

# AGENDA

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**Meeting: Standards Committee**

**Place: Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN**

**Date: Wednesday 1 May 2019**

**Time: 9.30 am**

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Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

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## Membership:

Cllr Derek Brown OBE  
Cllr Allison Bucknell  
Cllr Ernie Clark  
Cllr Peter Evans  
Cllr Peter Fuller  
Cllr Howard Greenman (Vice-Chairman)  
Cllr Ruth Hopkinson  
Cllr Bob Jones MBE

Cllr Paul Oatway QPM (Chairman)  
Cllr Fred Westmoreland  
Cllr Stuart Wheeler  
Mr Richard Baxter  
Mr Philip Gill MBE  
Mr Michael Lockhart  
Miss Pam Turner

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## Substitutes:

Cllr Richard Britton  
Cllr Trevor Carbin  
Cllr Sue Evans  
Cllr Nick Fogg MBE  
Cllr Chris Hurst

Cllr Peter Hutton  
Cllr George Jeans  
Cllr Gordon King  
Cllr Brian Mathew  
Cllr Graham Wright

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Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

# AGENDA

## Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes** (*Pages 5 - 8*)

To confirm the minutes of the meeting held on 23 January 2019.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **24 April 2019** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **26 April 2019**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Status Report on Complaints** (*Pages 9 - 12*)

To receive a report from the Monitoring Officer on the status of Code of Conduct complaints.

7 **Committee on Standards in Public Life** (*Pages 13 - 138*)

To receive an update from the Monitoring Officer on the report of the Committee on Standards in Public Life.

8 **Recommendations from the Constitution Focus Group** (*Pages 139 - 184*)

To receive a report on proposed changes to the Constitution recommended by the Constitution Focus Group.

9 **Review of Protocol 12 of the Constitution** (*Pages 185 - 188*)

To receive an update from the Monitoring Officer on the review of Protocol 12 of the Constitution

10 **Urgent Items**

Any other items which the Chairman agrees to consider as a matter of urgency.

**Part II**

*Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed*

## STANDARDS COMMITTEE

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### MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 23 JANUARY 2019 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

**Present:**

Cllr Derek Brown OBE, Cllr Allison Bucknell, Cllr Ernie Clark, Cllr Peter Evans, Cllr Peter Fuller, Cllr Howard Greenman (Vice-Chairman), Cllr Ruth Hopkinson, Cllr Bob Jones MBE, Cllr Paul Oatway QPM (Chairman), Cllr Fred Westmoreland, Cllr Stuart Wheeler, Mr Richard Baxter, Mr Philip Gill MBE and Mr Michael Lockhart

**Also Present:**

Miss Pam Turner and Cllr Christopher Newbury

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1 **Apologies for Absence**

Apologies were received from Pam Turner.

2 **Minutes**

The minutes of the meeting held on 26 September 2018 were presented for consideration and it was,

**Resolved:**

**To approve and sign as a true and correct record.**

3 **Declarations of Interest**

There were no declarations.

4 **Chairman's Announcements**

There were no announcements.

5 **Public Participation**

A statement was received under Minute 9 from Mr Francis Morland.

6 **Local Government and Social Care Ombudsman (LGSCO) Complaint - Update on action taken by the Council**

Claire Edgar, Director of Adult Social Care, Mental Health and Learning Disabilities, presented a report regarding actions undertaken by the Council following a report from the Local Government and Social Care Ombudsman

(LGSCO) in April 2018 which had found the Council at fault in a complaint regarding the provision of respite care and transport to a particular family. Cabinet had accepted the LGSCO's findings, recommendations and the actions to remedy the injustice set out in that report. At its meeting on 26 September 2018 the Standards Committee had received an initial update from Debbie Medlock, Interim Director of Adult Social Care, Mental Health and Learning Disabilities on how the Council was responding to the situation.

In accordance with the LGSCO's recommendations the Community Learning Disability Services teams had undertaken a review of the care and support needs of all service users potentially affected using the correct respite eligibility criteria. The Committee was informed that as a result 113 reviews had taken place, of which six received an increase in their allocation of respite, one a decrease, and the rest had remained at the same level. In response to queries it was stated that the changes in allocation were minor, by a few days additional or less respite offered, and so the total cost would be low.

Details were sought on the 'stop the clock' methodology that had been adopted to ensure practice is continually improved upon, and of the increased level of training and guidance to ensure responsibilities of the Council under relevant legislation were adhered to, as well as allowing for immediate reactions to urgent circumstances.

At the conclusion of discussion, it was,

**Resolved:**

**To note the further work undertaken by the Adult Social Care team in response to this matter.**

**7 Status Report on Code of Conduct Complaints**

Sukdave Ghuman, Public Law and Compliance Team Leader, presented the status report on Code of Conduct complaints. There had been 47 complaints received in the calendar year 2018, with a total of 8 referred for investigation, which was an increase on previous years. Details were provided of the number of cases opened and closed throughout the year, and of the types of complaints which had been received.

The Monitoring Officer, Ian Gibbons, added that owing to the number of investigations and because the complaints team was also responsible for handling corporate complaints, some investigations were needing to be undertaken by external providers, which had not been budgeted for. The Committee would be reported to if that trend continued, and the Chairman requested the level of pressure of the council's investigatory teams be noted.

The Committee discussed the report and presentation, seeking details of the cost of investigations, which could be several thousand pounds if done externally, and with considerable time pressures if done internally. The Committee also discussed the complaints process itself, noting it was robust

and extended compared to many other authorities, for example with many stages of review possible, and included valuable member involvement, but that some concerns had been raised as to the deadlines and timings of various stages of the process. It was requested that work be undertaken to look at each stage of the process to see that they were fit for purpose, and where delays occurred, and that the Constitution Focus Group review that information and make recommendations as appropriate.

