

STANDARDS COMMITTEE

Day: Tuesday
Date: 17 November 2020
Time: 4.00 pm
Place: Zoom



Item No.	AGENDA	Page No
1	APOLOGIES FOR ABSENCE To receive any apologies for absence.	
2	DECLARATIONS OF INTEREST To allow Members an opportunity to declare any personal or prejudicial interests they may have in any items on the agenda.	
3	STANDARDS: RECOMMENDATIONS FOR RIGOROUS CHANGE To consider a report of the Executive Director of Governance & Resources (Monitoring Officer).	1 - 124
4	UPDATE RE: LOCAL GOVERNMENT ASSOCIATION MODEL MEMBER CODE OF CONDUCT To consider a report of the Executive Director of Governance & Resources (Monitoring Officer).	125 - 148
5	GENERAL DISPENSATION FOR MEMBERS To consider a report of the Executive Director of Governance & Resources (Monitoring Officer).	149 - 156
6	CIVILITY IN PUBLIC LIFE To consider a report of the Executive Director of Governance & Resources (Monitoring Officer).	157 - 238
7	ETHICAL STANDARDS UPDATE To consider a report of the Executive Director of Governance & Resources (Monitoring Officer).	239 - 280
8	REGISTER OF INTERESTS AND GIFTS AND HOSPITALITY The Register of Interests and Hospitality will be available for inspection at the meeting.	
9	DISCUSSION PERIOD FOR MEMBERS TO RAISE ISSUES (IF ANY)	

From: Democratic Services Unit – any further information may be obtained from the reporting officer or from Louis Garrick, Senior Democratic Services Officer, to whom any apologies for absence should be notified.

Item No.	AGENDA	Page No
10	URGENT ITEMS (IF ANY)	
	To give consideration to any other matters arising. To be accepted at the discretion of the Chair of the meeting.	
11	DATE OF NEXT MEETING	
	To note that the next meeting of the Standards Committee is scheduled to take place 6 April 2021.	

From: Democratic Services Unit – any further information may be obtained from the reporting officer or from Louis Garrick, Senior Democratic Services Officer, to whom any apologies for absence should be notified.

Agenda Item 3

REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	STANDARDS: RECOMMENDATIONS FOR RIGOROUS CHANGE
REPORT SUMMARY:	<p>The Committee on Standards in Public Life completed an in-depth review of ethical Standards within local authorities in 2018 (Appendix A). The review focused upon how Local Authorities had responded to the changes made by the Localism Act 2011. The final report was published in January 2019 and contained 15 areas of best practice which Local Authorities are to implement. This report provides an update to the Committee on the Council's progress in implementing the 15 areas of best practices as shown in Appendix B.</p>
RECOMMENDATION(S)	<p>The Standards Committee are asked to:</p> <ul style="list-style-type: none">a) note the reportb) note the current position regarding the best practice.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.
ACCESS TO INFORMATION	<p style="text-align: center;">NON-CONFIDENTIAL</p> <p>This report does not contain information which warrants its consideration in the absence of the Press or members of the public</p>
REFERENCE DOCUMENTS:	<p>The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:</p> <p> Telephone: 0161 342 3028</p> <p> e-mail: Sandra.Stewart@tameside.gov.uk</p>

INTRODUCTION

In early 2018 the Committee on Standards in Public Life announced its first examination of local government standards since the complete transfer of responsibility for standards to local authorities in 2011. The review has taken place at a time of rapid change in local relationships, when councils are under significant budget constraints, and councillors' public role is being changed through the impact of social media. It makes a number of recommendations and identifies best practice to improve ethical standards in local government.

The report, *Local Government Ethical Standards*, published in January 2019, (**Appendix A**) focuses on principle councils and parish councils, and excludes combined and mayoral authorities. The Committee's remit is for England, but it has explored more widely, and includes learning from Northern Ireland, Scotland and Wales as well as from the councils contributing to the review. Aspects of the current system are not working, requiring changes in the law and best practice. The implementation of best practice – now a benchmark – will be reviewed in 2020.

Key changes in the law include:

- Councillors to be presumed to be acting in an official capacity in their public conduct, including in statements on publicly-accessible social media
- Disclosable pecuniary interests to include a number of unpaid roles coupled with repeal of criminal sanctions
- A public interest test for participating in a discussion or voting if councillors have an interest in an issue
- Increased powers and protections for Independent Persons
- Local authorities to have the power to suspend councillors without allowances for up to six months
- Councillors to have the right to appeal to the Local Government Ombudsman in the event of suspension
- Disciplinary protections for statutory officers to be extended to all disciplinary action, not just dismissal.

Key best practice proposals are for:

1. The adoption of an updated model code of conduct, prepared by the LGA
2. Including prohibitions on bullying and harassment in codes of conduct
3. Requiring councillors to comply with formal standards investigations
4. Strengthening aspects of the investigation of breaches of codes of conduct
5. Publicly available information on how to make a complaint
6. A reports on relationships with separate bodies as part of the annual governance statement

Later sections of the report look at the governance challenges of poor standards for officers, lead members, and the culture of the council as a whole, and deserve particular attention.

While intimidation of councillors and candidates can be severe, and is likely to affect high-profile women in local government, evidence suggests that it is less widespread than intimidation of parliamentary candidates. Existing recommendations, published in 2017, should help to address intimidation of local councillors.

COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee on Standards in Public Life [CSPL] is the guardian of local government standards, and, coupled with the efforts of local government peers in the House of Lords, put up a defence for councils retaining a proactive role in setting and managing their own standards during the passage of the Localism Act 2011. The CSPL is responsible for promoting the Seven Principles of Public Life, based on the Nolan principles [report page 5]. It now reports on the effectiveness of the current arrangements for local government standards in the light of the changes made by the 2011 Act.

A full list of recommendations including proposed changes in the law can be found on pages 14-17, the list of best practice recommendations on pages 18-19. The intention is that this best practice should be considered a benchmark of good ethical practice, which it is expected all local authorities can and should implement. Implementation will be reviewed in 2020.

COUNCILS' CODES OF CONDUCT

Since 2011, councils have been responsible for setting and managing their own codes of conduct. In practice not all do have a full code of conduct: this is one of the issues looked at in the review.

- Breaches of codes are dealt with by the council. In outline:
- Allegations of misconduct are usually first considered by the Monitoring Officer, who may decide that a formal investigation is necessary: this will be undertaken by the Monitoring Officer, a deputy, or by an external investigator.
- Where a complaint is formally investigated, the views of an Independent Person must be taken into account before a decision is made.
- A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer.
- The authority may impose a sanction – which cannot include suspension or disqualification – but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions which require positive action by the councillor, for example, an apology or training.

Councils do have discretion to develop their own standards arrangements within this framework, so that while there are features in common, in practice standards arrangements are being implemented very differently. Some authorities give greater emphasis to the role of Independent Persons and to standards committees including a range of activities upholding standards; others take different approaches and make more use of party discipline to resolve issues informally.

THE REVIEW

The terms of reference were to:

1. 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
 - 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
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

MAIN ELEMENTS OF THE REVIEW

Overview

The report looks closely at the standards regime, and goes on to consider the significance of maintaining standards for the better governance of the authority and council as a whole.

While there is no widespread standards problem in local government, there is clear evidence of misconduct – such as bullying and harassment – by some councillors, and some cases of persistent misconduct, which the current system is failing to address. There is a high volume of complaints from parish councils, which present difficulties for principal councils.

Decision-making is getting tougher and more complex as councils now work with partners from a variety of sectors. Systems are less transparent and less accountable, putting governance under strain. The emergence of independent members and groups and expanding use of social media present challenges. Procedures intended to protect decision-making or the fair handling of complaints can be seen as cumbersome and bureaucratic rather than helpful.

Overall, there is a need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches. Current arrangements need to be clarified and strengthened to ensure a robust, effective and comprehensive system.

But responsibility for standards should remain local, based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

To keep this ethos, the Localism Act 2011 needs to be updated and clarified, and a greater role given to the Local Government Ombudsman, allowing councillors to appeal a sanction of suspension without having to resort to the civil courts.

The focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations but they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.

Later sections of the report look at the governance challenges of poor standards for officers, lead members, and the culture of the council as a whole, and deserve particular attention. The CSPL report reinforces the significant findings and recommendations of the National Audit Office [NAO], which has raised questions about whether the local governance system remains effective and has challenged complacency on the part of the Ministry of Housing, Communities and Local Government.

The CSPL's proposals for changes in the legal framework and immediate good practice recommendations seek to solve some immediate and practical issues for local authorities with modest but effective changes. It is indeed necessary that changes be manageable for local authorities strapped for cash. The NAO cites a real terms decrease of 34.2% in spending on corporate and democratic support services by local authorities from 2010-11 to 2017-18.

Codes of conduct and interests

Reviewing a sample of 20 principal authority codes of conduct, and considering evidence gathered through consultation and visits the CSPL found that:

- The considerable variation in length, breadth, clarity and detail between codes is problematic. It creates confusion for councillors and members of the public over what is required in different areas and tiers of government, and inconsistencies in rigour in the way in which standards are enforced.
- A model code would create consistency across England and reflect common expectations. All local authorities need to take account of issues such as social media use and bullying and harassment: a model code would ensure that they do so
- A national model code that can be adapted by individual authorities is required. A mandatory statutory code would be difficult to change and would lack local ownership
- The new model code should be drafted by the LGA in consultation with representative bodies of councillors and officers, with the work resourced by Ministry of Housing, Communities & Local Government [the Department].

Bullying and harassment

Bullying – which can have a significant impact on the ability of individuals to act in the public interest – needs to be dealt with effectively and should be covered specifically in codes: reliance on

'respect' provisions is insufficient. Illustrations of the type of behaviour are required. An example of a bullying provision, definitions provided by Acas and set out by the Equality Act 2010 are provided at pages 32-35. There is also a value in providing a separate protocol on councillor-officer relations.

Intimidation of councillors

Evidence suggests that intimidation of councillors is less widespread than intimidation of parliamentary candidates, but that it does occur, is equally severe and distressing, and is particularly likely to affect high-profile women in local government.

The 2017 recommendations – already outlined in an LGiU policy briefing on the CSPL report intimidation in public life – where implemented should help to address the intimidation of local councillors. One aspect that is distinct is in relation to home addresses, and that the nature of local democracy means that those likely to engage in intimidation live nearby. The government is already committed to secondary legislation to remove the requirement for candidates to have their home addresses published on the ballot paper.

The 'sensitive interest' provisions do permit non-disclosure of details in the register of interests where the member and MO agree that their disclosure could lead to violence or intimidation, but are in some cases only being invoked after the experience. Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version (report 36-37). But for the avoidance of any risk, the rules should be amended to make clear that an interest in land does not require a councillor to register their home address.

Scope of the code of conduct

Currently, a breach of conduct will arise only when an individual is acting in their capacity of councillor. As a result, it is difficult to deal with some instances of poor behaviour by councillors in public, particularly in relation to social media use. While councillors need to have their right to free speech and expression protected and not unduly restricted, at the same time public interest requires that they meet certain responsibilities in that role.

The proposal is therefore to widen the scope of the rule, so that there would be a presumption that a councillor's behaviour in public is in an official capacity. An individual's behaviour in private, in a personal capacity, would remain outside the scope of the code, but the issue would be decided as one element of the disciplinary process. A change in the 2011 Act will be required for this to come into effect.

The code of conduct would also apply 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.

Other code recommendations

Other best practice recommendations include requiring councillors to comply with a formal standards investigation and prohibiting trivial or malicious allegations by councillors.

In addition,

Codes should be reviewed each year

Be subject to consultation locally

State clearly what is required of councillors (rather than being a simple values statement) with supporting guidance on social media or on officer-member relations in a separate document

Should be enforceable

Be readily accessible in a prominent position on the council website.

Councillors' interests

The current Disclosable Pecuniary Interests [DPI] arrangements are not working. The requirements are narrow, unclear, and do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

A system for managing conflicts of interest should distinguish between requirements for registering interests and declaring or managing interests. The CSPL recommends repeal of the criminal offences created in the 2011 Act. In its place, it recommends a scheme to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. In this:

The current list of pecuniary interests required is satisfactory

Two additional categories of interests and relationships should be required in a local authority's register of interests:

- (a) relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if nonexecutive)
- (b) relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy

Having an interest should be separate from having to withdraw from a discussion or vote: a councillor would not have to withdraw unless there was a conflict of interest based on an objective test (illustrated by the devolved codes in Scotland, Wales and Northern Ireland).

A register of gifts and hospitality should be required and updated at least quarterly, with councillors recording any gifts and hospitality over a value of £50 or totalling £100 over a year from a single source.

Councillors involved in planning decisions should be particularly cautious in accepting gifts or hospitality

A more demanding test for declaring and managing interests separately to registration requirements would include clarifying the law on when a decision to withdraw is necessary, and clarification of the disclosure of the interests of partners, family, and close associates.

A councillor should not have to withdraw from a discussion or vote solely because they have previously expressed a view on the matter in question.

INVESTIGATIONS AND SAFEGUARDS

The report usefully sets out an outline of the current investigation process, and explains what is involved in an investigation being proportionate and fair (report 52 onward).

Independent persons

Recommendations, which learn from evidence and practice elsewhere, include:

- Councils publishing a clear and straightforward public interest test against which allegations are filtered
- Local authorities should have access to at least two Independent Persons [IPs] who can be consulted at key points in the process
- An IP should be appointed for a fixed term of 2 years with the possibility of one term renewal
- The views of IPs should be formally recorded in any decision notice or minutes Should recommendations on suspension be accepted, then any suspension would be dependent on the IP agreeing with the finding of a breach and that suspending the councillor would be a proportionate sanction.
- The advice of IPs should be made public where it would be in the public interest to do so (in line with recent First Tier Tribunal cases) and that IPs should be provided with legal indemnity.

Standards committees

Although councils are not required to have standards committees, a large number do. All local authorities should as a matter of good practice have standards committees that adjudicate and decide upon sanctions, and monitor and report back to full council on standards issues. It should be made possible for councils to establish a decision-making standards committee with voting independent members (other than the IPs), and voting members from parish councils.

Appeals and escalation

There are no appeals in standards decisions, and none is recommended for current sanctions. Should sanctions be increased to include suspension, then a system of appeal could include the Local Government Ombudsman, who already has a role in reviewing complaints about the process

of a standards investigation and is open to taking this responsibility. Appeal would not be against the finding, but on the grounds of maladministration, that the decision was in some way flawed

Additional recommendations

Additional recommendations based on the Nolan principles of openness include:

- Councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.
- 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.
- Information about how to make a complaint should be available on the council's website.

Sanctions

When a councillor is found to have broken the code of conduct there is no requirement to comply with remedial action. This is a significant weakness in the system, as is the lack of more punitive sanctions to address more serious breaches or repeated breaches of the code. Removing the ability to suspend or disqualify councillors has had disciplinary and reputational consequences [page 66 onward]. Party disciplinary processes frequently fill the gap, but have a number of drawbacks. Ultimately, public confidence will only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are seen to be imposed fairly and in a timely way.

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years. The CSPL argues that in England:

- There is a need for stronger sanctions
- There is no compelling evidence to introduce a power of disqualification
- There are strong reasons to introduce a power of suspension without allowances for up to six months for significant breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated noncompliance with lower level sanctions.
- There is a need to clarify if councils may lawfully impose other sanctions, such as barring councillors from council premises or withdrawing facilities.

It reasons that introducing more disqualification or suspension for longer than six months would necessitate the reintroduction of a central standards body, and in any event expects the power to suspend to be used rarely. Non-attendance at council meetings during the period of suspension would not count towards disqualification for failure to attend council meetings for six consecutive months.

Criminal offences and disqualification

Criminal offences relating to non-disclosure of pecuniary interests are inappropriate and disproportionate, and should be abolished. Individuals can be disqualified from being councillors in a number of circumstances [report 74]. It is intended to add to the existing criteria being listed on the sexual offences register, receiving a criminal behaviour order, and receiving a civil injunction under the Anti-social Behaviour, Crime and Policing Act 2014. The commitment was made by government in September 2017, so this move is overdue.

Parish councils

Evidence suggests a high volume of complaints arising from a small number of town and parish councils. As principal authorities are responsible for standards in parish councils within their boundaries, these can take up a great deal of time. It is not intended in this briefing to go into detail on this section of the report, but councillors in principal authorities may also be parish councillors, and want to know more. An overview of the issues can be found on p22, and a full chapter with recommendations in Chapter 5, page 88.

- Best practice recommendations include:
- Parish council clerks should hold an appropriate qualification
- Formal complaints about behaviour towards a clerk should normally be made by the chair or parish council as a whole
- MO roles should be provided with adequate training, corporate support and resources to undertake to deal with the standards issues raised by the parish councils within their remit.

In addition, changes in the legal framework are needed to require parish councils to adopt either the code of their principal authority or a new model code; any sanction should be determined by the principal authority.

Support for officers

The Monitoring Officer [MO], one of three statutory officers, has the key responsibility in promoting and maintaining standards, and has to be effective in an increasingly complex role. A survey by Local Government Lawyer found that, of those responding, 38% believed the role to have become significantly more risky; 48% said it was moderately riskier than in the past. The CSPL has concluded that the role is manageable, given some forethought and attention to the standing of MOs.

The MO may simultaneously be acting as an advisor, assessing the preliminary stage in a complaint, seeking advice from the Independent Person, and overseeing and managing investigations. This becomes more complicated when the MO is overseeing an investigation into a senior member of a local authority, particularly a cabinet member, when the professional relationship also involves advising cabinet. In instances such as this, the MO needs the support of the chief executive, and may call in an MO from a different authority, or pass the investigation to a deputy on an arm's-length basis.

The status, or standing, of statutory officers is critically important. The MO must be able to give objective advice without being hampered by undue pressure or, in extremis, being forced to resign. Disciplinary protections reduced in 2015 should be restored. A decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons. This protection should be enhanced to include all disciplinary actions (such as suspension or formal warnings), not just dismissal.

It is noteworthy that the National Audit Office when reviewing governance of the role of the section 151 officer drew attention to the importance of those holding that statutory role having sufficient status within the authority to fulfil their responsibilities effectively.

Training of officers

There is a danger in necessary processes and procedures being seen as arbitrary or bureaucratic by officers or elected members. Councillors can exert pressure to bend the rules; officers can treat governance processes as a rubber stamp. Training on governance and process should include an explanation of the rationale for the processes in place. Training and support in the governance and corporate aspects of the statutory officer roles is particularly important: this is apparently not a standard offer for senior officer roles.

Whistleblowing

The transparency code should be updated to require that a whistleblowing policy specifies a named contact for the external auditor, alongside their contact details, and that this information should be available on the council's website. Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998. These measures will make it simpler to report a concern.

Councils' corporate arrangements

Compliance with standards and maintaining ethical governance become more challenging as we move into the arena of Local Economic Partnerships [LEPs], joint ventures, and the various forms

of partnership and outsourcing arrangements in which councils are involved. In addition to statutory requirements, significant changes in the way councils are funded have led to changes in the way services are delivered, even where outsourcing may not be a council's preferred option.

In these structures, elected members and officers can play complex and differing roles where the council has similarly complex and differing interests. There are considerable challenges in maintaining scrutiny, accountability, and high ethical standards in these contexts.

Reports in 2018 and 2019 from the National Audit Office [NAO] draw attention to the current environment of financial uncertainty for councils, and highlight the lack of governmental comprehension of the implications for councils, their ability to achieve financial sustainability and maintain good governance. At this point, the appearance of the CSPL report widens the context in which the NAO reports are being considered, and emphasises their importance.

"Authorities have faced significant challenges since 2010-11 as funding has reduced while demand for key services has grown. Not only are the risks from poor governance greater in the current context as the stakes are higher, but the process of governance itself is more challenging and complex. Governance arrangements have to be effective in a riskier, more time-pressured and less well-resourced context." NAO 2019

Governance challenges

Ethical standards apply to how decisions are made, as much as to an individual's day to day conduct:

- (a) Complexity makes it difficult to identify who is accountable for particular decisions or outcomes, making it difficult to hold councils and other sectoral bodies to account.
- (b) Complexity can create conflicts of interest. Councillors and officers as directors² of external limited companies will have fiduciary interests potentially at odds with the interests of the council, and these conflicts may arise the other way round, when the council has to make decisions about a company in which it has an interest.
- (c) Investment vehicles, joint ventures, and LEPs can result in less transparency³ over decision-making: the new bodies are not subject to the same requirements as the authority itself. A need for proportionate commercial confidentiality may also come into play.

How to respond?

The illusion of accountability can be avoided by addressing governance at three key stages:

1. At the earliest stage, make decisions about:
 - what the relationship will be between the body and the local authority
 - what role the statutory officers will have in overseeing its activities and providing assurance on its governance
 - how and when the body will report to full council
 - what the relationship will be between the body and individual councillors
 - how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen.
2. Councillors or officers to be involved as formal observers or as board directors¹ should be briefed on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body. And the authority needs to consider how to manage a conflict of interest if and when decisions are made about the body.
3. When the body is functioning, regularly review governance procedures to² ensure that they are still appropriate. Both the body and local authority need to practice ongoing assurance, oversight, and transparency.

The report usefully considers the advantages and potential disadvantages of councils' nominees as board directors or trustees, and outlines advice from Audit Scotland on councils' use of arm's-

length external organisations and the code of conduct for councillors in Scotland [report 88-89]. This last involves a provision exempting councillors where they have an interest from the requirement to withdraw from a discussion in certain circumstances: this may be useful for English authorities.

Local Enterprise Partnerships

Evidence showed a lack of transparency around LEPs, and gaps in processes to manage potential conflicts of interest. A 2017 internal government review had found that governance policies varied widely, and that understanding of the position of public sector members on LEP boards was underdeveloped. The Department has made a commitment to implement the recommendations of that review, and further, in a review of governance and transparency of LEPs, to improve scrutiny and peer review among LEPs.

Ethical standards and corporate failure

The CSPL has found a strong link between failings in ethical standards and corporate failure. Allowing low level breaches to go unaddressed allows more significant wrong-doing to take place, although in the cases of serious corporate governance failings, several factors are present. High profile cases of failure at Tower Hamlets, Doncaster, and Northamptonshire County Council suggest three common threads, all of which are linked to failures in upholding the Seven Principles of Public Life [report 91-94].

1. An unbalanced relationship between members and officers, with a risk that decisions are not made in the public interest
2. A lack of understanding and appreciation of governance processes and scrutiny
3. A culture of fear or bullying – fundamentally a failure of leadership.

Left unchecked, standards risks can be realised and become instances of corporate failure.

“The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.”

Leadership and culture

How to maintain high standards and an ethical culture? The CSPL divides responsibility for leadership on the issues in a number of ways [report 95-101].

1. The Standards Committee: in addition to dealing with alleged breaches of the code of conduct, standards committees should continuously review ethical standards in the council, and hold the authority to account on standards issues.
2. The Chief Executive: models a high standard of conduct, particularly on political impartiality and objectivity; empowers senior and statutory officers, and is guardian of the demarcation between officer and member decision-making.
3. Leaders of political groups: set the tone for new councillors and expectations on the conduct of group members; are quick to address poor behaviour; mentor and advise councillors; use party discipline where necessary; appoint experience members to standards committees.
4. Leaders of councils: as the most visible group leader, be a model for the highest standards and address any poor behaviour by portfolio-holders.
5. Chair of the council: a role in setting the tone of full council meetings and ensuring that councillors are aware of expectations on how they engage with each other and officers.

Turning round poor culture

The CSPL has concluded there are four measures needed to turn round an unhealthy culture:

1. Modelling expected behaviours on the part of senior leadership, in the early days of a new council, or in the case of corporate renewal.
2. Taking a zero-tolerance approach even to small breaches.
3. When there has been a breach of the rules, distinguishing where there are opportunities for development from those occasions when discipline is necessary.

4. Avoiding over-extended interim arrangements so that new leaders can be responsible for embedding change.

A role for political groups

Rather than run parallel disciplinary processes to those being followed by the council, the informal mentoring and training organised by political groups is better complemented by the formal training offered by the council and by advice from officers. Similarly, with respect to disciplinary processes, officers can offer assistance with informal resolution: in the event of a formal complaint or a serious issue, the formal standards processes should be followed [report 97-8]. There is a need for officers to provide greater support and a full induction process for councillors who lack the support of an established political group.

Building an ethical culture

A system that investigates complaints is important, but more so is a system which enables good behaviour: a civil tone in conducting business, clear standards of behaviour modelled by senior leaders and reinforced by early stage induction and training programmes; an impartial monitoring officer who has the confidence of members and senior officers, and an open and public approach to decision-making.

Councillors should be required to attend formal induction training by their political groups, and national parties should add such a requirement to their model group rules. Information should be withheld from councillors and the public only when stringently justifiable. Scrutiny should be effective, and officers should have a general obligation to provide information to councillors and to account for decisions to councillors.

Press accountability is disappearing with local newspapers in many parts of the country: local authorities must have systems in place that enable external scrutiny of behaviour and decisions. The effectiveness of these systems should be tested by peer review: the CSPL recommends that the LGA incorporate a local authority's processes for maintaining ethical standards as part of peer reviews.

Comment

If accepted, the proposals for changes to the Localism Act 2011 can be expected to wait, but the good practice recommendations can be taken up straight away.

There is clearly a range in current practice, from councils that simply have a short statement of intent acknowledging the Nolan Principles, towards others having effective codes in place, with worked out examples making it clear that bullying and harassment are unacceptable. Illustrations are provided in the report, and there can be no obstacle to councils that are behind on the curve catching up with the best. It will need resources, but the LGA should be putting pressure on the Department to support the creation of a model code of conduct. It does appear that the material is out there, and it must be the case that representative bodies and councillors and officers of all tiers of local government would be willing to take part in a well-structured consultation exercise. The LGA should also be incorporating consideration of a local authority's processes for maintaining ethical standards in its peer reviews.

Government should not be allowed to park changes to the law until 'a legislative opportunity is presented'. Pressure should be brought to bear on the Department to amend the Localism Act 2011 as recommended [report 14-17], to make changes to the way in which pecuniary and non-pecuniary interests are recorded and managed, to reflect the impact of using social media on councillors' public standing and responsibilities, to introduce an effective enforcement system that makes it possible for councils to tackle bullying and harassment including protections for councillors, and to manage an increasingly complex decision-making future.

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Local Government Ethical Standards

**A Review by the
Committee on
Standards in Public Life**

**Committee on
Standards in
Public Life**





Local Government Ethical Standards

Committee on Standards in Public Life

Chair: Lord Evans of Weardale KCB DL

January 2019





The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

Lord Evans of Weardale
Chair, Committee on Standards in Public Life





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Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



List of 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



Number	Recommendation	Responsible body
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



Number	Recommendation	Responsible body
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



Number	Recommendation	Responsible body
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 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.



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.



Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.¹

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were 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
- 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

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

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Goolden of Wilkin Chapman LLP for his support and advice throughout.



Chapter 1: Overview of standards

Is there a standards problem in local government?

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.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as 'parish councils' for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.²

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

2 Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

The current system

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.

Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

1997 The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

1998 The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.³ The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

³ Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



2005 In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

2007 Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.

2010 In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.⁴ The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”⁵

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



Chapter 2: Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.⁶

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

Variation, consistency, and clarity

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

⁶ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.⁷

Monitoring Officer, North Hertfordshire District Council

In Ashford, a 'Kent model' 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.¹⁰

Ashford Borough Council

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

Model code of conduct

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.⁸

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.⁹

Worcestershire County Council

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.¹¹

INLOGOV, University of Birmingham

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.¹² A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.¹³ We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

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.

Bullying and harassment

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

¹² Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

¹³ Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10

which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

Example of a bullying provision

Extract from Newcastle City Council code of conduct¹⁴

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated "[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance".¹⁵

¹⁴ Newcastle City Council Code of Conduct. Available at: https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf

¹⁵ Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”.¹⁶

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities¹⁷

¹⁶ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

¹⁷ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.¹⁸

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

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.

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

Intimidation of councillors

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.¹⁹

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.²⁰

Local Government Association

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

18 Equality Act 2010, section 26

19 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

20 Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.²¹

Association of Police and Crime Commissioners

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.²² We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.²³

City of Westminster, *Guidance note to members on Register of Interests.*

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

Recommendation 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.

Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.²⁴ This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.²⁵

Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

²³ City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

²⁴ Localism Act 2011, section 27(2): "...a relevant authority must, in particular, 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*"

²⁵ Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.²⁶

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".²⁷ This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."²⁸

²⁶ Ministerial Code, paras 7.13, 7.18

²⁷ The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

²⁸ Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in an official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.²⁹

The *High Court, in Heesom v Public Service Ombudsman for Wales*,³⁰ considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

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.

Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.³¹ The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.³²

Hoey Ainscough Associates

*MC v Standards Committee of LB Richmond*³³ drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

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.

Compliance with standards processes

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

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.

Writing codes of conduct

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

³² Written evidence 212 (Hoey Ainscough Associates)

³³ *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively³⁴

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.³⁵ The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.³⁶

**Jonathan Goolden,
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.³⁷

**Jonathan Goolden,
Wilkin Chapman LLP**

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.

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.

³⁴ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

³⁵ DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

³⁶ Jonathan Goolden, Roundtable, 18 April 2018

³⁷ Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Example of a clear code of conduct

Extract from Plymouth City Council code of conduct³⁸

Disrepute

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

Misuse of position

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

Use of council resources

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

Advice of Monitoring Officer and Responsible Finance Officer

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

Giving reasons for decisions

Councillors must give reasons when required to by the law or by any council procedures.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

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.

Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

Integrity: Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

The Disclosable Pecuniary Interests (DPI) arrangements

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.³⁹

Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.⁴⁰

Mid Sussex District Council

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPs.⁴¹

London Borough of Croydon

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.⁴²

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



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.

Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.⁴³

Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.⁴⁴

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

⁴³ Written evidence 315 (Transparency International UK)

⁴⁴ Available online at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf, 20



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.

