

# **BIRMINGHAM CITY COUNCIL**

## **STANDARDS COMMITTEE**

**Wednesday, 20<sup>th</sup> June 2018 at 14:00 hours in Room 329,  
Third Floor, Council House, Birmingham B1 1BB**

### **A G E N D A**

**1     APOLOGIES**

**2     DECLARATION OF INTERESTS**

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared, a Member must not speak or take part in that agenda item. Any declarations will be recorded in the Minutes of the meeting.

**Attached**     **3     MEETINGS SCHEDULE FOR 2018-2019**

**Attached**     **4     TERMS OF REFERENCE**

**Attached**     **5     MINUTES**

To agree the Minutes of the meeting held on 17 April 2018.

**Attached**     **6     COMMITTEE FOR STANDARDS IN PUBLIC LIFE'S LATEST  
CONSULTATION: REVIEW OF LOCAL GOVERNMENT ETHICAL  
STANDARDS: STAKEHOLDER CONSULTATION**

Copies of the City Council's response and the response of Lawyers in Local Government are attached.

**7     CODE OF CONDUCT**

City Solicitor to update.

**8     PROCEDURE IN DEALING WITH INVESTIGATION COMPLAINTS**

City Solicitor to update.

**9     OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that, in the opinion of the Chairman, are matters of urgency.

**10    AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

# STANDARDS COMMITTEE MEETINGS SCHEDULE FOR 2018-2019

ALL MEETINGS WILL BE HELD AT  
THE COUNCIL HOUSE, B1 1BB  
OR COUNCIL HOUSE EXTENSION

<b>Wednesday, 14:00 hrs</b>	<b>20<sup>th</sup> June 2018</b>	<b>Room 329, 3<sup>rd</sup> Floor, Council House</b>
<b>Wednesday, 14:00 hrs</b>	<b>8<sup>th</sup> August 2018</b>	<b>Committee Room 2, Council House</b>
<b>Wednesday, 14:00 hrs</b>	<b>10<sup>th</sup> October 2018</b>	<b>Committee Room 2, Council House</b>
<b>Wednesday, 14:00 hrs</b>	<b>12<sup>th</sup> December 2018</b>	<b>Committee Room 2, Council House</b>
<b>Wednesday, 14:00 hrs</b>	<b>13<sup>th</sup> February 2019</b>	<b>Committee Room B, Council Hse Extension, Margaret St</b>
<b>Wednesday, 14:00 hrs</b>	<b>17<sup>th</sup> April 2019</b>	<b>Committee Room 6, Council House</b>

## **Terms of Reference: Standards Committee**

### **Key Roles**

- advising the City Council on the adoption or revision of the Code of Conduct;
- monitoring the operation of the Code of Conduct;
- advising, training or arranging to train members and co-opted members on matters relating to the City Council's Code of Conduct.
- determining complaints brought by members of the public alleging a breach of the Code of Conduct by Councillors.
- determining the penalty to be imposed in the event of a breach of the Code being upheld.
- hearing appeals as may be necessary.
- granting any dispensations and dealing with any other powers granted to Standards Committees by legislation.
- to submit an Annual report on the work of the Standards Committee and, generally, promoting the standards of ethical conduct and behaviour expected of Councillors.

The Standards Committee shall also determine under Sections 1 and 2 of the Local Government and Housing Act 1989: -

- any application received from any officer of the Council for exemption from political restriction; and
- any application to consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.

# BIRMINGHAM CITY COUNCIL

<b>STANDARDS COMMITTEE</b> <b>17 APRIL 2018</b>
--

**MINUTES OF A MEETING OF THE STANDARDS COMMITTEE HELD ON TUESDAY, 17 APRIL 2017 AT 1500 HOURS IN COMMITTEE ROOM 2, COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:** - Mr Peter Wiseman in the Chair;

Councillor Deirdre Alden, Councillor Mahmood Hussain and Mr Steven Jonas.

\*\*\*\*\*

**APOLOGIES**

260 Apologies were received from Sutton Coldfield Parish Councillor Derrick Griffin, Professor Steven Shute and Raymond Tomkinson (Independent Observer).

