

## Local government ethical standards - government response to the Committee on Standards in Public Life report

To: Constitution and Ethics Committee

Meeting Date: 26th April 2022

From: Director of Law and Governance & Monitoring Officer

Outcome: The Committee is asked to consider the Government's response to the individual recommendations in the Committee on Standards in Public Life report on Local Government Ethical Standards and consider any future actions, including revisiting its previous review of the Council's Code of Conduct.

Recommendation: The Committee is asked to identify any future actions or further reports following the Government's response to the recommendations from the Committee on Standards in Public Life on Local Government Ethical Standards.

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# 1. Background

- 1.1 The Committee on Standards in Public Life issued a report into Local Government Ethical Standards in January 2019, which made a number of recommendations, including strengthening the available sanctions for breaching the code of conduct by re-introducing the ability to suspend a councillor for up to six months. Many of the report's recommendations required primary legislation changes to the Localism Act 2011, whilst others included the introduction of a new model code of local government conduct drafted by the LGA.
- 1.2 The CSPL report was considered by the Constitution and Ethics Committee at its meeting on 4th April 2019.

# 2. Government Response

- 2.1 The Government has now published its response to the Committee on Standards in Public Life's report, which is attached as Appendix A.
- 2.2 The Government indicated that it was committed to working with local government to ensure it was supported in reinforcing its reputation for ethical local standards and that the Government should build on the sector-wide enthusiasm for improvement. It agreed with the Committee's conclusion that there have been benefits from local authorities being responsible for ethical standards, including the flexibility and discretion to resolve standards issues informally and recognised the role of Government in ensuring that the system is robust.
- 2.3 However, the CPSL recommendations made a considerable number of requests for legislative change, many of which could "be more appropriately, effectively and swiftly taken forward by local authorities as best practice".
- 2.4 The Government has rejected the recommendation that local authorities should be able to suspend councillors without allowances for up to six months for breaches of the code of conduct, concluding that "on the rare occasions" where notable breaches of the code of conduct had occurred, local authorities were not without sanctions under the current regime, including party discipline and ultimate accountability via the ballot box.
- 2.5 Further work on options for strengthening sanctions is to take as the Government is to "engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour".
- 2.6 The Chairman of the Committee on Standards in Public Life, Lord Evans, responded to the DLUHC response as follows: "While we note the government's commitment to further work to support local government, the Committee is disappointed that many of its careful recommendations have not been accepted. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach. We are pleased that many local authorities have already reviewed their approach as a result of this work and are adopting the best practice points from the report. Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence."

2.7 The CSPL recommendations are set out below with the Government's responses and potential areas for the Committee to consider:

- **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.**

The LGA published an updated code of conduct in January 2021.

The Constitution and Ethics Committee at its meeting on 29 September 2021 reviewed the new code against the Council's current code and agreed to retain the current one for the time being. However, it did agree to keep the Council's Members' Code of Conduct under review, pending a response from the Government to the recommendations from the Committee on Standards in Public Life. The Committee may wish to revisit this now the response has been issued.

- **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.**

The Government agrees with the principle behind this recommendation – which safeguards elected representatives - and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it. The Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address. Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

- **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.**

The Government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.

At its meeting on 27 June 2019, the Committee considered a report proposing the introduction of a Social Media Code for Members, which it agreed unanimously. Then at its meeting on 1 October 2019, at the request of Full Council, it considered amendments to the Social Media Code, which had been approved at the meeting in June. At this meeting, it was agreed unanimously: to withdraw the Council's Social Media Code; consult with a Member representative from each district council, along with their Monitoring Officers, to develop a countywide approach to social media guidance; request an update on the process from the Monitoring Officer at the Committee meeting on 21 November 2019; and request the Monitoring Officer to present a new County Council social media guidance at a future Committee meeting. At the 30 June 2020 meeting it was agreed that a report on Review of Social Media Guidance, would be deferred to a later date following the completion of the LGA's review of the model code of conduct. At the September 2021 meeting

the Committee reviewed the LGA new model code and agreed to retain the council's current code for the time being but to keep the code under review, pending a response from the Government to the recommendations from the Committee on Standards in Public Life.

- **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.**

It is for individual local authorities to ensure that their codes of conduct are regularly updated, comprehensive and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code. The Government will keep this matter under review but has no immediate plans to amend the regulations.

As set out above, the new LGA Model Code of Conduct has been reviewed against the Council's current Members' Code of Conduct. Almost all CCC councillors have undertaken Standards and Governance training by either attending the session or watching the recording.

- **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.**

The Government will keep this matter under review but has no immediate plans to amend the regulations.

- **Recommendation 6 Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record 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.**

Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The Government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available.

The Committee at its meeting on 27 June 2019 agreed to set the financial limit for declarations at £100 as this would also cover the Chair of the Council acting in their civic capacity and agreed to add an additional column to gifts and hospitality forms explaining the commensurate benefit to the Council of the gift/hospitality and that the form should be an online form.

- **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 consideration or decision-making in relation to the matter”.**

The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

- **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.**

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities. In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution “fresh” and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable.

There is a separate report on the agenda in relation to the appointment of independent persons.

- **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.**

The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices.

The response to recommendations 10, 12, 13, 14 and 16 have been grouped together

- 10 A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.**
- 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.**
- 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.**
- 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, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**
- 16 Local authorities should be given the power to suspend councillors, without allowances, for up to six months.**

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Government at the time to differentiate it from the previous Standards Board regime. These proposals would effectively reinstate that flawed regime.

On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box.

As part of the Government's response to the Committee's report on intimidation in public life, the Government recommended that every political party establish their own code of conduct for party members, including elected representatives. The Government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

- **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.**

The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation.

- **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.**

The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

- **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.**

The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare so the Government will consider this further.

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

The Government does not agree with this recommendation, but rather believes the

criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

- **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.**

The Government does not agree that this is necessary and has no plans to repeal Section 27(3) 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.**

The Government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

- **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.**

The Government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations. The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

- **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.**

The Council's whistleblowing policy is available here [Whistleblowing Policy - Cambridgeshire County Council](#)

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

Local councillors would not meet the criteria of being external to an individual's workplace in relation to matters affecting the council and could therefore not be considered as a 'prescribed person' for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament. However, the Government recognises that this may provide a further check and balance against council corruption or wrongdoing and is

open to further representations on the matter on how local accountability can be strengthened in this regard.

### 3. Source documents

Constitution and Ethics Committee Minutes - 4 April 2019

Constitution and Ethics Committee - 27 June 2019

Constitution and Ethics Committee - 1 October 2019

Constitution and Ethics Committee - 29 September 2021