

Review of Ethical Standards in Local Government

The Committee for Standards in Public Life has recently published their review on Local Government Standards.

Overall, the Committee recognises that standards remain high in local government, but this is in spite of processes and legislation that are not working effectively. The Committee are proposing to remove the regime created by the Localism Act, and bring back much of the previous (pre 2012) requirements, the main exception being that they propose to maintain local accountability at a County / District level rather than reintroduce the national Standards Board.

Their main concerns relate to:

- a) A small proportion of Councillors who cause persistent issues and the lack of ability to address this;
- b) The lack of sanctions available to redress very poor behaviour by Councillors;
- c) Rules around declaring interests and addressing potential conflicts are unclear and ineffective;
- d) The increasing complexity of local government is a risk to good governance

In consequence, the Committee have made 26 formal recommendations, the majority of which require changes to the primary legislation (The Localism Act 2011) and secondary legislation. It will be interesting to see how the Government respond to these and whether they agree that changes are required. In addition, the Committee have recognised 15 "Best Practice" examples; each of the recommendations and best practice areas have been assessed in the table at the end of this summary to identify whether the Council may wish to take further action at this stage.

The Committee recognised the importance of a strong ethical culture within the organisation, both at a political and officer level. They assessed cases of significant corporate failure that had arisen within local government, which highlighted the need to ensure effective member / officer relations and the importance of openness and transparency in the way that decisions are made.

The Committee have touched upon growing concerns regarding the personal safety of Councillors. Whilst levels of concern are lower in local government than central government, there is a pattern emerging that abuse is particularly targeted at Female Councillors and so are suggesting that the need to disclose the home address of Councillors is removed – this requires changes to legislation.

The Committee have raised concern about the lack of clarity in codes of conduct on what is meant by a Councillor being "in capacity as a Councillor" – i.e. the

time when they are bound by a code of conduct, and the time when they are considered to be in a private capacity. The proposals by the Committee may significantly widen the scope of capacity, in particular suggesting that all public social media activity would be "in capacity"

A particularly interesting area explored by the Committee is the accountability of Parish Councils. They recognised that for the majority of Parishes, the current oversight regime worked well, but there are some where it does not. The Committee propose that the Monitoring Officer would have a broader role in supporting Parishes / Towns who were experiencing difficulties with behaviour; however, this may raise concerns that Parishes / Towns, who are autonomous bodies, could try to absolve responsibility for trying to work to resolve issues. It also brings into potential conflict the role of the Monitoring Officer, and the role of bodies such as SALC, as well as raising potential resource implications for District Councils.

This is only a report, and will require a response from the Government before any potential changes to legislation could be introduced. However, as the table below identifies, there are opportunities to work across Suffolk to see how some of the more local best practice suggestions could be implemented.

CfSPL Recommendations and Best Practice

Recommendation	Views / Where West Suffolk is
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.	This is a matter for the LGA; depending on their response, there is scope for West Suffolk to work with Suffolk MO's to look to update the existing Code of Conduct
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	This would require a change in primary legislation. However, we have informed District Councillors that we are willing to withhold this information if they have concerns.
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	This would require a change in primary legislation. At present, the expectation is that Councillors are acting in capacity where they do or say something that would give the impression they are acting in capacity.
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.	This would require a change in primary legislation. Our Code of Conduct already includes such a statement.
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.	This would require a change in secondary legislation. Our Code of Conduct expects Councillors to declare these as local non-pecuniary interests.

<p>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.</p>	<p>This would require a change in primary legislation. We do maintain records of donations received over £25 when a Councillor is acting in capacity</p>
<p>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".</p>	<p>This would require a change in primary legislation. Our Code expects Councillors to also declare non-pecuniary interests and should comply with the Nolan principles to act objectively and selflessly, but this still creates a grey area for Councillors which such a change to legislation may help to resolve.</p>
<p>The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.</p>	<p>This would require a change in primary legislation. Our current Independent Persons have been appointed for 7 years and 2 years respectively.</p>
<p>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.</p>	<p>This would require a change to the Transparency Code, although we already include the Independent Person's views as part of decision notices.</p>
<p>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.</p>	<p>This would require a change in primary legislation.</p>
<p>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.</p>	<p>This would require new secondary legislation.</p>
<p>Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from</p>	<p>This would require a change in primary legislation. We have a Standards Committee, comprised of District Councillors.</p>