It was also reported that the Committee for Standards in Public Life, to which the Council had submitted a response to a recent consultation, would be reporting its findings at the end of January 2019.

At the conclusion of discussion, it was,

**Resolved:**

**To note the status report on Code of Conduct complaints, and to request the Constitution Focus Group oversee a review of the procedures and make such recommendations as felt appropriate.**

**8 Code of Conduct Complaints Comparison Case Study**

Kieran Elliott, Senior Democratic Services Officer, presented a report detailing research and analysis of the level of code of conduct complaints received at other, similar local authorities, as requested by the Committee at its meeting on 26 September 2018.

It was explained that owing to the differing procedures, scale and reporting methods of the authorities direct comparison was not without difficulty, however a range of information had been obtained from that which was publicly available and which was sufficient to draw some preliminary conclusions.

The data indicated that the level of complaints within the Wiltshire Council area was not excessively high or low and that the ratio between unitary and parish councillor complaints was similar in many authorities. Most other authorities did not have as detailed a complaints procedure as Wiltshire with several stages of reviews of decision, and had different levels of emphasis on pre-screening of complaints and the focus on alternative resolution. As a result, many authorities had very few investigations, however there were still some which undertook more than in Wiltshire.

The Committee received the report, noting the conclusions that the Council was not out of keeping with other authorities, and thanked Mr Elliott for his work compiling the information.

At the conclusion of discussion, it was,

**Resolved:**

**To note the case study data and preliminary analysis set out in the report.**

## 9 **Recommendations of the Constitution Focus Group**

A report was presented by Kieran Elliott, Senior Democratic Services Officer, outlining recommendations from the Constitution Focus Group in relation to Protocol 1 (Member-Officer Relations) and Part 4 (Council Rules of Procedure). On the recommendation of the Standards Committee Full Council on 16 October 2018 had approved previous changes to both sections, noting that some additional proposed revisions would follow at a later date.

The proposal in relation to Protocol 1 was an appendix setting out in further practical detail the rights of access of members to confidential or exempt information, and how they could request access and demonstrate their need to know the specified information. The proposal in relation to Part 4 were amendments to the provisions relating to substitution on committees, in particular to clarify that it was the responsibility of the member who was to be substituted to arrange such a substitution, and inform the proper officer in writing. A guidance note had been prepared to assist the interpretation of the relevant proposed provisions within the constitution.

Mr Francis Morland made a statement in relation to the proposals, relating to statutory rules on proportionality on committees, and he considered that the proposed guidance was not compliant with those rules. The Monitoring Officer, Ian Gibbons, in reply stated that he did not accept this was the case and that the proportionality arrangements were abided by. During wider discussion with the Committee regarding the nature of the substitution arrangements generally, which were common in many authorities, it was stated that those common arrangements had not been subject to legal challenge and were regarded as reasonable procedures to adopt.

The Committee discussed the proposals from the Focus Group, and considered that the proposed changes and guidance note would be helpful additions to clarify the rights of members and procedural requirements respectively, and noted the inclusion of urgency provisions in the event a member, for an exception reason, was unable to inform the proper officer in writing.

Therefore, at the conclusion of discussion, it was,

### **Resolved:**

**To recommend that Council approve the changes to Protocol 1 and Part 4 of the Constitution as set out in the report.**

## 10 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.00 - 3.00 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114/713115



**Wiltshire Council**  
**Standards Committee**

**01 May 2019**

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## **Code of Conduct Complaints - Status Report**

### Statutory Background

1. All local authorities are required, by s.28 Localism Act 2011, to adopt a code of conduct for their members. All such codes are required to cover the following:
  - The principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
  - The registration and disclosure of pecuniary and other interests
2. Wiltshire Council, as a principal authority, is required to have in place arrangements for investigating and determining allegations that a member of the Council, or a member of a parish council within the council's area, has failed to comply with the relevant Code of Conduct.
3. These arrangements must include the appointment of at least one independent person, whose views must be taken into account before a decision is made on any alleged breach of a code of conduct.

### Council Structure and Procedures

4. Wiltshire Council's arrangements for considering complaints about alleged code of conduct breaches are set out in Protocol 12 to the Constitution. All complaints are subject to an initial assessment on behalf of the Monitoring Officer, having sought comments from the Subject Member (the councillor who is the subject of the complaint). This initial assessment may conclude that no further action should be taken; it may refer the complaint for investigation or it may recommend that an alternative resolution be explored with the parties.
5. Both parties (the Complainant and the Subject Member) have a right to a review of the initial assessment. This is considered by the Review Sub-Committee of the Standards Committee.
6. If it is determined that a formal investigation should be undertaken (either at the initial assessment stage or by the Review Sub-Committee), an investigating officer is appointed by the Monitoring Officer. If the investigating officer finds that there has been a breach of the Code of Conduct, and the Monitoring Officer on reviewing the investigation report concludes that alternative resolution is not appropriate, then a Standards Hearing Sub-Committee will be convened. This will conduct a hearing into the complaint to determine whether there has been a breach of the Code and, if so, what sanctions, if any, should be applied to the Subject Member. If the Subject Member is a member of a town or parish council, the Hearing Sub-Committee's decision regarding sanctions will be in the form of a recommendation to the relevant council.

