. It suggests including an objective test to be applied in considering whether members can participate in the item where an interest exists.

Recommendation 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 discussion or decision-making in relation to that matter”.

CHAPTER 3: INVESTIGATIONS AND SAFEGUARDS

26. Filtering complaints

It is recognised that the filtering of complaints involves an element of judgement by the Monitoring Officer (and Independent Person). It is recommended that for transparency in decision making the council adopts and publishes a public interest test to be applied at this stage.

Best Practice 6

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

27. Safeguards and Independent Persons

The report recognises the role of the independent person as a safeguard for the standards process. The investigation highlights that the role of the independent person needs to be strengthened both in relation to its function and term of office. This is to provide certainty for the role and for the councillors. The report makes several recommendations in relation to this role.

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.

Recommendation 8

The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years renewable once.

Recommendation 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 recoded in any decision notice or minutes.

Recommendation 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.

Recommendation 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.

28. Standards Committees

As it currently stands, the legislation prohibits non-councillors sitting as voting members of a decision-making committee. This means that neither Parish Councillors (in that capacity) nor independent persons can fulfil anything other than an advisory role. The report recommends that Councils should be given the discretion to establish a decision-making standards committee which has voting independent members. This makes best use of local knowledge and skills. It is also suggested that the powers to levy a sanction be with the standards committee rather than a decision of council.

Recommendation 12

Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from the dependent parishes, to decide on allegations and impose sanctions.

29. Appeals and escalation

This is tied to the recommendation to increase the scope of sanctions which can be applied. It is recognised that where a potential sanction is a 6 months suspension there needs to be a process to challenge this decision.

Recommendation 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.

Recommendation 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.

30. Promoting openness and transparency

There is no direction within the legislation on publication of standards complaint information therefore there is no consistency across the country. The report recommends that this be amended. It is believed that this will promote greater openness and transparency and therefore confidence in the regime.

It is acknowledged that at present this authority do not publish any details about individual complaints unless it progresses to a hearing by the Standards Sub-Committee.

Recommendation 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 (eg bullying, conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious and any sanctions applied.

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.

CHAPTER 4: SANCTIONS

31. There is a lengthy consideration of sanctions within the report and members are encouraged to read this chapter due to the significant implications of the proposed changes to the standards regime. The report recognises the importance of getting the balance right in relation to sanctions providing an adequate deterrent for more serious poor behaviour but not overly punishing minor offences. This balance is necessary to ensure both public and councillor confidence in the process.
32. The report also acknowledges the reliance placed on party discipline in the current system due to the absence of adequate sanctions. Good councillor behaviour can certainly be encouraged and embedded by political group discipline but should not replace the role of the standards regime although it may compliment it. Neither does the report feel that the sanction of the 'ballot box' is an adequate deterrent with there being some evidence that the public do not elect the individual but a wider political party candidate, with conduct not being a consideration.
33. The report concludes that stronger sanctions are required in order to provide an adequate deterrent.

Recommendation 16

Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

34. Legal certainty on sanctions

In the absence of detailed sanctions local authorities have been fixing their own local ones which have included the exclusion of councillors from council premises. The legal basis for this is unclear although it is acknowledged to be a reasonable sanction to impose. The report recommends that the position be clarified, with council's being specifically granted the power to levy this sanction.

Recommendation 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.

35. Criminal offences in the Localism Act 2011

The current regime criminalises the failure to properly complete a register of interests, failure to declare a DPI and then participate in a meeting. Putting aside the issue of police interest in these matters, the report finds that the criminalisation of a standards matter is inappropriate and sets too high a burden in relation to the standard of proof.

Recommendation 18

The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

CHAPTER 5: TOWN AND PARISH COUNCILS

36. It is recognised that Parish and Town Council's occupy a particular position in relation to standards, with the principal council being responsible for investigations under the local code adopted by the parish or town. The report also recognises the significant role of the Parish Clerk and the importance of maintaining strong relationships between parish councillors and clerks and the challenges this creates. Clerks it is acknowledged are often sole employees with minimal professional support being available to them. The report states the view that it is advisable that Clerks are properly trained and obliged to keep up to date with their responsibilities and duties.

Recommendation 19

Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

37. Misconduct in parish councils

The report states that the proposed extension of sanctions to include suspension would serve as a deterrent for parish councils as well as principal councils. It also recognises the difficulties that can be caused by a Clerk who, as an employee, wishes to make a standards complaint against one of their own parish councillors.

Concerns have also been raised that some principal councils have been declining to accept complaints from parish councils citing insufficient resources. The report finds that this is not acceptable.

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.

