

To: Standards Committee
Date: 25 February 2019
Report of: Monitoring Officer / Head of Law and Governance
Title of Report: Committee on Standards in Public Life – Local Government Ethical Standards

Summary and recommendations	
Purpose of report:	This report informs the Committee of the findings of the Committee on Standards in Public Life report on Local Government Ethical Standards.
Key decision:	No
Recommendation:	That the Standards Committee notes the report and considers whether there are any particular recommendations from the Committee on Standards in Public Life that the Committee would like to consider further at a future meeting.
Appendix 1	The Committee on Standards in Public Life report on Local Government Ethical Standards

Introduction and background

1. In 2018 the Committee on Standards in Public Life undertook a review of local government ethical standards. The Committee on Standards in Public Life considers that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The consultation period ran from 29 January to 18 May 2018.
2. The terms of reference for the review were to:
 - i. 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
 - ii. assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government

- iii. make any recommendations for how they can be improved
 - iv. 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
3. Details of the review can be found at:
<https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>.

Oxford City Council submission

4. The Oxford City Council response to the review was prepared by the Monitoring Officer, following discussions with the Chair-elect of the Standards Committee (Councillor Shaista Aziz) and the Committee and Member Services Manager. Appendix 1 contains the Oxford City Council response to the review.

The Committee on Standards in Public Life report on Local Government Ethical Standards

5. The Committee on Standards in Public Life (“the CSPL”) published the [Local Government Ethical Standards report](#) (“the Report”) on 30 January 2019.
6. The CSPL has recommended that local authorities should be given the power to suspend councillors without allowances for up to six months. It said “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.” This is something that the Council highlighted in its response to the CSPL review. It said that “the main weakness in the standards regime is the limited range of sanctions that can be applied, which are not strong enough to provide an effective deterrent ... Additional sanctions which would strengthen the standards regime should include the powers to suspend members from office and to suspend members’ allowances for a period of time. Currently there are insufficient sanctions to deal with more extreme behaviours such as serious bullying, dishonesty or conviction other than under s34 Localism Act 2011.”
7. The CSPL said that councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government and Social Care Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman would then be binding. The Government will have to consider whether to introduce this mechanism one particular concern may be the delay that this could build into the process.
8. The CSPL described the Monitoring Officer as “the lynchpin” of the current standards arrangements, but accepted that the role was “challenging and broad”, with a number of practical tensions and the potential for conflicts of interest. It said that local authorities should put in place arrangements to manage any potential conflicts, it said. It has called for employment protections for statutory officers to be extended, and for statutory officers to be supported through training on local

authority governance. This is something that the Council highlighted in its response to the review. It said “The Monitoring Officer has to be extremely robust when dealing with complaints against senior members of an Authority. The statutory protection afforded to Monitoring Officers could be strengthened to encapsulate a specific category of when they are dealing with complaints against members. In the event of a conflict of interest it is useful to have reciprocal arrangements with other Monitoring Officers to step in, but depending on the circumstances there could be reluctance to wish to do so.” Any additional protections will require legislative change through an amendment to The Local Authorities (standing Orders) England (Amendment) Regulations 2015.

9. There is a list of recommendations in the Report at page 14. The key findings and recommendations in the Report include:
 - i. There is considerable variation in the length, quality and clarity of codes of conduct. It found that this created confusion among members of the public and among councillors who represent more than one tier of local government. Many codes of conduct fail to adequately address important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should be available to local authorities in order to enhance the consistency and quality of local authority codes. The Local Government Association will be responsible for creating this model code. In terms of good practice, all Oxfordshire local authorities are covered by a single, jointly-agreed Code of Conduct that is wider than just the seven Nolan principles of conduct in public life. This ensures that councillors who are members of multiple authorities within the area are covered by a single code, providing clarity and consistency. A model code while on the face of it, reducing local choice would create consistency across England and reflect the common expectations of the public regardless of geography or tier of authority.
 - ii. The updated model code should 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, was in their official capacity. The Council, in its response to the review, stated that “the rules around disclosable pecuniary interests and the Seven ‘Nolan’ Principles of Public Life are clear and easily understood. However, adopted codes have not kept pace with recent technological and societal changes and the range of behaviours covered is somewhat limited. For example, it is not necessary that aspects such as bullying, the use of ICT equipment and social media are covered by all adopted codes and this has been left as local choice.” The Localism Act may need to be amended to allow for the rebuttable presumption that councillors are acting in an official capacity in their public statements on publicly-accessible social media which can be an important consideration when deciding on code of conduct breaches.
 - iii. 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. The Council stated that “the compulsory provisions for registering and declaring interests are limited to disclosable pecuniary interests with no accompanying guidance. This is quite a narrow range of interests that is subject to interpretation by elected members and is unlikely to satisfy public perceptions and expectations of the kinds of interests that should be declared. For example, there are no compulsory requirements around declaring other prejudicial interests, which may warrant further consideration In addition, further explanation and guidance on disclosable pecuniary interests would be welcome, including, for example, roles on other organisations where the councillor receives expenses or payment in kind ... Adopted codes could be clearer about expectations in relation to conflicts that are not disclosable pecuniary interests.” The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the Localism Act 2011 would need to be amended if this recommendation is adopted.

- iv. The current criminal offences relating to disclosable pecuniary interests are “disproportionate in principle and ineffective in practice, and should be abolished”. The CSPL state that “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.” The criminal offences in the Localism Act 2011 would need to be abolished. In practice it would appear that this provision has also been little used and therefore is not serving its intended purpose.
- v. Local authorities should maintain a standards committee. This committee would 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. This reflects the approach in retaining its Standards Committee that Oxford City Council has chosen for itself emphasising the importance of ethical behaviour to the Council and its councillors.
- vi. The safeguard provided by the Independent Person 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. This will require an amendment to the Localism Act 2011.
- vii. 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.
- viii. 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.
- ix. At a time of rapid change in local government, decision-making in local councils was becoming 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.”
 - x. An ethical culture required 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. The Council raised this as part of its response to the review.
 - xi. 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.”
 - xii. 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. It was acknowledged by councillors recently in the budget council meeting earlier this month that while political views may differ, business continues to be conducted in a civil and respectful way.
 - xiii. 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.”
 - xiv. 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.”
10. The Government will take time to consider the recommendations contained in the Report. A number of the CSPL’s recommendations involve legislative change which it believed the government should implement. A further report will

be prepared for the Committee when the government has published its response.

11. The Report contains a list of fifteen best practice recommendations for local authorities at Page 18. The CSPL has said that it expects local authorities to implement those recommendations and that it will review their implementation in 2020.
12. A number of the recommendations would require amendments to be made to the Council's Code of Conduct but this would need to be done in consultation with the other Oxfordshire authorities since they each adopted the same shared code. For example, the CSPL has recommended that any code should require councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors. The Council's code does not currently make such provision.
13. There is a recommendation to local authorities to update their gifts and hospitality register at least once per quarter and publish it in an accessible format. This is something that has already been agreed locally and arrangements will be put in place and communicated to members.
14. The CSPL has also recommended that Council's should publish a clear and straightforward public interest test against which allegations are filtered. This is something that is proposed as part of the review of the Council's complaint handling process and the revised arrangements, to include clarity around the public interest test, will be considered elsewhere on the agenda.

Legal implications

15. None – for information only.

Financial implications

16. None – for information only.

Risk management

17. None – for information only.

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