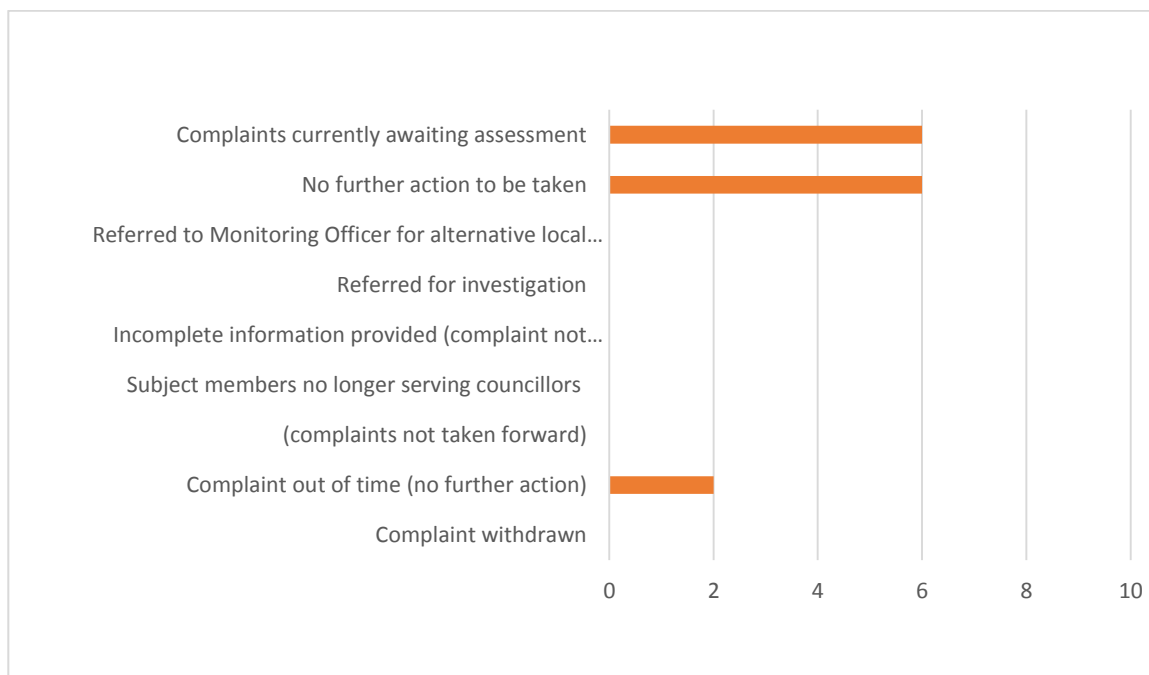
7. The full Standards Committee has oversight of the operation of the procedures for dealing with Code of Conduct complaints as well as a general responsibility to promote and maintain high standards of conduct by elected and co-opted members and officers.

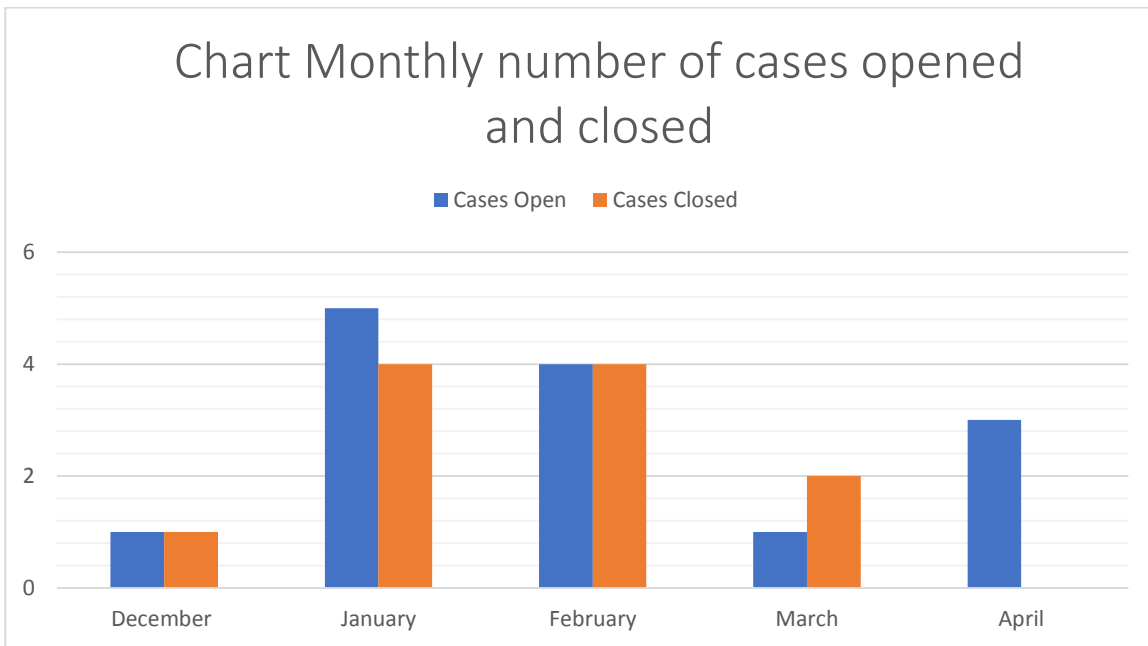
Summary of complaints received 1 December 2018 to 19 April 2019

8. Between 1 December 2018 and 19 April 2019, the Monitoring Officer received 14 complaints under the Code of Conduct. Of these complaints, 4 concerned members of Wiltshire Council, while the remainder of 10 were against members of town and parish councils within the authority's area.