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

Cabinet Office principles for accepting gifts or hospitality

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider's relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.⁴⁵

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.⁴⁶

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: "[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner."⁴⁷

Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have "[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting". The test of having a 'disclosable

pecuniary interest *in* any matter' is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest 'in' that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.⁴⁸

North Hertfordshire District Council

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 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.⁴⁹

Ashford Borough Council

⁴⁷ Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

⁴⁸ Written evidence 22 (North Hertfordshire District Council)

⁴⁹ Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an ‘objective test’ for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

Tests for actively managing interests in the devolved codes

Scotland

“Whether 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 your role as a councillor.”⁵⁰

Wales

“[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”⁵¹

Northern Ireland

“An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents.”⁵²

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3

Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

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”.



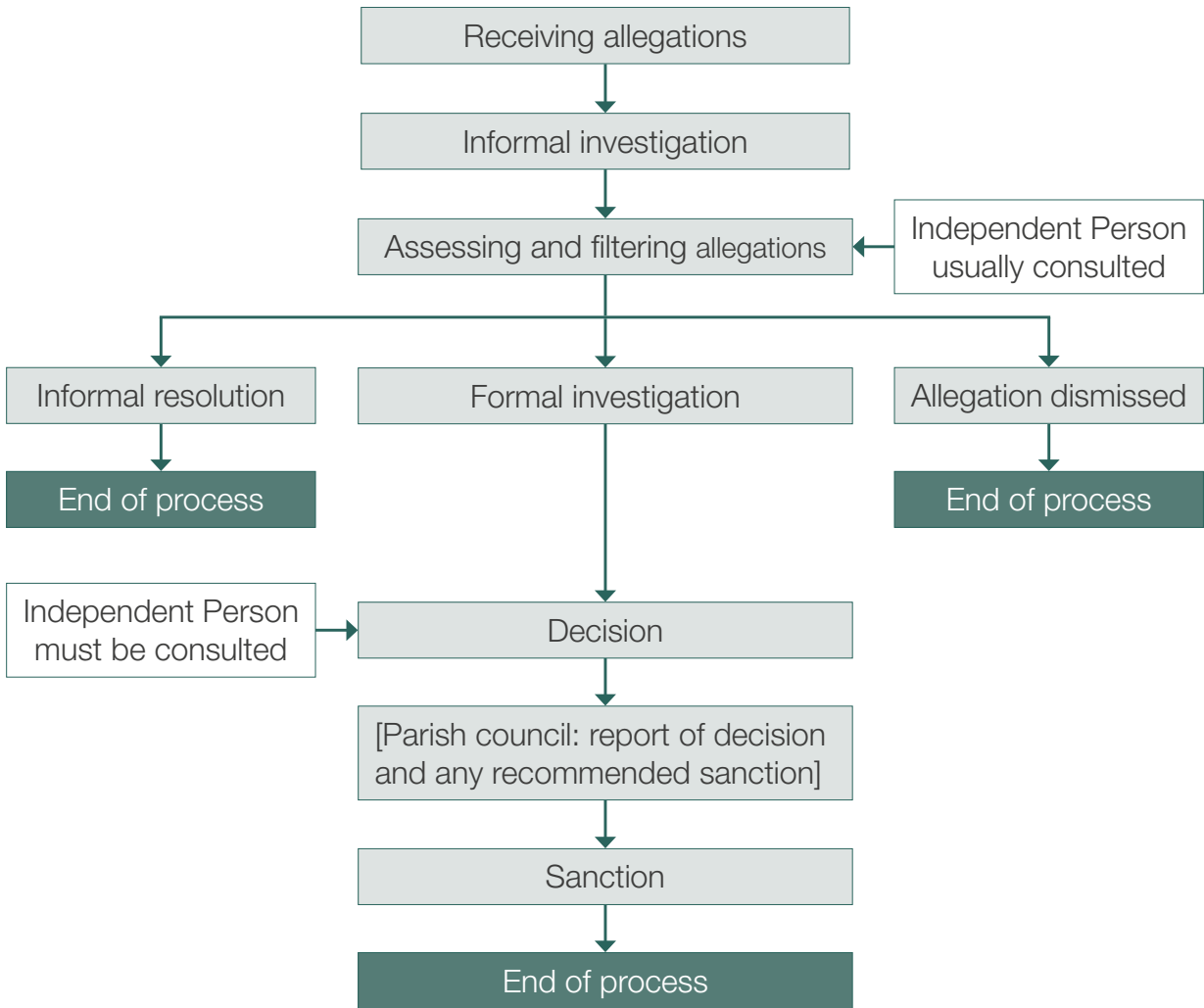
Chapter 3:

Investigations and safeguards

Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

The current investigation process





Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

Northern Ireland Local Government Commissioner for Standards public interest test

1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?⁵³

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

Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

⁵³ Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.⁵⁴
Cllr Dan Cohen, Leeds City Council

Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for 'independence' specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be 'taken into account', they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title 'Independent Person' creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...] ⁵⁵
Richard Stow, Independent Person

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority's code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

⁵⁴ Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

⁵⁵ Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.⁵⁶

London Borough of Sutton

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

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

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

⁵⁶ Written evidence 311 (London Borough of Sutton)



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.

The role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.⁵⁷

**Dr Peter Bebbington,
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

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.

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.⁵⁸

Hoey Ainscough Associates

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 recorded in any decision notice or minutes.

⁵⁷ Dr Peter Bebbington, Roundtable, 18 April 2018

⁵⁸ Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

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.

We have noted recent First Tier Tribunal cases⁵⁹ which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

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.

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017_0220 (GRC)



Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.⁶⁰

⁶⁰ Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.⁶¹

Wychavon Borough Council

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

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 dependent parishes, to decide on allegations and impose sanctions.

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

Appeals and escalation

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

61 Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.⁶²

Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.⁶³

London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.⁶⁴ This is an under-appreciated safeguard within the current system.

Common issues with local authority standards processes considered by the Local Government Ombudsman⁶⁵

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

⁶² Written evidence 228 (Lawyers in Local Government)

⁶³ Written evidence 311 (London Borough of Sutton)

⁶⁴ Written evidence 126 (Local Government and Social Care Ombudsman)

⁶⁵ Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.⁶⁶

Local Government Ombudsman

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

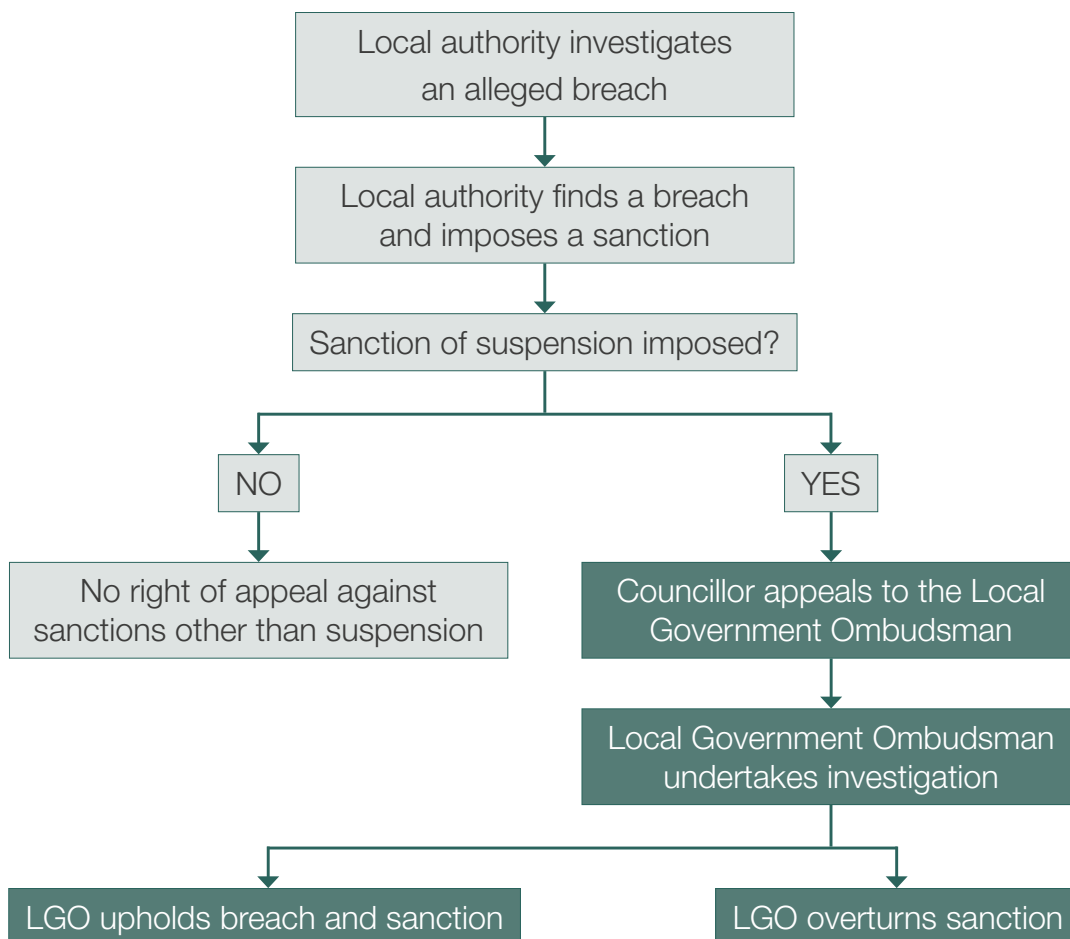
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



Proposed appeals process





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.

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

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.

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

Promoting openness and transparency

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

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 (e.g. 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.

Avoiding legalisation

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”⁶⁷

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”⁶⁸

The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.⁶⁹ In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

⁶⁷ Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

⁶⁸ Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

⁶⁹ Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

The current sanctions arrangements

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.⁷⁰

Tonbridge and Malling Borough Council

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.⁷¹

Taunton Deane Borough Council

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.⁷²

Hoey Ainscough Associates

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.⁷³

David Prince CBE

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

Party group discipline

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.⁷⁴

Hoey Ainscough Associates

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.⁷⁵

**Andrew Maughan, Monitoring Officer,
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

⁷⁴ Written evidence 212 (Hoey Ainscough Associates)

⁷⁵ Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

Examples of political party disciplinary process used as an alternative to the formal standards process

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.⁷⁶

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

⁷⁶ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.⁷⁷

**Cllr Rory Love, Chairman,
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.⁷⁸

**Cllr Simon Henig CBE, Chair,
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

The sanction of the ‘ballot box’

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.⁷⁹

**Sandwell Metropolitan Borough
Council**

⁷⁷ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

⁷⁸ Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

⁷⁹ Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.⁸⁰

Wycombe District Council

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”⁸¹ Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].⁸²

Cllr David Gaye

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.⁸³

Cornwall Council

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).⁸⁴

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.⁸⁵

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.⁸⁶ However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

⁸⁴ Written evidence 106 (Standards Commission for Scotland)

⁸⁵ Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

⁸⁶ Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

Giving legal certainty to councils

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

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.

Criminal offences in the Localism Act 2011

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.⁸⁷

Taunton Deane Borough Council

⁸⁷ Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

Disqualification of councillors

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

Current law on the disqualification of councillors

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



Chapter 5:

Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.⁸⁸

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create a increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

⁸⁸ Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.⁸⁹

Cornwall Association of Local Councils

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

⁸⁹ Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.⁹⁰

Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.⁹¹

Hoey Ainscough Associates

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.⁹²

Society of Local Council Clerks

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

⁹⁰ The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

⁹¹ Written evidence 212 (Hoey Ainscough Associates)

⁹² Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

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.

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.⁹³

Society of Local Council Clerks

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

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.

Investigations and sanctions in town and parish councils

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.⁹⁴

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.⁹⁵

Cornwall Council

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

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.

Following *Taylor v Honiton Town Council*,⁹⁶ a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.⁹⁷

Wychavon Borough Council

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

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.

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,⁹⁸ which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.⁹⁹ The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.¹⁰⁰ We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

⁹⁸ *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

⁹⁹ *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

¹⁰⁰ See *Moores v Bude-Stratton Town Council* [2000] EAT 313_99_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



Chapter 6: Supporting officers

Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.¹⁰¹

Max Caller CBE

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.¹⁰² Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.¹⁰³

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.¹⁰⁴

¹⁰¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰² For example, in sections 59, 60, 66 of the Local Government Act 2000

¹⁰³ Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

¹⁰⁴ Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.¹⁰⁵

Lawyers in Local Government

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

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.

¹⁰⁵ Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

Standing of statutory officers

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.¹⁰⁶ The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.¹⁰⁷

Lawyers in Local Government

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

Recommendation 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.

¹⁰⁶ Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

¹⁰⁷ Written evidence 228 (Lawyers in Local Government)



Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.¹⁰⁸

Max Caller CBE

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.¹⁰⁹

Dame Stella Manzie DBE

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.¹¹⁰

Protect

¹⁰⁸ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰⁹ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

¹¹⁰ Written evidence 305 (Protect)

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.

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.¹¹¹

Protect

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

¹¹¹ Written evidence 305 (Protect)



Chapter 7:

Councils' corporate arrangements

A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.¹¹² The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

¹¹² National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.¹¹³

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that "[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability."¹¹⁴

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

Responding to the new governance challenges

Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance 'illusion', that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.¹¹⁵

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

¹¹³ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

¹¹⁴ "What next for care and health?", *Municipal Journal*, 22 February 2018, 16

¹¹⁵ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.¹¹⁶

Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)*

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

Potential advantages of council nominees as board directors or trustees

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

¹¹⁶ Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected¹¹⁷

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.¹¹⁸

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.¹¹⁹

Audit Scotland, *Councils' use of arm's-length external organisations*

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".¹²⁰ However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

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.

Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.¹²¹

Nicola Greenan, Director, East Street Arts, and LEP board member

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, "[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation".¹²²

The report also identified a need to consider "[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications".¹²³ Ney recommended that "[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

¹²¹ Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

¹²² Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

¹²³ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".¹²⁴

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.¹²⁵

Ethical standards and corporate failure

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)¹²⁶

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

¹²⁴ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

¹²⁵ Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

¹²⁶ PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)¹²⁷

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".¹²⁸ The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

¹²⁷ Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

¹²⁸ Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



**Northamptonshire County Council
(events taking place between 2015-17;
report by Max Caller CBE, Best Value
Inspector, 2018)¹²⁹**

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.¹³⁰

Dame Stella Manzie DBE

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

¹²⁹ Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf

¹³⁰ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.¹³¹

Max Caller CBE

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

¹³¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Chapter 8: Leadership and culture

Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.¹³²
Dame Stella Manzie DBE

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leaders of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

¹³² Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.¹³³

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.¹³⁴

**Dawn French, Chief Executive,
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.¹³⁵

Dame Stella Manzie DBE

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

¹³³ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁴ Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

¹³⁵ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.¹³⁶

Max Caller CBE, Commissioner, Northamptonshire County Council

The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.¹³⁷

Dame Stella Manzie DBE

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

¹³⁶ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁷ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.¹³⁸

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

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

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

Building an ethical culture

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

¹³⁸ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

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.

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.¹³⁹

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

139 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.¹⁴⁰

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.¹⁴¹

Andrew Maughan, Monitoring Officer, Camden Council

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.¹⁴²

Darryl Chamberlain, editor, 853 blog

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

¹⁴⁰ House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

¹⁴¹ Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

¹⁴² Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.¹⁴³

**Barry Quirk CBE, Chief Executive,
Royal Borough of Kensington &
Chelsea**

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says 'these people are elected and have entitlement to know and there are some rules about confidentiality'. They can't pursue cases where they have individual reasons for not being involved.¹⁴⁴

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

¹⁴³ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

¹⁴⁴ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



Appendix 1:

About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Membership of the Committee, as of January 2019

Lord (Jonathan) Evans of Weardale KCB DL, Chair

The Rt Hon Dame Margaret Beckett DBE MP
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah
(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
 - research on the legal framework for local government standards
 - analysis of a sample of 20 principal authority codes of conduct
 - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerslake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

*Follow-up telephone conversation

Committee on Standards in Public Life

Room GC.07, 1 Horse Guards Road, London SW1A 2HQ

Tel: 020 7271 2948

Email: public@public-standards.gov.uk

January 2019

CSPL local government ethical standards 15 best practice recommendations

Name of local authority:

1.	<i>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.</i>
	Progress:
2.	<i>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.</i>
	Progress:
3.	<i>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.</i>
	Progress:
4.	<i>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.</i>
	Progress:
5.	<i>Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</i>
	Progress:
6.	<i>Councils should publish a clear and straightforward public interest test against which allegations are filtered.</i>
	Progress:
7.	<i>Local authorities should have access to at least two Independent Persons.</i>
	Progress:
8.	<i>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.</i>
	Progress:
9.	<i>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.</i>
	Progress:
10.	<i>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.</i>
	Progress:
11.	<i>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.</i>

	Progress:
12.	<i>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.</i>
	Progress:
13.	<i>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.</i>
	Progress:
14.	<i>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.</i>
	Progress:
15.	<i>Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</i>
	Progress:

REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	UPDATE RE: LOCAL GOVERNMENT ASSOCIATION MODEL MEMBER CODE OF CONDUCT
REPORT SUMMARY:	<p>The LGA has committed to reviewing the current model member code of conduct, as recommended by the Committee on Standards in Public Life's report into Local Government Ethical Standards. The LGA held an event on Civility in Public Life with a range of stakeholders at the end of last year and three consultation workshops at the beginning of this year. Their consultants have also examined examples of good practice, both in local government and other professions. The LGA consultation draft model member code of conduct is the result of this initial work. It is the intention to create additional guidance, working examples and explanatory text.</p> <p>The onset of COVID-19 and the measures that have been introduced to curb its spread have changed the workings of local government. Remote meetings and decision-making processes have been introduced, but these have not diluted the importance of high standards of conduct of local government elected members. With more communication taking place remotely and online between members and residents, particularly through social media, there may be more difficult and heated discussions as some seek to express the fear, frustration and heightened emotions they are experiencing at this time. However, abuse, threatening and intimidatory communications continue to be unacceptable, and the LGA have sought to address these issues in the draft code.</p> <p>This report looks at the draft Model Code of Conduct for Members in comparison to Tameside's current Code of Conduct for Members and highlights the main differences between them.</p>
RECOMMENDATION(S)	The Standards Committee are asked to note the changes and recommend to Council to adopt the final version of the Local Government Association Model Code of Conduct for Members once published, which is expected to be in December of this year.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of

setting and advising on local ethical and standard issues.

**LINKS TO COMMUNITY
PLAN:**

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



Telephone: 0161 342 3028



e-mail: Sandra.Stewart@tameside.gov.uk

1. INTRODUCTION

- 1.1 The Committee on Standards in Public Life conducted a review of Local Government Ethical Standards in 2018 and the subsequent report was published in January 2019. One of the recommendations of the report was that a new national code of conduct for members was to be created by the LGA for all local Authorities to use as a basis for their own code. The Local Government Association (LGA) is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.
- 1.2 The role of councillor in all tiers of local government is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that councillors can be held accountable and all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We all want the role of councillor to be one that people aspire to and want to participate with. We need to continue to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.
- 1.3 All councils are required to have a local Member Code of Conduct. The Local Government Association Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.
- 1.4 A councillor role is to represent local residents, work to develop better services and deliver local change. The public have high expectations of councillors and entrust them to represent everyone (be it ward/town/parish), taking decisions fairly, openly, transparently and with civility.
- 1.5 Councillors should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. The Local Government Association Model Member Code of Conduct, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

2. PURPOSE

- 2.1 The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken.
- 2.2 It is also to protect councillors, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and a minimum set of obligations relating to conduct.
- 2.3 The overarching aim is to create and maintain public confidence in the role of member and local government.

3. APPLICATION OF THE CODE

- 3.1 The Code of Conduct applies to a councillor when they are acting [***or claiming or giving the impression that they are acting***]¹ in [***public or in***]² their capacity as a member or representative of the council, although councillors are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [***including where a councillor could be deemed to be representing your council or if there are potential implications for the council's reputation.***]³ Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

The seven principles of public life

- 3.2 Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in **Appendix A**.

Breaches of the Code of Conduct

- 3.3 Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.
- 3.4 Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.
- 3.5 The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.
- 3.6 Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence.
- 3.6 Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence. Political parties may have its own internal standards and resolution procedures in addition to the Member Code of Conduct that members should be aware of.
- 3.7 Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life⁴ and may be part of a future Government consultation. This includes possible future sanctions and appeals processes. This is a significant change from the current Code.
- 3.8 The current Members Code of Conduct, which applies to all elected members can be found on the website at: <https://tameside.moderngov.co.uk/documents/s13569/Part%205a%20-%20Code%20of%20Conduct.pdf>

¹ CSPL recommend that "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".

² CSPL recommend that "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

³ See 1 and 2 above

⁴ See CSPL website for further details www.gov.uk/government/news/theprinciples-of-public-life-25-years

- 3.9 In 2012, the then Government significantly reduced the role of Standards Committee and Monitoring Officer to deal and consider complaints and abolished the Standards Board for England taking the view that the electorate should determine who the representative was and sanction their behaviour through the ballot box unless the elected member's behaviour was criminal.
- 3.10 Criminality was refined and narrowed to failures to declare interests.
- 3.11 Clearly all elected members are subject to the laws of the land and any such complaints would be investigated by the Police in the usual way.
- 3.12 The complaints process does not apply to complaints that are about:
- any conduct where the Councillor is not acting as a councillor for example in their private life
 - Incidents that happened before a member was elected or chosen to serve.
 - Incidents that generally happened more than 12 months ago
 - The way a council conducts or records its meetings.
 - The way a council as a whole has or has not done something. This may be a matter for the Local Government Ombudsman if the council has not dealt with the matter properly and it has not been resolved locally.
 - Decisions of the council or which are about one of the services it provides. In this case, you should ask how to complain using the relevant council's own complaints system.
- 3.13 Any complaints are considered by the statutory section 5 Monitoring Officer usually in consultation with the Independent Person appointed under the Localism Act 2012.
- 3.14 The options available include:
- Informal resolution through, for example, seeking an apology from the member who is the subject of the complaint or attempts at conciliation.
 - Formal investigation to the Standards Sub-Committee
 - No further action.
- 3.15 Where the elected member or the authority make a reasonable offer of local resolution, but a complainant is not willing to accept that offer, this is taken into account of this when deciding whether the complaint merits formal investigation.
- 3.16 Depending on the nature of the complaint, it may be referred for formal investigation to the Standards Committee.
- 3.17 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.
- 3.18 There is no right of appeal against the decision as to what steps, if any, the Council intends to take in relation to a complaint.
- 3.19 If a complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.
- 3.20 The Code of Conduct for Members makes it clear that the majority of the Code applies only to a Councillor's actions in his capacity as a Councillor. The High Court considered this issue in detail when it considered and upheld the decision of the Case Tribunal that Ken Livingstone was no longer discharging his functions as Mayor of London in telling a reporter that he was acting just "*like a concentration camp guard*" in obeying his employer's instructions to waylay Ken Livingstone and seek to interview him as he walked home after

an evening reception at City Hall. By making it clear to the reporter that he had no intention to reply to the reporter's questions and that he regarded himself as being "off duty", Ken Livingstone had done enough to take himself outside the Code of Conduct's requirement to "treat others with respect".

- 3.21 The High Court concluded that where the Councillor is doing something in an entirely private capacity, where his conduct had nothing to do with his position as a Councillor, he will not be covered by the Code of Conduct.
- 3.22 By way of illustration, the High Court referred to a Councillor who is caught shoplifting or found guilty of drunken driving and said that, if it had been the intention of Parliament to subject a Councillor to a Code of Conduct, which extends to conduct in his private life, Parliament should have spelled out what is to be covered. On that basis, Ken Livingstone was not performing his functions as Mayor of London when he made his remarks to the reporter, and so the Case Tribunal was wrong to find that the Code of Conduct could apply to his conduct at the time.
- 3.23 This interpretation is consistent with Article 10 of the Human Rights Act 1998, as the High Court pointed out. The presumption in that Article is that "*everyone has the right to freedom of expression*", and that right shall include the freedom to hold opinions and to impart information. So Ken Livingstone was entitled to hold the opinion that the reporter was acting unreasonably, and to express that view, and the law could only restrict that right, or penalise him for expressing it, where "*necessary in a democratic society for such purposes as the protection of morals or the reputation or rights of others*".
- 3.24 The High Court found that, since he was "off duty", he had the right to express himself as forcibly as he thought fit, at least on matters which were not so close to his official duties as to bring him back within the reach of the Code of Conduct. Mr. Justice Collins said that, however offensive and undeserving Ken Livingstone's remarks might be his right of freedom of speech as a private individual must prevail.
- 3.25 There is also a difference between actions which bring a Councillor into disrepute, and those which diminish the reputation of his office, or of the authority of which he is a member. The High Court was clear that Ken Livingstone's remarks might reasonably diminish public respect for him as an individual, but that it would have been necessary for the Case Tribunal to have gone a stage further and consider whether his words brought the office of Mayor of London into disrepute. By way of guidance, the High Court suggested that misuse of public office for personal advantage is likely to diminish public respect for that office, but personal misconduct is less likely to do so, even where the office holder is personally associated with the office.
- 3.26 The effect of this judgment is that, currently where a Councillor does something quite outside his functions as a Councillor, even where that action clearly reflects upon his/her credibility to act as a Councillor such as a criminal offence of dishonesty, the only way in which the law can prevent that Councillor from continuing to act as a Councillor is where the Councillor is disqualified under Section 80 of the Local Government Act 1972 as a result of being convicted of a criminal offence and given a custodial sentence of 3 months or more (whether or not suspended).
- 3.27 Even then, disqualification does not bite until any appeal, however unmeritorious, has been dismissed, as was demonstrated when Councillor Jim Speechley, the former Leader of Lincolnshire County Council, was given an 18 month custodial sentence for misconduct in public office but remained a Councillor for more than 6 months, whilst in prison, until his appeal was summarily dismissed. Otherwise, therefore in the absence of legislation regulating behaviour in councillors private lives the Court states that it is for the electorate not to re-elect a Councillor who has demonstrated by their conduct in their private life that they are unworthy of public trust.

- 3.28 **Consequently, it should be noted that generally, the Code doesn't apply to Social Media because members aren't carrying out their council duties and do so in a personal capacity as we do not host their social media accounts.**
- 3.29 Moreover, as explained Article 10 ECHR provides the right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".
- 3.30 This right includes the freedom to hold opinions, and to receive and impart information and ideas.
- 3.31 Article 10 protects both popular and unpopular expression – including speech that might shock others – subject to certain limitations.
- 3.32 *The case of Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)* had confirmed that what was said by elected politicians was subject to "enhanced protection", applying to all levels of politics (including local politics); and that the protection "extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others".
- 3.33 Clearly, like everyone councillors are subject to the laws of defamation and any criminal obscenity restrictions.
- 3.34 Additionally, whilst some matters don't breach the very strict framework for councillors when undertaking their duties but it may in fact be in breach of their party political code of conduct and this may be an avenue that complainants want to follow.
- 3.35 The model code suggests a new duty of acting "with civility". There is clearly a major issue with regard to social media and the behaviour of Councillors. A recently reported case on the BBC News/"Lincolnshire Live" websites involved the Chair of a Parish Council and farmer who threatened on Twitter, to take action against those in the village seeking to take part in a vigil outside the Parish Church in support of "Black Lives Matter". He has now resigned. It would appear to give the necessary enforcement to the Council's social media.

4. EXAMPLE LGA GUIDANCE AND RECOMMENDATIONS

Internal resolution procedure

- 4.1 Under the new Code councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct.
- 4.2 The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the council as a whole.
- 4.3 In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken. If the breach is confirmed and of a serious nature, action can be automatically escalated.
- (a) an informal discussion with the monitoring officer or appropriate senior officer
 - (b) an informal opportunity to speak with the affected party/ies
 - (c) a written apology
 - (d) mediation
 - (e) peer support
 - (f) requirement to attend relevant training

- (g) where of a serious nature, a bar on chairing advisory or special committees for up to two months.
- (h) where of a serious nature, a bar on attending committees for up to two months. Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

4.4 The process for dealing is the same as it is now although it sets out more specifically the proposed sanctions.

5. DIFFERENCES BETWEEN THE DRAFT MODEL CODE OF CONDUCT & THE CURRENT CODE

- 5.1 The Draft Model Code of Conduct for Members and Tameside's current code both take a rule based approach. A rules based code is preferred when a document is to be public facing as it clearly sets out what the public can expect from Elected Members.
- 5.2 The content of the Draft Model Code of Conduct is very similar to Tameside's code of conduct, which is the same code that was adopted across Greater Manchester with the differences being mainly in the level of description and the number of examples/definitions provided.
- 5.3 The main difference is that Committee for Standards in Public Life (CoSPL) recommend that "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". The Committee for Standards in Public Life (CoSPL) recommend that "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
- 5.4 The draft Model Code of Conduct for Members details Councillors' responsibilities for declarations of gifts and hospitality and sets the minimum value at £25 which is in line with our existing Policy. It was recommended by the Committee for Standards in Public Life (CoSPL) that the Government set a national rule of £50 or £100 from a single source over the course of a year but that is still awaiting action from Government.
- 5.5 The draft Model Code of Conduct for Members also includes a short description of a proposed internal resolution procedure. It includes details of proposed sanctions in relation to breaches, which is not something currently included in Tameside Code.
- 5.6 The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model code of conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government. Workshops of members and Monitoring Officers took place to discuss the approach and content of the revised Code and a consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August.
- 5.7 Lots of comments questions and feedback provided during the webinar sessions with high level consultation summary response with overwhelming support for the Code. But a number of issues were raised.
 - First person or third person
 - Respect or Civility?
 - More on social media including confidentiality.
 - Declaration of gifts £25 too low £50 too high?

- Need for accompanying guidance with examples
- Equality Act- obligation to comply
- Obligation to cooperate with investigation
- Compulsory training for members
- Sanctions

5.8 A Stakeholder roundtable to discuss the response and next steps took place on 30 September 2020 and the revised draft Code was considered at an LGA Councillors Forum on 22 October 2020.