dependent parishes, to decide on allegations and impose sanctions.	At present, we could not appoint voting independent / parish council members.
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.	This would require a change in primary legislation.
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.	This would require a change in primary legislation
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	Whilst this would require a change in the Code, this is something we could opt to produce (we present this information to Standards Committee, although some information is treated as exempt due to the level of details relating to individuals)
Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	This would require a change in primary legislation
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.	This would require a change in primary legislation
The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished	This would require a change in primary legislation
Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks	This is a matter for Parish Councils
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.	This would require a change in primary legislation, however this already happens across West Suffolk

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.	This would require a change in primary legislation. At present, the District Council would make recommendations and the Parish would then determine whether to agree / adopt those recommendations. Caselaw has demonstrated the wording in the Localism Act at present is unclear and needs clarifying
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.	This would require a change in secondary legislation.
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.	Whilst this requires a change in the Transparency Code, our policy already includes this.
Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	This would require a change in primary legislation to the Public Interest Disclosure Act (for reference, employees of businesses and organisations can raise concerns to "prescribed persons" such as MP's or ombudsman services if they are worried about the activities of their employer and they believe there is a public interest in raising the concern. Employees would then be protected from disciplinary action as a result)
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.	This is a matter for the political groups
Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	This is a matter for the LGA
Best Practice Suggestions	Views / Where West Suffolk is
Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a	Our Code does include that Councillors must not bully anyone, but does not define bullying nor give examples.

definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition	Suggest consideration by Suffolk Monitoring Officers following any views expressed by the LGA regarding a new model code.
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.	Suggest consideration by Suffolk Monitoring Officers following any views expressed by the LGA regarding a new model code. The second point – on trivial or malicious allegations – this is considered as part of the procedure review
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	This is difficult in practice. The Suffolk wide Code of Conduct is agreed by Suffolk County Council, District Councils and Parish / Town Councils across the County. It is a challenging exercise to get all parties to agree and so an annual review / modification process could involve considerable resources and risk a divergent approach. It would clearly be preferable to seek views from parties when the Code of Conduct is reviewed.
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	The Code is available on the website and in Council premises
Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV	All declared gifts and hospitality are always available on the website for each Councillor, as such this is a live document rather than a quarterly publication.
Councils should publish a clear and straightforward public interest test against which allegations are filtered	The procedures for complaints are subject to review by the Standards Committee today; this can be published publicly.
Local authorities should have access to at least two Independent Persons.	We have appointed two independent persons
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	This is our current practice
Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision	This may not be consistent with recent case law that suggested that where a Councillor has not breached the

<p>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</p>	<p>Code of Conduct, it is not in the public interest to disclose details relating to it. As such, it would not be our intention to do this unless there is a clear change in the case law position or legislation.</p>
<p>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.</p>	<p>We have a specific page on our website to cover this</p>
<p>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.</p>	<p>This may not always be practical (for example where the Clerk has concerns about the Chair or a group of Councillors), as such the current approach – where it can be made by the chair, or the council, or the clerk, is considered more appropriate</p>
<p>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.</p>	<p>This raises concern regarding the potential capacity to do so, and autonomy of Parishes in resolving issues. Suffolk MO's meet every 2-3 months with representatives of SALC to discuss Parish Council challenges and how to resolve these</p>
<p>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.</p>	<p>West Suffolk has a highly experienced Deputy MO who can operate when the MO has a conflict of interest, and has access to external investigators.</p>
<p>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</p>	<p>This would be included as part of the AGS. There is some concern regarding the second aspect of this proposal – for companies to publicly report their board agendas and minutes, as this would need necessary caveats relating to confidential information (as apply already to local authorities) to be considered appropriate.</p>

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

Senior Officers do meet with political group leaders where there are concerns regarding councillor behaviour. The Chief Executive offers briefings to all group leaders.