9. Of the cases received, the current position is as follows:

Complaints currently awaiting assessment	6
No further action to be taken	6
Referred to Monitoring Officer for alternative local resolution	
Referred for investigation	
Incomplete information provided (complaint not taken forward)	
Subject members no longer serving councillors (complaints not taken forward)	
Complaint out of time (no further action)	2
Complaint withdrawn	





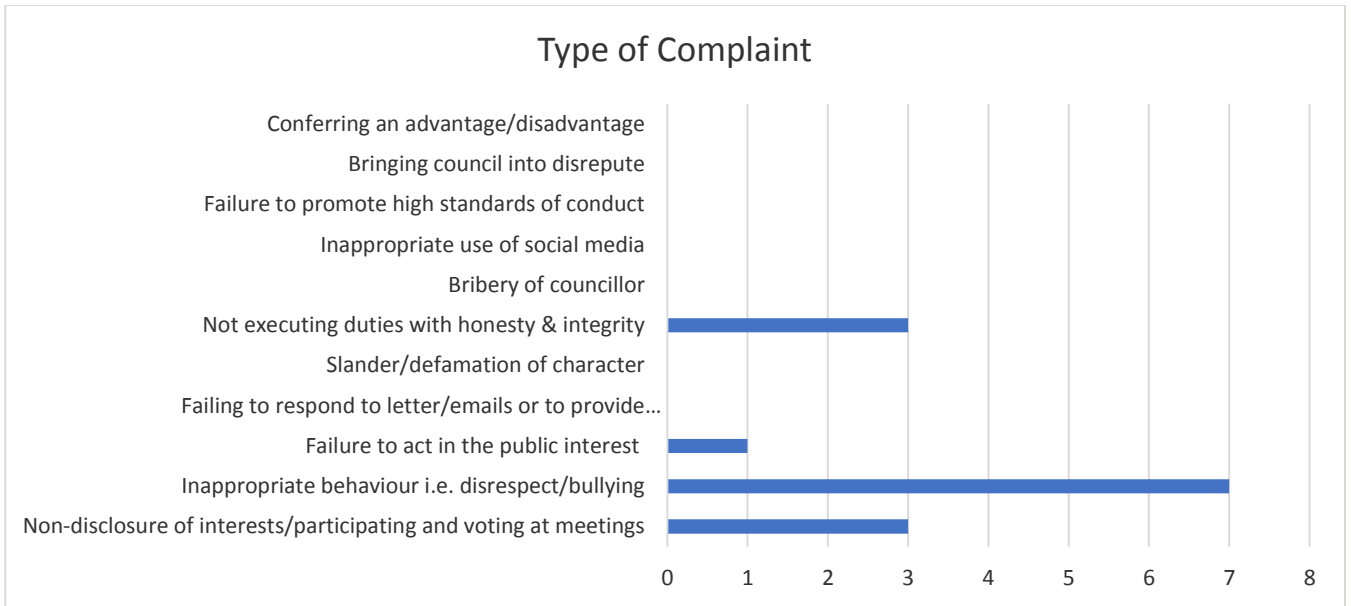
#### Investigations

10. Since the beginning of December 2018, no complaints have been referred for investigation on assessment.

#### Types of Complaint

11. Many of the complaints received make various allegations against the Subject Member concerned. However, for each complaint received, the main type of complaint can be categorised as follows:

Type of complaint	Number
Non-disclosure of interests/participating and voting at meetings	3
Inappropriate behaviour i.e. disrespect/bullying	7
Failure to act in the public interest	1
Failing to respond to letter/emails or to provide information/lack of communication	
Slander/defamation of character	
Not executing duties with honesty & integrity	3
Bribery of councillor	
Inappropriate use of social media	
Failure to promote high standards of conduct	
Bringing council into disrepute	
Conferring an advantage/disadvantage	
<b>Total</b>	<b>14</b>



## Proposal

12. To note the current position on Code of Conduct Complaints

**Ian Gibbons, Director of Legal and Democratic Services, and Monitoring Officer**

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Report Author: Sukdave Ghuman, Team Leader, Public Law and Compliance  
[Sukdave.ghuman@wiltshire.gov.uk](mailto:Sukdave.ghuman@wiltshire.gov.uk)

## Wiltshire Council

### Standards Committee

1 May 2019

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#### Update on the Committee on Standards in Public Life Report

##### Purpose of Report

1. To consider how the Standards Committee (“The Committee”) should respond to the findings and recommendations of the report of the Committee on Standards in Public Life

##### Background

2. The Localism Act 2011 introduced a new Standards Regime for local authorities. Full Council adopted new arrangements for resolving standards complaints against elected members in accordance with the Act on 26 June 2012, which came into effect on 1 July 2012. Among other changes, The Localism Act 2011 removed the sanction of suspending elected members for breaches of Codes of Conduct, and made involvement in a matter in which an elected member has a pecuniary interest a criminal offence.
  3. On 29 January 2018 The Committee on Standards in Public Life, which was established in 1994 to be responsible for promoting to Seven Principles of Public Life (Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership), undertook a review of Local Government Ethical Standards. It’s terms of reference were to:
    - i. *Examine the structures, processes and practices in local government in England for:*
      - a. *Maintaining codes of conduct for local councillors;*
      - b. *Investigating alleged breaches fairly and with due process;*
      - c. *Enforcing codes and imposing sanctions for misconduct;*
      - d. *Declaring interests and managing conflicts of interest;*
      - e. *Whistleblowing;*
  - 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.*
4. The consultation for that review took place from 29 January 2018 to 18 May 2018. At its meeting on 18 April 2018 the Committee discussed the consultation questions and delegated the preparation of a response on behalf of the Council to the Monitoring Officer after consultation with the Chairman of the Committee. Points requested to be included by the committee included that a single national Code of

Conduct would simplify the Standards process, that the level of sanctions available under the present regime were insufficient for ensuring high standards of conduct and the burdens placed on town and parish councils.