5.9 The revised draft Code is being reviewed in light of this discussion and a final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published as the second Model Code of Conduct for Members. It is expected that the updated version will be released before the end of 2020.

6. RECOMMENDATIONS

6.1 As set out at the front of the report.

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Local Government Association Model Member Code of Conduct

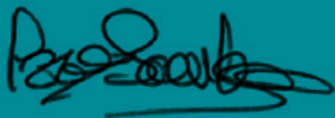
Introduction

The Local Government Association (LGA) is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillor in all tiers of local government is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate with. We want to continue to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

As a councillor we all represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent everyone (in our ward/town/parish), taking decisions fairly, openly, transparently and with civility. Councillors should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. This Code, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.



Councillor Izzi Seccombe OBE
Leader, LGA Conservative Group



Councillor Nick Forbes CBE
Leader, LGA Labour Group



Councillor Howard Sykes MBE
Leader, LGA Liberal Democrats Group



Councillor Marianne Overton MBE
Leader, LGA independent Group

Purpose

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of member and local government.

Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]¹ in [public or in]² your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.] Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

The seven principles of public life

Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

Model member conduct

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

Specific obligations of general conduct

This section sets out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

Civility

- 1. Treating other councillors and members of the public with civility.**
- 2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.**

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to members, where action could then be taken under the Member Code of Conduct.

Bullying and harassment

- 3. Not bullying or harassing any person.**

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

Impartiality of officers of the council

- 4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.**

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Confidentiality and access to information

- 5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.**
- 6. Not preventing anyone getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and

printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

Disrepute

7. Not bringing my role or council into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

Your position

8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

Use of council resources and facilities

9. Not misusing council resources.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given

to you to help you carry out your role as a councillor more effectively and not to benefit you personally.

Interests

10. Registering and declaring my interests.

You need to register your interests so that the public, council employees and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

Gifts and hospitality

11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.

12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you

because you are a member. However, you do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your monitoring officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

Breaches of the Code of Conduct

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member Code of Conduct that members should be aware of.

Example

LGA guidance and recommendations

Internal resolution procedure

Councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken.

If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. an informal discussion with the monitoring officer or appropriate senior officer
2. an informal opportunity to speak with the affected party/ies
3. a written apology
4. mediation
5. peer support
6. requirement to attend relevant training
7. where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. where of a serious nature, a bar on attending committees for up to two months.

Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

Endnotes

1. CSPL recommend that “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”.
2. CSPL recommend that “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.”
3. Subject to footnotes 1 and 2 above
4. See CSPL website for further details www.gov.uk/government/news/the-principles-of-public-life-25-years
5. ACAS’s definition of bullying

Appendices

Code Appendix A

The principles are :

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Code Appendix B

Registering interests

1. Within 28 days of this Code of Conduct being adopted by the council or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table 1 or 2, or of any change to a registered interest, notify the Monitoring Officer.

Declaring interests

3. Where a matter arises at a meeting which directly relates to an interest in Table 1, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
4. Where a matter arises at a meeting which directly relates to an interest in Table 2, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

5. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which affects –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body covered by table 1 below

you must disclose the interest.

7. Where the matter affects the financial interest or well-being to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Disclosable Pecuniary Interests

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 .
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. ‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor’s knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*'director' includes a member of the committee of management of an industrial and provident society.

*'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

Any Body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;	
Any Body—	(a) exercising functions of a public nature;
	(b) directed to charitable purposes; or
	(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
of which you are a member or in a position of general control or management.	



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We consider requests on an individual basis.

REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	GENERAL DISPENSATION FOR MEMBERS
REPORT SUMMARY:	This report invites the Committee to readopt the existing range of standard dispensations available to Members in discharging Council functions in accordance with the Localism Act 2011 and the Members' Code of Conduct.
RECOMMENDATION(S)	<p>The Committee is asked to:</p> <p>(i) Delegate authority to the Borough Solicitor to, upon application by Members, grant a dispensation for four years from the date of this Committee, for Members to participate and vote in the following matters, irrespective of them otherwise having a pecuniary interest:</p> <ul style="list-style-type: none">(a) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless the matter relates particularly to the school, which the child attends;(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or is entitled to the receipt of, such pay;(c) an allowance, payment or indemnity given to Members;(d) any ceremonial honours given to Members; and(e) setting council tax or a precept under the Local Government Finance Act 1992. <p>(ii) Note that such dispensation does not relieve the Member of the obligation to declare the interest or have such interest registered in accordance with the Members' Code of Conduct and the expectation is it will be produced in the form at Appendix A and declared at the meeting.</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	As set out in the report.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have

confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



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e-mail: Sandra.Stewart@tameside.gov.uk

1. PURPOSE OF REPORT

- 1.1 The Localism Act and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced “Disclosable Pecuniary Interests” and new rules on the grant of dispensations to allow Council Members to take part in or vote on matters in which they have a Disclosable Pecuniary Interest (“DPI”). Where a Member has a DPI, they cannot speak and/or vote on a matter in which they have such an interest, unless they have obtained a dispensation in accordance with the requirements of section 33 of the Localism Act. The grounds for the grant of a dispensation under section 33(2) of the Localism Act are, if, after having regard to all relevant circumstances, the Council considers that:
- Without the dispensation the number of Members prohibited from participating/voting in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
 - Without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
 - The grant of the dispensation would be in the interests of the inhabitants of the borough.
 - Without the dispensation every Member of the Executive would have a DPI prohibiting them from participating/voting in any particular business to be transacted by the Executive.
 - It is otherwise appropriate to grant the dispensation.
- 1.2 Any grant of a dispensation must specify how long it lasts for, up to a maximum period of four years. Previously, the old “national” model Code of Conduct for Members specifically stated that Members would not have a prejudicial interest in certain circumstances that potentially affected the majority or a large number of Members. These general exemptions included an interest in any business of the Council which related to setting Council Tax or a precept under the Local Government Finance Act 1992. The new arrangements on DPIs introduced by the Localism Act do not reproduce any of the “general exemptions”.
- 1.3 Members are required to declare under the Localism Act 2011 (‘the Act’) and Members’ Code of Conduct (‘the Code’) their disclosable pecuniary interests in relation to matters discussed at formal Council meetings. Ordinarily when this situation arises a Member will:
- (a) declare the interest at the meeting;
 - (b) ensure the interest is registered on the Members’ Register of Interests;
 - (c) withdraw from the meeting and not take part in any discussion or in a vote on the matter; and
 - (d) not take any steps or any further steps in relation to the matter (except where a Cabinet Member acting in a single Member capacity is required to pass the matter to another Member).
- 1.4 The Act also gives the Council the power to grant dispensations from the prohibition on Members participating in or voting on those matters where they have a disclosable pecuniary interest. In November 2016 the Standards Committee agreed dispensations in certain categories for a four-year period ending on 17 November 2020.
- 1.5 This report seeks the agreement of the Standards Committee to grant in principle (because of the statutory mechanism) a dispensation to all Members for the same categories of otherwise disclosable pecuniary interests for a further four-year period.
- 1.6 Such dispensations do not relieve the Member of the obligation to declare and register such interests, although on those occasions where something impacts on a majority of Members, the Borough Solicitor will usually make that declaration on behalf of all those affected Members.

2. THE 2012 DISPENSATION

- 2.1 The 2007 Model Code of Conduct included a general dispensation for Members from having a prejudicial interest for specific business of the Council when discharging its functions relating to:
- (a) housing (except where a member's individual tenancy is affected);
 - (b) school meals or school transport and travelling expenses (for parents of children at local schools and parent governors of local schools);
 - (c) statutory sick pay (where a councillor is in receipt);
 - (d) councillors' allowances and ceremonial honours given to councillors; and
 - (e) setting council tax.
- 2.2 When the local government standards regime was changed in 2012, the Act prescribed no set categories of dispensation for Members. Noting that there was some debate as to whether all of the categories prescribed in the 2007 Model Code were strictly speaking pecuniary interests, and that taking part in an item whilst having a pecuniary interest is a criminal offence, the Committee in November 2012 agreed to permit dispensations for the same categories as in the 2007 Model Code. So for example, while the relevance of having a dispensation for statutory sick pay seems unclear, considering it was in the Model Code, and there is a sickness payment element to the Members' allowances scheme it seems appropriate to continue to include it.
- 2.3 The GM Chief Lawyers considered that the rationale for the blanket dispensation under the 2007 Model Code remained relevant in granting the existing dispensation, particularly noting that:
- (a) although these are decisions that may impact on Members' private interests and therefore may theoretically affect Members' views, there is no strong reason to deviate from the same conclusion for the 2007 Code, namely that for these issues it is overall in the public interest that Members participate in such decisions;
 - (b) these are important decisions affecting the borough and it is important that as many Members are able to participate and represent their constituents as possible, especially as most of the decisions are reserved for full Council.
- 2.4 The Act specifies a number of grounds on which a dispensation may be granted. In reapplying the 2007 Model Code dispensations it was felt that two of those grounds applied, namely that the authority:
- (a) "Considers that granting the dispensation is in the interests of persons living in the authority's area;"
 - (b) "Considers that it is otherwise appropriate to grant a dispensation."
- 2.5 It was however considered advisable to caveat some of the provisions to ensure Members cannot participate in decisions where their individual interest is the subject matter of the decision, for example their tenancy or lease.
- 2.6 The Committee also noted that Members may voluntarily choose not to participate in a decision even where they have a relevant dispensation.
- 2.7 Taking into account of the above, it was considered that granting the dispensation for the categories under the 2007 Model Code, with minor revisions, represented a reasonable balance between democratic decision making and probity. The Committee therefore agreed to grant the dispensation for four years – the maximum permitted time allowed under the Act – as follows:
- (a) housing (except where a member's individual tenancy is affected);
 - (b) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless the matter relates particularly to the school which the child attends;

- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to Members;
- (e) any ceremonial honours given to Members;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

3. COUNCIL TAX SETTING AND DISPENSATIONS

- 3.1. In 2013, the Government issued guidance on whether a Member has a pecuniary interest in respect of setting the Council Tax or a precept. This specifies that:

“Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.”

- 3.2. While therefore it is not necessary to apply for the dispensation in order for Members to discuss and vote upon Council Tax, as there is ambiguity in the legislation which necessitated the Government guidance, it is considered advisable to continue to include the setting of Council Tax or any precept as one of the dispensation categories for the avoidance of doubt.

4. THE 2020 DISPENSATION

- 4.1. It is felt that the above reasons and grounds for these current categories of dispensation remain relevant, and therefore it is proposed to readopt them, as in November 2016, for a further four year period.

5. APPLICATIONS FOR DISPENSATIONS

- 5.1. The Act does not allow a blanket dispensation to be granted by a local authority, only citing individual members seeking dispensations as follows:

“A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority grant a dispensation relieving the member of co-opted member from either or both of the restrictions in section 31(4) (being that on having a pecuniary interest the member can neither take part or vote and as a result of our standing orders must leave the room) in cases described in the dispensation.”

- 5.2. As technically no written request from a Member is being presented, the Committee cannot directly grant the dispensation to Members; this is the same position as in 2012. It is therefore recommended that the same mechanism be used for granting the dispensation, namely that the Committee grants delegated authority to the Borough Solicitor to grant the dispensation for the categories specified, upon application by individual Members.
- 5.3. A dispensation may be granted for up to 4 years and it is suggested the renewed dispensation be granted for the full 4 year period, subject to any further decisions on dispensations or review of this decision by the Committee.
- 5.5. For clarity any Member seeking a dispensation to vote and participate on any matter where they have a disclosable pecuniary interest not covered under the categories agreed by the Committee, would have their case referred to the Borough Solicitor for a decision.

6. DISPENSATIONS GIVEN TODATE

- 6.1 All Members are likely to have a pecuniary interest in relation to the setting of the Council Tax through their ownership / occupation of property in Tameside in common with any resident of the Borough or indeed anyone who stands as a Councillor. In the Monitoring Officer's opinion, the transaction of business relating to these matters would be impeded unless a dispensation was granted.
- 6.2 In these circumstances, the Monitoring Officer has over the last 8 years granted dispensations to all members to allow members to participate in and vote on the setting of the Council Tax or a precept (and matters directly related to such decisions including the budget calculations). It will be necessary for all councillors to apply for dispensations to take part in the meeting at Full Council.
- 6.3 The only dispensations in the last 8 years have been awarded only for setting Council tax using the form attached at **Appendix A** on an annual basis.

7. RECOMMENDATIONS

- 7.1 As set out on the front of the report.

APPLICATION FOR DISPENSATION

The Localism Act and the relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced “Disclosable Pecuniary Interests” and new rules on the grant of dispensations to allow Council Members to take part in or vote on matters in which they have a Disclosable Pecuniary Interest (“DPI”).

Where a Member has a DPI, they cannot speak and/or vote on a matter in which they have such an interest, unless they have obtained a dispensation in accordance with the requirements of Section 33 of the Localism Act. The grounds for the grant of a dispensation under Section 33(2) of the Localism Act are, if, after having regard to all relevant circumstances, the Council considers that without the dispensation the number of Members prohibited from participating/voting in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.

Power has been delegated to the Monitoring Officer the power to grant dispensations. In order to obtain a dispensation a Member must make a written request to the Council’s Monitoring Officer.

Previously, the old “national” model code of conduct for Members specifically stated that Members would not have a prejudicial interest in certain circumstances that potentially affected the majority or a large number of Members. These general exemptions included an interest in any business of the Council which related to setting Council Tax or a precept under the Local Government finance Act 1992. The new arrangements on DPIs introduced by the Localism Act do not reproduce any of the “general exemptions”.

All Members are likely to have a pecuniary interest in relation to the setting of the Council Tax through their ownership/occupation of property in Tameside in common with any resident of the Borough or indeed anyone who stands as a councillor. In the Monitoring Officer’s opinion, the transaction of business relating to these matters would be impeded unless a dispensation was granted. In these circumstances, the Monitoring Officer is minded in the exercise of her delegation to grant dispensations to allow members to participate in and vote on the setting of the Council Tax or a precept (and matters directly related to such decisions including the budget calculations). Accordingly in the interests of protecting individual elected members and the council in the absence of an indemnity or statutory guidance, Members are advised to complete the request for a dispensation at the meeting which will be granted by the Monitoring Officer.

Members Name:	Councillor		
Decision Making Body:	Tameside MBC		
Matter to be considered:	Setting the Tameside MBC budget and matters directly related to such decisions, including budget calculations.		
Nature of Member’s Interest:	Beneficial interest in property in Tameside, namely residence.		
Ground for Application :	Section 33(2) (a) of the Localism Act 2011 – that without the dispensation the number of Members prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.		
Reason(s) for the application:	Under the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012, where a Member of the Council has a Disclosable Pecuniary Interest (DPI), they cannot speak and / or vote on a matter in which they have such an interest, unless they have obtained a dispensation in accordance with the requirements of section 33 of the Localism Act. Most or all of the Council are likely to have a DPI in relation to setting the Council budget and matters directly related to such decisions, including budget calculations through their ownership / occupation of property in Tameside.		
Signature of Member:		Dated	

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REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	CIVILITY IN PUBLIC LIFE
REPORT SUMMARY:	<p>Increasing intimidation of politicians and increasing toxicity of public debate is having an impact on the democracy of our country. Across the UK, there are growing concerns about the impact an increasing level of public intimidation and toxicity of debate is having on our country's democratic processes. In response, the LGA is working closely with WLGA, COSLA and NILGA to coordinate a programme of work entitled '<i>Civility in public life</i>', primarily aimed at</p> <ul style="list-style-type: none">• articulating good standards for anyone engaging in public and political discourse• understand the scale and impact of intimidation and abusive behaviour on our membership organisations, and develop recommendations for achieving positive debate and public decision-making on a local level• to support elected members and all democratically elected local representatives in addressing intimidation and abuse, so they deliver the best on behalf of their communities <p>The LGA has published some <u>practical steps</u> that councillors and councils can take to protect themselves as a person in a public position in a Councillors' guide to handling intimidation (Appendix A).</p> <p>In addition the Lawyers in Local Government published their social media toolkit on the 26 of August, a copy of which is at Appendix B. The toolkit is a comprehensive guide that covers all aspects of issues that may arise from the use of social media.</p>
RECOMMENDATION(S)	That the LGA Councillors' guide to handling intimidation (Appendix A) and the Lawyers in Local Government published their social media toolkit (Appendix B) be shared with all elected councillors to support them in their roles.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.

**LINKS TO COMMUNITY
PLAN:**

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



Telephone: 0161 342 3028



e-mail: Sandra.Stewart@tameside.gov.uk

1. COUNCILLORS' GUIDE TO HANDLING INTIMIDATION

- 1.1 The LGA recognise the growing need among councillors for support related to intimidation, and have jointly developed a resource following advice from both councils, councillors, other council representative organisations, as well as national organisations such as the Suzy Lamplugh Trust and National Counter Terrorism Security Organisation.
- 1.2 The guide covers topics such as how to handle abuse, both face-to-face, letters or online, and the legal and practical remedies, including the nature of the criminal offences involved and will be continuously updated with the latest advice and information available.
- 1.3 Becoming and serving as a councillor is a responsibility, a privilege and a hugely rewarding undertaking. We are all aware that an increasing number of councillors and candidates are being subjected to abuse, threats and public intimidation, undermining the principles of free speech, democratic engagement and debate. The growth of social media has provided an additional and largely anonymous route for individuals and groups to engage in such activity.
- 1.4 We are also aware that the growth in public intimidation is putting people off standing as local councillors. This is of concern to the LGA, an organisation representing local government, as it should be to everyone.
- 1.5 The LGA want to encourage more people to stand as councillors as part of their *Be a Councillor* campaign. We all recognise we need a numerous and diverse set of candidates and councillors to represent our numerous and diverse local communities, ensuring that local decision making is robust and well-informed.
- 1.6 The guide produced by the LGA is not designed to alarm, but to suggest some steps to Councillors and the Council to support Councillors to ensure that individuals and the council can undertake to protect a person in a public position, and how to respond should an incident occur.
- 1.7 In the guide the LGA define public intimidation as “*words and/or behaviour intended or likely to block or deter participation in public debate, which could lead to an individual wanting to withdraw from public life*”.
- 1.8 While debate and having different views is all part of a healthy democracy; abuse, public intimidation and threats are designed to undermine democratic decision making by generating fear in those who represent it. There is existing legislation designed to protect not only councillors but the general public as a whole, and this guide provides some advice on it.
- 1.9 We are aware that due to the scale and nature of public intimidation, many police forces feel under-resourced and unable to tackle it. However, if public intimidation is taking place and a crime has been committed it is important that it is recorded and reported so that the scale and nature of the issue can be better understood. In addition to producing this guide, the LGA is planning further guidance for councils on supporting councillors and will continue to work with national government and other agencies to address the issue of public intimidation and its impact on local democracy.

2. SOCIAL MEDIA TOOLKIT

- 2.1 The Lawyers in Local Government recognise that the growing use of social media places additional pressure on Monitoring Officers to advise officers, councillors, and their authority on a range of legal implications based on wide-ranging posts, tweets and commentary published in the public domain.

- 2.2 Whilst the world under lockdown becomes increasingly virtual, social media has become centre stage in both personal and private lives leading to often complex and wide-ranging legal advice. How do we best manage social media from a governance and operational perspective? How do we work out what presents risk and how can that risk be mitigated?
- 2.3 There are all too many examples of social media causing embarrassment or loss of reputation. However, there is also a darker side to social media which has increased over recent years. Malicious abuse, threats of violence and harassment are unfortunately, all too prevalent across virtual platforms.
- 2.4 The Committee on Standards in Public Life's review on 'Intimidation in Public Life' (2017) stated:

"The vitality of our political culture depends upon free and vigorous expression of opinion, and it is crucial that this freedom is preserved. The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom".

This is a position that LLG takes seriously, and one that we should all agree with.

- 2.5 The Lawyers in Local Government intend that this toolkit will support Monitoring Officers in providing advice to their officers and members covering Defamation, abuse, standards, employment law, data protection, indemnities and guidance for councillors, it provides a comprehensive useful guide to an increasingly complex area.

3. RECOMMENDATION

- 3.1 As set out at the front of the report.



Councillors' guide to handling intimidation

Practical steps that you and your council can undertake to protect yourself as a person in a public position.

About

The LGA and the [WLGA](#) recognise the growing need among councillors for support related to intimidation, and have jointly developed this resource following advice from both councils, councillors, other council representative organisations, as well as national organisations such as the Suzy Lamplugh Trust and National Counter Terrorism Security Organisation.

The guide covers topics such as how to handle abuse, both face-to-face, letters or online, and the legal and practical remedies, including the nature of the criminal offences involved and will be continuously updated with the latest advice and information available.

Introduction

Becoming and serving as a councillor is a responsibility, a privilege and a hugely rewarding undertaking. But we are aware that an increasing number of councillors and candidates are being subjected to abuse, threats and public intimidation, undermining the principles of free speech, democratic engagement and debate. The growth of social media has provided an additional and largely anonymous route for individuals and groups to engage in such activity.

We are also aware that the growth in public intimidation is putting people off standing as local councillors. This is of concern to us as an organisation representing local government, as we want to encourage more people to stand as councillors as part of our [Be a Councillor](#) campaign. We need a numerous and diverse set of candidates

and councillors to represent our numerous and diverse local communities, ensuring that local decision making is robust and well-informed.

This guide is not designed to alarm, but to suggest some steps you and your council can undertake to protect yourself as a person in a public position, and how to respond should an incident occur.

In this guide we define public intimidation as “words and/or behaviour intended or likely to block or deter participation in public debate, which could lead to an individual wanting to withdraw from public life”.

While debate and having different views is all part of a healthy democracy; abuse, public intimidation and threats are designed to undermine democratic decision making by generating fear in those who represent it. There is existing legislation designed to protect not only councillors but the general public as a whole, and this guide provides some advice on it.

We are aware that due to the scale and nature of public intimidation, many police forces feel under-resourced and unable to tackle it. However, if public intimidation is taking place and a crime has been committed it is important that it is recorded and reported so that the scale and nature of the issue can be better understood. In addition to producing this guide, the LGA is planning further guidance for councils on supporting councillors and will continue to work with national government and other agencies to address the issue of public intimidation and its impact on local democracy.

Please note that this guide does not take the place of legal advice or personalised advice from the police on offences or personal security. If you are concerned about your personal safety or security as a result of abuse, harassment or intimidation, do contact your local police force

General advice on handling intimidation

The most important determining factor in deciding how to respond to intimidation is the impact it is having on you. Regardless of what others may think, if it is having an effect on you, then that is sufficient enough for you to take action.

Key points:

- Councillors are encouraged to keep a record of any intimidatory communication or behaviour
- Contact with unknown or anonymous individuals should be undertaken with care

General advice

Below are a suggested set of actions that you could undertake if you consider you are being subjected to intimidation:

- Make sure that your immediate safety is not at risk. Make sure you are safe.
- If possible, record or diarise the encounter or communication. In the case of an email or letter you can copy or save it. A telephone call or face-to-face discussion and social media incident could be written in a diary as soon as possible after the event, recorded, screen-shot or saved. You can also take photos of damage or even a computer screen. Even if this is the first or only incident, others may also have been subjected to intimidation and a collective record is important if future action is going to be taken. It is also important that incidents relating to the same individual or individuals should be recorded as such evidence could be critical if the matter gives rise to a criminal prosecution.
- Raise the incident with a view to discussing it or obtaining support from a nominated council officer and/or political group nominated person. This will also help you establish if others have been subjected to the same or similar intimidation.
- If a serious potential crime has occurred, it is advisable to formally report it to the council and/or to the police, particularly in the context of a serious threat to life or anticipated violence.
- If you are concerned about your personal safety, raise this with the council and the police so that there is a record of the impact the incident is having and review your own security and personal safety. This could include your personal or work activities and those of your family.
- Under the Health and Safety at Work Act, councils have a duty to safeguard their staff against potentially violent persons and often have a register with names of such parties. Although councillors are not employees in the legal sense, treating them as such in this instance will enable the council and the councillor to ascertain if the individual or individuals who have intimidated them is on such register and, if not, ensure that that their name is added.
- Every situation will be different, and it will need a personal judgement about whether it is worthwhile to pursue the incident, ignore it or politely acknowledge.
- If the letters or emails continue further steps may need to be considered such as advising the individual that such abuse will result in a referral to the police and the stopping of further correspondence.

Intimidation on the telephone

- Continue to be polite and try to stay calm – ensuring you are safe
- If you have a recording function on your phone, particularly if it is a mobile phone, switch this on. You can also use your mobile phone to record a landline call by switching on the voice recording function and holding it to the landline phone

- Try to ascertain the complaint if there is one and indicate to the person on the phone that you consider that they are trying to intimidate you and that calls may be recorded
- Try to ascertain the name, address and telephone number if you can
- Remember not to reveal any personal details
- Sometimes a suggestion that the caller refers the matter to the standards committee of the council may result in a solution for the caller
- If the call continues with threats, abuse and/or intimidation, you can terminate the call, indicating to the caller that you will do this
- Make a note of any details of the call you can remember, particularly the person's phone number
- If you are concerned make a report to responsible officer at the council.

Your mental health

Being abused or intimidated, whether in person or remotely, can have an impact on your mental health. If you are feeling anxious or worried, or if it is affecting your daily routines such as sleeping or eating, or if you have any concerns, do speak to your local GP.

Personal safety and security

This section sets out some advice for considering and maintaining your personal safety and security. Much of this is common sense, but we hope the reminders will prove useful.

Further information on issues raised here are available with acknowledgement to, the [LGiU](#), the [Suzy Lamplugh Trust](#) the [National Counter Terrorism Support Office](#), Northampton Borough Council and Kirklees Metropolitan Borough Council, which has comprehensive paperwork relating to personal safety training.

Key points:

- consider your personal safety and security and incorporate it into planning any public duties or interaction, in association with your council
- much personal safety is common sense, but it is useful to remind yourself of the advice

1. Introduction

- 1.1 An important role of a councillor is to keep in touch with their residents and communities. This includes helping individuals with any problems they might have. Often this extends beyond just the delivery of council services. These contacts are usually rewarding and non-adversarial. However, councillors can find themselves in a position where they need to manage angry and frustrated residents who often contact their elected representative when they feel that they have no other avenue to pursue. Often councillors will deal with constituents on a face to face basis when alone.
- 1.2 Councillors are encouraged to:
- assess the risks to personal in carrying out their public duties
 - recognise potential danger from personal contact or internet / postal communication and take appropriate action
 - be proactive in considering personal safety through, for instance, the purchase of personal alarm, ensuring your partner, friend or relative has information on your activities, and ensuring your mobile telephone is charged
 - if possible, vary daily routines, such as leaving and returning home at the same time or on the same route
- 1.3 The purpose of this section of the guidance is to set out what personal safety and security measures you could take to prevent and deal with those rare circumstances when you might find yourself in situations where you are concerned for your safety.
- 1.4 Most councillors will not experience any problems during their term(s) of office, but a little time given to the preparation and planning can reduce any risk.
2. **Ward surgeries**
- 2.1 The arrangements you can make will vary according to your local circumstances and it will be a fortunate councillor who can find premises for their surgery which meet every aspect of good practice and are also accessible to their constituents.
- 2.2 The following suggestions are designed to help make a Ward Surgery safer and more effective:
- Not holding surgeries alone in an otherwise empty building. Try to get someone to act as receptionist. This not only makes you safer, but also makes it much easier to manage a busy surgery. If you are currently holding surgeries alone, you could discuss how this can be overcome with fellow councillors or council officers.
 - If you cannot avoid holding surgeries on your own, you can try to reduce any risk by considering the layout of the room, for example, sitting nearest to the door with the constituents seated on the other

side of the table. Seating is best set out at an angle of 45 degrees (seating directly opposite can be confrontational). You can make sure there are no heavy items in the room that could be used as weapons and generally declutter the room.

- If possible, a separate and comfortable waiting area for constituents allows for a preliminary assessment.
- Have a plan for any helpers or staff regarding what to do in an emergency that you review and test regularly. This could include having an emergency word or phrase you can use to ask for assistance.
- Have an incident log book to record any incidents. This should include all types of unacceptable behaviour and should be dated, timed and signed in case further action is required.
- You can also undertake personal safety if you want to have additional skills in dealing with a potentially volatile situation.
- If you are at the stage of looking for suitable premises in which to hold a surgery, the following can help when considering personal safety:
 - council premises (e.g. libraries) during opening hours or other premises where there are many other people about
 - close to members of staff or other people in case you need assistance
 - premises that where the names of any visitors for councillors are recorded
 - premises where there is a comfortable waiting area
 - easy access to a landline or an alarm linked to reception
 - a clear and agreed procedure for dealing with a call for assistance
 - is in view of a public area or a reception
 - a vision panel in the door
 - has a swift means of escape and any visitors are not able to lock the door from the inside.

2.3 It can be useful to make the following personal security checks:

- Are council staff/friends/family aware of where and when I am holding my surgery? And will they check on me if the meeting takes longer than expected? Do they know how to contact me?

- How do I call for help if I need to? Have I got my mobile phone with me, is the battery charged and can I get a signal? Do I have a personal safety alarm with me that is working?
- Is the visitor displaying signs of irrational, aggressive or confrontational behaviour?
- Am I sat at their level and using eye contact and open and gestures to display a helpful attitude?
- Do I think it is safe for me to conduct this surgery? Do I need to consider other options, such as a fellow councillor supporting me during the surgery? Do I need to call the police?
- Have I checked the room to make sure it is set up correctly with no items lying around that could be used as weapons?
- Is my chair nearest the door, so I can get out quickly if I need to?
- Am I aware of the quickest way out of the area or building and is there a safe location identified for me to go in case of any issues?