The Chair paid tribute to Mr Philip Richardson, the first Chair of the Committee and later the Joint Chair until 2017, and expressed sadness at his passing away.

---

**DECLARATIONS OF INTEREST**

261 No interests were declared.

---

**COMMITTEE FOR STANDARDS IN PUBLIC LIFE'S LATEST CONSULTATION: REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS: STAKEHOLDER CONSULTATION**

The following copy of the Stakeholder Consultation document was submitted:-

(See document no. 1)

The Chair advised that it was open for any stakeholder to respond to the consultation, either individually or on behalf of organisations. It was proposed to submit a response from the Committee by 18 May 2018 and it was intended to produce a draft response to be circulated for comment. He confirmed that it should be discussed with Group Leaders and that they would be able to respond separately.

Attention was drawn to email comments received from Raymond Tomkinson (Independent Observer), particularly regarding the lack of powers, and it was questioned whether naming and shaming someone was sufficient. However, it was noted that there was a general view that the ballot box was the ultimate power in the hands of the electorate.

Concern was expressed that a power to suspend Councillors would lead to single Member Wards becoming disenfranchised. If a pay reduction was applied, that would create difficulties for Councillors who saw their role as their only job and would lead to the need to find other work, thereby limiting their availability.

The Committee recognised that the level of response should depend upon the seriousness of the misconduct and that the response should also be proportionate. It was noted that the Group to which a Member belonged had more power as it was able to 'suspend the whip' in response to misconduct. The Chair advised that there had been only one serious case of misconduct within the life of the Committee and the Councillor was suspended for one month. He believed that a Councillor should be encouraged to correct their misconduct and to apologise, before any appropriate and proportionate action was considered.

Reference was made to the need to consider incidents of abuse and intimidation and what sanctions could be imposed.

262

**RESOLVED:-**

That the report be noted.

---

**CODE OF CONDUCT**

263

A copy of the proposed code of conduct was tabled for Committee members' information. Catherine Parkinson, Assistant City Solicitor, advised that it was intended to provide greater clarity, but not to be all-encompassing.

Concern was expressed in relation to leaflets and the use of social media, particularly during the pre-election period. Catherine Parkinson advised that officers were trying to address that concern and provide suitable guidance. It was felt that it would be useful to provide examples and to look at cases from other Local Authorities. Committee members were advised that the guidance needed to relate to Parish Councillors as well as the City Councillors.

The situation in relation to declarations of interests was discussed and it was acknowledged that further guidance was needed. There was concern that a Councillor could be vulnerable and at risk of intimidation by disclosing their home address. Catherine Parkinson advised that guidance would be included with the form for declaring interests. A training session for Members had been arranged on 8 May 2018.

Committee members were invited to submit comments to the City Solicitor/Monitoring Officer.

---

264      **PROCEDURE IN DEALING WITH INVESTIGATION COMPLAINTS**

The City Solicitor/Monitoring Officer gave an update on the procedure, advising the Committee that her team had considered the procedure and produced a draft document. Thought had been given to the roles of the Monitoring Officer, the Chair and the Standards Committee members, at what stage each should become involved, and whether a Sub-Committee was required, with other members being kept informed in order that they could be involved in a hearing.

---

**PROPOSED DATES OF MEETINGS 2018/19**

265      Committee members noted that it was proposed that meetings in 2018/19 be held on the following Wednesdays:

20 June 2018 at 1400 hours  
8 August 2018 at 1400 hours  
10 October 2018 at 1400 hours  
12 December 2018 at 1400 hours  
13 February 2019 at 1400 hours  
17 April 2019 at 1400 hours

---

**OTHER URGENT BUSINESS**

266      The City Solicitor/Monitoring Officer advise the Committee that this was the final meeting that Catherine Parkinson would be attending, as she was leaving the City Council in early May 2018. She thanked Catherine for her support.

---

**AUTHORITY TO CHAIRMAN AND OFFICERS**

267      **RESOLVED:-**

‘In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee’.