5. The minute extract of the Committee's discussion is included at **Appendix 1**. The response that was submitted as part of the consultation is included at **Appendix 2**. This was previously circulated to members of the Committee for information on 25 May 2018.
6. On 30 January 2019 the Committee on Standards in Public Life released its report into Local Government Ethical Standards and presented its findings to the Prime Minister. Its report is attached at **Appendix 3**.
7. On 12 March 2019 the Chairman and Vice-Chairman of the Committee met with the Monitoring Officer and the Council's Independent Persons to discuss the outcomes of the report.
8. As requested at the Committee meeting on 23 January 2019, the Constitution Focus Group is already undertaking a review of the Code of Conduct Complaints Procedure to improve the existing procedures.

### **Main Considerations**

9. The Committee on Standards in Public Life reached a number of conclusions. As taken from the executive summary of its report included:
  - i. The review concluded that the evidence gathered supported the view that the vast majority of elected members and officers maintain high standards of conduct. However, there was clear evidence of misconduct by some elected members, and that a majority of those cases related to bullying, harassment or other disruptive behaviour.
  - ii. There were concerns about a risk to standards as a result of existing rules on declaring interests, gifts and hospitality, and the increased complexity of local government decision-making. It was recommended the requirements for registration of interests should be updated to include categories of non-pecuniary interests. It was also recommended the rules on declaring and managing interests should be repealed and replaced with an objective test such as is used in Scotland, Wales and Northern Ireland. A gifts and hospitality register should be made mandatory.
  - iii. Whilst it concluded that the consistency and independence of the existing system could be enhanced, the review saw no reason to reintroduce a centralised body for standards, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.
  - iv. Variation in length, quality and clarity of Codes of Conduct creates confusion for elected members and the public, particularly where a member represents more than one elected body. It was recommended an updated model code of conduct be made available to local authorities to enhance the consistency and

quality of local authority codes, though it recommended this remain voluntary and adaptable to an extent.

- v. It was recommended the scope of Codes of Conduct be widened, including a rebuttable presumption that an elected member's public behaviour, including comments made on publicly accessible social media, is in their official capacity.
  - vi. It was recommended that all authorities be required to maintain a Standards Committee, and that independent members should be able to vote on such a committee.
  - vii. The role of the Independent Person should be strengthened, have fixed terms, and additional legal protections.
  - viii. It was considered that existing sanctions are insufficient, overly reliant on party discipline which lacks the necessary independence and transparency the system requires, and this was considered to damage public confidence in the standards system. Local authorities were felt to have no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct. It was therefore recommended local authorities be given the power to suspend elected members without allowances for up to six months. Those suspended would be able to appeal to the Local Government Ombudsman.
  - ix. The current criminal offences relating to disclosable pecuniary offences were felt to be disproportionate in principle and ineffective in practice, and were recommended to be abolished.
  - x. It was recognised that principal authorities being responsible for investigating breaches of town and parish councillor conduct could cause a disproportionate burden. It was recommended town and parish councils should be required to adopt the code of their principle authority (or the new model code) and that a decision from the principal authority should be binding.
  - xi. Increased commercial and partnership working by local authorities increased complexity and steps need to be taken to prevent and manage any potential conflicts of interests, for instance where an elected member sits on a separate governance body.
  - xii. Political groups should require their members to attend Code of Conduct training
10. The full list of recommendations is at pages 14-17 of the Committee on Standards in Public Life report. Some of the changes requested as a result of the review would require the introduction of primary legislation which would be subject to parliamentary timetabling. Others would require changes to secondary legislation and the Local Government Transparency Code, which the review stated could be implemented more quickly.
  11. Many of these changes, if agreed by central government, would take significant time before they come into effect. Alongside legislative changes, however, the review identified what it considered to be best practice recommendations, which it stated,

*'should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement'.*

12. The best practice recommendations are as listed below:

- i. Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.
- ii. 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.
- iii. 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.
- iv. 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.
- v. Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.
- vi. Councils should publish a clear and straightforward public interest test against which allegations are filtered.
- vii. Local authorities should have access to at least two Independent Persons.
- viii. 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.
- ix. Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.
- x. 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.



- xi. 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.
  - xii. 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.
  - xiii. 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.
  - xiv. 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.
  - xv. Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.
13. The Committee is therefore asked to consider the report of the Committee on Standards in Public Life, and in particular the best practice recommendations, to direct how the Council can improve its processes to uphold and maintain high standards of conduct.

### **Safeguarding Implications**

14. There are no safeguarding issues arising from this report.

### **Equalities Impact of the Proposal**

15. There are no equalities impacts arising from this report.

### **Risk Assessment**

16. There are no significant risks arising from this report

### **Financial Implications**

17. There are no financial implications arising from this report.

### **Legal Implications**

18. There are no legal implications arising from this report

### **Public Health Impact of the Proposals**

19. There are no public health impacts arising from this report.

## **Environmental Impact of the Proposals**

20. There are no environmental impacts arising from this report.

### **Proposal**

21. **For the Committee to make such recommendations as it feels appropriate to the report and recommendations of the Committee on Standards in Public Life, in particular regarding the best practice recommendations.**

### **Ian Gibbons, Director of Legal, Electoral and Registration Services (and Monitoring Officer)**

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Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504,  
[kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Unpublished reports relied upon in the preparation of this report: None

### **Appendices**

- Appendix 1 – Minute extract of the Standards Committee held on 18 April 2018.  
Appendix 2 – Response of Wiltshire Council to the consultation on Local Government Ethical Standards  
Appendix 3 – Report of the Committee on Standards in Public Life

### **Background Papers**

None

## **Minute Extract – Standards Committee 18 April 2018 – Minute 19**

A report from the Monitoring Officer was presented informing the Committee of a review of local government ethical standards being undertaken by the Committee on Standards in Public Life.

Details of the consultation were provided, including all the questions, which related to existing structures and procedures for ensuring high standards of conduct, any gaps in the current regime, whether existing sanctions were sufficient, arrangements regarding whistleblowing and other questions as detailed in the report.