3. Dealing with a variety of behaviours

- 3.1 It is inevitable that some of the people you will meet will be angry or upset. Calmness in the face of whatever comes up will help you and your constituents.
- 3.2 If you are subjected to offensive, threatening, intimidating, racist, homophobic or derogatory remarks, you are within your rights to bring the meeting to an end and seek assistance. It is recommended that you take a detailed note of the incident and person(s) involved and let your council know about the incident. You can decide if you want to inform the police.
- 3.3 Some constituents seeking a councillor's help may have additional needs or a mental health condition, and it is important that they are still able to seek advice and representation from their councillor. They may just require suitable adjustments to be made and for an understanding of the nature of their condition. Advice on supporting such individuals is available from a number of organisations, including the [Autistic Society](#) and [mind](#).

4. Home visits

- 4.1 Councillors do sometimes visit residents in their homes, especially those who are elderly, disabled, have additional needs or where they simply want to see for themselves the conditions that are the subject of complaints.
- 4.2 It is for each councillor to decide whether a particular home visit should be made, especially if the person to be visited is unknown to the councillor. Most councillors trust their own instincts as to whether to meet someone alone. However, if you have any doubts about the safety of the premises you

are to visit and the purpose of the visit is not about the premises itself then arrange for the meeting to take place at a neutral venue.

4.3 If a home visit is undertaken, the following general personal safety issues can be considered and planned before the visit:

- arrange the visit during normal working and daylight hours, if possible
- if appropriate, refer to the council's 'cautionary contacts' database
- let somebody know who you are visiting, providing details of address, date and time of visit and expected duration
- keep a record of your whereabouts. This might include making a call on your mobile during the home visit, telling the resident that there is such a record or that you are expected elsewhere at a specific time. It would be advisable to let colleagues or family members know when you expect to finish.

4.4 During a home visit, you can consider the following specific personal safety advice:

- consider calling the person before the meeting to confirm arrangements and establish their mood/state of mind
- set up a code word or phrase for use on the telephone that you can use to raise the alarm. This needs to be something you have agreed with someone which will alert them that you think you might have a problem
- park your car so that it can be driven away easily and park in a well-lit area near other vehicles, if possible
- stay alert when approaching the property, and look around the garden for obvious dangers, for example dogs or prowlers
- after knocking, stand back and to the side of the door and do not stand on the edge of any steps
- be aware of potential weapons
- you can ask for any dogs or other pets to be secured
- assess the situation and mood of the resident. Also note any other people in the property and their mood
- if in any doubt or you feel threatened, do not enter, make an excuse and leave
- only sit down when the resident does

- where possible, sit in an upright chair as this is easier to stand up from barrier. If you have to sit in an armchair or settee, sit on the edge near the arm. This will enable you to stand up more easily
 - take a look for any alternative escape routes
 - if the situation changes and you feel threatened, make an excuse and leave. Back out rather than turning your back on the resident.
- 4.5 If a serious situation occurs, vacate the premises immediately and report the incident.
- 4.6 If you are unable to leave immediately when a serious situation occurs, you can:
- place defensive barriers between yourself and the resident
 - continue talking to the resident, reassuring them that you mean them no harm
 - set off your personal alarm, if you have one, or scream or shout to attract the attention of others. The use of reasonable force to protect yourself can be a last resort.
5. **Potentially violent persons register**
- 5.1 The council will have a corporate database. Councillors can contact designated officers to check about potentially violent persons prior to undertaking a home visit.
6. **Lone working**
- 6.1 If you are working alone you might consider the following:
- leaving details of where you are going and how long you will be with a partner, friend or colleague
 - checking that you mobile telephone is charged and switched on
 - carrying a personal alarm
 - making regular check-in calls to a partner, friend or colleague or asking them to call you at regular intervals
 - teaming up with another councillor in your own or a neighbouring ward
 - carrying out a risk assessment and discussing it with another councillor or officer, if there are a number of risks associated with a particular visit, for their view on whether a visit should be undertaken.
7. **Personal callers to councillors' private homes**

- 7.1 Most councillors seek to maintain a balance between their personal and public lives and do not want to encourage any callers at their private homes. Good publicity by the council as to how to contact councillors and details of ward surgeries reduces the chances of unwanted callers. Contact details for councillors can be found on the council's website, although councillors do not need to show their address on the published election nomination paper or on the council's website.
- 7.2 If a visit is to take place at your private home, it is recommended that this only takes place via a pre-arranged appointment, ideally with another person in support
- 7.3 It is inadvisable to see an unannounced caller in your home. You can suggest making an appointment, but if you have any doubts as to their intention or if they appear angry/aggressive, then contact the police
- 7.4 If you believe you are safe, you can try to ascertain their name and address
- 7.5 If you believe you are safe, try to ascertain the nature of the issue they want to discuss, conducting any discussion outside the house.
- 7.6 If you do feel under threat you can carry a personal alarm, perhaps keeping it at the door for easy access.
- 7.7 If you have another person with you inside the house they could take a photo of the person or film the encounter, but be aware that this is likely to inflame the situation if the person is aware of it and they may become more aggressive – this should really be a last resort if you want evidence for the police.
- 7.8 If more than one individual who are not known to you turns up unannounced and you are concerned that they pose a threat it is advisable to contact the police and decline to open the door.
- 7.9 Once the incident is over, record as much as you can, including descriptions, should you decide to take any action over the matter. If you are concerned, report the incident to the council and/or the police.

8. Home security

- 8.1 As a person with a public profile it is advisable to maintain a decent level and awareness of home security. The following is general advice on what to consider in making your home safe and secure:
- Try to make it clear via boundaries the difference between public and private space. Front boundaries should be kept low so they don't provide hiding places and to enable good natural surveillance.

- Keep fences and walls in a good state of repair and consider your planting to reduce the availability of handholds and to put off prospective intruders
- Remember to lock your garages, outbuildings, sheds, etc. Ensure they are fitted with high-quality and secure locking devices, and you can add extra locks if you are concerned.
- Ensure tools and ladders, which could be used to access your home, are locked away, and remove anything that could potentially be used to cause damage, such as loose bricks or large stones.
- If possible, keep your dustbin and recycling bins secure until collection day to prevent them being used as climbing aids.
- Obscure the view into your home by fitting blinds, curtains or film including glazed exterior doors. Get into the habit of closing curtains or blinds when occupying a well-lit room.
- Do not label your keys – if you need to identify keys, use a colour-code theme, and keep control of your door keys. Make sure you know who has copies and if you cannot account for all the keys, change the locks. Do not give keys to people you do not know, e.g. trades people.
- If you are planning on installing a home alarm or CCTV, the police recommend that you select an installer who is affiliated to one of the recognised alarm and CCTV inspectorate bodies, such as the [National Security Inspectorate](#) (NSI) or the [Security Systems and Alarms Inspection Board](#) (SSAIB).
- In order to identify visitors at night, good external lighting is recommended, alongside low wattage lighting is recommended to illuminate all external doors, car parking and garage areas and footpaths leading to your home.
- Additional useful information is available at [SecuredbyDesign](#).

9. **Attendance at meetings**

- 9.1 Councillors have to attend evening meetings which often finish after dark. It is possible that depending on the nature and outcome of the meeting that members of the public may leave feeling angry or upset. In such instances, councillors may wish to ask to be accompanied to their car or nearest public transport by colleagues or officers who also attended the meeting.

10. **Demonstrations**

- 10.1 It is possible, due to the nature of the difficult decisions that councillors have to make, that you may experience a protest against such decisions. If this does occur:

- stay calm – such protests may feel intimidating but will not necessarily lead to a physical threat
- remain inside, close and lock doors and windows and draw the curtains/blinds
- inform the police
- it is not recommended to confront the protesters
- if you concerned that the protest is an aggressive one, and it is safe for you to do so, note descriptions of individuals and vehicles present so you can pass these onto the police.

11. Travelling safety

This section sets out generic personal safety advice when travelling.

Car

11.1 When travelling the car, it is advisable to consider your personal safety by:

- having your keys in your hand or easily accessible
- investigating whether an area will be dark and isolated when you return to your car
- parking where possible, under street lighting and not in dark, deserted streets or isolated car parks
- parking on the ground floor in multi-storey car parks away from stairs and lifts and reversing into the parking space
- always locking the car doors when you get into the car and when leaving it
- taking boxes/bags to the car when other people are around
- always carrying a torch with you
- looking around your vehicle as you approach in case someone is crouching down
- looking inside before entering your vehicle to ensure no one is hiding there (even if the doors were locked)
- avoiding placing handbags, valuables or other such items on the passenger seat
- parking on the left hand side of the road facing the way you want to drive off
- trying to park in a space where you will not be blocked in
- avoiding having identifying stickers in your car

- locking the door at service stations when you go to pay
- ensuring your vehicle has sufficient fuel for the journey and refuel during daylight hours;
- not getting out if you are followed in your vehicle, and ensuring the car is locked, flashing your lights and sounding your horn to attract attention
- not winding down your window if someone taps on it, unless the individual is known to you.
- Be alert to any visual changes to your vehicle. If you notice a suspicious object on or near the vehicle, do not approach or enter it. Contact the police and give them the location and registration number of your vehicle.
- Don't leave laptops, documents, parking permits or papers in unattended vehicles, as they may identify you.

Public transport and taxis

11.2 When travelling by public transport, it is advisable to consider your personal safety by:

- having the right change or your pass available so that you do not have to bring out your purse or wallet
- ensuring that you know travel times – particularly the details of the last bus / train of the day
- waiting for a bus or train in a well-lit place near other people, whenever possible, and paying attention to your environment
- carrying “emergency” money so that if a bus or train does not turn up, you are able to call a taxi
- sitting on the lower deck and near the driver if a bus is empty or it is after dark
- on trains, choosing carriages that are well-populated and not hesitating to move seats if you feel uncomfortable where you are
- on trains, if you sit next to the door make sure that you keep your mobile telephone close to you. A common crime is for a thief to grab a telephone and make a dash just as doors are closing
- avoiding compartments which have no access to corridors or other parts of the train
- sitting with other people and avoiding empty carriages

- if you do feel threatened, making as much noise as possible to attract the attention of the driver or guard
- if you can, arranging for someone to meet you at the bus stop or train station, particularly if travelling at night or in an unfamiliar area. If this is not possible, try to walking near other people with whom you feel safe, and walk purposefully to your destination
- always carrying the telephone number of a trusted, licensed company with you
- ensuring any pre-booked licensed minicab driver has ID and it that it matches the driver and the vehicle's photographic licence. If it does not, do not get in the cab
- when booking a taxi or minicab, asking for the driver's name, as well as the make and colour of the car. Confirm the driver's details when they arrive – is it the taxi or minicab you ordered?
- sharing a taxi or minicab with a friend and sitting in the back of the car are good safety strategies
- minicabs that pick up fares on the street, without being pre-booked, are illegal, uninsured and potentially very dangerous.

Cycling Safety

11.3 When travelling by bike, it is advisable to consider your personal safety by:

- keeping your bike in good working order
- wearing a fluorescent belt or jacket and always using lights
- wearing a cycling helmet;
- securing your bicycle with a good quality chain and padlock.

Walking

11.4 When walking, it is advisable to consider your personal safety by:

- checking that you know where you are going
- considering what your walk will be like at night if you are travelling at that time.
- being prepared to walk a longer way around to keep safe
- wearing comfortable shoes that you can move quickly in, if you need to
- considering carrying a personal alarm, and if you do, making sure that it is accessible
- tucking a scarf or long hair inside your coat

- carrying any bag or handbag across your shoulder

12. **Reporting incidents**

- 12.1 If you consider any incident to be severe, contact the police. Even if an incident is not considered serious enough to involve the police, it should always be reported to the council.
- 12.2 If you have been subject to, or witnessed a hate incident or crime you have a duty to report it. By taking appropriate action you may help to prevent a similar incident reoccurring.

13. **Training**

- 13.1 Personal safety of councillors is a responsibility of your council whilst you are on council business. Personal safety training for councillors may be a key component of the councillor induction programme.

14. **Terrorist-level threats**

- 14.1 Although the purpose of this guide is not to cover this in detail, it provides a good opportunity to highlight the current safety advice should such an incident occur.
- 14.2 The main 'Stay Safe' principles are to "Run – Hide – Tell". If you would like more information you can refer to the National Counter Terrorism Support Office's website at www.gov.uk/government/publications/recognising-the-terrorist-threat.
- 14.3 You can discuss your personal security with your [local counter-terrorism security adviser](#).

Councillors and social media

This section sets out background information on the use of social media for councillors. With thanks to Ashfield District Council for permission to share their guidance on social media.

Key points:

- Social media can be very useful in getting feedback on proposals and communicating information about councillors' activities
- Social media is always on, so consider setting personal limits and establishing your own routine
- Councillors are subject to the council's code of conduct when using social media

1. **Why you may find social media useful**

Social media has become an every-day communications tool for councillors and the people they represent, and the potential for councillors using social media is huge.

Social media allows you to be innovative and responsive as well as providing links to useful sources of information or sign-posting to other organisations.

In addition, it is a useful source of intelligence:

- People will talk about local issues, their concerns and interests.
- You can find out about breaking news, the latest research or publication or the latest policy announcements from organisations such as the LGA.
- People often have little understanding of the councillor role and may have negative perceptions, but social media can give people a taste of your personal life and remind them that you are similar to them.
- Residents can be made aware of and provide feedback to your work and campaigns, including mobilising support and interest and gathering followers.
- You can have conversations with people who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly (bearing in mind that you would then share equal responsibility in law for anything later seen to be untrue or defamatory)
- The local and sometimes national press will follow councillors on Twitter or Facebook. Social media is a growing source for stories for news outlets as each tweet or comment is effectively a mini-press release.

Online safety, personal security and digital citizenship

Digital Citizenship, which has begun to be taught in schools, is about engaging in appropriate and responsible behaviour when using technology, and encouraging others to do so as well. It encompasses digital literacy, ethics, etiquette, online safety, norms, rights, culture and more.

In any personal online biography, it is advisable to make clear that the views are those of the councillor in question and may not represent the views of the council. If space allows, you may also want to set out a 'response' policy, such as "I welcome questions via email" and an 'engagement' policy, such as "abusive content will be removed".

It is easy to put personal information online, such as your birthday, routines, places you frequent, future visits, holiday destinations, relationships, and opinions, etc, which are then available for anyone in the public domain to access. For personal safety, as well as identity security, you may want to consider whether you share personal information, images of friends and/or family and details of any routines.

Social media posts now include location-based information, particularly from mobile phones, which tells people exactly where you are or where you have been. Again, with personal security in mind, you may want to turn off these notifications.

You can 'search for yourself' to check what information you can find out about yourself, your family or your business on-line. Checking this regularly means you can check what is in the public domain and edit it if necessary.

With respect to personal security, it is advisable not to include on social media details such as your personal phone numbers, home address, details of family members or vehicle details.

A picture paints a thousand words, and a photo can relay personal information you may not want shared on social media. As such, it is advisable to only publish photos of family, friends and colleagues with your consent and theirs, to ensure photos don't reveal your home or places frequented with family members such as schools or care homes, and to disable automatic photo and location tagging so that you have to approve another user identifying you in a photo or being at a specific location. You may also want to make your family and friends aware that you will be following these precautions.

Some people say things via social media that they probably would not say in person, and they can post false information, insults or messages that you would not want to be associated with you. These can multiply and be shared quite rapidly. Councillors, and in particular female councillors, are unfortunately increasingly the subject of online abuse, bullying and harassment on social media. See our section on handling abuse on social media on how to manage this.

Having a social media presence means that people can contact you at any time. This is great in terms of accessibility but means that they may expect you to reply immediately, which can create a sense of pressure. It is useful to set your own rules and limits for how you manage your social media presence.

You can be sent phishing requests and malicious software on social media the same as you can on email, so maintain the same level of vigilance.

Be aware that some individuals post socially unacceptable, defamatory, inciting or even intimidatory remarks to generate online activity on the back of advertising or promotion of ideologies, brands or events. Similarly, the term "internet troll" is used to refer to a person or group of people who deliberately start arguments or upset people by posting inflammatory or off-topic messages online with the deliberate intent of provoking readers into an emotional response or of otherwise disrupting normal discussion, often for their own amusement.

Be aware of safeguarding because social media sites are often misused by offenders. Safeguarding is everyone's business – if you have any concerns about other site users, you have a responsibility to report these.

The usual protocols regarding confidential information, copyright, data protection, purdah, exempt reports, etc, apply to social media. Avoid publishing anything where there is doubt or seek permission in advance. Your council may also have a protocol

regarding the use of social media in the run up to, during and after both internal and public meetings.

To be an effective councillor you won't stop meeting people and posting leaflets simply because you are posting online. You will know your residents best—consider which channel works best for them to connect with you, online and offline.

To provide support councillors in their use of social media, it is recommended that councils have their own policies, protocols and training, as well as a point of contact within the council to give support and to report to if things go wrong. The LGA will be working with members to develop more detailed advice for councils in a future guide.

Responsibilities of councillors on social media

Councillors are personally responsible for the content they publish on any form of social media. Publishing or allowing to be published (in the form of a comment) an untrue statement about a person which is damaging to their reputation may incur a defamation action for which you will be personally liable. The same applies if you pass on any similar untrue statements you receive.

Social media sites are in the public domain and it is important to ensure you are confident of the nature of the information you publish. Once published, content is almost impossible to control and may be manipulated without your consent, used in different contexts, or further distributed.

You can make use of stringent privacy settings if you do not want your social media to be accessed by the press or public. It is advisable to read the terms of service of any social media site accessed and make sure you understand their confidentiality / privacy settings.

Some councillors choose to have separate social media profiles for personal and council use. It is important to keep in mind, however, that even the strictest privacy settings is no guarantee for posts or actions to remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting.

The code of conduct for members and relevant legislation continues to apply online and in social media. If you are referring online in any way to your role as a councillor, you are deemed to be acting in your “official capacity” and any conduct may fall within the code.

Managing and moderating your own group or page

- 1.1 You may wish to set up your own councillor or community page on Facebook. These are valuable platforms to promote local information, news, events or council developments or seek people's views on community or council proposals.
- 1.2 Members of the community and others can contribute and comment in an interactive manner and whilst most is constructive and uses acceptable

language, some individuals may use bad language or 'cross the line' into abuse or harassment.

1.3 If you are a Group or Page administrator, Facebook provides you with a range of tools to manage and moderate other people's content or contributions to your Group or Page for more serious breaches of standards.

1.4 You can:

- block certain words or apply a 'profanity filter' in the settings, this will stop such postings appearing in your page
- hide or delete comments, photos or tags
- ban or remove someone from your pages

Useful guidance and instructions are available on the 'Banning and Moderation' section of Facebook.

Administering a large Group can be a lot of work, particularly if group members are active. If that's the case, you might want to share the responsibility with other councillors, friends or trusted community members. [Guidance](#) on making other people or administrators is available on Facebook.

Handling abuse on social media

This section provides advice on handling intimidation and abuse online. With thanks to the Welsh LGA for the reproduction of their [guide](#) in the production of this section.

Key points:

- Keep a record of any abuse
- Carefully consider how and whether to respond to inaccurate or defamatory social media comments
- Report any abuse to the social media companies for its deletion or to raise concerns about an account

Introduction

Any intimidation or abuse on social media is subject to all the same potential criminal prosecutions as other forms of intimidation, with the additional criminal offences relating specifically to electronic communications.

You are best placed to determine whether a post or interaction is abusive or intimidating, and if you feel intimidated you can take action to report it. Good digital citizenship encourages the labelling of abusive and inappropriate online material so that both the perpetrator and others viewing it can also know it is not acceptable.

However, it does not necessarily follow that the police or courts will regard it as intimidatory behaviour in law as they have to apply their own 'average person' tests – also known as 'reasonableness tests' or the '[Clapham omnibus](#)' test.

Every situation will be different, and it will need a personal judgement about whether it is worthwhile to pursue the incident, ignore it or politely acknowledge.

Keep a record

If you have received online abuse, even if you are not overly concerned or if you intend to ignore it, you should consider keeping a record should any incidents escalate in the future. You can simply 'screen shot', 'clip' or 'snip' tweets or posts on your phone, tablet or computer. You may also decide to warn the perpetrator that you are keeping a record of all messages and may refer them to the appropriate authorities, which may stop them posting further comments or might encourage them to delete them.

Tackling abuse on social media

In any situation that arises on social media, you will need to decide whether you want to engage in a discussion or ignore it, and whether the communication is abusive, intimidatory or threatening.

When determining whether to engage or ignore, you'll need to balance the risks and likely success of either approach in stopping the situation. Engaging in online discussion could diffuse it through the use of humour or similar, or could inflame the situation further. There is no right or wrong here. However, it is likely that the person posting has less of a following or public profile than you and by engaging you can increase their audience

If the communication is abusive, intimidatory or threatening, then keep a record of it (such as a screen shot). You can post that you find the communication abusive, intimidatory or threatening if you want to highlight the poor online behaviour, and report it to the social media platform and to the police. You can also make your council aware that you have been subjected to online abuse, intimidation or threats in your role as a councillor so they can keep a record or take action as well. If you think there are threats to your personal safety or security, you can ask for advice from the police.

It may be useful to refer to our section on the legislation applicable to harassment and abuse to see if the communication falls into any of the categories so you can describe it to the police in these terms.

Perhaps most distressing is when multiple users all send abusive messages in quick succession or at the same time. This can be overwhelming and the structure of Twitter in particular means that the more posts and retweets, the more others see it, and they can be encouraged to add to the abuse. It can escalate very quickly. There are sadly some who will willingly add to the abuse for their own amusement, even if they are unaware of the details. This is a difficult situation to handle, particularly if the information is being held by another user. If this occurs, you are advised to make a record of the abuse, inform the social media platform, your council and the police if

any of the tweets make significant personal threats. You may wish to remove the original post if you can. Often these things burn themselves out very quickly and the perpetrators move onto the next trend or victim.

If someone has posted some inaccurate information about you or the council, and if the information is defamatory (a false statement that could harm your reputation), again, the first step is to gather evidence. You may then want to contact the individual initially to request that the tweet or post be deleted; some individuals may have made a mistake without malice and will remove their post immediately. Depending on the nature of the tweet or post and the number of followers who may have viewed the tweet, you may wish to seek a correction and/or an apology.

If this approach is unsuccessful or where a defamatory tweet or post causes serious concern or is part of a concerted campaign, in addition to informing your council, you may wish take legal advice and to issue a “notice and take-down” letter via your solicitor (assuming you are able to locate the perpetrator). Although you may not have the intention of proceeding further, the threat of legal action is often a powerful deterrent and can prompt a swift and successful resolution.

If the tweet or post is a complaint about a council service, you can ask for contact details and pass the information to officers to follow-up on and inform the individual that this is the course of action you are taking. This may help defuse any tensions.

Muting or blocking accounts on Twitter

You may wish to unfollow, mute or even block a person or group who is persistently tweeting you or is being abusive or intimidatory. Guidance about to mute and block is available from Twitter, but in summary:

Muting allows you to remove an account’s tweets from your timeline but does not go as far as unfollowing or blocking the account. Muted accounts will not know that they have been muted and you can ‘unmute’ them at any time.

Blocking allows you to restrict specific accounts from contacting you, seeing your tweets or following you. Unlike muting, the perpetrators can find out that they have been ‘blocked’ and may accuse you of avoiding their scrutiny; this may be a small price to pay if their behaviour is checked and can be easily rebutted if necessary.

Reporting the abuse on Twitter

Twitter itself promotes ‘[Rules](#)’ encouraging constructive debate but it explicitly prohibits behaviour “...that crosses the line into abuse, including behaviour that harasses, intimidates, or uses fear to silence another user’s voice”.

If tweets are so offensive that you believe they violate Twitter’s rules, you can [report](#) them to Twitter who may decide to take action. For further information about how to report ‘violations’ visit Twitter’s how to report [violations](#) page.

If someone sends threatening, abusive or offensive messages via any social networking site, they could be committing an offence. The most relevant offences are ‘harassment’ and ‘malicious communications’.

According to the police, harassment means a 'course of conduct' (i.e. two or more related occurrences) and the messages do not necessarily have to be violent in nature, but must be oppressive and need to have caused some alarm or distress.

An offence relating to malicious communications may be a single incident, but for an offence to have been committed, a message must be indecent, grossly offensive, obscene or threatening or menacing.

Tackling abuse on Facebook

Facebook has slightly different '[Community Standards](#)' to Twitter and alternative methods of dealing with complaints.

You are also more likely on Facebook to encounter community or campaign groups or pages which facilitate scrutiny of you, fellow councillors or your local council, and some will have been set up specifically with that purpose in mind. If these groups are not moderated effectively, they can provide a conduit for abuse and harassment. Your council may have a policy on communicating and engaging with such groups, particularly if they have been set up to criticise the council, and you can take advice from the council's communications officers.

There is no right or wrong way with regards responding to a group or page which regularly criticises the council or councillors; some believe that it is beneficial to engage constructively, to explain, inform or signpost and hopefully improve awareness, understanding and support, whilst others are more reluctant as it will require emotional energy and time and the likelihood of successful engagement may be limited.

If you are concerned about comments or postings about you in a group or page, you can report the post to the group administrator. If you are concerned about a group that is abusive and you think it has broken Facebook's Community Standards, you can [report](#) the group to Facebook.

Although Facebook encourages respectful behaviour and takes action to protect 'private individuals' from bullying and harassment, it permits 'open and critical discussion of people who are featured in the news or have a large public audience based on their profession or chosen activities' but does take action around 'credible threats' and 'hate speech'.

There are a range of options for you to manage abuse or harassment on Facebook and full instructions are available on the Facebook [help page](#):

if you want a post removed from Facebook, you can ask the person who posted it to remove it

if you don't like a story that appears in your news feed, you can [hide it](#)

if you are not happy with a post you're tagged in, you can [remove the tag](#)

you can leave a [conversation](#) at any time, though the other people in the conversation will be notified and you will no longer receive messages from the conversation

you can unfriend or block another user; they will no longer be able to tag you or see things you post on your timeline

If the post goes against Facebook's Community Standards you can report it to Facebook.

Tackling abuse on blogs

Blogs are a quick and easy way for members of the public or councillors to set up mini-websites to discuss and air views on matters of interest.

Occasionally, blogs may take an interest in local, community matters and some have been set up specifically to scrutinise the local council or councillors. At other times, councillors may face negative comments on their own blog.

While scrutiny is a key part of local democracy and accountability, on occasions, some blogs may make unfair comments or untrue allegations or may include abusive or threatening commentary. Unlike Facebook and Twitter, there are no 'community rules or standards' to moderate or challenge such content.

Depending on the nature of the comments, councillors therefore have several choices:

ignore them altogether and hope that few people read and become aware of the comments

engage with the blogger and seek to assure, inform or correct the comments as appropriate. Bear in mind that this course of action may fuel and prolong the debate and abusive comments further

if you are concerned that the blogger is harassing you, threatening you, spreading malicious communications or is defaming or libelling you, you may wish to record any evidence (such as screen shots) and seek further legal advice or refer the matter to the police.

The law

This section sets out the legislation that applies to intimidation with the aim of helping councillors experiencing intimidation or abuse to classify it according to the legislation.

Key points:

- Threats to kill, rape, serious violence, stalking and property damage are all criminal offences
- Intimidating behaviour that is face-to-face or by letter, telephone call or online is a criminal offence

- Councillors are encouraged to make a record of these incidents and report them. Even if it does not result in a criminal investigation or conviction, it is important that the collective scale of the issue is reported

2. Legal background

Whilst the law on physical and verbal intimidation and abuse is better established and known, the law has been catching up with developments in the area of communication generally and the recent seriousness of intimidation arising from the conduct of our democracy. This includes the speed and available uses of the internet as well as the subsequent significant growth in the use of social media in both promoting political causes and discussions with residents and voters.

Although social media can create a new type of relationship with the electorate, it can provide a platform, through its remoteness and anonymity, to be used by those wishing to intimidate others.

Councillors are not employees of the council and do not have the benefit of safeguards in employment legislation if they suffer intimidation. However, they should be supported by their council to undertake their duties safely and without fear or intimidation. Their political party may also offer them support.

In undertaking their activities as a councillor, they are protected by the same legislation relating to intimidation or threats as to any member of the public. As councillors are servants of democracy they, arguably, deserve greater support as they undertake their public duties.

Summary of offences and corresponding legislation

The summary table below sets out the range of offences classed as intimidatory offences. These range from face-to-face encounters to online activity. The guide includes a more detailed explanation of the offences.