---

The meeting ended at 16:00 hrs

-----  
**CHAIRMAN**

## Committee on Standards in Public Life: Consultation Questions

	Question	Response
a.	Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.	In general, yes but see comments below.
b.	What, if any, are the most significant gaps in the current ethical standards regime for local government?	Lack of meaningful and enforceable sanctions for breach of the Code of Conduct; inconsistency in the provisions of Codes between different councils.
<b>Codes of conduct</b>		
c.	Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?	<p>Generally, the Code is clear and easily understood. However, the parts which deal with disclosable pecuniary interests are complicated and less well understood</p> <p>We have also sought to make the code clearly understood by use of plain English and constantly providing real examples of how the code works in practise. We have kept the code under periodic review to ensure it is up to date and covers all essential requirements /obligations.</p>

		<p>We have also introduced a more structured training /refresher programme for members which is aimed at addressing any trends that may be starting to develop and ensure members are kept up to date with any national development.</p> <p>There are other interests which are not supported with statutory requirement, such as interests of close associates and family interests such as memberships of clubs and societies, controlling functions of non-paid directorships or nominations to bodies such as fire authorities which are not paid.</p> <p>The confidence in the system could be improved and consistency obtained across all councils if statutory enforcement covered the wider interests apart from the member and spouse only interests.</p>
<b>d.</b>	A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.	Yes.



<b><i>Investigations and decisions on allegations</i></b>		
<b>e.</b>	Are allegations of councillor misconduct investigated and decided fairly and with due process?	
	<p>i What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?</p>	<p>Birmingham City Council (BCC) has a complaints process which is used to supplement the code.</p> <p>This process allows for an initial investigation/review of the complaint to take place and for a draft report to be produced. This enables those which are without merit, or where an informal resolution is possible, to be dealt with without a formal investigation.</p> <p>Formal investigations are reserved for the most serious cases and are usually carried out by an independent investigator.</p> <p>Occasionally the Monitoring Officer (or Deputy) has carried out the investigation but she/he then takes no part in the hearing process except as the investigating officer. Otherwise complaints are investigated externally.</p> <p>The process allows for both parties to participate in the process at various stages by providing comments and further information.</p>

			<p>Any process such as this has to bear in mind the need for natural justice and for there to be confidence in the system.</p> <p>The role of the independent Person is fairly limited because BCC has, along with others, retained the Standards Committee structure whilst others have moved to an Ethics Style Committee comprised solely of Councillors.</p>
	ii	Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?	<p>The retention by BCC of the Standards Committee structure which is a mix of lay members and councillors with a lay Chair introduces a high level of objectivity and fairness into the process. The knowledge and experience of the Councillors is invaluable. Equally, the involvement of lay members in the whole process strengthens the perception that it is acting independently of party political allegiances.</p> <p>BCC has not, to date, any experience of having to call on the services of the Independent Person. In our structure a useful role might arise where there is a need for conciliation in order to avoid a hearing. However, recently we have found the Councillors have sought their own advice from outside the system from solicitors /party organisations.</p>

	iii	Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?	The BCC code of conduct allows for the MO to delegate investigations to a senior lawyer and deputy MO. Where necessary we will instruct external individuals/bodies to conduct investigations. Such delegation allows investigations to be conducted at arm's length from the MO which is helpful in that that it gives her/him the chance to have more general oversight role over investigations and where necessary remove the perception of there been a conflict of interest.
<b>Sanctions</b>			
f.		Are existing sanctions for councillor misconduct sufficient?	No.
	i	What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?	The Council has a limited range of sanctions available to it in law. These include censuring the member who has been found to have breached the Code of Conduct; requiring the member to undertake training or to make a written apology or recommending their removal from committees or cabinet. However, the Council has no powers of enforcement so if a councillor chooses not to apologise, for example, then there is little more it can do. In particular, the decision to remove a councillor from a committee or cabinet lies with the councillor's political group, not the Council. The ability for the Council to enforce sanctions is almost non-existent where the councillor is not a member of a formal political group as there is no party disciplinary process to encourage