As the consultation would close on 18 May 2018, it was requested the Committee discuss the questions and provide direction for the Monitoring Officer, in consultation with the Chairman, to prepare a response on behalf of the Council.

The Committee therefore considered the consultation, where points including but not limited to the following were raised.

With over 250 parishes in the Wiltshire Council area, and no ability to enforce compliance with obligations, it was difficult as a principal authority to ensure towns and parishes in particular were adopting codes and registering interests appropriately. A single national code would simplify the process and make compliance with and understanding of that code easier. An alternate approach would be an opt-out system whereby parishes under a principal authority were automatically subject to the Code of the principal authority, unless they specifically determined otherwise. This would allow flexibility where desired, without over burdening smaller parishes, and remove confusion where more than one code applied to a member on more than one council.

It was also raised that a gap in the regime was that Code of Conduct complaints were often the only avenue for people to register concern with a parish council, when the main problem was the conduct of that council as a whole, and its operation, rather than an individual's personal conduct.

Options for online or in person training to improve compliance was discussed, with currently no ability to demand certain training be undertaken in order to undertake specific responsibilities

It was also felt that the current level of sanctions was insufficient for ensuring high standards of conduct, as the Committee had concluded in previous reviews of its own Code.

It was felt that clarity could be provided on whether it was necessary to withdraw following a declaration of pecuniary interest, as currently this was left up to individual councils to decide. Additionally, government guidance stated a councillor with a pecuniary interest could not speak as a member of the public, but Wiltshire had taken the view that this was not the case, in particular as it would disadvantage a councillor versus a regular member of the public, and clarity should be provided on this. The Committee also felt it should be mandatory to declare any relevant interests at a meeting, irrespective of whether the interest was on a register of interest.

A report was requested on the council's whistleblowing policy for the next meeting.

In respect of a question on intimidation of local councillors, the Committee noted the opportunity for more intimidation on social media in particular, but that they did not have any specific data to respond to that section of the consultation. They did, however, consider that some measure of support should be provided to town, parish and Wiltshire councillors who were subjected to intimidation.

At the conclusion of discussion, and on the moving of Councillor Allison Bucknell and Councillor Fred Westmoreland, it was,

**Resolved:**

**To ask the Monitoring Officer after consultation with the Chairman of the Committee, to prepare a response to the consultation reflecting the Committee's views on behalf of the Council.**

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

### **Responses on behalf of Wiltshire Council**

1. Wiltshire Council welcomes the opportunity to contribute to the review of local government ethical standards, being undertaken by the Committee on Standards in Public Life. The consultation questions have been considered by the Council's Standards Committee and the responses set out below have been prepared by the Council's Monitoring Officer, taking into account the comments made by members of that Committee.
2. Wiltshire Council is a large unitary authority with 98 members. There are also 252 parish councils within the County, the majority representing rural areas with small populations. The Monitoring Officer for Wiltshire Council deals with all Code of Conduct complaints relating to these parish councils. Most of the issues that have arisen with the operation of the ethical standards regime in Wiltshire have involved parish councillors, rather than Unitary councillors.
3. In response to the specific questions posed by the Committee, the Council's comments are as follows. Some of the comments of necessity overlap between different questions:
  - 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.*
  - b. *What, if any, are the most significant gaps in the current ethical standards regime for local government?*
4. A significant concern that the Council has with the current regime is that it only deals with the ethical standards of individual councillors and does not address the problem of poor standards of decision-making and procedures that may exist within a parish council itself as a corporate body. The Monitoring Officer receives many complaints about the actions of parish councils as well as ones about the conduct of individual councillors. Many parish councils in Wiltshire struggle to attract and retain sufficient numbers of people with appropriate skills and experience to serve as parish councillors. At the May 2017 elections only 44 out of the 252 parish councils in Wiltshire had contested elections, the majority of those being the larger town councils. A number of parish councils continue to operate with one or more vacancies, as they have not been able to fill those vacancies by co-option. In addition, some parish clerks (particularly in the smaller parish councils) need more support

and training on governance matters and there is a problem of a high turnover of clerks in some parish councils.

5. There is currently no mechanism for members of the public to challenge poor practices by a parish council itself (other than by legal proceedings or, if relevant, referral to the appointed auditor). This can lead to attempts to frame such challenges as Code of Conduct complaints against individual members of the parish council, leading to frustration and wasted time by all concerned. Wiltshire Council recently had a case where separate Code of Conduct complaints were brought against all members of a parish council, in an attempt to challenge a decision taken by that council.
6. The Council has concerns about the effectiveness of sanctions under the current regime and this is addressed below.
  - 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?*
7. The Council considers that it would be preferable to have a single Code of Conduct that applied either nationally, or across a principal authority's area, rather than requiring each individual parish council to adopt its own Code. Whilst many parish councils in Wiltshire have adopted the Wiltshire Council Code of Conduct, a number have adopted their own Codes, which can cause confusion in interpretation, especially where the drafting of some of the provisions may not be particularly clear. In addition, there are some parish councils that have still not adopted a Code of Conduct and there is little that this Council can do, other than to remind them of their legal obligations. The Council feels that it may be worth considering having an 'opt out' system, whereby all parish councils are automatically covered by a standard Code of Conduct (with standard interpretation of terms), unless they positively determine to adopt a different one. A standard Code of Conduct would also assist councillors who sit on more than one parish council, or who are both parish and Unitary councillors.
8. Wiltshire Council conducts a comprehensive induction programme for new Unitary Councillors, immediately after election. However, it is not practicable to provide such induction to all parish councillors, given the number and geographic spread of parish councils in the county. The Council is looking at providing on-line training for parish councillors, however it would not be possible to ensure that all councillors undertook such training.