Offence	Legislation	Comment
The Act defines anti-social behaviour as "conduct that has caused, or is likely to cause, harassment, alarm or distress to any person"	Anti-social Behaviour, Crime and Policing Act 2014	
Improper use of public electronic communications network	Communications Act 2003 – Section 127	Sending message which is grossly offensive or of an

Offence	Legislation	Comment
		indecent, obscene or menacing character.
Racially or religiously aggravated offences	Crime and Disorder Act 1998 – Sections 28 – 32	Hate crimes relating to racial or religious issues. Crimes relating to disability, transgender status or sexual orientation, treated as factors in sentencing. Subject to Law Commission review.
Restraining orders on conviction or on acquittal	Protection from Harassment Act 1997 – Sections 5 and 5A	Section 5A inserted in Domestic Violence Crime and Victims Act 2004 and both sections give court wide discretion to restrain defendant from contact with victim.
Stalking, involving fear of violence or serious alarm or distress	Protection from Harassment Act 1997 – Section 4A	Inserted by Protection of Freedom Act 2012, also requiring conduct “on at least two occasions”.
Harassment which puts people in fear of violence	Protection from Harassment Act 1997 – Section 4	Requirement that the conduct has taken place “on at least two occasions”.
Offence of stalking	Protection from Harassment Act 1997 – Section 2A	Inserted by Protection of Freedom Act 2012 and examples are detailed in 1997 Act
Prohibition of harassment	Protection from Harassment Act 1997 – Section 1	Applies when one or more people are subjected to harassment
Intimidation arising from investigation into	Criminal Justice and Public order Act 1994 – Section 51	Applies if intimidation is reported to police and

Offence	Legislation	Comment
or given evidence about an offence		prosecution takes place
Unauthorised access to computer material	Computer Misuse Act 1990 – Section 1	Hacking into computer
Common assault and battery	Criminal Justice Act – Section 39	Common law offence which includes fear of, rather than actual, violence
Sending letters or other communications with intent to cause distress or anxiety	Malicious Communications Act 1988 – Section 1	Electronic communications and networks included in Criminal Justice and Police Act 2001 and Communications Act 2003
Using threatening, abusive words or behaviour which may cause unlawful violence or harassment and alarm	Public Order Act 1986 – Section 4 and Section 4A	Applies for displaying any written material such as banners or posters
Threats to destroy or damage property	Criminal Damage Act 1971 – Section 2	“Without lawful excuse” or which could endanger life
Destroying or damaging property	Criminal Damage Act 1971 – Section 1	“Without lawful excuse” or being reckless as to action. Arson could, also, amount to threat to kill
Threats to kill	Offences Against the Person Act 1861 – Section 16	Threat “without lawful excuse”
Possible future legislation		
Intimidating parliamentary candidates or party campaigns	Government consultation following Committee on Standards in Public Life 2017 report	The LGA is lobbying that this should apply to local elections and candidates

Offence	Legislation	Comment
Action to regulate removal of illegal and unacceptable online content	Government consulting on its Online Harms White Paper	Likely to be subject to resistance from the tech companies

Balancing freedom of speech and its limitations

The right to freedom of expression is a fundamental human right of the greatest importance and a lynchpin of any democracy. However, it is not an absolute right as indicated in the three articles numbered 9, 10 and 14 of the European Convention on Human Rights. The key elements appear in article 10, which sets out that the freedom includes the right to hold opinions and to receive and impart information and ideas without interference from a public council.

The elements that have a bearing on councils are:

Interests of public safety

Prevention or disorder or crime

Protection of health or morals

Protection of the reputation or rights of others

Preventing the disclosure of information received in confidence

All the above have been incorporated within our legislation and thus restrict the extent to which freedom of speech is permitted.

Severity of intimidation

If you are feeling intimidated, then that experience is legitimate and should be your own test as to whether you want to report the situation. In determining whether an act is classed as intimidation in law, the police and the courts will apply their own tests based on the existing legislation and 'reasonableness'. However, legislation, guidance and case law evolves and this should not put you off reporting a situation and seeking a resolution should you feel you have been intimidated. In summary:

Threats to kill, rape, serious violence or actual common assault, damage to property (such as arson) should be reported to the police. Councillors may wish to review their own personal safety precautions and possibly those of their family.

Harassment and stalking would also require police involvement, particularly if there were a number of occurrences.

Action following intimidation arising from both face-to-face and online contact will depend upon the circumstances such as the number of communications or contacts, extent of obscene or violent language and whether the activity continued for a period of time including whether the abuser resorted to more than one method of abuse.

Councillors are encouraged to record all instances that cause concern and in reporting to the police consider the requirement for detailed evidence to prove the case “beyond all reasonable doubt”.

There have been a number of cases arising from the provisions of the 1997 Protection from Harassment Act where judges have provided guidance as to when the intimidation complained about should require the involvement of the civil or criminal law. The judge in the case of *Dowson and Others v Chief Constable of Northumbria* [2010] EWHC 26 set out six steps under the 1997 Act:

1. there must be conduct which occurs on at least two occasions
2. which is targeted at the individual
3. which is calculated in an objective sense to cause alarm or distress, and
4. which is objectively judged to be oppressive and unacceptable
5. what is oppressive and unacceptable may depend on the social or working context in which the conduct occurs
6. a line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways such as “torment” of the victim, “or an order which would sustain criminal liability”.

Although the courts look at the conduct from an objective point of view, the victim’s reaction to the intimidation will be subjective and it will be for that individual to decide upon the action which is taken. The courts will also take a view on whether the perpetrator knows or ought to know that his conduct amounts to harassment.

Advice for supporting councillors

This section puts forward some suggested ways that council officers can support their members. The LGA will be expanding this guidance.

Key points:

- It is helpful for councils to have an officer to support councillors experiencing public intimidation, and to provide a liaison point with the police
- Political groups on the council could consider nominating someone to provide a support role on these issues
- Councils can develop their own policies, procedures and regular briefings to assist councillors experiencing intimidation

How councils can support their councillors

Councils can support their councillors by:

- Appointing an officer to undertake a role as a sounding board for any councillor or officer who wishes to make contact in confidence if he or she has received intimidatory contact or communication from an external or internal source. This

officer can provide support and advice rather than a solution to such abuse, and could also provide practical advice on personal safety. Any serious allegation of criminal activity may have to be taken further.

- Encouraging each political group within the council to likewise appoint either the leader of the group and/or one of their number to perform a similar role for their elected members.
- Establishing a council policy setting out procedures and protocols, should a councillor feel they are being publicly harassed, intimidated or abused. Regular briefings for all councillors, including those who have been newly elected, to share experiences and concerns can both help identify persistent offenders and look at council-led solutions.
- Working with the local police, establishing a named officer responsible for handling the serious threats to councillors and to advise on personal safety and security.
- Ensuring that council insurance arrangements cover injuries or loss suffered by elected members arising from their role as councillors in respect of any intimidation.
- Considering what steps should be taken by the council to mitigate the risk to councillors in the event of severe intimidation and threats. In some of the cases that have been researched in the production of this guidance, councillors who have been subjected to death threats have been supplied with personal alarms by the police and, occasionally, by their council. All councils could consider what steps they can take to address any risks or threats.

Working with the police

The research undertaken in the development of this guide found that the police response to councillor intimidation varied across the country.

We are aware that some police forces are reviewing their responses to such threats, and that the issue is being looked at by Government. The LGA highlighted this issue in its [response](#) to the consultation on '[protecting the debate: consultation on intimidation, influence and information](#)'.

It is recommended that councils are proactive with their local police force and police crime commissioner in establishing protocols for how councillors should report intimidation and threats that are made to them in their role as a councillor. The police can also provide upfront and more detailed advice on how to respond and the factors that will determine their response to any threats, abuse or intimidation.

Wellbeing of councillors

Experiencing abuse, threats and/or intimidation can have an impact on wellbeing. Your council may have a [Mental Health Champion](#) who can offer support to fellow councillors, or you may have an at work support scheme that councillors could also

benefit from. If a councillor reports any incidents, it is recommended that they are asked if they also require support with their wellbeing.

COUNCILLOR GUIDANCE – WEBSITE LINKS

Personal safety guide for councillors, Northampton Borough Council

<https://www.northampton.gov.uk/downloads/file/9457/safety-guide-for-councillors>

Personal safety for members, Essex County Council

<https://members.essex.gov.uk/media/1364/social-media-january-2019.pdf>

<https://members.essex.gov.uk/guidance-resources-and-key-documents/social-media-protocol-for-members/>

Personal safety and lone working guidance for councillors, Plymouth Council

https://www.plymouth.gov.uk/sites/default/files/personal_safety_and_lone_working_guidelines_for_councillors.pdf

Personal safety for elected members, the LGiU

<https://www.lgiu.org.uk/essentialguide/personal-safety-for-councillors/>

Social Media: a guide for councillors, WLGA

<http://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=344>

Social Media Policy for Councillors, Ashfield District Council

<https://www.ashfield.gov.uk/media/4412/social-media-policy-for-councillors-agm-may-2018.pdf>

Councillors guide to handling online abuse, March 2018, WLGA

<http://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=1504>

Ward Work- guidance for councillors, Medway Council

https://www.medway.gov.uk/downloads/file/660/ward_work_-_guidance_for_councillors

Advice for elected and prospective councillors, Data Protection Act, ICO

<https://ico.org.uk/media/for-organisations/documents/1432067/advice-for-elected-and-prospective-councillors.pdf>

The Suzy Lamplugh Trust has a website with useful and practical guidance on issues such as transport safety, dealing with aggression, internet safety, personal alarms, running safety and safety at home. Find them on:

<https://www.suzylamplugh.org/>

LINKS TO KEY SOCIAL MEDIA:

Facebook policies and guidelines

<https://en-gb.facebook.com/communitystandards/> - what is or isn't against Facebook's rules

<https://newsroom.fb.com/news/2018/08/enforcing-our-community-standards/> - what action Facebook takes to respond to abuse

<https://en-gb.facebook.com/safety/tools> - the methods of protection on Facebook

<https://en-gb.facebook.com/help/122006714548814> – a guide to how users ought to respond to safety issues

Instagram policies and guidelines

<https://help.instagram.com/477434105621119/> - overview of the user standards, and also articles about how individuals should respond to abuse

[https://help.instagram.com/196883487377501/?helpref=hc_fnav&bc\[0\]=368390626577968&bc\[1\]=1757120787856285](https://help.instagram.com/196883487377501/?helpref=hc_fnav&bc[0]=368390626577968&bc[1]=1757120787856285) – overview of privacy settings

Twitter policies and guidelines

<https://help.twitter.com/en/rules-and-policies#twitter-rules> & <https://help.twitter.com/en/safety-and-security#hacked-account> – Twitter's policies on abuse

<https://help.twitter.com/en/managing-your-account/suspended-twitter-accounts> - account suspension on twitter as a punishment

Digital citizenship

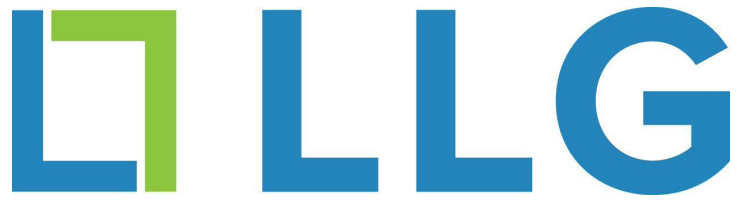
<https://www.virtuallibrary.info/digital-citizenship.html#>

www.securedbydesign.com

NaTSCO

www.getsafeonline.org

helping young people stay safe online - www.thinkuknow.co.uk



LLG Social Media-Toolkit



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The LLG Social Media Toolkit has been prepared by Lawyers in Local Government (LLG) for the benefit of its membership, in order to introduce the subject of social media use and resulting legal considerations which may apply.



Foreword

Unfortunately, most Councils can now lay claim to having at least one “pressure group” or “blogger” who see it as their life’s calling and personal duty to make persistent and unfounded allegations of corruption, maladministration, and misconduct (and any other allegations involving unlawful or illegal activities) against their local (or sometimes not local) Council, its elected members and officers. They have always been there in one form or another, however the internet and in particular social media have given them a significantly more elevated and wider platform from which to emerge from the shadows (albeit virtually), and from which to launch their attacks, whereas in the days of yore their reach was limited to writing letters and posting newsletters among other more traditional forms of communicating their views and theories.

Some of the more unsavoury instances have seen elected members or prospective candidates threatened with social media exposés should they continue to hold office or stand for election, whether or not there is any credibility or truth to what is proposed to be published. This has resulted in some of those subject to such threats retiring or withdrawing from public life, some before they have even had chance to launch their political careers. Such behaviour also discourages individuals from putting themselves forward for public office in the first place.

It is of course correct that those who do put themselves forward for public office, and who currently hold public office, should be subject to increased scrutiny and challenge, and that they should expect to be faced with sometimes very strong criticism. Enhanced protection therefore applies to what is said in a political arena, not only to politicians, but also to those who comment upon politics and politicians, notably the press. This is because the right protects, more broadly, the public interest in a



democracy of open discussion of matters of public concern, but this does not denote 'open season' and there is a bar (albeit one set relatively high) beyond which such challenge and criticism are unacceptable, particularly where the basis of that challenge is devoid of factual substance.

The consequence of these very public threats is to distort the democratic process. Arguably they act as an independent and unofficial pre-selection filter on candidates and a screen upon the longevity of political careers, leaving those standing for or holding office either affiliated with or supported by those making the threats, or of a particularly strong character. This cannot be right, and presently unless a public figure is in league with those making threats, a particularly thick skin is seemingly an essential part of the make-up of the modern Councillor. This is not to mention the effect that social media can have upon the wellbeing of officers and the retention of key members of staff.

The LLG Social Media Toolkit is designed to help you navigate your way around the complex and sometimes all too emotive issue of social media in advising your officers and members on the best way to protect and conduct themselves as well as ensuring your authority complies with its legal obligations.

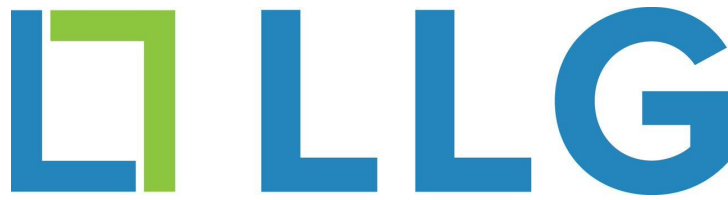
Best wishes

David Kitson

Bevan Brittan



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Introduction

LLG recognise that the growing use of social media places additional pressure on our members to advise officers, councillors, and their authority on a range of legal implications based on wide-ranging posts, tweets and commentary published in the public domain.

Whilst the world under lockdown becomes increasingly virtual, social media has become centre stage in both personal and private lives leading to often complex and wide-ranging legal advice. How do we best manage social media from a governance and operational perspective? How do we work out what presents risk and how can that risk be mitigated?

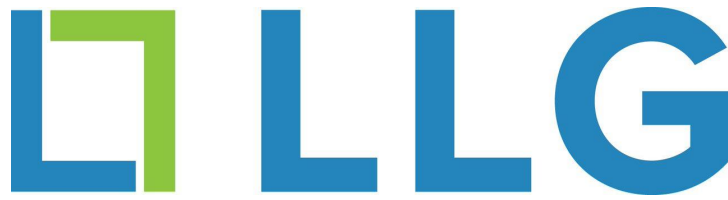
There are all too many examples of social media causing embarrassment or loss of reputation. However, there is also a darker side to social media which has increased over recent years. Malicious abuse, threats of violence and harassment are unfortunately, all too prevalent across virtual platforms. The Committee on Standards in Public Life's review on 'Intimidation in Public Life' (2017) stated "The vitality of our political culture depends upon free and vigorous expression of opinion, and it is crucial that this freedom is preserved. The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom". This is a position that LLG takes seriously, and one that we should all agree with.

LLG hopes this toolkit will assist you in providing advice to your officers and members in this complex field.

Best Wishes

Quentin Baker

LLG President 2020-2021



1. Defamation

What is defamation?

- 1.1 Defamation is a complex legal area necessitating specialist legal advice. It is often a lengthy and costly pursuit of action and should be considered carefully.
- 1.2 The Defamation Act 2013 came into force on 1st January 2014. It codified and consolidated large parts of case law and previous statute. It introduced a single publication rule, addressed the 'serious harm' threshold and reversed mode of trial to a judge (as opposed to jury).
- 1.3 Simply put, if someone has posted a false statement which could cause serious harm to an individual's or organisation's reputation and character this could give rise to a claim for defamation. Defamation law both protects from damage to reputation and character and compensates for the loss and damage arising.
- 1.4 There are a number of defences to defamation, including truth, honest opinion, fair comment, publication on matter of public interest, absolute privilege, and innocent dissemination. The defences each set out specific criteria in order to meet the test for reliance upon any one of them.

Can a local authority bring an action?

- 1.5 It is important to note that local authorities cannot themselves sue in defamation, which was a principle laid down by *Derbyshire County Council v Times Newspapers Limited* ([1993] 1 All ER 101). In that case the court held that local authorities are distinguished from corporations as democratically elected government bodies and as such, it was highly important that they



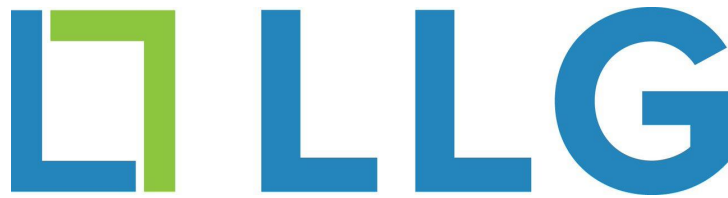
were open to criticism. The threat of defamation would therefore inhibit freedom of speech and be contrary to the public interest.

General Power of Competence

- 1.6 Whilst there has been some suggestion that local authorities can use section 1 of the Localism Act 2011 (the general power of competence) to bring a defamation claim this is untested. It is worthwhile noting that this point was specifically discussed in parliamentary debates on what was then the Defamation Bill. It was highlighted within the debate that the Bill was not intended to undermine the Derbyshire principle. Given this fact it would be very risky to rely upon the Localism Act to bring a defamation claim. In the alternative, it is open to individual officers and members to bring an action in their own name. However, due to cost and complexity it is often not an option open to many. It might be possible for local authorities to provide an indemnity in exceptional circumstances, (see *Thompson v James* [2013] EWHC 515 (QB), but extreme caution must be exercised (see section on Indemnities).

Can officers and members bring an action?

- 1.7 Officers (or members) of a local authority can sue for defamation in connection with statements made about them which relate to the exercise or discharge of their duties or as an employee of the authority and where it personally relates to them (*McLaughlin v Lambeth LBC* [2010] EWHC 2726 (QB)).
- 1.8 In *Thompson v James* [2013] EWHC 515, the judge acknowledged that there would be “a serious gap in the law if members and officers of a local authority (and others who work in or for other public authorities) could not sue for libel”



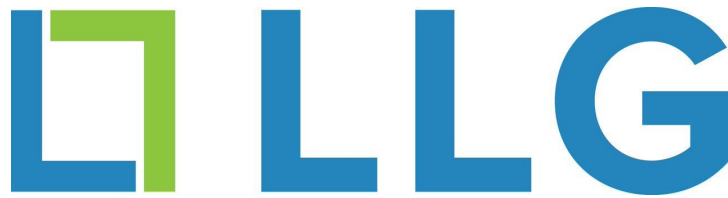
and “if those who work in or for public authorities could not defend themselves against the dissemination of falsehoods, the public would be the losers”.

- 1.9 However, the judge noted that civil servants acting in their official capacity must show a greater degree of tolerance to public scrutiny and criticism. This is not a surprise, and it reconfirms the conclusion reached by the House of Lords in the *Derbyshire* case some 20 years ago. But the judge also recognised that where a person maliciously spreads false and defamatory allegations about individuals holding public offices, a libel action may be the best means of establishing the truth and preventing repetition.
- 1.10 Where an officer or member raises defamation, it is important that they record all the relevant posts and consider whether the person in question will publicly apologise and retract the comment in the first instance. Defamation proceedings are costly and lengthy. In some cases, ignoring the communication may stop any further communication. However, if a member or officer feels the nature of the post is such that it cannot be ignored, lawyers may, after providing initial advice, seek specialist external legal advice about the options available and merits of any claim.

2. Indemnities

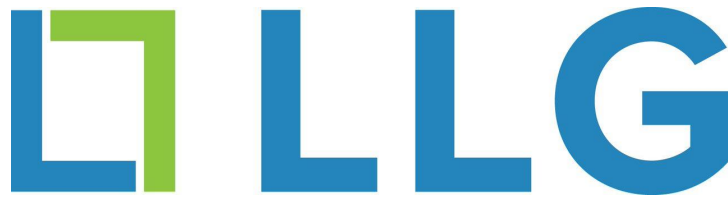
General

- 2.1 An authority can provide an indemnity for a claim brought by an individual officer or member, or to assist in defending a claim under The Local



Authorities (Indemnities for Members and Officers) Order 2004 (“the 2004 Order”) where the public expenditure is justified. Under the 2004 Order, an indemnity can be granted to cover “any act or omission by a councillor or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council”.

- 2.2 An authority cannot provide an indemnity for a defamation claim brought by a councillor but can fund a defence.
- 2.3 For both councillors and officers, the 2004 Order restricts the provision of indemnities so that they cannot cover any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, recklessness, or the cost of pursuing a defamation claim. In such cases, if an indemnity had been provided, any costs incurred under an indemnity would have to be repaid to the Council or insurer.
- 2.4 Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to particular decisions or acts, if to do so would facilitate or is incidental, or conducive, to the discharge of a function of the authority.
- 2.5 Authorities should be careful when providing indemnities that no officer/councillor is involved in the decision-making process to do so, whilst having a disqualifying personal and pecuniary interest in the matter.



Defamation and indemnities

- 2.6 Indemnities for defamation claims other than in relation to the defence of a member or officer of any allegation of defamation made against them are expressly excluded under Article 6 of the Local Authorities (Indemnities for Members and Officers) Order 2004. However, prior to the 2004 Order it had been established under the 2003 case of *Comninos, R (on the application of) and Bedford Borough Council* that local authorities could provide indemnities to Officers in order to bring defamation proceedings under s111 or s112 of the Local Government Act 1972. It is not settled law however whether the 2004 Order was meant to be a comprehensive code, but it might be possible to use the powers in exceptional circumstances (but not without substantial risk).
- 2.7 In *Thompson v James* [2013] EWHC 515 (QB), Mrs Thompson (who was a prolific blogger) brought a defamation claim against the Chief Executive Officer (CEO) of Carmarthenshire County Council who counter-claimed for defamation in return. The council agreed to indemnify the CEO following two senior QC's opinions and on the basis that there were exceptional circumstances under section 111 Local Government Act 1972. During the hearing, the court did not consider this particular point, but the Welsh Audit office took the view that the expenditure had been unlawful and issued a report in the public interest. They did not however subsequently follow up with legal challenge.



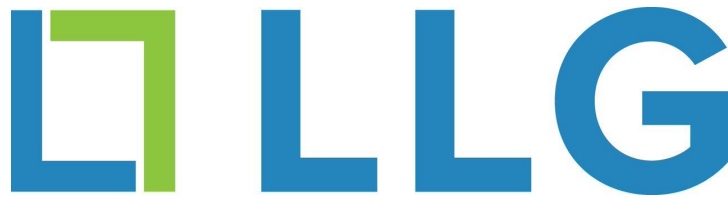
- 2.8 It is important to remember that any decision to indemnify must be Wednesbury reasonable, legitimate, proportionate, and a proper use of public resources.

3. Standards

- 3.1 An increase in complaints about members' use of social media has been acknowledged by the Committee on Standards in Public Life to be a catalyst behind declining standards in conduct. One of the key issues is the capacity in which posts are being made by councillors. There is no clear definition and much depends on the facts in each case. Even where members do not disclose that they are councillors, it can still be perceived that they are posting in that capacity. It is important therefore that councillors state in what capacity they are posting or tweeting/retweeting. It does not prevent issues arising, but it should help to provide clarity.
- 3.2 The case of *R (on the application of Mullaney) v Adjudication Panel for England* [2009] EWHC 72 (Admin) acknowledged the sensitive nature of the exercise of whether or not a member was acting in their capacity as a member; "...These are ordinary descriptive English words. Their application is inevitably fact sensitive and so whether or not a person is so acting inevitably calls for informed judgment by reference to the facts of a given case. This also means that there is the potential for two decision makers, both taking the correct approach, to reach different decisions..."

Local Initiatives and Pre-determination

- 3.3 There has been a significant increase in the use of social media by Members during lockdown due to COVID-19. Many members are supporting



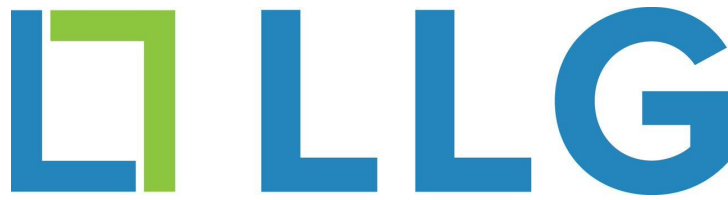
and re-posting local initiatives such as the production of protective equipment and financial assistance to those in need. But it is important that as much clarity is given as possible as to the capacity in which the member is posting these types of content. Reference to initiatives whilst using title 'Cllr' may infer to the reader that those initiatives are council initiatives or are officially supported. If there are then consequential issues arising with those initiatives (for example breaches concerning the processing of personal data), there might be an assumption that the council is liable or responsible.

- 3.4 Once a post is made it is a permanent record, and social media posts on views and voting intentions can be perceived as predetermination and result in allegations of bias increasing the risk of legal challenge and judicial review claims.

4. Abusive Posts & Declining Ethical Standards

Ethical Standards

- 4.1 It is becoming increasingly common for standards complaints to be made on the basis of comments Councillors have made on social media. As section 27(1) of the Localism Act 2011 places a positive duty on Councils to promote and maintain high standards of conduct amongst members, Councils must seek to do so where their members use social media. If a Council can reduce the incidence of complaints being made regarding the use of social media by Councillors, this not only saves resources but also goes towards the section 27(1) duty.
- 4.2 The issue of social media and the declining standards of behaviour both towards public figures and by elected members has been commented upon by

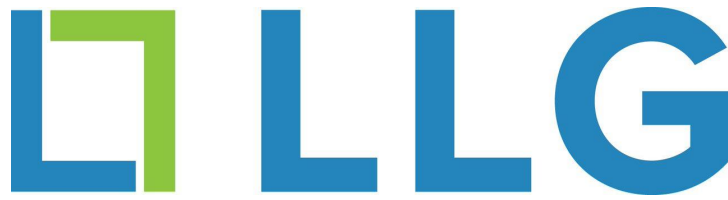


the Committee on Standards in Public Life (CSPL). The CSPL report 'Intimidation in Public Life – A Review by the Committee on Standards in Public Life' which was published in December 2017 is well worth a read. In the covering letter to the Prime Minister Lord Bew stated the following:

“...The increasing prevalence of intimidation of Parliamentary candidates, and others in public life, should concern everyone who cares about our democracy. This is not about defending elites from justified criticism or preventing the public from scrutinising those who represent them: it is about defending the fundamental structures of political freedom. A significant proportion of candidates at the 2017 general election experienced harassment, abuse, and intimidation. There has been persistent, vile, and shocking abuse, threatened violence including sexual violence, and damage to property. It is clear that much of this behaviour is targeted at certain groups. The widespread use of social media platforms is the most significant factor driving the behaviour we are seeing...”

4.3 In the foreword to the Government’s response to the report, the Prime Minister stated:

“...the ideal of a truly plural and open public sphere where everyone can take part is in danger. A tone of bitterness and aggression has entered into our public debate. Participants in local and national public life – from candidates and elected representatives to campaigners, journalists, and commentators – have to contend with regular and sustained abuse. Often this takes the form of overt intimidation...”

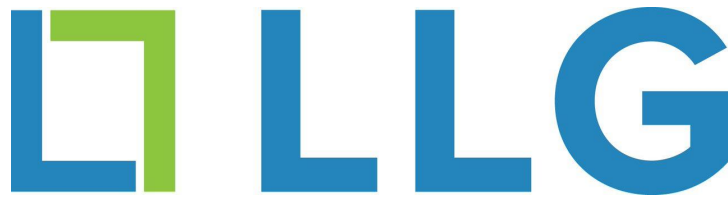


- 4.4 In January 2019, the CSPL published their report 'Local Government Ethical Standards – A Review by the Committee on Standards in Public Life'. The report acknowledges that ethical standards are in decline and that changes are required to the standards regime to address this. The report also highlights the frequency of attacks against and the harassment of Councillors, quoting a highly topical paragraph from the written evidence submitted by the Local Government Association at page 35 as follows:

“Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.”

Harassment

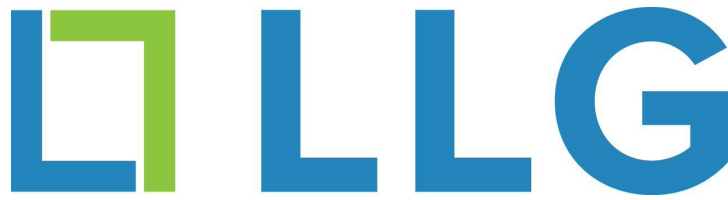
- 4.5 The Protection from Harassment Act 1997 covers both civil actions and criminal offences. There is a requirement to prove that there was a course of conduct (i.e. at least two instances) which was directed at a single person, or in the case of conduct against two or more persons, on at least one occasion in relation to each of those persons. The course of conduct must involve harassment. Harassment includes alarming the person or causing the person distress.
- 4.6 Unlike with defamation claims by officers or members, a council can indemnify officers and members to bring an action under the Act. The council can also start an action in its own name (section 1(1A) and 3A of the Protection from Harassment Act 1997) where there is harassment of two or more of its members or officers which the perpetrator knows or ought to know involves harassment of those persons; or by which they intend to persuade any person to do something which they are not obliged to do or not to do something which they are entitled or required to do.



- 4.7 Bringing a civil claim from harassment is often less expensive than a claim in defamation, not least because of the possibility at interim stage of an interim injunction.
- 4.8 The ongoing publication of defamatory allegations online can constitute a course of conduct (see *Cheshire West and Chester Council & Others v Robert Pickthall* [2015] EWHC 2141 (QB) and *Coulson v Wilby* [2014] EWHC 3404).
- 4.9 The conduct complained of must be considered to “cross the boundary from the regrettable to the unacceptable,..... and be sufficiently serious to be regarded as criminal” (see *Conn v Sunderland City Council* [2007] EWCA Civ 1492). Given the Court of Appeal judgement, there is now an expectation that the conduct must be such as to attract the sanction of the criminal law. The higher threshold makes a claim quite difficult. It is important to remember that where action is sought by or in relation to members in particular, it will be difficult, and only in exceptional circumstances successful.