			<p>compliance.</p> <p>It is believed that the lack of effective sanctions in cases of serious breaches is proving to be a serious issue for some councils, particularly those with “rogue” councillors who are only too aware of the insufficiency of sanctions.</p>
	ii	Should local authorities be given the ability to use additional sanctions? If so, what should these be?	<p>Councils should be able to impose a short period of suspension (up to 3 months) for councillors who have committed particularly serious breaches of the Code or who have failed to comply with previously imposed sanctions.</p> <p>Councils ought to be able to withhold members’ allowances for a short period from councillors who have committed serious breaches or refused to co-operate in the process.</p> <p>It is submitted that these sanctions are not draconian and less than existed under the previous Statutory scheme. However, they are serious enough for councillors to be aware that misconduct on their part could have a serious impact on their work. Further it would allow the Council to impose sanctions which should offer a better chance of breaches not being repeated and for the public to perceive “real” action being taken.</p>

			Accordingly, it is the view of BCC that to have credibility there needs to be the restoration of some of the powers which were removed under the Localism Act 2011 . The possibility of even a short suspension from the council would concentrate the mind of the recalcitrant Councillor.
<b>Declaring interests and conflicts of interest</b>			
<b>g.</b>	Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.		
	i	A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?	<p>The current regime under the statutory arrangements under the Statutory Instrument Relevant Authorities [ Disclosable Pecuniary Interests ]Regulations 2012 outlines a limited number of occupation for gain, business and property interests. This is for a member and their spouse.</p> <p>However, it is the case that members have interests linked to close associates, fiends and wider family that can cause confusion as to what is discloseable.</p> <p>They also are required to register non paid interests where they are on bodies like fire authorities or parish councillors</p>

		where they are not paid allowances. It is also the case that if they have memberships they should declare those. It would be more straight forward if all of these interests were all included in a the statutory instrument framework and defined all in one place.
	ii	<p>What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.</p> <p>At BCC the declaration of interest forms include both the statutory and non-statutory interests. There are in addition forms to register gifts.</p> <p>These forms are in the process of review as there is a need to include more reference to the interests of spouses. This is currently under review to make it more understandable and effective.</p>
<b>Whistleblowing</b>		
<b>h.</b>	What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?	The Council has a Whistleblowing Policy. There is also a dedicated resource to deal with any whistle blowing allegations
<b>Improving standards</b>		
<b>i.</b>	What steps could <i>local authorities</i> take to improve local government ethical standards?	There seems to be quite a wide range of standards across local authorities, some authorities have quite detailed codes others do not. It would be a lot better if there was more

		<p>standardisation of codes across the board as it would help with public confidence in the system. The variations in codes can cause misunderstanding of the public as to why such variations exist.</p> <p>Having said that we think it equally important that each authority be allowed a degree of flexibility as to how they draft their code to reflect its local circumstances. What might be suitable for a small rural district council may not be suitable for an authority the size of Birmingham (and vice versa)</p>
j.	What steps could <i>central government</i> take to improve local government ethical standards?	Central government could support the process identified in point i.
<b>Intimidation of local councillors</b>		
k.	What is the nature, scale, and extent of intimidation towards local councillors?	<p>Councillors have occasionally experienced threatening behaviour and intimidation from members of the public who have found out where the councillor lives. Councillors are unhappy that they are required by law to disclose their home address when standing for election (unlike parliamentary candidates) although this is changing.</p> <p>In addition the requirement to declare their home address on their register of disclosable pecuniary interests increases the risk of such unwanted and frightening visits. For the MO to</p>

		<p>be able to exclude the home address from the public register, he or she has to be satisfied that disclosure of the details of the interest could lead to the member or others being subject to violence or intimidation. By the time this evidence is available, it is often too late to prevent violence or intimidation because the councillor's address is already in the public domain.</p> <p>In particular female councillors or those in single parent families have expressed real concern about disclosing their home address.</p>
	i	<p>What measures could be put in place to prevent and address this intimidation?</p> <p>From 2019 candidates will no longer need to publish their home address their home address when standing for election; Consequently thought needs to be given about removing the requirement for the address of the councillor's only or main residence to be published on the register of DPLs to ensure consistency.</p>





# LLG

## Lawyers in Local Government

Suite 2, Sanford House  
Medwin Walk  
Horsham  
West Sussex  
RH12 1AG

Tel: 01483 478769  
Fax: 01483 478774  
Email:  
Membership@lawingov.org.uk  
Web: <http://www.lawingov.org.uk>