9. The Council has also prepared and adopted Guidance on the interpretation of the Wiltshire Council Code of Conduct, which is included in its constitution. However, that guidance does not apply to differently worded Codes that have been adopted by parish councils.

*d 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.*

10. The Council considers that these requirements are appropriate as they stand. However, as mentioned above, the Council feels that this duty could be strengthened by having a standard code applicable to all councils, which could avoid ambiguities and ensure that the seven Principles were addressed and applied to all councils consistently.

*e. Are allegations of councillor misconduct investigated and decided fairly and with due process?*

*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?*

11. The processes operated by Wiltshire Council for investigating Code of Conduct complaints are considered to be robust and few concerns have been raised about the operation of those processes by those who have participated in them. The Council's arrangements provide for an initial assessment of a complaint to be undertaken by a representative of the Monitoring Officer and there is a right for either the complainant or the Subject Member to ask for a review of that assessment. This is undertaken by a Sub-Committee of the Council's Standards Committee. Similarly, if, following an investigation of a complaint, the Monitoring Officer determines that no further action should be taken, the Complainant can ask for a review of that decision by the Review Sub-Committee. Whilst the inclusion of these reviews can increase the time taken to determine a complaint, it is felt that they provide useful safeguards for all parties.

*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?*

12. The Council considers that the involvement of an Independent Person in the complaints process is very helpful and provides a useful safeguard to all parties. The Council has adopted a procedure whereby, on receipt of a complaint, an IP is allocated to assist the

Subject Member, if requested, with another IP assisting the decision-maker. This has proved to be successful and appreciated by those involved during what can be quite a stressful process. Where a complaint is referred to a Review Sub-Committee for assessment, the IP that has been allocated to assist the decision-maker will attend the meeting of the Sub-Committee to present their views, together with the IP supporting the subject member if required.

*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?*

13. The arrangements operated by Wiltshire Council ensure, so far as is possible, that the Monitoring Officer is protected from conflicts of interest. The initial assessment of complaints is undertaken by the Deputy Monitoring Officer, or an experienced member of the Council's Legal Team. A different Legal officer will advise the Review Sub-Committee, if a review is requested. The Council also has experienced investigating officers in its Corporate Complaints Team. The Monitoring Officer himself would only usually become directly involved in a complaint on completion of an investigation and if that complaint then went to a hearing. It is accepted, however, that Councils with smaller legal teams may have more difficulty in maintaining these separations of functions during the complaints process.

#### *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?*

14. Wiltshire Council has had very few complaints that have been upheld following investigation and censure has been the sanction applied in those cases. There have been other cases where the complaint has not been upheld, but where, in its decision, the Council has made a recommendation of some other form of resolution, such as mediation (either formal or informal) or has suggested that training be provided to the councillors concerned, or to the parish council as a whole.



15. For most breaches of the Code, censure may well be a sufficient sanction. However, there is a perception amongst some complainants that it is inadequate and this has dissuaded them from pursuing a formal complaint. There have been a number of occasions where the Monitoring Officer's staff have been contacted by a person wanting to complain about the actions of a councillor. When the process has been explained to them, and they have been told that, if the complaint is upheld after investigation, the ultimate sanction would be likely to be a censure, they have taken the view that it is not worth the effort to make a formal complaint.

16. Where the complaint involves a breach of the Code which is also a criminal offence, such as participating in a discussion and vote on a matter in which the councillor has a disclosable pecuniary interest, the Council refers the matter to the police for investigation and it has a protocol with the local police for this. However, unless the offence is a serious one that can be proved to the criminal standard, the police tend not to pursue the complaint beyond an initial investigation. The Council feels, therefore, that there may be benefit in considering an intermediate form of sanction (between censure and criminal prosecution) for such cases e.g suspension. Suspension may also be warranted in other cases of serious misconduct.

*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.*

17. At the moment, the legislation does not require a councillor to declare an interest at a meeting, if it is included within their register of interests. The Council considers that this can cause confusion and that it would be preferable for all interests to be declared at the appropriate point in a meeting, irrespective of whether that interest has already been registered.

18. The Council considers that there needs to be clarity as to whether a councillor who has declared a disclosable pecuniary interest at a meeting can still participate in that meeting as a member of the public - for example, where the Council's procedures allow members of the

public to make representations on planning applications at the start of Planning Committee meetings. It is the Council's view that, whilst councillors should not be able to take advantage of their position as a councillor in relation to matters in which they have a pecuniary or other interest, they should not be placed in a worse position than other members of the public by virtue of their office of councillor. Having declared an interest and left the meeting, a councillor should, nevertheless, be able to effectively become a member of the public during consideration of the matter in question. This Council has reflected that position in its Standing Orders which provides that, 'where a member has declared a pecuniary interest in an item on an agenda, they must withdraw from the meeting in their capacity as a councillor for the duration of that item and not speak or vote on the item with the exception of exercising their right to speak as a member of the public.'

19. Finally, on this point, the Council considers that, where a councillor has declared a disclosable pecuniary interest ( and is not exercising any rights of the public as mentioned above) there should be a consistent position as to whether they are required to leave the meeting room during consideration of the item concerned. At the moment, this is a matter for individual councils to determine and again this can cause confusion where councillors serve on more than one council with differing requirements.

#### *Whistleblowing*

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

20. The Council has a whistleblowing policy which allows concerns to be raised in confidence in writing or via a dedicated telephone number. The details are then passed on to a designated senior officer who will contact the person who has raised the concerns and, if appropriate, refer the matter for investigation. The investigation is carried out by a specialist who reports to the Monitoring Officer and the relevant Corporate Director, who is responsible for taking any remedial action identified in the investigation report.