Other forms of Action

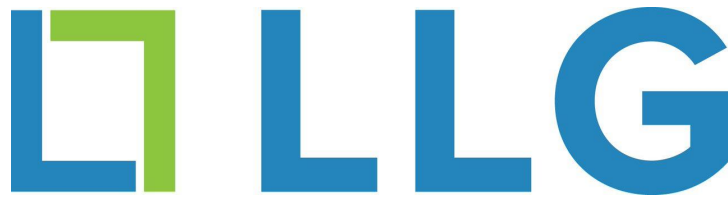
- 4.10 Other forms of action might be applicable and include the common law claim for malicious falsehood, criminal offences under the Communications Act 2003 and the Malicious Communications Act 1988, and anti-social behaviour injunctions under the Anti-Social Behaviour Crime and Policing Act 2014.
- 4.11 Crown Prosecution Service guidance in relation to both the Communications Act 2003 and the Malicious Communications Act 1988 makes it clear that a prosecution should only proceed where it involves offensive, shocking, and disturbing communications.



- 4.12 Injunctions under the Anti-Social Behaviour Crime and Policing Act would be quite novel in the context of social media postings about members and/or officer, but technically speaking it might be possible. It also has the benefit of being dealt with on the civil balance of probabilities and there is presently no case law to suggest that the conduct must be such as to attract the sanction of the criminal law as there is with injunctions under the Protection from Harassment Act 1997 (see above). Use of this legislation in this context is untested and so how a court might deal with such a case is unknown at present.
- 4.13 If officers or members receive an abusive, intimidatory or threatening communication they should keep a record of it and report it to the social media platform concerned. They should also make the council aware so that the council can keep a record and provide any appropriate advice.
- 4.14 Any posts which threaten the personal safety or security of a member or officer should be discussed with the police.
- 4.15 Engaging with an abusive communication can often encourage further, unwanted communications and may provide a platform and audience which further incites the behaviour.

5. Breach of Confidentiality

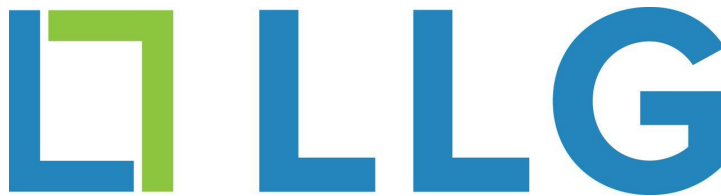
- 5.1 Breaches of duties of confidentiality (whether implied or express) can happen in all contexts, by members and officers or by third parties. An exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about



complaints or individuals who have made complaints might be disclosed. This can result in claims being brought against the council or against individuals to recover any loss or damage suffered.

Loss of general indemnity

- 5.2 A general indemnity applies to officers and members under section 265 Public Health Act 1875, which is applied to all council functions by section 39 Local Government (Miscellaneous Provisions) Act 1976. The indemnity only applies when members or officers are acting bona fide in the council's interests. A breach of confidentiality is unlikely to be considered to be in the interests of the council, meaning that the member or officer involved might end up being individually liable for what could be quite large sums of money. Breaches of confidentiality are also likely to significantly undermine a council's ability to obtain best value in future due to reputational damage. In the context of contracts, third parties might not engage, hold back on sharing information with the council, or use the situation to their advantage to seek more stringent contractual terms to the detriment of the council. Breaches might also impact upon and/or effect regulatory functions in that those who are subject to regulation, or have information about breaches, might be reluctant to engage for fear of that information being disclosed.
- 5.3 There is a public interest defence to a breach of confidentiality, however it is for the person who has caused the breach to make this out.

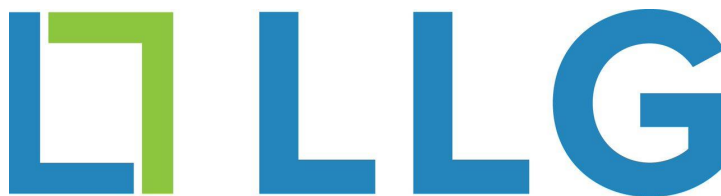


6. Data Protection and the Information Commissioners Office (ICO)

- 6.1 Disclosure of personal data on social media is a “processing” activity and requires a lawful basis if no exemptions to that processing apply.
- 6.2 Where neither a lawful basis or an exemption apply to that processing it may be unlawful and constitute a breach of GDPR.

Who is the controller?

- 6.3 Most social media postings by individuals are considered by the ICO to be made in a personal capacity and therefore exempt from the GDPR. However, when members post personal data on social media they could be doing so in one of four different capacities. The first of these is where the member is posting purely in their personal capacity. The ICO have however expressed a view that when processing personal data not in their own personal capacity, members could be acting in one of three further capacities: -
- a. Processing in relation to council business (where the council is the controller).
 - b. Processing in relation to constituency work (where the councillor is the controller); and
 - c. Processing in relation to party political matters (where the political party is the controller).
- 6.4 Although elected representatives are exempt from paying a data protection fee under the Data Protection (Charges and Information) Regulations 2018, they must still ensure that they adhere to the principles of the GDPR and understand best practice for managing information. Where members seek to



process the personal data for matters other than exercising members' functions then the fee exemption will not apply to that processing.

Personal or Household Activities Exemption

- 6.5 The ICO considers most social media postings made by individuals are exempt under the personal or household activities exemption.. It should be noted however that in [Sergejs Buivids \(Case C–345/17\)](#) the Court of Justice European Union (CJEU) recently gave an interesting view on the application of this exemption regarding the posting of a video on YouTube by an individual, having been asked to do so by a Latvian Court (ECLI:EU:C:2019:122). This was a case concerning the pre GDPR data protection directive however the exemption under the GDPR is very much the same.
- 6.6 In that case, an individual had been taken to a police station to give a statement, and whilst there he filmed police officers going about their normal day to day business. He subsequently posted the footage on YouTube stating that he had done so to draw attention to the police acting unlawfully. When the individual was told to take the clip down by the Latvian National Data Protection Agency, he challenged them, claiming that the personal or household activity exemption or the journalism exemption applied (being one of the “special purposes” exemptions). The CJEU said that the personal or household purposes exemption did not apply as the material was published on *“a video website on which users could send and share videos without restricting access to that video, thereby permitting access to an indefinite number of people”*. The processing of personal data here, did not come within the personal or household activities. The CJEU also stated that the journalism exemption could apply but did not give a definitive view on this.



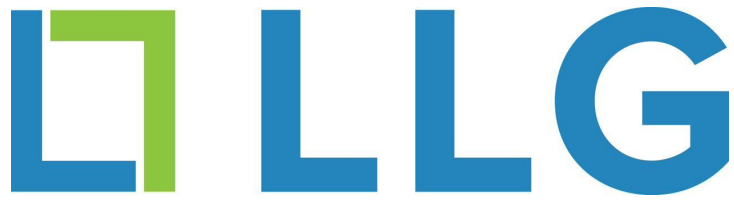
- 6.7 Although this raises interesting points, the case was very nuanced, and it remains to be seen whether this view will be more widely adopted.

Journalism Exemption

- 6.8 As referred to above, the GDPR and the Data Protection Act 2018 contain an exemption applicable to processing for the “special purposes”. One of those special purposes is processing for the purpose of journalism, which could apply to the processing of personal data by ‘citizen journalists’ on their social media pages, blogs and websites. The exemption (when applicable) acts to

exempt the controller from the vast majority of obligations under the GDPR (but not the security and accountability principles). The exemption only applies where the controller considers that compliance with the GDPR provisions would be incompatible with the special purposes (this must be more than inconvenience); that the processing is being carried out with a view to publication of journalistic material; and that the publication is in the public interest, taking into account the special importance of the general public interest in freedom of expression, any specific public interest in the subject matter, and the potential to harm individuals. When deciding whether publication would be in the public interest, the controller must have regard to BBC Editorial Guidance lines, the OFCOM Broadcasting Guide, and the Editors’ Code of Practice..

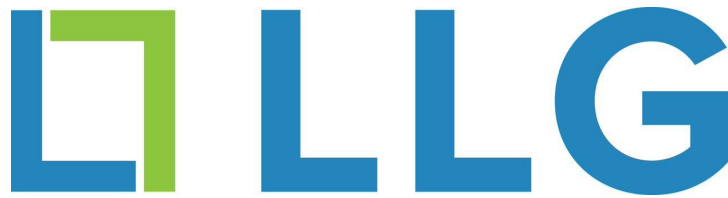
- 6.9 If those making derogatory posts on social media cannot rely on the personal or household activities exemption or the journalism exemption, they will be considered to be controllers under the GDPR meaning that there may be means of redress under the GDPR (such as the right to object). Complaints could also be made to the ICO, as well as potential proceedings being



brought under the GDPR and Article 8 for material and non-material damage against the controller for any breach.

7. Employment Considerations

- 7.1 Employee misconduct involving use of social media is becoming an increasing problem and one that can be difficult for employers to deal with properly. Firstly, characterisation of misconduct may be problematic e.g. does the misconduct consist of damaging the employer's reputation or does it breach a duty of confidentiality?
- 7.2 Reported cases tend to fall within the following three categories – inappropriate employee actions (for example an employee posted pictures of themselves DJing in Ibiza whilst “off sick”); using social media to make derogatory comments about colleagues, the employer, customers/clients/patients; or excessive use of social media during work hours. Different considerations will also apply to dealing with conduct which is in work or on the other hand outside work.
- 7.3 There is an implied term in all employment contracts that the working environment will be reasonable, tolerable, and congenial. The case of *Moore v Bude-Stratton Town Council* UKEAT/313/99; [2000] IRLR 676 also makes it clear that councils can also be held responsible for conduct of members towards officer. This case involved a councillor's persistent hostility and abuse against an officer. The council tried to claim that as the councillor was not employed by the authority, it was not responsible. However, the tribunal found that those circumstances did not absolve the authority from its obligations and employees could in fact resign and claim unfair dismissal. The council was therefore vicariously liable for the breach and damages flowed from that.



- 7.4 It is important to remember that where someone is subjected to a course of conduct that causes them distress or alarm this may give rise to cause of

action for harassment.. Online activities such as cyber bullying are also caught.

- 7.5 If any harassment is on the grounds of a protected characteristic (e.g. sex, race, disability, age etc.) then this might form the basis of a discrimination claim against the employer in the Employment Tribunal. A concern here is that discriminatory damages are not capped and can also include injury to

feelings. The amount of damages could therefore be very high depending on the conduct.

Health and Safety

- 7.6 The Health and Safety etc. Act 1974 places a general legal duty on employers to ensure (so far as is reasonably practicable) the health, safety and welfare at work of all their employees. This includes protection from bullying and harassment, and other things that can affect psychological wellbeing. Councils should have safeguards and effective monitoring in place in order to protect against risks and effectively deal with abuse as the duty may be breached by exposure to the risk without the need for actual injury or ill health.

Reputational Risk

- 7.7 Employee conduct may damage the council's reputation even if it takes place outside of work, particularly so in the case of social media (which is where it



often happens). Cases determined in the Employment Tribunal (ET) suggest that the following factors are relevant when considering employees' use of social media: -

- a. Is it sufficiently work related? Depending on the facts there has to be some link between work and activity.
- b. Employers should not take a disproportionate view merely because the material is not putting them in the best light when it comes into the public arena.
- c. Information given to employees about the council's image and reputation as well as guidance on the use of social media are particularly relevant.

General Indemnity

- 7.8 As set out in paragraph 5.2 above, a general indemnity applies to officers under section 265 Public Health Act 1875, which is applied to all council functions by section 39 Local Government (Miscellaneous Provisions) Act 1976. The indemnity only applies when officers are acting bona fide in the council's interests. A failure to act bona fide in the Council's interests can result in the indemnity being lost, meaning that Officers may therefore be personally liable for claims and damages, including claims by the Council against the Officer.

Human Rights

- 7.9 The Human Rights Act 1998 is potentially applicable to employment cases resulting from the alleged misuse of social media. Human rights will not be affected by Brexit.

The three relevant rights in this context are: -

- a. Right to respect for private and family life (Article 8)

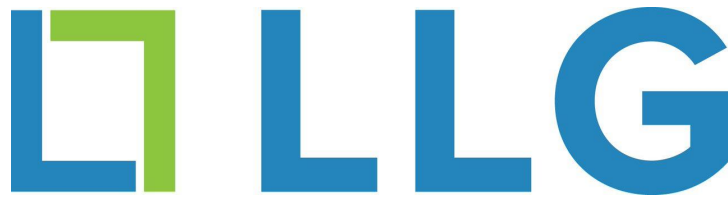


- b. Freedom of thought conscious and religion (Article 9)
- c. Freedom of expression (Article 10)

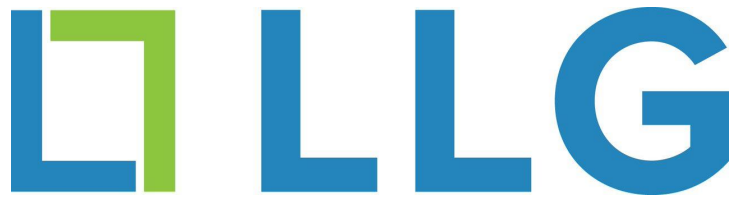
7.10 It is important to note that these are qualified rather than absolute rights and should therefore be approached in two stages. First, has the human rights article been engaged? Second, if there is an infringement, is that justified? When considering justification, proportionality must be considered which requires balancing an employees' rights against the employers' legitimate interests in protecting its reputation and other employees.

Case Law Examples

- 7.11 The case of *Crisp v Apple Retail (UK) Ltd* [2011] ET/1500258/11 concerned an employee of Apple posting expletives and derogatory comments on Facebook about Apple software and working at Apple in general. The Tribunal found that Mr Crisp had no reasonable expectation of privacy even though Facebook was restricted to friends, as it was noted that Mr Crisp's comments could be forwarded without control and indeed it was a friend who had forwarded it to Apple.
- 7.12 The Tribunal found that the right to freedom of expression had been engaged, but the infringement of that right had been justified. Apple had the right to protect its reputation and had taken definite steps to do so in its training, with clear policies that stated the protection of its image was of core value and that social media comments on Apple products was likely to be seen as gross misconduct.
- 7.13 The case demonstrates that the way in which you address social media use in policies is important in being able to handle misconduct through social media by staff.

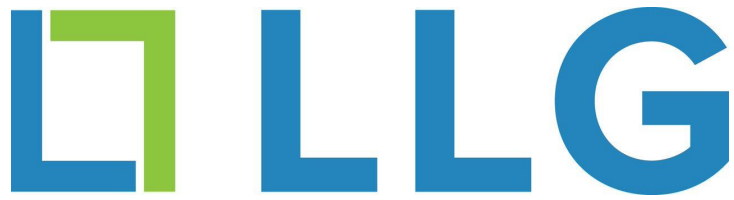


- 7.14 The case of Teggart v TeleTech UK Limited 00704/11 concerned a customer service representative in a call centre who posted obscene comments about the alleged promiscuity of a female colleague within which he also mentioned his employer, TeleTech. On becoming aware of the posts the female colleague asked Mr Teggart's girlfriend to ask him to remove the posts, however instead he chose to post more derogatory and abusive comments and was subsequently dismissed for gross misconduct for bringing TeleTech into disrepute and for harassing a fellow employee.
- 7.15 Mr Teggart claimed unfair dismissal and breach of Articles 8, 9, and 10. The Tribunal found that his privacy was not engaged as he had abandoned this by putting his comments on Facebook. Further that freedom of thought and belief did not extend to a belief about colleague's promiscuity, and that freedom of expression, although a right, must be exercised responsibly so as not to damage a colleague and her reputation. The Tribunal found that the dismissal was fair but was critical of the finding by the employer of serious disrepute as there was no evidence of that. They had made the assumption but could not prove it actually had in reality.
- 7.16 The case of Game Retail Ltd v Laws UKEAT/0188/14/DA concerned a risk and loss prevention investigator who had a personal twitter account and was followed by 65 stores in the business. Game Retail identified 25 expletive tweets by Mr Laws who had taken offence to dentists, golfers, police, his dad, and disabled people and summarily dismissed Mr Laws. The EAT found that the dismissal was fair. The tweets were not private, and he knew that he was being followed by the 65 stores. The tweets could be seen by staff and potential customers. There was more than just a theoretical risk of



reputational damage due to the number of tweets, the level of offensiveness of the comments, and due to being followed by the 65 stores.

- 7.17 In the case of *Walters v Asda Stores Ltd* an ASDA manager posted a comment on her Facebook page which stated "*even though I'm supposed to love our customers hitting them in the back of the head with a pick axe [sic] would make me feel far more happier heheh*". She denied posting the comments and argued that her account had been hacked. The Tribunal found that the subsequent dismissal was unfair because the misconduct did not amount to gross misconduct and the employer's internet policy did not specifically state that this type of conduct by managers would be viewed more seriously. Further, the employee had an exemplary disciplinary record over 10 years' service with no previous warnings.
- 7.18 This can be contrasted with the case of *Dixon v GB Eye Ltd*, ET (Case. 2803642/10), in which Ms Dixon who had raised a grievance about changes to her role following her return from maternity leave, was subsequently suspended pending investigation for accessing her manager's email account., During suspension she posted offensive comments about her employer and colleagues on Facebook. She was dismissed and the Tribunal found that the dismissal was fair on the basis that she had breached a clear employer IT policy and the severity of the comments alone would have been sufficiently serious to dismiss.
- 7.19 Of key importance is having clear policies in place on the use of social media in all aspects of Council business and operations, as well as regular training for both Councillors and officers to consolidate understanding. It is better to be proactive in dealing with potential issues, as doing so on a reactive basis will



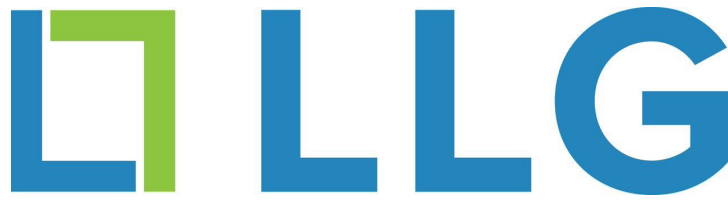
often be too late to avoid serious breaches of legislation and duties of confidence with potential for significant damage to reputation.

8. Social Media Management

- 8.1 When analysing the majority of case law in this area, the strength or otherwise of an employer's policies are exceptionally important and do correlate to the outcome in any given employment tribunal case.
- 8.2 Policies need to set limits or set appropriately defined acceptable usage of council resources, intellectual property use and third-party data together with setting out expectations in respect of confidentiality, prohibitions on bullying, harassment and discrimination, and on negative comments about the council, its employees, elected members, service users, business contacts or partner organisations.

Social media management - controls

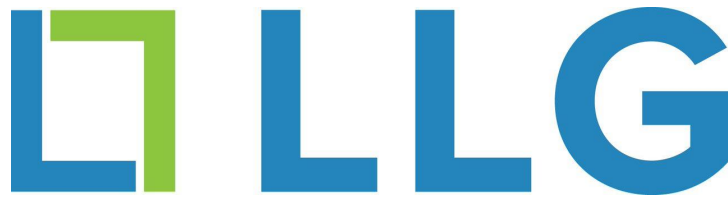




- 8.3 Whilst a disciplinary policy should state clearly the sanctions for misconduct and set expectations around maintaining the reputation of the council and not bringing it into disrepute; there will inevitably be the need to assess misconduct on a case by case basis and an acceptance that harm to the council's reputation might not always be sufficiently evidenced to rely upon.
- 8.4 Communications should be utilised to remind employees at every opportunity about the correct use of social media including at induction, within policies, through continuous training and even log on messages.
- 8.5 Where it can be demonstrated that an employee has been told that use of council resources are restricted to work matters and that social media content which is malicious, discriminatory, bullying or otherwise goes against the ethos of the council and/or harms its reputation this will help protect the council in disciplinary matters from a defence that the employee 'did not know' or 'was not told'. Failure to evidence these matters will provide the employee with a stronger defence in any external proceedings.

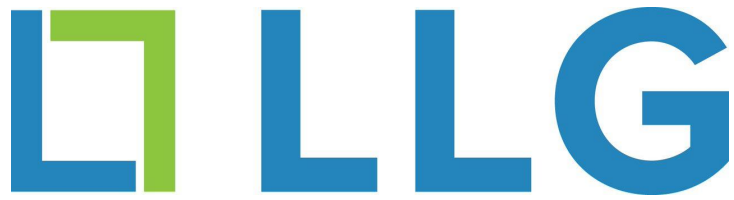
Monitoring of employees

- 8.6 Monitoring of employees can take the form of routine IT monitoring or even targeted monitoring during the course of an investigation. Emails, even if deleted, are retained on a hard drive and may be retrievable using specialist software. Indeed, many cloud-based systems back up such data.
- 8.7 Monitoring online activity can be useful because it could relate to performance issues but can also mitigate against reputational damage and legal liabilities.



Regulation

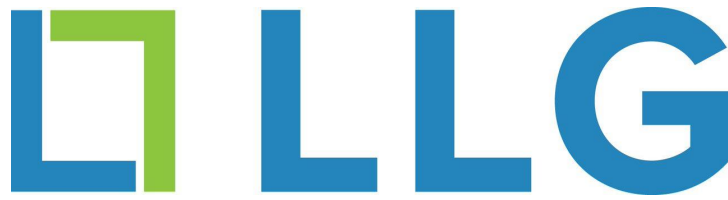
- 8.8 Monitoring is tightly regulated through a wide range of legislation. In terms of monitoring involving the processing of personal data, this is of course regulated under the GDPR and the Data Protection Act 2018. The Information Commissioners Office (ICO) has produced the [Employment Practices Code](#) which was issued under the Data Protection Act 1998 and intended to assist employers to “comply with the Data Protection Act and to encourage them to adopt good practice. The code aims to strike a balance between the legitimate expectations of workers that personal information about them will be handled properly and the legitimate interests of employers in deciding how best, within the law, to run their own businesses”. Whilst the Code is yet to be reviewed in light of the GDPR and the Data Protection Act 2018, it is understood to remain indicative of the ICO’s approach to be taken and in particular Part 3 of the Code contains guidance on monitoring at work and covers systematic monitoring which is understood to mean where an employer monitors all workers or particular groups of workers as a matter of routine; and occasional monitoring which is understood to mean where an employer introduces monitoring as a short term measure in response to a particular problem or need.
- 8.9 The Code recommends that employers set out the circumstances in which monitoring can be used, the nature of it, how the information obtained will be used, and the safeguards in place for those employees subject to monitoring. Employees should be left with a clear understanding of when information about them is likely to be obtained, why the information is being obtained, how it will be used, and who if anyone will the information be disclosed to. The Council’s IT policy needs to ensure it is GDPR compliant as this is a useful tool in controlling abuse.



- 8.10 There are specific pieces of legislation that deal with monitoring including the Investigatory Powers Act 2016, which makes it unlawful in certain circumstances to intercept a communication in the course of transmission. It is also important to consider the Human Rights Act 1998 (in particular Article 8 in that private life might be infringed) and employee protection rights including the duty of mutual trust and confidence.
- 8.11 Monitoring must be proportionate with less intrusive methods considered at first instance. Employees should be provided with details about the purpose of monitoring including when and how it will be carried out, and employers may need to undertake an impact assessment, balancing the rights and privacy needs of the employee against the legitimate aim and needs of the employer.
- 8.12 It is good practice to reserve the right to monitor and review communications within existing policy which should reference both Council communication systems and social media. This should explain what the Council considers to be a legitimate business purpose whilst also incorporating the standards expected.

Policy Content

- 8.13 A social media policy should look to include the following: -
- Coverage (the types of media and categories of people)
 - Who is responsible for implementing the policy
 - Interrelationship with other policies (e.g. IT, Disciplinary, Data Protection etc.)



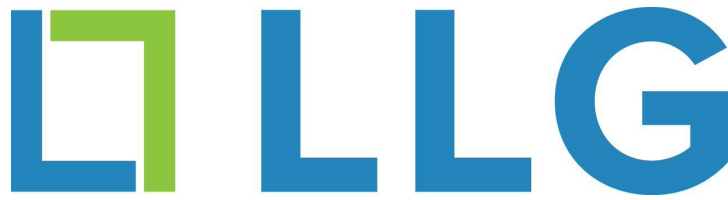
- Prohibited use
- Business use parameters
- Guidelines for responsible use
- Monitoring
- Consequence of breach and sanctions

8.14 Proactively defining what is and what is not acceptable within a social media policy minimises the risk of challenge. This can include not just discrimination and bullying but other more specific examples such as impersonating colleagues.

8.15 The policy should be clear about applying outside of office hours and regardless of whether council equipment or own devices are utilised. Disciplinary action relating to misconduct outside of office hours can be justified if the misconduct presents a real risk of damage to the reputation of the Council and or concerns a breach of confidentiality or amounts to defamation, harassment, discrimination or bullying.

8.16 Be clear about whether the Council accepts the personal use of social media within work time. Tolerable limits should be explicit to avoid confusion or any suggestion that an employee was not clear as to the restrictions.

8.17 Ensure the policy covers not just employees but consultants, contractors and councillors.

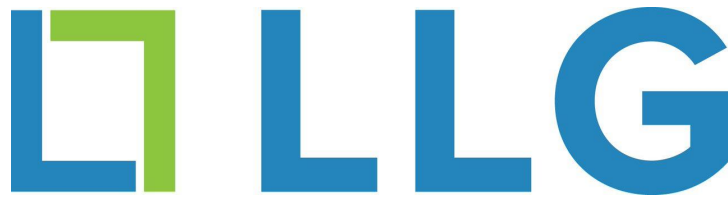


Guidelines

- 8.18 Ensure staff are clear on their personal social media profile that they are speaking on their own behalf, write in the first person and use a personal email address, not a work address.
- 8.19 Where there is a possibility of identifying the individual as a council employee a disclaimer can be used to ensure the reader understands that the views expressed do not represent those of the council, (unless of course the employee has explicit authority to speak on its behalf). Employees should also be given the contact details of a named person at the Council they can report any misconduct to, should they see it on social media.

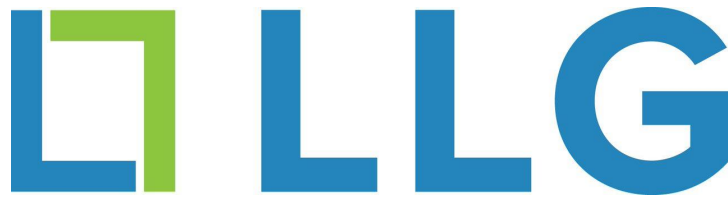
Key Messages to Employees

- 8.20 Posts can go viral quickly resulting in a loss of control. Employees should be reminded that posts on social media are often permanent in nature.
- 8.21 Off the cuff or unguarded remarks should be avoided. Even the most well-intentioned posts without due consideration can have unintended consequences.
- 8.22 Employees should be reminded to maintain personal/professional boundaries and should try to imagine that they are speaking face to face to an audience, as well as understanding that there is no automatic expectation of privacy.

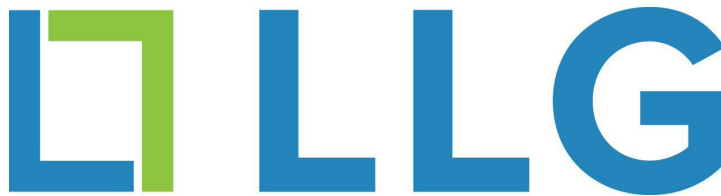


9. Problem Individuals and Practical Action

- 9.1 There is no easy remedy to the issue of problem individuals and their use of social media to attack and criticise councils, members and officers, and to make allegations of corruption. As discussed, there is a much higher threshold of tolerance expected of those in public life. Successful action is not commonplace. It is costly and risks increasing or compounding the issue (particularly if such action is not successful), and in some cases these individuals will see such action as vindication that their allegations are correct, or even hold themselves out as a martyr. This is not to say that legal action should not be taken in cases where such action is demonstratively necessary, reasonable and proportionate. Legal options available in those cases are discussed in Chapter 4 above.
- 9.2 Sometimes, the individuals behind such posts do not realise the impact their behaviour has had on the employees and/or members concerned. Reporting the matter to the police who may visit the perpetrator can have an immediate and lasting effect on their behaviour.
- 9.3 There are however practical measures which can be taken to reduce the impact. These include measures such as blocking users, removing content (if able to do so but remembering to take a screen shot for evidence), and reporting content to the social media platform itself. It is important to complain to the particular social media platform and keep a record in order to build evidence that steps have been taken should legal action become necessary.



- 9.4 Whilst unpleasant content if acknowledged or addressed might reach a further audience and perpetuate the content, where the issue is already known about, a press statement on the council's own platform can help to redress misinformation. This can include a statement that any malicious allegations are without merit and could impact on council functions and the public purse. What course of action may be appropriate very much depends upon the nature of the behaviour and the context within which it sits.
- 9.5 The council's unreasonable complaints policy should include behaviour on social media and set out the measures that might be taken to address inappropriate behaviour. This might include restricting access to members and/or officers, blocking emails, banning access to council land, or initiating a single point of contact. It is important to be overt about what action may be taken and in what circumstances, as well as making sure that any measure applied is demonstratively proportionate and necessary to mitigate against potential challenges brought. Any measures applied should be reviewed intermittently and lifted when appropriate.
- 9.6 It is worth noting that section 14 of the Freedom of Information Act 2000 provides that public authorities do not have to comply with vexatious or repeated requests. The ICO have produced guidance on [Dealing with Vexatious Requests](#) which is comprehensive and expects authorities to consider whether the request has a genuine purpose in light of the objective public interest test. Regulation 12(4)(b) of the EIR contains a similar exception allowing public authorities to refuse to comply with a request for environmental information where the request is manifestly unreasonable.

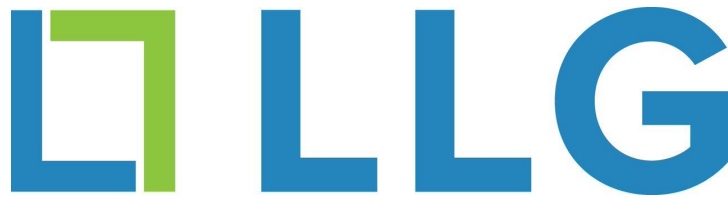


10. Guidance for Members

- 10.1 Social Media can be an effective tool to promote political views and activities/projects with which members are engaged. It can also however present a minefield of delicate situations which can, if not managed correctly, place members at risk of abuse or at risk of breaching the code of conduct.
- 10.2 The best way to ensure that members protect both themselves and the council's interests is to encourage them to treat posting on social media in exactly the same way as they would a public speech or an article for publication either professionally or in their personal capacity. The relatively permanent nature of a social media post means that it can follow an individual around their entire lifetime and even when deleted, another person may have captured a screen shot which could be reposted.
- 10.3 Remembering to adhere to the code of conduct when using social media and ensuring the accuracy of content will go a long way to reaping the benefits of on-line engagement without facing potential repercussions.