Review of Local Government Ethical  
Standards Committee on Standards in  
Public Life  
GC:07  
1 Horse Guards Road  
London  
SW1A 2HQ

[public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

18 May 2018

Dear Sir/Madam

### **Review of Local Government Ethical Standards: Stakeholder Consultation**

Lawyers in Local Government (LLG) represent 3842 lawyers and governance Officers within local government and 97% of eligible local authority legal departments in England & Wales. I am the National Lead Officer for Monitoring Officers and Governance. As such, I have collated the response set out below, which reflects the views of Monitoring Officers, Deputy Monitoring Officers across the Country. Rather than seek to impose an LLG view on the ethical standards regime, all views (whether they are consistent with each other or not) have been included.

As the response set out demonstrates, members of LLG have concerns that the Standards Regime, particularly in relation to sanctions is not sufficiently robust to address serious misconduct and/or repetitive, low level misconduct, which erodes public confidence in local government ethical standards.

- a) Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.**

All relevant authorities have adopted a Code of Conduct and awareness of the Code is generally good amongst County and Town and Parish Councils and the



# LLG

## Lawyers in Local Government

ability to tailor arrangements to local circumstances is helpful. It is also helpful that Monitoring Officers have the ability to deal with issues by way of informal/ local resolution.

However, in areas where there are a number of Town/Parish Councils, the absence of a Model Code causes confusion, particularly for “dual-hatted” members. Consideration should be given to re-introducing a standard code for all relevant authorities.

There is a lack of meaningful sanctions available to Standards Committees and no consistency across local authority areas as to which sanctions are used/when.

It is difficult to effectively deal with serious misconduct such allegations of/convictions for criminal behaviour, bullying and intimidation and persistent minor/trivial breaches of the Code of Conduct.

Members of the public often expect sanctions to be imposed, which the Standards Committee does not have the power to. This erodes public confidence in ethical standards and dissuades the public from making complaints as very little can be done to address the behaviour complained of.

The introduction of Disclosable Pecuniary Interests (DPIs) limited the circumstances in which Members must declare interests. Many local authorities have retained provisions within their Codes, which cover a broader range of interests. However, this is dependent on local convention. Where Members are not required to register such interests, there is less transparency of Members interests. The different regimes creates confusion for Members and Members of the public.

**b) What, if any are the most significant gaps in the current ethical standards regime;**

The lack of sanctions to deal with the most serious of breaches and also the inability to compel a subject Member to comply with the sanction imposed.

The criminal offences introduced under the Localism Act 2011 in relation to the disclosure of pecuniary interests are only engaged if a Member fails to make a declaration within 28 days of election/re-election or if they participate in a meeting where they have an interest but this is not disclosed.

Consideration should be given to widening the scope of when the Code of Conduct is engaged. 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.

It is acknowledged that a number of Town/Parish Clerks volunteer for the role but in some cases have little or no relevant experience/qualifications for the job. Therefore it can sometimes (through no fault on their part) be difficult to tackle poor ethical standards quickly as they do not have the confidence, expertise and/or in the case of small Councils, the support. It is therefore suggested that the requirements for the role of Clerks should therefore be reviewed as well as the support available to them. Mandatory training/qualifications should be considered as well as mandatory membership of the local association of local councils and or the Society for Local Council Clerks.

Monitoring Officers reported a minority of examples where ethical conduct issues stemmed from the behaviour of the clerk themselves. In smaller Councils, these employment issues can be difficult to address where the clerk is perhaps the only employee and the Council has limited resource to pay for external advice. It is also acknowledged that given the number of smaller Town/Parishes, any changes to the role need to be proportionate to ensure that Councils are able to recruit to the role.

Consideration should also be given to putting in place a legal duty on individual Councillors to promote high standards of conduct. LLG would particularly support a duty which reflected this.

### Codes of Conduct

- c) Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes exist?**

As explained above, all relevant authorities have adopted Codes of Conduct, which are generally very clear and easily understood. However, the lack of a model code sometimes creates confusion for members of the public and Members who are dual/triple hatted.

The slight variations in local Codes can create an additional burden for Monitoring Officers in administrative areas with a large number of Town/Parish Councils because they have to be familiar with all of them and adapt their approach/training accordingly.