38. Investigations and sanctions in town and parish councils

The report highlights the difficulties faced by Monitoring Officers where parishes within their principal area have adopted different codes of conduct. The report makes a recommendation to address this.

It was also recognised that whilst principal authorities may recommend sanctions based on findings of a breach of the code of conduct, the imposition sits with the parish council. There is therefore a risk that the proposed sanctions may be disregarded and not applied.

Recommendation 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.

Recommendation 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.

CHAPTER 6: SUPPORTING OFFICERS

39. The role of the Monitoring Officer

The Committee recognises the complexities and potential conflicts of interest that can arise for the Monitoring Officer when investigating standards complaints. This is particularly the case where the complaint relates to the conduct of a cabinet member. Whilst such conflicts are unlikely to arise frequently the report suggests that they should be planned for.

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.

40. Standing of statutory officers

The report recommends that the current protections given to statutory officers in relation to a decision to dismiss from their role should be extended to cover all disciplinary action. This is to ensure protection is given to senior officers who are required to cooperate with standards investigations and may suffer adverse consequences as a result.

Recommendation 22

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.

41. Whistleblowing

Two recommendations are made to improve whistleblowing arrangements in councils. Firstly, to enable whistle-blowers to bring concerns are brought to the attention of the

external auditor and secondly, to protect staff who make whistleblowing disclosures to councillors.

Recommendation 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.

Recommendation 24

Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

CHAPTER 7: COUNCIL'S CORPORATE ARRANGEMENTS

42. Members are encouraged to read this chapter considering the corporate project to establish an arm's-length external organisation (housing company). It references issues which have been identified with the governance arrangements for external bodies and recommends maximising transparency in relation to the exercise of the business of the external organisation.
43. There is also an extended section, with supporting examples, of ethical standards and corporate failure. Whilst no recommendations come out of this part, it provides salutary lessons where governance failings have arisen from poor ethical standards.

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.

CHAPTER 8: LEADERSHIP AND CULTURE

44. It is recognised that to embed in an organisation and behaviour Leadership is essential. This is particularly so in relation to ethical behaviour. The standards committee and regime can play a key leadership role in this regard. The role of senior officers is also important as is the role of the political groups themselves. Whilst the provisions on 'turning a culture around' and 'building an ethical culture' may not be completely relevant to this authority they again contain learning points that can be used to maintain a positive ethical culture.
45. What the report recognises however is that good communication and the provision of training and information at an early stage can address these issues. It also stresses the need for the professional distance to be maintained, particularly with the Monitoring Officer, in order to preserve their impartiality. Finally, the importance of openness particularly in decision making is also considered.

Best Practice 15

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

Recommendation 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.

Recommendation 26

Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

NEXT STEPS

46. Members will recognise that this council are delivering many of the best practice suggestions in some form already. As it is suggested that the best practice proposals will form part of future assessments of ethical governance the council should consider very carefully how to implement them. Members are likely to accept these are sensible suggestions.
47. The recommendations are more problematical and will largely require actions by central government or third parties to be implemented. It should be noted that recommendation 2 concerning the disclosure of a candidate's address has already been implemented but the remainder are still outstanding.
48. It is proposed that a working group is formed from Governance to consider the implementation of the best practice recommendations and make recommendations back to Governance Committee and Full Council. It should also be noted that as part of the recent audit of ethical governance there is a management action to undertake a full review of the constitution. This work on ethical standards feeds nicely into the wider constitutional review.
49. It is proposed that the membership of the working group be 3 members, the independent person and it will be supported by the Monitoring Officer and other officers as required.

IMPLICATIONS OF REPORT

50. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

51. The risks identified within the report are wider governance and standards issues that have been assessed within the ethical governance review undertaken by Internal Audit.

COMMENTS OF THE STATUTORY FINANCE OFFICER

52. No comments.

COMMENTS OF THE MONITORING OFFICER

53. Contained in the body of the report.

COMMENTS OF THE INDEPENDENT PERSON

54. It is interesting that the Committee say that "The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct." Certainly that has been my experience with Chorley since I was appointed (under the new standards regime) in July 2012.

Despite the lack of a widespread problem, the Committee make no less than 26 recommendations and give 15 best practice recommendations detailed in this report. They

make no attempt to justify the potential costs of some of their recommendations in a time of restricted local authority resources.

The report does, however, make many sensible recommendations, the outcome of which will be determined nationally. The next steps recommended by the Monitoring Officer seem an appropriate way to respond locally to the Committee's report.

CHRIS MOISTER
MONITORING OFFICER

Background Papers		
Document	Date	File
Local Government Ethical Standards: A Review by the Committee on Standards in Public Life	January 2019	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

Report Author	Ext	Date
Chris Moister	5160	11 March 2019