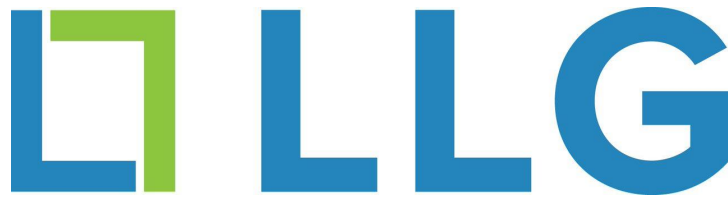
Setting the Scene

- 10.4 The following are examples of social media use by members which have given rise to complaints and/or reputational damage.
- 10.5 In January 2020, a councillor retweeted an article which said that Countdown star Rachel Riley was a "fascist" and an "Israeli state terrorist sympathiser". An investigation commissioned by the council found that the councillor's



Twitter account biography listed them as a councillor but that they were acting in a personal capacity at the time and therefore had not breached the council's code of conduct. The findings were accepted by the council's standards committee, but it said councillors should be given more training on social media use.

- 10.6 In April 2020, a councillor who was taking part in a day of fasting during Ramadan, shared a photograph of bacon and boiled eggs and tagged the Muslim Council of Britain with the caption: 'Up early to start my fast for #LibDemIftar! Really not sure I'll get through to the evening, but we'll see!' Following complaints, the councillor said that "This is a learning experience, and I'd prefer to be honest about it than not. Sorry if it caused offence". He also explained "it was 4am and I was half asleep."
- 10.7 In April 2020, a councillor shared a picture of Greta Thunberg on Facebook in response to her statement that "my generation will start a revolution" and added the caption: "Your generation can't work 40 hours in a week, can't decide whether you're a boy, or a girl or 'other' or can't eat meat without crying". A number of complaints were made about his post, in particular that it was transphobic. The councillor later apologised however the Scottish Conservatives received calls for the councillor to resign from the party or be suspended, with constituents threatening to file complaints with the Commissioner for Ethical Standards in Public Life (who investigate complaints about councillors in Scotland).
- 10.8 In May 2020, a councillor faced calls to resign after sharing a tweet headed "Things I trust more than Boris" which set out a list including: an injection from Dr Harold Shipman; a taxi ride from John Worboys, and the Covid-19 virus.

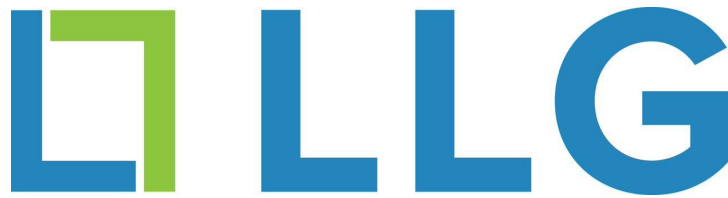


The councillor retweeted that they ‘trusted criminals and the covid virus more than the prime minister’ on their personal twitter account. The councillor did delete the retweet following criticism from the local MP who said it was repulsive and shocking. In response, the councillor said that they had learnt their lesson and would be more careful in the future adding that their poor eyesight had caused them to retweet without looking at it.

Legal Areas

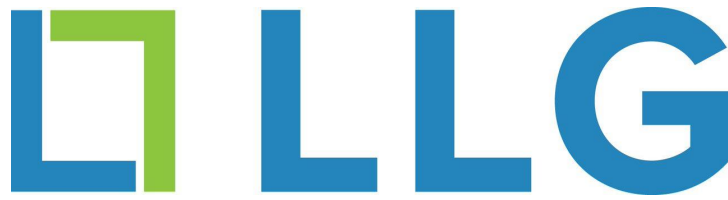
10.9 The following is a list of legal areas which should be taken into account when using social media: -

- a. Defamation: if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages.
- b. Copyright: publishing information that is not yours, without permission, may also result in an award of damages against you.
- c. Harassment: it is an offence to pursue a course of conduct against a person that is likely to cause alarm, harassment, or distress.
- d. Data protection: do not publish personal data of other people, including photographs, without their express permission to do so.
- e. Incitement: it is an offence to incite any criminal act.
- f. Discrimination and ‘protected characteristics’: it can be unlawful to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010).
- g. Malicious and obscene communications: it is an offence to send malicious or obscene communications.
- h. Judicial review of decisions on the basis of bias and/or predetermination.



Professional or Personal Capacity?

- 10.10 Section 27(2) of the Localism Act states that the Code of Conduct applies when members are acting in their official capacity. This can present significant grey areas in the context of social media, where the line between acting in an official or in a private capacity can be a difficult one to draw. Often Councillors will state that they were posting in a private capacity, whereas complainants will state the opposite.
- 10.11 Councillors should be mindful that the public may view them as acting as a councillor whatever their intention at the time. Utilising a council mobile phone or technology for the purposes of electioneering and political campaigns is not allowed. Indeed, Councillors should only access their personal social media accounts through personally held technology and not that provided by the council, with appropriate restrictions enabled to ensure that posts are not publicly accessible to all. Any reference to an individual holding office as a councillor on a social media site runs the risk that any content added by that individual is attributable to them as an elected member.
- 10.12 When using social media councillors are able to share strong views on matters of political interest. In *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) Mr Justice Hickinbottom stated at paragraph 38 that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated...”.



Bias and pre-determination

10.13 Members sitting in particular on regulatory committees such as planning or licensing should be aware that they are allowed to have a view, but not go so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council's decision is then open to challenge and could be invalidated, and the 'disrepute' provisions of the Code of Conduct could be engaged.

Property and Data Protection

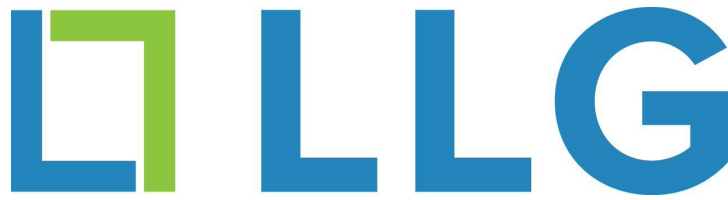
10.14 It is important at all times to respect confidentiality, financial, legal and personal information. Policy that has yet to be announced should not be disclosed.

10.15 Personal information about other councillors should not be disclosed. An informal tone of voice is often desirable within agreed boundaries, but remember that when using official accounts, members are the voice of the council.

The Employment Context

10.16 It should be remembered that officers within the council are employees of the council. Members have responsibilities toward them in relation to ensuring and maintaining the mutual relationship of trust and confidence owed to them.

10.17 In the Heesom Case (which was an appeal by a Welsh Councillor against findings that he had been in breach of the Code of Conduct in his behaviour

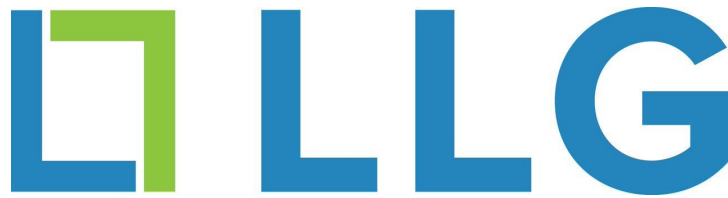


towards officers), Mr Justice Hickinbottom (referring to the case of Janowski v Poland (1999) 29 EHRR 705) stated the following at paragraph 42 of the judgment:

“...Civil servants are, of course, open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them. As well as in their own private interests in terms of honour, dignity and reputation, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration...”

10.18 Where Councillors themselves make allegations against officers via social media (or otherwise), it can impact upon the mutual duty of trust and confidence between the officer and the Council. Indeed, at paragraph 82 of the Heesom case Mr Justice Hickinbottom stated:

“In *Moores v Bude-Stratton Town Council* [2001] ICR 271, a council employee resigned because of abuse and allegations of dishonesty at the hands of a backbench member of the council for whom he worked. The councillor was censured by the council at its next meeting, and the employee asked to reconsider; but he refused and pursued a claim for unfair dismissal. It was argued on his behalf that there was a duty on every local councillor arising out of his or her position as councillor not to do anything calculated and likely to destroy or damage the relationship of confidence and trust between the council and the council's employees (page 277D-E) ...the majority accepted that argument, and held that



councillors were under a duty of trust and confidence for breach of which the council would be liable...”

10.19 Councillors also need to be alive to inappropriate comments and content posted by third parties in response to their own posts. Whether by failing to respond at all or by actively engaging with third parties without addressing the offending content, this could be seen to undermine trust and confidence and at worst, be taken to condone such activity.

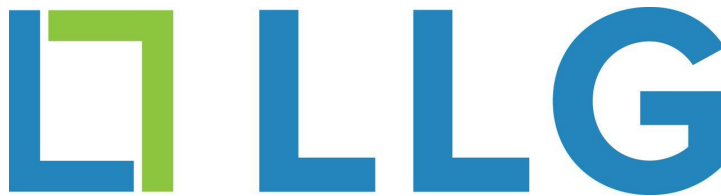
10.20 Finally, section 2(1) of the Health and Safety at Work etc Act 1974 states that: “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”

10.21 Councillors should therefore be very careful when referring to officers on social media, raising concerns or complaints through the appropriate council policies and procedures only.

Note

It should be noted that at the time of writing this, the LGA are currently consulting on a new model member code of conduct which includes a presumption that councillors are acting in an official capacity. This does require legislative change which the LGA acknowledges and which may or may not happen within the foreseeable future.

The CSPL recommended that “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”.



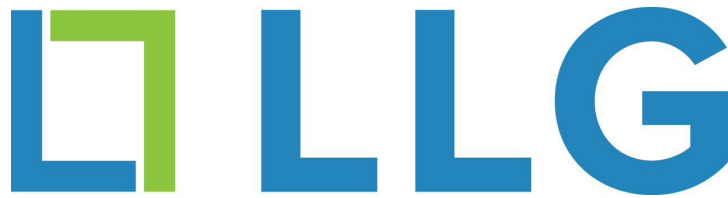
The LGA draft code states “The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting] in [public or in] your capacity as a member or representative of your council,...” and “These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media”

The draft code also states “Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes”

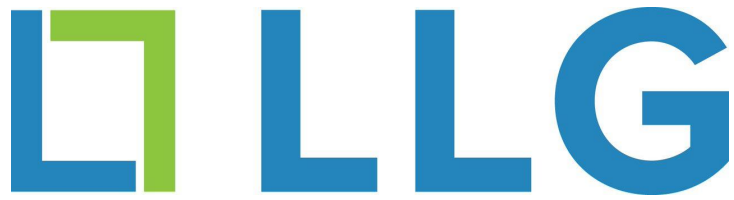
11. Do’s and Don’ts

DO: -

- 11.1 Have in place policies for both officer use and use by elected members in their capacity as a Member of the Council – back this up with a policy on unreasonable complaint behaviour.
- 11.2 Provide regular training to elected members and to officers, particularly those who are given access to social media accounts on behalf of the Council.
- 11.3 Restrict the number of officers authorised to use the Council’s social media accounts (normally comms officers or dept heads).
- 11.4 Require officers and elected members to sign up to the Council’s policies on social media use.



- 11.5 Consider hosting elected members blogs through modern.gov therefore allowing a degree of control but be careful in relation to the code of publicity and particularly purdah (Council resources must not be used for party political purposes).
- 11.6 Remember that FOIA/EIR and DPA Subject Access requests might be made via social media.
- 11.7 Actively respond to people who engage with you – this shows that the Council is listening and responsive. It also allows Councils to be involved in and address issues at an early stage.
- 11.8 Deal with inappropriate content quickly where possible.
- 11.9 Be mindful of the Council's duties towards employees and others.
- 11.10 Use social media during crisis situations – this provides an immediate interface with persons affected and allows quick dissemination of advice and critical information. Include its use in emergency plans.
- 11.11 Use it to live broadcast meetings therefore increasing transparency, engagement and understanding.
- 11.12 Use it for consultation purposes.



11.13 Ensure staff report back regularly on usage and activity in order to assess strategy and any issues.

DON'T

11.14 Ban or shy away from the use of social media.

11.15 Assume that social media will look after itself.

11.16 Forget that anything you post is permanent and available to the world at large.

11.17 Forget that it is a two-way tool.

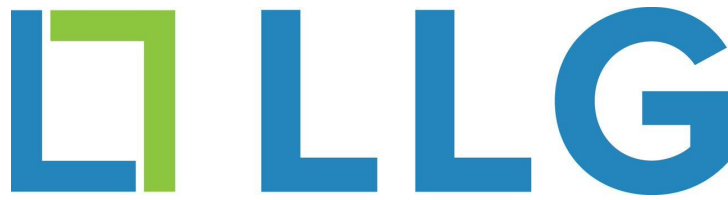
11.18 Get drawn into arguments and debates on social media – where individuals are expressing dissatisfaction direct them to the right place to make their complaints.

12. Social Media Suggested Guidelines for Inclusion

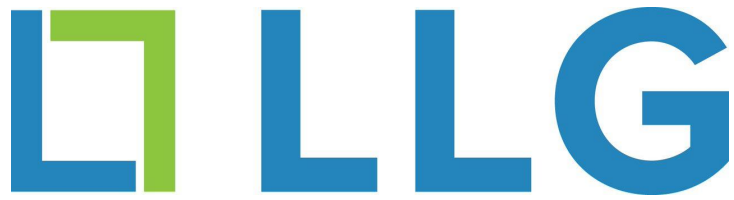
12.1 Be clear as to the objective of your engagement: e.g. consultation, influencing, communication.

Potential Guidelines

- I. Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.



- II. Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
- III. Proper copyright and reference laws should be observed when posting on-line.
- IV. When posting on your own social media accounts and referencing your authority be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own, and complying with the code of conduct and council's policies on social media together with the law.
- V. Discriminatory content is prohibited and may be unlawful and criminal.
- VI. You must be mindful of the political sensitivities within which individuals operate in their day jobs.
- VII. You must not disclose any information which is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.
- VIII. You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker or are advising the decision maker.
- IX. You should show respect for other's opinions.
- X. You should uphold the code of conduct and any values policy.



- XI. You should contact the Communications Team (and/or your line manager if relevant) immediately if you make a mistake or spot something you are concerned about.

13. Useful Links: -

LGA ['Handling Abuse on Social Media'](#)

LGA ['Councillors and Social Media'](#)

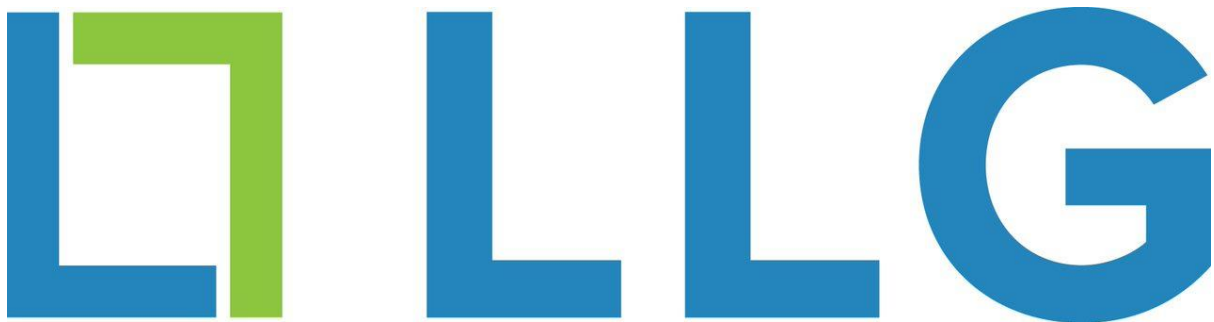
LGA ['Councillors Guide to Handling Intimidation'](#)

The Welsh Local Government Association ['Social Media and Online Abuse'](#)

CSPL ['Local Government Ethical Standards Review'](#)

CSPL ['Intimidation in Public Life Review'](#)



LGA ['A Basic Guide to Social Media'](#)



Acknowledgements: -

LLG would like to thank David Kitson, Sarah Lamont and Wesley O'Brien from Bevan Brittan, and Durham County Council.

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REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	ETHICAL STANDARDS UPDATE
REPORT SUMMARY:	This report is intended to brief members on any developments and news on matters of local government ethics.
RECOMMENDATION(S)	Members are asked to consider the report and comment on its contents (as applicable) and note its contents
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.
ACCESS TO INFORMATION	NON-CONFIDENTIAL This report does not contain information which warrants its consideration in the absence of the Press or members of the public
REFERENCE DOCUMENTS:	The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:  Telephone: 0161 342 3028  e-mail: Sandra.Stewart@tameside.gov.uk

1. INTRODUCTION

- 1.1 This report is intended to brief members on any developments and news on matters of local government ethics.
- 1.2 It will look at news items and any relevant case law, as well as any recent published decisions from other local authorities or any of the existing standards boards.
- 1.3 It will also provide an update on the work of the CSPL that follows on from their report 'Ethical Standards in Local Government'.

2. UPDATE SINCE MARCH 2020

- 2.1. A number of sources have been checked for details of any news items that are of relevance or may be of interest to the committee. These include Local Government Lawyer, Lawyers in Local Government, websites of other local authorities as well as local and national media.
- 2.2 There are a number of articles, from the Local Government Lawyer website, which may be of interest to the committee, even if all are not directly relevant to the work of the committee. Copies of the articles are at **appendix A**, and the following are of particular interest.
- 2.3 In July 2020 Wakefield Council had to explain to residents that there were no powers to remove a councillor who had been convicted of sexual offences involving children, but was then yet to be sentenced.
- 2.4 In June 2020, Richard Harwood QC reported a case in which the High Court had considered the issues around lobbying. This followed the London Borough of Hackney advising planning committee members to not read correspondence sent to them concerning applications. The High Court found that such communications were an important part of the local democratic process.
- 2.5 In June 2020, the LLG website published a report about NALC calling for there to be a power of suspension and asking the government to take urgent action to introduce such a power.
- 2.6 In June 2020 it was reported that a community councillor in Wales had failed to secure an injunction to prevent the Public Service Ombudsman for Wales investigating complaints about him.
- 2.7 A search of local newspaper websites has thrown up a number of stories about councillor conduct, ranging from a report of one council receiving almost 180 complaints in 6 months, to a councillor being removed from a virtual meeting, one council fighting back about social media posts and the possibility of a Standards Commission hearing being streamed online. Details are in appendix A.

3. RECENT PUBLISHED DECISIONS

- 3.1 Some Local Authorities in England publish their decisions on member complaints, as do the Standards Boards in Wales, Scotland and Northern Ireland.
- 3.2 The Standards Commission for Scotland has continued to work, holding hearings remotely.
- 3.3 A number of hearings have been listed for October 2020 and any decisions of interest will be reported to a future meeting of this Committee.

- 3.4 No hearings have been held since the last report to this Committee, one of which resulted in a Scottish elected member being censured. A copy of the decision notice is at **Appendix B**.
- 3.5 The Commissioner for Standards in Northern Ireland has not published any further reports since July 2019. The Commissioner's website advises that the office is currently closed and there is reference to a number of hearings that are yet to be listed.
- 3.6 The Local Government Ombudsman for Wales publishes a 'Code of Conduct Casebook' periodically. Unsurprisingly, there have been no 'casebooks' published so far in 2020.
- 3.7 The Ombudsman did publish an annual report in May 2020 and the key points to note are that there was an increase in complaints but a decrease in the number of interventions and serious cases.
- 3.8 There has been a drop in complaints about alleged breaches of the Code of Conduct of 18%, the report noting a decrease in what it describes as 'frivolous complaints'. An extract from the annual report is attached at **Appendix B**.
- 3.9 The Northern Ireland Local Government Commissioner for Standards reports that hearings are currently on hold, but notes that there are a number to be listed.
- 3.10 In England, publication of decisions remains discretionary, although the CSPL did support publishing these, so it may be the case that more decisions from English local authorities are published in due course. We have published when held but we have not has any complaints falling within the jurisdiction of the Code for a number of years.

4. CASE LAW

- 4.1 There does not appear to have been any recent reported decisions in the Courts on any matters directly relating to local authority standards, other than the High Court case on lobbying reported on above.

5. THE WORK OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 5.1 The CSPL have been fairly quiet in follow up work to their report.
- 5.2 Since the last report, the CSPL have published the minutes of their meetings, held on the 27 February 2020, the 19 March 2020 and the 23 April 2020. There was no direct reference to the Local Government Ethical Standards report in these minutes.
- 5.3 This is probably a reflection of the fact that the Government is yet to respond to the report or to consider setting any legislative timetable to implement any of the recommended changes. Having said that, the Chair of the CSPL, Lord Evans, has written to Robert Jenrick, Minister for Housing, Communities and Local Government to enquire how soon the government are likely to respond to the report, referring to a letter sent to Mr Jenrick's predecessor in October 2019, which remains unanswered.
- 5.4 An update on work from the CSPL report is the matter of a separate report.

6 RECOMMENDATIONS

- 6.1 As set out at the front of the report.

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Appendix A

Council says it is unable to remove convicted councillor ahead of sentencing

July 15, 2020

Wakefield Council has explained to local residents that it is powerless to remove a councillor convicted of sex offences involving children.

Independent councillor Alex Kear is reported by the BBC to have admitted trying to entice a child aged under 13 to engage in sexual activity, and attempting to incite a child into pornography.

He is due to be sentenced on 20 August at Leeds Crown Court.

Gillian Marshall, the council's chief legal officer, said: "Under local authority legislation, Alex Kear remains a councillor. Wakefield Council is powerless to remove him at this stage.

"Central government has essentially left local councils powerless to take action in these situations. We do not have any authority to remove elected members from their position, regardless of the severity of their alleged crimes, unless they receive a significant custodial sentence.

"Therefore unless Cllr Kear chooses to resign, he remains a councillor. This will be reviewed when he is sentenced."

She said the council had taken "appropriate safeguarding measures" when it became aware of West Yorkshire Police's investigation of the matter.

The right to lobby councillors: Holborn Studios 2

June 26, 2020

A High Court judge recently considered the right of local councillors to receive correspondence from the public and to consider it when making decisions. Richard Harwood QC analyses the outcome.

The High Court has ruled, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications.

Holborn Studios run the largest photographic studio in Europe. Redevelopment is proposed by their landlords, with a scheme which will not accommodate them. In 2017 planning permission was quashed because of an unfair failure to reconvene on amendments and a failure to disclose application documents in breach of a legitimate expectation: *R (Holborn Studios) v London Borough of Hackney* [2017] EWHC 2823 (Admin). A new application was considered by Hackney's Planning Sub-Committee in January 2019. Shortly before the meeting Holborn Studio's managing director wrote to the committee members about the officers' report and received this reply from the chair:

"Planning members are advised to resist being lobbied by either applicant or objectors."

Holborn Studio's solicitors, Harrison Grant, then wrote to the planning officers, copying in the committee members, explaining why the officer recommendation to refuse the application should be rejected. They also said that Hackney's approach of not allowing committee members to read representations sent to them was unlawful. A councillor replied that he had been given legal advice that he *"should forward any lobbying letters to Governance Services and refrain from reading them"*. Consequently, he said, *"I have not read your email"*. In an addendum report the officers responded to the solicitors' letter:

"Members are warned about viewing lobbying material as this can be considered to be prejudicial to their consideration of the application."

This reflected the Council's leaflet *'How to have your say at the Planning Sub-Committee'*, sent to the public in advance of the meeting *"it is advised that you don't contact any of the councillors before a meeting"*.

The particular issue was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in *R (Legard) v Royal Borough of Kensington and Chelsea* that *"As democratically elected*

representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining".

Holborn Studios relied on Article 10 of the European Convention on Human Rights and the common law. Article 10 provides *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information ... subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society"*. In R(Lord Carlisle of Berriew v Secretary of State for the Home Department Parliamentarians asked for the exclusion of a dissident Iranian politician from the United Kingdom to be lifted to enable her to address meetings in Parliament on issues associated with Iran. Lord Neuberger said at paragraph 91, discussing meetings with MPs and Peers:

"These are hugely important rights. Freedom of speech, and particularly political speech, is the foundation of any democracy. Without it, how can the electorate know whom to elect and how can the parliamentarians know how to make up their minds on the difficult issues they have to confront? How can they decide whether or not to support the Government in the actions it wishes to take?"

Baroness Hale emphasised that whilst the politician could still speak to UK Parliamentarians by video or audio link, or they could see her in Paris, the preventing a meeting at Westminster was still an interference with the Parliamentarians' Article 10 rights.

Holborn Studios also relied on the common law as being in step with Article 10 citing Lord Steyn in *R v Secretary of State for the Home Department ex p Simms*:

"The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible. ... In Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1990] 1 A.C. 109; 283-284, Lord Goff of Chieveley expressed the opinion that in the field of freedom of speech there was in principle no difference between English law on the subject and article 10 of the Convention. ...

"Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" Abrams v. United States (1919) 250 U.S. 616, 630, per Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country ..."

Dove J referred to the Local Government Association's publication "*Probity in Planning*" which says "*Lobbying is a normal part of the planning process*". It was "*indisputably correct*" that "*that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest*" (para 78). He held (para 78):

"Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as proportionate the discouragement, prohibition or prevention of communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."

Mr Justice Dove concluded (para 79):

"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them."

81. ... The standard correspondence clearly advised against members of the public writing directly to members of the committee; there was no warrant for that advice or discouragement and it impeded the freedom of expression of a member of the public who was entitled to write to a member of the planning committee setting out in his or her own terms the points they wish to be considered in respect of an application and expect that the member would have the opportunity to read it."

The permission was not quashed on this ground since whilst committee members had thought they were obliged to disregard a letter from Holborn Studios' solicitors, their points were made by their QC at the committee meeting.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The planning permission was though quashed because the council failed to make affordable housing viability assessments available to Holborn Studios and the public. These were background papers and given government policy and guidance on transparency, the public interest did not allow these to be exempt information. Dove J found that the viability material which was published to justify a reduced affordable housing contribution was 'opaque and incoherent'.

NALC renews calls for power to suspend councillors for up to six months

June 23, 2020

The National Association of Local Councils (NALC) has called on the Government to take “urgent action” to introduce a power for local authorities to suspend councillors for up to six months.

The introduction of such a power was recommended by the Committee on Standards in Public Life in a report in January 2019 to the Prime Minister on improving ethical standards in local government.

NALC has made its call after working with the Local Government Association (LGA) on the development of an updated national model code of conduct for all tiers of local government.

The LGA published the draft code earlier this month for consultation.

On the power to suspend, NALC said: “Failure to introduce this sanction alongside other measures will risk wider steps being taken to improve ethical standards, such as the model code of conduct and training for councillors and clerks, as being ineffective.

“Now more than ever, high standards of conduct in government at all levels are needed to protect the integrity of decision making, maintain public confidence and to safeguard local democracy.

“That is why NALC is also calling for the Committee on Standards in Public Life to publish a timetable for reviewing progress on the implementation of the report’s wider recommendations and best practice to ensure this important issue continues to be a priority for action.”

Community councillor in Wales fails to secure injunction to stop Ombudsman investigating complaints against him

June 12, 2020

A High Court judge has rejected an application by a community councillor for an injunction against the Public Service Ombudsman for Wales (PSOW) to stop its investigation of complaints made against him.

Jonathan Bishop had been the subject of complaints by the former clerk, the chair and vice-chair of the Taff's Well and Nantgarw Community Council.

The application for an injunction was made on an urgent basis, before a claim had been issued.

In *Bishop v Public Service Ombudsman for Wales* [2020] EWHC 1503 (Admin) His Honour Judge Jarman QC, sitting as a judge of the High Court, said the basis of the application was that the complaints should be investigated under a local resolution procedure which had been adopted by the council, and not by the statutory procedure under Part III of the Local Government Act 2000.

Cllr Bishop asserted that the former procedure, which is an informal non statutory procedure, was appropriate where, as here, complaints were made against a councillor by another councillor rather than a member of the public.

In his pre-action protocol letter the applicant set out three reasons why the Ombudsman did not have the power to investigate the complaint. These were:

1. Issues of politeness should be dealt with under the local resolution procedure.
2. Councillors and officers are expected to have a thick skin.
3. Allegations made by the vice-chair about the applicant were made outside the political arena.

A "further aspect" was then stated to be that named members of PSOW staff had acted in a biased manner towards him in other referrals or complaints. This included that complaints against him had been treated more favourably than complaints which he had made against the complainants. Mr Bishop expanded upon this in his oral submissions by saying that his complaints were not investigated but those against him were.

The complaint by the chair of the council, Alun Fowler, was made in September 2019. The following month the Ombudsman wrote to Cllr Bishop to inform him that the complaint would be investigated.

That investigation is now in the process of collating evidence. By letter dated 31 March 2020 the Ombudsman informed Cllr Bishop that the complaint against him by the vice-chair, Helen Edmunds, would not be investigated as a stand-alone complaint but as part of the ongoing investigation.

In an email Cllr Bishop informed the Ombudsman of several medical conditions which he has, including autism spectrum disorder and also a high IQ with dyslexia, dyscalculia and dysgraphia.

In a reply sent on 6 April 2020 an assistant investigation manager at the Ombudsman's service replied, saying Cllr Bishop's comments had been noted and would be considered during the course of the investigation.

HHJ Jarman QC said Cllr Bishop's contention that the Ombudsman should not be investigating the complaints against him under the statutory procedure but that the complaints should be dealt with in the local resolution process was at the heart of his application for an injunction to stop the current investigation.