All Monitoring Officers arrange training for new and existing members. Some authorities have resolved that such training should be mandatory at regular intervals. However, there is limited ability to deal with Members who do not comply with this requirement. LLG would welcome provision which encourages elected Members to undertake training relevant to their role and in particular to standards.



# Lawyers in Local Government

Members represent their local authorities on an increasing number of different bodies such as Health, LEPs and Combined Authorities. It would be helpful to have a Code of Conduct which reflects those roles and provides clarity on the role of the members when representing their authorities on such bodies.

- d) Whether the requirement for the local code of conduct to be consistent with the Nolan Principles, and to include appropriate provision for registering and declaring interests, is appropriate;**

The Nolan principles are widely known and understood by Members and the public. However, not all Codes provide for/include the full list of principles. For example, some Codes no longer contain provisions in relation to respect and/or confidentiality. LLG would welcome specific provision in relation to confidentiality, in particular, the issue of legal privilege following advice to the council.

## Investigations and decisions on allegations

- e) Are allegations of councillor misconduct investigated and decided fairly with due process?**
- i) What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet the requirements for due process? Should any additional safeguards be put in place to ensure due process?**
  - ii) Is the current requirement that the views of the Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?**
  - iii) Monitoring Officers are often involved in the process of investigating and deciding on code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?**

Local authorities have detailed arrangements in place for dealing with the assessment, investigation and determination of complaints, which address the principles of fairness and due process but they can vary between different authorities. Whilst the assessment/sift procedures are helpful to Monitoring Officers in dealing with complaints proportionately, there can be a perception that complaints are dealt with “behind closed doors.”

The resource implications of investigating a matter and referring it to a hearing can be disproportionate to the eventual outcome, particularly where the Monitoring Officer has to appoint an external investigator.



# LLG

## Lawyers in Local Government

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

There could be clearer guidance available in relation to the role of Independent Persons. The legislation provides that subject Members can consult them in relation to a complaint and the Standards Committee must consider their views before determining a complaint. Whilst most Monitoring Officers consult Independent Persons at other stages in a complaint, the approach is not consistent. Furthermore, Independent Persons sometimes feel conflicted/unclear as to their position if they have been consulted by the Subject Member and then have to give their views to the Committee. This scenario can be avoided where authorities have more than one Independent Person but for smaller authorities it can be an issue.

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.

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.

### Sanctions

#### **f) Are existing sanctions for councillor misconduct sufficient?**

- i) What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?**
- ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

All of the representations received from LLG members consider the sanctions to be insufficient. The sanctions imposed tend to include requiring an apology, attendance at training, censure and in the most serious cases removal from a Committee. However, this requires co-operation from the leadership of the relevant political group and/or the Council.

It is understood that the Localism Act intended Councillors to be accountable "at the ballot box". However, this fails to address breaches the Code by Members



# Lawyers in Local Government

shortly after their election and/or Town/Parish Councillors who are elected unopposed.

The suggestion in the present regime that Council's should be responsible for setting their Codes of Conduct but then enforcement for DPI's and failure to notify referred to the Police is simply intellectually inconsistent. Nolan accepted that most Councillors are responsible individuals who are looking to serve their area and do their best. They should be permitted to hold colleagues to account when the Code (set locally) is not adhered to or when there are other breaches. This argument does not remove the possibility of criminal sanction altogether as the Fraud Act, the fiduciary duty that Councillors have and other offences such as misfeasance in public office all have a place in the most serious cases.

There have been some cases where a Councillor has been convicted of a serious criminal offence but have been able to continue in office because they have not received a custodial sentence of 3 months or more. The individuals involved have resigned but if they had not, the local Authority would have no power to compel them to step down. This seriously undermines the public confidence in local authorities and their ability/willingness to address such conduct.

Therefore, suspension and disqualification ought to be available to authorities to deal with the most serious breaches of the Code of Conduct. Authorities should also be given the power to compel Members to comply with recommendations of the Standards Committee or face further sanction. Some members of LLG have suggested that a deduction in the Members Allowance may be appropriate in limited circumstances. Where such sanctions are imposed, in the interests of fairness, the subject Member should have a right of appeal.

## Declaring interests and conflicts of interest

- g) Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not, please say why.**
- i) A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?**
  - ii) What arrangements do local authorities have in place to declare councillors interests and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.**

Some Monitoring Officers consider that DPIs are considered to be too narrowly defined. As a result, many authorities have retained provisions, which replicate



# LLG

## Lawyers in Local Government

the previous personal, prejudicial interests. However, this approach is again inconsistent across authorities and creates confusion amongst Members and the public as to what constitutes an interest and what must be declared and when. It is also less clear as to what interests a Member has over and above what has been declared as a DPI.

The criminal offences in relation to the failure to register/declare DPIs only apply in limited circumstances, which is often at odds with public expectations. A member can deliberately avoid declaring a DPI, without serious sanction, provided that they do not participate in business where that interest is engaged.

Others however consider that the current arrangements work well and that any perceived gaps in the Localism Act 2011 are sufficiently addressed at local level by inclusion of additional requirements within the Code of Conduct.

### Whistleblowing

#### **h) What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?**

All respondents to the consultation confirmed that their authorities have appropriate Whistleblowing arrangements in place and in the larger authorities there is Member oversight of the arrangements.

Whistleblowing within smaller authorities can be an issue however, particularly where the Clerk is the only employee. They often do not feel able to make a whistleblowing complaint and/or have sufficient resources/training to deal with whistleblowing complaints made in relation to their Council.

### Improving Standards

#### **i) What steps could local authorities take to improve local government ethical standards?**

A limited number of respondents considered that local authorities currently do enough. However, others suggested that Independent Persons could be consulted more widely/consistently. Training on ethical standards should be mandatory for all elected Members on election and periodically thereafter. LLG would support mandatory ethical standards training.

#### **j) What steps could central government take to improve local government ethical standards?**

Central government could seek to amend the relevant legislation to amend the sanctions available so that Standards Committees and Monitoring Officers can deal with the most serious breaches of the Code and/or persistent 'low-level' breaches of the Code more effectively.



# LLG

## Lawyers in Local Government

Respondents acknowledged the good work that the Clerks to Parish/Town Councils do, often with limited resources. However, some clerks have very little experience/training in relation to the role. This can make it difficult to deal with difficult Councillors and manage persistent poor behaviour. Central Government could consider making it a requirement that all Clerks to local Councils complete relevant training/qualifications before commencing and during the role.

### Intimidation of local councillors

#### **k) What is the nature, scale and extent of intimidation towards local councillors?**

Much of the intimidatory/threatening or bullying behaviour takes place on social media. It can be difficult to deal with because it is not always possible to identify the perpetrators.

Monitoring Officers reported some intimidation in person/in writing, which are referred to the Police who tend to respond positively, particularly in the more serious cases. There is a perception that such behaviour is more prevalent but it is not clear if this is as a result of incidents being more widely reported.

#### **l) What measures could be put in place to prevent and address this intimidation?**

The requirements to publish the personal contact details for members could be reviewed. The provisions to remove such information based on evidence of risk/actual intimidation come into effect too late – the intimidating behaviour is the evidence which prompts the removal of details. The provisions in relation to Sensitive Interests only cover potential harm/threatening behaviour in relation to a Members Interests, not their role as Councillor more generally.

Some consistent guidance for all Councillors on the use of social media would be helpful so that everyone is clear as to the expectations on them. LLG would support and indeed actively wish to engage in any proposed guidance on the use of social media.





# LLG

## Lawyers in Local Government

### Conclusion

The changes to the ethical governance regime under the Localism Act 2011 were intended to reduce bureaucracy, provide flexibility and enable ethical conduct issues to be dealt with more efficiently. The above responses demonstrate that there have been improvements. However the changes, particularly in relation to sanctions, have gone too far to the other extreme. LLG would support changes to the regime which strike more of a balance between the old and current arrangements. LLG would welcome the opportunity to work with the Committee on Standards in Public Life to develop proposals to change the regime and help improve public confidence in local government ethical standards.

Yours faithfully

Helen Lynch  
**SAA Lead Monitoring Officers and Governance.**