Counsel for the Ombudsman, Gwydion Hughes, submitted that such an injunction should not be granted for three reasons:

1. There was no good reason or urgency to justify making the application prior to the commencement of a claim.
2. There was no serious issue to be tried with a real as opposed to a fanciful prospect of succeeding at trial.
3. Exceptional circumstances would have to be shown before a court prevented a statutory investigatory body from exercising its powers of investigation, and none were shown here.

HHJ Jarman QC said it was appropriate to deal with the most substantive of those grounds first, namely the second ground that there was no serious issue to be tried.

The judge said: "In deciding whether or not to investigate, as PSOW and OVW [One Voice Wales] guidance make clear, one of the matters taken into account is the seriousness of the complaint.

"In my judgment Alun Fowler's complaint clearly goes far beyond matters of politeness or matters in respect of which he can reasonably be expected to be thick skinned. The reference to obscene and offensive language may come within that category, but the complaint continues to include allegations that the actions of the applicant have caused two clerks to resign and a third to consider her position, to enclose a long list of complaints against the applicant, that most members of the council have indicated a wish to resign if the applicant is not dealt with, and to enclose statements showing a pattern of unacceptable behaviour on the part of the applicant."

He continued: "Each of those other aspects of the complaint is in my judgment clearly capable of amounting to a lack of consideration for others and/or may reasonably be regarded as bringing the office or authority into disrepute. Each of these is in a different category to a lack of politeness or a matter in respect of which other members of the council should be thick skinned about.

"In my judgment the applicant does not have a real prospect of succeeding at trial in establishing that the complaints against him should be dealt with in the local resolution process rather than be investigated by the PSOW."

In respect of the complaint of Helen Edmunds against the applicant, the judge noted that the Ombudsman had informed Cllr Bishop by letter dated 31 March 2020 that it had been decided not to investigate this as a standalone complaint, but as part of the existing investigation.

"Given that Alun Fowler's complaint alleges that the applicant has shown a pattern of unacceptable behaviour and the most of the members of the council had threatened resignation if the applicant is not dealt with, in my judgment that was clearly an approach which PSOW was entitled to adopt," he said.

As for the applicant's allegation that the Ombudsman had shown bias against him in refusing to investigate his complaints, the judge noted that Cllr Bishop said that the reason the Ombudsman gave for not investigating his complaints was that he had not identified which part of the code he alleged was broken by Alun Fowler, but neither had the latter in his complaint.

"However, it is clear from reading the decision of PSOW in respect of the applicant's complaint against Alun Fowler that that is not the reason given for not investigating that complaint."

The judge said the reasons were given in a letter from the Ombudsman to the applicant dated 6 April 2020. HHJ Jarman QC went on to cite large extracts from that letter.

He said the Ombudsman's decision was reasoned and reasonable. "It is clear that the request for references to the code in future was a request for assistance for the avoidance of doubt rather than the basis for refusal. The reasons for refusal included lack of evidence, which the applicant said he would only supply if an investigation was initiated, and lack of particularity. This was in marked contrast to Alun Fowler's complaint, which was particularised and accompanied by statements."

The judge said another particular of bias relied upon by the applicant was that Helen Edmunds' complaint that the applicant said to her that she shouldn't come to council meetings with a communicable infection was being investigated, but his complaint about her

that she said that applicant could not help with voluntary work as a friendly face was needed, was not being investigated.

“However, as is clear from PSOW's letter concerning the former, that is not being investigated as a standalone complaint but as part of the ongoing investigation which includes an allegation of a pattern of unacceptable behaviour on the part of the applicant,” the judge said.

HHJ Jarman QC continued: “Finally, in respect of bias, the applicant says that is shown by how PSOW conducted an interview of his support worker as part of the investigation, after which the support worker wrote to PSOW saying that the draft statement which had been sent to him did not fairly reflect what he said in the interview and was in breach of data protection rights arises. In my judgment this is far from justifying the allegation of bias.”

The applicant submitted before the judge that the complaint of Helen Edmunds dealt with matters outside council business and therefore came within the principle in *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin).

HHJ Jarman QC agreed with counsel for the Ombudsman that this and any other jurisdictional points could be raised by the applicant in the course of the investigation (see, for example APW/001/2018-19/CT *Councillor Graham Down*).

The judge said the applicant in his oral submissions referred to his medical conditions as impacting upon the subject matter of the complaints against him and his ability to take part in the investigation.

“As indicated above he has made these known to PSOW who has indicated that they will be taken into account and that reasonable adjustments will be made in the investigation. The applicant invited me to extend time for any judicial review claim in light of these conditions, but it is not appropriate to do so unless and until a claim is issued.”

HHJ Jarman QC concluded that he was not satisfied that Cllr Bishop had shown any serious issue to be tried, and that was sufficient to justify refusing to grant the order sought.

The judge said it was not necessary for him to make findings on the other points taken by counsel for the Ombudsman.



180 complaints alleging councillors' misconduct sent to South Tyneside Council - chief fears process is being 'weaponised'

Claims complainants are "weaponising" council processes as reports of alleged councillor misconduct soar in South Tyneside.

By Chris Binding

Tuesday, 07th July 2020, 3:07 pm



A large spike in complaints against councillors could be linked to a "weaponisation" of council processes, legal chiefs have said.

Since January 2020, South Tyneside Council's monitoring officer has received a total of 178 emails, letters or calls from potential complainants.

This included complainants expressing a wish to make a complaint or sharing information in respect of "perceived elected member misconduct."

Of this number, only 23 complainants provided further information to support their complaint, with several cases rejected or resolved without the need for investigation.



A total of 13 complaints are currently ongoing, with many nearing conclusion following delays caused by Covid-19, the meeting heard.

"The [complaints] process itself provides for complaints or communications, that are described as being complaints but mainly aren't, to be rejected fairly early on if they're considered to be tit for tat, politically motivated or 'vexatious'," Interim Head of Legal Services, John Rumney, said.

"That said, I do think the weaponisation of the process may account for the large numbers that we have seen in recent months.

"But it is certainly nothing new and the process does provide for them [complaints] to be dealt with appropriately."



The legal chief was speaking at a Standards Committee meeting on July 6 in response to a question from Coun Doreen Purvis about the complaints process potentially being "weaponised".

Coun Purvis said examples could include a complaint against a councillor(s) being posted on social media and staying in the public domain, regardless of whether the complaint is pursued.

At the meeting, which was broadcast live on the council's YouTube page, councillors heard about recent steps that have been taken to improve the complaints process.

This included the introduction of a new 'complaints form' which helps complainants to structure their complaint and provide necessary information and evidence.



Despite the large number of complaints, no cases have progressed to the final stage so far such as a formal hearing and/or sanction.

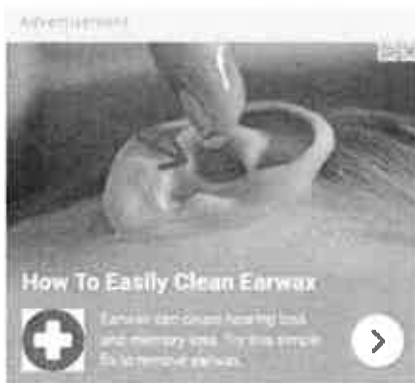
Independent chair of the Standards Committee, Professor Grahame Wright, said that the complaints figure of 178 may be "a little bit misleading".



But he noted a "significant number of complaints" were still under active consideration, pending any decision

to investigate further.

Coun Anne Hetherington added that the complaints figures showed "a very serious issue" and asked if there was any previous data to look at comparisons and trends.



"I know the process for dealing with complaints against elected members since some legal reforms are a bit of a toothless tiger," she said.

"But there are means in the council's constitution where members can be sanctioned to a degree if a complaint is found to be proven and I would like to see that we're actually following that through and dealing with complaints to the full extent that we're able to.

"Particularly if we're receiving complaints from residents that they see we're addressing these complaints because we can't put ourselves above the law that is there to supervise our behaviour as elected members."

Legal officer Mr Rumney, responding, confirmed council bosses are recording complaints to allow for statistical analysis in future.

But he warned that records for previous complaints may not be available to build a historical picture. ✕

He told the meeting: "The plan is going forward that each complaint which is reviewed and found to be capable of proceeding within the process will be given a number.

"We have already started numbering complaints so that they can be logged and outcomes recorded so statistical analysis can take place in the future.

"Whether it's possible to go back beyond the beginning of this year or late 2019 I'm not sure that the records will be there I'm afraid."

Standards Committee chair, Prof Wright, added: "If you see some of the complaints that we get they're extremely difficult to work out what exactly it is the councillor has meant to have done wrong.

"It's more that somebody is just angry and they want to blame somebody so one of the reasons we have this [complaints] form is to try and guide people so if they have a complaint they can make clear what the nature of that complaint is."

Wellingborough councillor removed from meeting over outburst

🕒 18 June 2020

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A councillor was removed from a public meeting after speaking about his mental health over what he describes as bullying from his authority's leader.

Robert Gough made the statement at a virtual Borough Council of Wellingborough meeting on Tuesday

He claimed his mental health issues were being used against him

Council leader Martin Griffiths said his conduct "was not acceptable" The authority said it takes "allegations of councillor misconduct very seriously"

During an agenda item on a proposed pay rise for Mr Griffiths, Mr Gough attempted to outline the impact the situation has had on his mental health recently.

He was stopped by other councillors who said correct procedures were not being followed and was eventually removed from the meeting

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Mr Griffiths, who did not attend the meeting which was watched by the public, said: "I am incredibly saddened and sympathetic that councillor Gough is suffering at this time.

"However, the conduct last night was not acceptable at a public meeting "

Mr Gough told the **Local Democracy Reporting Service** his mental health problems, possibly linked to his time in the Army, were being used against him.

The incident was the latest issue within the Wellingborough Conservative Group in recent weeks.

Previously a group of eight councillors, including Mr Gough, had asked for a motion of no confidence in Mr Griffiths citing bullying behaviour and pre-empting of council committee meetings.

The motion did not carry because the group was one short for a vote of no confidence to take place.

Mr Gough, whose Earls Barton ward falls within Daventry constituency, was then suspended by Daventry Conservative Association following complaints against him.

An investigation is ongoing, but he automatically had the whip removed from the Borough Council of Wellingborough's Conservative group

Standards Commission sets hearing date for shamed Aberdeen councillor



by Alastair Gossip

🕒 June 23, 2020, 12:10 pm



Former deputy Lord Provost Alan Donnelly

A disgraced Aberdeen councillor has been given a date for a hearing which could end in his removal from office.

Suspended councillor Alan Donnelly will face the Standards Commission on October 6 in the council chambers at Aberdeen Town House.

He was convicted of sexual assault last December and later placed on the sex offenders register, sentenced to eight months supervision and ordered to pay his victim £800 in compensation.

While Donnelly resigned from the Scottish Conservatives and was stripped of all council committee positions, the former deputy provost resisted calls to stand down as a councillor.

After complaints from fellow councillors and members of the public, Donnelly was banned while the ethical standards commissioner compiled a report into his misconduct.

Given his refusal to resign, and with councils not able to sack elected members, the Standards Commission could be the only means for Donnelly's removal from office.

The hearing in October will come more than seven months after his initial ban on March 4.

It is understood plans to have it at the Town House could still change, depending on guidance around the pandemic.

The proceedings will be streamed online.

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50 Backpacks in crisis as Fenland Council rips apart damaging allegations made against Wisbech councillor

✓ PUBLISHED: 12:18 01 July 2020 | UPDATED: 12:16 01 July 2020 | [John Elworthy](#)



An organisation set up to help the homeless was in meltdown this week after its chairman Simon Crowson posted a series of malicious allegations.

Mr Crowson (Spike) used Facebook to fire off damaging accusations against a Wisbech councillor.

The claims were made on his 50 Backpacks Facebook page after he had questioned a 'victim' (a woman in her 30s) and who offered him screenshots of emails sent to Fenland Council intended to support her accusations.

Council leader Chris Boden and chief executive Paul Medd met on Tuesday and authorised an investigation.

The council later issued a statement saying they had "identified both the original email partially published last night and the full correspondence trail associated with that email.

"We can categorically confirm that this email has been completely misrepresented".

On Monday they had become aware "of serious allegations made on 50 Backpacks' Facebook page about Cllr Steve Tierney and Fenland Council.

"The allegations were that Cllr Tierney had been accused of serious sexual misconduct and that Fenland Council had 'covered up' a complaint made about Cllr Tierney's alleged behaviour.

"50 Backpacks purportedly supported their allegation concerning Fenland Council's alleged 'cover up' by publishing a partially redacted section of an email from FDC, sent in 2016."

The council found the correspondence and "we can categorically confirm that this email has been completely misrepresented.

"The email did not in any way relate to a complaint of sexual misconduct against Cllr Tierney; there has never been any complaint received by FDC against Cllr Tierney regarding sexual misconduct." 50 Backpacks had "fundamentally misrepresented" the emails. Fenland Council completely refutes 50 Backpacks' blatantly false claim that the council 'covered up' any allegations of sexual misconduct, whether by Cllr Tierney or by anyone else".

Mr Crowson has since removed the 50 Backpacks page from Facebook. In an oblique message to other Facebook pages today he says: "My job is done, so whatever happens to me or the future of 50 Backpacks is immaterial". There was no apology to either the council or Cllr Tierney.

Plymouth councillor accused of misconduct over tweet

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor

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By Edward Oldfield

15:06 2 JAN 2020

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Plymouth City Council's Labour leader has accused a councillor of misconduct over a tweet about a colleague.

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor.

Cllr Singh, who denied the accusation, resigned from the Labour Party in September and now sits as an Independent on the city council.

He tweeted a screenshot of a Facebook post by Cllr Taylor which included a comment that one of the things she would not miss about lockdown was gin hangovers.

The comment by the Cabinet member, who has responsibility for much of the council's health response to COVID-19, is understood to have been light-hearted and was published on her personal profile, visible to friends rather than public.

However the row went public when Cllr Singh published the screenshot in a Tweet on Monday and tagged in several other accounts including the city council's official feed, Labour group leader Cllr Evans, and the city's director of public health Dr Ruth Harrell. He also tagged the city's Labour MP for Sutton and Devonport Luke Pollard, who Cllr Taylor works for.

The tweet, with a screenshot of the post, was then retweeted by Cllr Evans.

Cllr Singh commented in the tweet: "Caseworker for @LukePollard has endured many hangovers due to excessive gin consumption. Getting some support is the first step."

Cllr Taylor, the city council's cabinet member for health and adult social care, said she felt she was being hounded over a "non-issue".



Cllr Kate Taylor made the comments on a personal social media account Image: Paul Slater

She replied to Cllr Singh's tweet: "Hi Chaz. I have removed you from my social media because I don't want to engage with you so would appreciate it if you would refrain from tagging me in your posts. Your hounding of me via the council and my employer on a non-issue is now verging on harassment."

The council leader then intervened. He retweeted the post from Cllr Singh and added: "I'm reporting this to the Council today. I believe this to be Bullying and harassment by a councillor, to another."



It is understood Cllr Evans has lodged a formal complaint

Cllr Evans declined to comment. It is understood he has lodged a formal complaint about Cllr Singh's conduct.

Cllr Singh, who represents the Drake ward, denied his actions amounted to bullying and harassment.

He said he considered it was inappropriate for a councillor with responsibility for adult health to joke about alcohol consumption.

Cllr Taylor declined to comment on the tweets as the issue was expected to become a disciplinary matter.

Cllr Singh, who is a Sikh, resigned from the Labour Party last year after saying membership was no longer compatible with his faith.

The Labour group said the issue related to his "conduct towards another local authority."

It later emerged that the row involved comments Cllr Singh made on Twitter about a wreath-laying ceremony in Bristol.

Appendix B

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on Wednesday 8 July 2020.

Panel Members: Ms Ashleigh Dunn, Chair of the Hearing Panel
Professor Kevin Dunion
Mr Paul Walker

The Hearing arose in respect of a Report referred by Ms Caroline Anderson, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/H/3003, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Allan Henderson (the Respondent).

The ESC was represented by Mr Martin Campbell, Director of Investigations and Solicitor to the Commissioner.

Referral

Following an investigation into a complaint received about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 30 April 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 5.3, 5.7 and 5.18(2)(ii). The relevant provisions are:

5.3 You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether 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 your role as a councillor.

Your Non-Financial Interests

5.7 You must declare, if it is known to you, any **NON-FINANCIAL INTEREST** if:

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

Definition of Exclusions

5.18 The following paragraphs refer to General Exclusions and Specific Exclusions.

(2) The Specific Exclusions

The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:



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(iv) as a member of a Regional Transport Partnership (RTP);

In relation to (iv), the exclusion applies to any councillor who is a member of a Regional Transport Partnership established under the Transport (Scotland) Act 2005 by virtue of having been appointed by their council. The exclusion enables such a councillor to take part in the consideration and discussion of, and to vote upon, a matter relating to that RTP or in relation to which the RTP has made a representation; provided that the councillor has declared his or her interest at all meetings where such matters are to be discussed. The exclusion includes quasi-judicial and regulatory matters except any quasi-judicial or regulatory matter on which the RTP has made an application to the council, has formally objected to an application made by another party, or is the subject of an order made or proposed to be made by the council.

Evidence Presented at the Hearing

Joint Statement of Facts

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the ESC and the Respondent. The Hearing Panel noted that it was not in dispute that, at a meeting of Highland Council's Environment, Development and Infrastructure Committee on 16 May 2019, the Respondent moved, and voted in favour of, a motion to:

- approve £170,000 worth of additional funds for work relating to Skye Airport / Aerodrome; and
- for him, as Committee Chair, to write to the Transport Secretary on behalf of the Council and also on behalf of HITRANS (being the local regional transport partnership) requesting support.

The Panel noted that HITRANS was a member of a working group established for the purpose of developing Skye Aerodrome into an airport and that the Respondent had been Chair of HITRANS since June 2017. The Panel noted that the post was unremunerated. The Panel noted that it was not in dispute that the Respondent had not declared his interest in HITRANS at the meeting of the Environment, Development and Infrastructure Committee on 16 May 2019.

Submissions made by the ESC's Representative

The ESC's representative advised that the Respondent accepted that he had breached the Code and had apologised for doing so.

The ESC's representative noted that while councillors may be able state truthfully that an interest they had in a matter would not influence their discussion or decision-making, they must nevertheless comply with the objective test outlined in paragraph 5.3 of the Code. The ESC's representative argued that, in this case, having applied the objective test as required, the Respondent should have declared his interest in HITRANS. This was because a member of the public with knowledge of the relevant facts, being that:

- the Respondent was the chair of HITRANS; and
- that HITRANS was a member of the working group

would reasonably conclude the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, that his interest could influence his discussion and decision-making on the matters under consideration.

The ESC's representative noted while there would be no need to withdraw in the case of an interest covered by a specific exclusion; paragraph 5.7 nevertheless requires councillors to declare any non-financial interests that would fall within the terms of the objective test. The ESC's representative noted that the specific exclusion at paragraph 5.18(2)(ii) allows any councillor who has been appointed by their Council to be a member of a regional transport partnership to take part in the consideration, discussions and voting on matters relating to that regional transport partnership, provided they declare their interest in it at the Council meeting in question. The ESC's representative advised, therefore, that in this case, the Respondent would have had to have declared the interest in the regional transport partnership in order to benefit from the



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specific exclusion at paragraph 5.18(2)(ii). The ESC's representative argued, therefore, that the failure to do so amounted to a breach of the Code.

The ESC's representative nevertheless asked the Panel to note that:

- the fact that the Respondent was Chair of HITRANS was widely known;
- the funding approved by the committee would not benefit HITRANS; and
- that the Respondent was not the HITRANS representative on the Working Group.

The ESC's representative further asked the Panel to note that the Respondent's position as Chair of HITRANS was unremunerated and that there was no question of him having gained personally from the Environment, Development and Infrastructure Committee's decision.

Submissions made by the Respondent

Submissions made by the Respondent

The Respondent advised that he considered that the ESC's representative's summary of the case was accurate and fair. The Respondent advised that while his position as Chair of HITRANS was known to all members of the Environment, Development and Infrastructure Committee, he nevertheless accepted that he was aware of the terms of the specific exclusion and that he should have formally declared an interest, in order to benefit from it. The Respondent apologised unreservedly for his failure to do so.

DECISION

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Henderson.
2. The Respondent had breached paragraphs 5.3, 5.7 and 5.18(2)(ii) of the Code.

Reasons for Decision

The Panel noted that paragraph 5.7 of the Code states that councillors must declare any non-financial interest even if the interest is not so remote or insignificant that it could not reasonably be taken to fall within the objective test. In this case, the Panel considered that, having applied the objective test under paragraph 5.3, the Respondent should have reached the view, in terms of paragraph 5.7, that his interest in HITRANS, as a member of the Working Group, would not be perceived as being so remote and insignificant that it could not influence him. This was because the Panel agreed with the ESC's representative that a member of the public would be reasonably entitled to conclude that, as Chair of HITRANS, the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, his interest could influence his discussion and decision-making on the matters under consideration.

The Panel noted the terms of the specific exclusion under paragraph 5.18 of the Code that allowed councillors who were members of regional transport partnerships, such as HITRANS, to take part in the consideration and discussion of, and to vote upon, a matter relating to that regional transport partnership. The Panel noted however, that the specific exclusion only applies if the councillor declares his or her interest at all meetings where such matters are to be discussed. In this case, despite confirming to the Panel that he was aware of the specific exclusion, the Respondent failed to declare an interest at the Committee meeting on 16 May 2019 before taking part in the discussion and decision-making.

The Panel concluded, therefore, that the Respondent's failure to declare his interest in HITRANS at the meeting in question amounted to a contravention of paragraphs 5.3, 5.7 and 5.18 of the Code.

Evidence in Mitigation

The Respondent advised that his failure to declare his interest in HITRANS at the Environment, Development and Infrastructure Committee on 16 May 2019 was simply an oversight. The Respondent explained that this had occurred largely because there had been a full agenda and a large amount of paperwork before the Committee on the date in question. The Respondent further advised that as matters before the Committee did not usually concern HITRANS, the need to declare an interest was not at the forefront of his mind.

The Respondent advised that he was embarrassed by his failure to declare an interest as required and apologised unreservedly to the complainer, Panel and ESC for the breach of the Code.

SANCTION

The decision of the Hearing Panel was to censure the Respondent, Councillor Henderson.

The sanction was made under the terms of section 19(1)(a) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reasons for Sanction

In reaching its decision on sanction, regarding the breach of paragraphs 5.3, 5.7 and 5.18 of the Code, the Hearing Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes and offered an unreserved apology in respect of the failure to declare the interest. The Panel accepted the Respondent's submission that the failure to comply with the Code was inadvertent and an oversight.

The Panel emphasised, however, that the requirement for councillors to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making. The Panel noted it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complied with them.

The Panel was nevertheless of the view that the Respondent's conduct did not warrant a more severe sanction. This was because there was no evidence that the Respondent had attempted to conceal his interest or that there was any personal gain. The Panel further noted that while it had found that the Respondent had not declared the interest as required, had he done so, he would still have been allowed to take part in the discussion and decision-making under the specific exclusion in the Code for members of regional transport partnerships.

RIGHT OF APPEAL

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

Date: 13 July 2020



**Ms Ashleigh Dunn
Chair of the Hearing Panel**

Extract from Annual report Ombudsman for Wales

Code of Conduct complaints

(a) New Code of Conduct complaints

This year we received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

Body	2018/19	2019/20
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

This decrease relates entirely to complaints made against members of Town and Community Councils. This is encouraging and suggests that standards of conduct of members of these bodies may be improving and/or that local resolution of issues may be taking place with good effect.

Nevertheless, within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

In fact, 18% of the Town and Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. In those cases, we were very grateful to the Monitoring Officer of the principal authority who agreed to visit the Council to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We take a very dim view of complaints of this nature and have, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

We categorise the subject of the Code of Conduct complaints based on the Nolan Principles which are designed to promote high standards in public life.

The table below shows the proportion of complaints received under each principle when compared to 2018/19:

Subject	2019/20	2018/19
Accountability and openness	11%	7%
Disclosure and registration of interests	17%	17%
Duty to uphold the law	7%	9%
integrity	10%	13%
Objectivity and propriety	2%	2%
Promotion of equality and respect	49%	51%
Selflessness and stewardship	3%	1%

As in previous years, the majority of the Code of Conduct complaints that we received during 2019/20 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%)

We are concerned that these themes continue to dominate. In fact, we have seen year on year an increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of Local Authorities or Town and Community Councils.

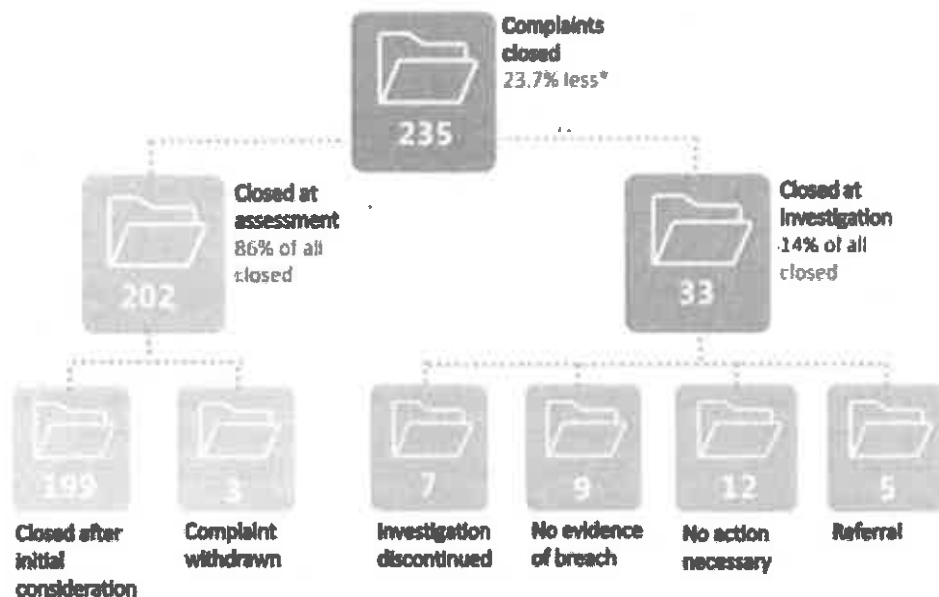
This suggests that members could benefit from training or refresher training on these subjects. However, our impression from investigations is that many members of Town and Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.

Our view is that Code of Conduct training is essential to becoming a 'good councillor'. We believe that members should embrace this training as soon as they become elected/co-opted and refresh themselves on the provisions regularly. Whilst there is no statutory obligation for members of Town and Community Councils to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

(b) Closed Code of Conduct complaints

This year we closed 235 Code of Conduct complaints. This represented a 23.7% decrease compared to the previous year. The rate of closures was also inevitably affected by the number of new complaints received. However, we are glad that we still closed more complaints this year than we received.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2019/20:



* compared to 2018/19

All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place
- it is in the public interest to investigate that matter

Public interest can be described as "something which is of serious concern and benefit to the public"

In 2019/20, we closed 202 or approximately 86% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%).

The remaining complaints taken forward to investigation represented the most serious of the complaints received.

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made one of these determinations in 85% of the Code of Conduct investigations this year.

In cases which cannot be concluded in this manner or feature serious breaches of the Code, it is necessary for us to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2019/20 we made 5 referrals - that is, we referred 2% of all the Code complaints that we closed, compared to 8 or 3% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'. We did, however, investigate a higher proportion of cases related to 'disclosure and registration of interests' than the proportion of this theme in the closed Code of Conduct complaints overall:

Subject	All closed	Closed at assessment	Closed at investigation
Disclosure and registration of interests	17%	15%	30%
Promotion of equality and respect	49%	50%	42%

(c) Referrals

In 2019/20 we made:

- 4 referrals to the Standards Committees
- 1 referral to the Adjudication Panel for Wales

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

Between 2016/17 and 2018/19, the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 88% of our referrals

This year Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by us in 2018/19. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice our investigation of a complaint made about them. In all cases, the members; or former member, concerned were suspended for a period of 4 months.

(3) Lessons

As is clear from the above, we make referrals only in a very small number of cases. We do not believe that the cases that we do refer are indicative of a wider decline in member conduct. Nevertheless, outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

However, even when we do not refer a case, we try to use our investigation as an opportunity to promote good practice. We usually remind the members investigated of their obligations under the Code and, where possible include instruction on further training or engagement with the authority to prevent further possible breaches. We may also make the members aware that the matter could be taken into consideration in the event of any future complaints of a similar nature.

We think that it is important that we continue to look for innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned. Where appropriate, we also want to give members the opportunity to account for their own actions and for further development.

We plan to revise our Guidance to Members to include analysis of recent cases determined by Standards Committees and the Adjudication Panel for Wales.

Appendix C

LLG, CIPFA and SOLACE to work together on response to LGA draft model code of conduct, call for monitoring officers to be legally qualified

July 20, 2020

LLG, CIPFA and SOLACE are to work together on a response to the draft model code of conduct that the Local Government Association (LGA) is currently consulting upon.

In a joint statement the three organisations said they would jointly challenge the LGA and “share the insight of our members gained from their close working knowledge of ethical governance within the local authority context”.

LLG, CIPFA and SOLACE said: “Our response to the consultation will explore and contrast the recommendations made by the Committee on Standards in Public Life’s Ethical Review. There is consensus between our organisations on the need for sanctions tailored for local government, including parish and town councils.

“In addition, whilst outside the scope of the code, we will argue in support of other measures which we consider will promote more effective ethical governance and standards such as statutory protection for Monitoring Officers and the requirement that Monitoring Officers should hold a legal qualification.”

The statement added: “This an unmissable opportunity to work together to cement consistency and high standards in governance. Between us, we are determined to raise the bar on acceptable conduct.”

The LGA launched its consultation last month. It runs until 17 August.