#### *Improving standards*

- i. What steps could **local authorities** take to improve local government ethical standards?*
- j. What steps could **central government** take to improve local government ethical standards?*

21. As stated above, Wiltshire Council is seeking to provide training to both parish councillors and clerks on ethical standard requirements, particularly in relation to the disclosure of interests and related issues. However, it is difficult to see how such training could be made compulsory and it would require considerable resources to try to ensure that all councillors and clerks received the training, given the numbers involved and the rate of turnover of both parish councillors and clerks.
22. Wiltshire Council considers that central government could seek to improve ethical standards in local government by amending the current legislation in the following ways, which have been mentioned above:
- a. Providing that all councils (either nationally or within the relevant county) are automatically subject to a standard code of conduct which can be applied and interpreted consistently across all councils;
  - b. Requiring councillors with a disclosable pecuniary interest to declare that interest at the meeting determining whether there is then a requirement to withdraw from the room during consideration of the matter, to ensure a consistency of approach;
  - c. Providing clarity within the legislation as to whether, having declared a pecuniary interest in a matter, a councillor still has the same opportunity as other members of the public to participate in the meeting;
  - d. Considering an alternative sanction to censure for breaches of the requirements regarding disclosable interests which do not merit the use of criminal procedures and for cases of serious misconduct.

*Intimidation of local councillors*

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

*i. What measures could be put in place to prevent and address this intimidation?*

23. The Council does not keep any specific data on incidents of intimidation towards local councillors. It is accepted, however, that the rise in the use of social media has increased the risk of such intimidation, particularly where councillors are involved in matters that are controversial within their locality.
24. Wiltshire Council would be pleased to provide additional information on any of these matters if it would assist the Committee.

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# Local Government Ethical Standards

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

**Committee on  
Standards in  
Public Life**







# Local Government Ethical Standards

Committee on Standards in Public Life

*Chair: Lord Evans of Weardale KCB DL*

January 2019







# The Seven Principles of Public Life

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

## **Selflessness**

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

## **Integrity**

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

## **Objectivity**

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

## **Accountability**

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

## **Openness**

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

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

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

Dear Prime Minister,

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

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

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

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

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

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

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

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



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

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

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

I commend the report to you.

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





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# Executive summary

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

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

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

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

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

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

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

## Codes of conduct

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



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

### **Declaring and managing interests**

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

### **Investigations and safeguards**

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

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

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

### **Sanctions**

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

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

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

## Town and parish councils

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

## Supporting officers

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

## Councils' corporate arrangements

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

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

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

## Leadership and culture

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

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

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





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

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

# List of recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government



Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government

Number	Recommendation	Responsible body
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman’s decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government



Number	Recommendation	Responsible body
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association

# List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

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

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

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.



**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

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

# Introduction

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

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

The terms of reference for our review were to:

**1. Examine the structures, processes and practices in local government in England for:**

- a. Maintaining codes of conduct for local councillors
- b. Investigating alleged breaches fairly and with due process
- c. Enforcing codes and imposing sanctions for misconduct
- d. Declaring interests and managing conflicts of interest
- e. Whistleblowing

**2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government**

**3. Make any recommendations for how they can be improved**

**4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation**

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





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

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

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

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

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

# Chapter 1: Overview of standards

## Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

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

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

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

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

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

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

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

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

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



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

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

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

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

### **The current system**

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

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

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

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

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

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

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



## Developments leading to the current framework for local government ethical standards

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

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

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

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

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

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

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





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

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

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

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

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

## Responsibility for standards

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

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

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

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

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

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

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

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





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

## Chapter 2: Codes of conduct and interests

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

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

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

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

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

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

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

### **Variation, consistency, and clarity**

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

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

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



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

**Monitoring Officer, North Hertfordshire District Council**

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

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

**Worcestershire County Council**

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.<sup>10</sup>

**Ashford Borough Council**

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

### **Model code of conduct**

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

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

**INLOGOV, University of Birmingham**

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)

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

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

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

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

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

**Recommendation 1: The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.**

### **Bullying and harassment**

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

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

<sup>12</sup> Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

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



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

### Example of a bullying provision

Extract from Newcastle City Council code of conduct<sup>14</sup>

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

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

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

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

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

### Broader standards failure arising from bullying

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

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

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

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

<sup>14</sup> Newcastle City Council Code of Conduct. Available at: [https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part\\_5\\_2a\\_-\\_members\\_code\\_of\\_conduct.pdf](https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf)

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

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

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

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities<sup>17</sup>

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

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





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

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

**Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.**

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

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

### **Intimidation of councillors**

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

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

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

### **Local Government Association**

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

<sup>18</sup> Equality Act 2010, section 26

<sup>19</sup> Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

<sup>20</sup> Written evidence 170 (Local Government Association)

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

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

**Association of Police and Crime Commissioners**

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

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

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

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

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

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

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

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

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





### Example of local authority policy on home addresses

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

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

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

**Recommendation 2: The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.**

### Scope of the code of conduct

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

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

### Lawyers in Local Government

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

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

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

<sup>24</sup> Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

<sup>25</sup> Written evidence 228 (Lawyers in Local Government)

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

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

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

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

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

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

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

### Public Service Ombudsman for Wales social media guidance

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

26 Ministerial Code, paras 7.13, 7.18

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

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



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

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

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

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

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

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

### Article 10: Rights to freedom of expression

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

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

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

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

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

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

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

**Recommendation 3: Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.**

### Purporting to act as a member or a representative

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

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

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

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



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

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

#### **Hoey Ainscough Associates**

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

**Recommendation 4: Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

### **Compliance with standards processes**

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

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

**Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.**

### **Writing codes of conduct**

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

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

<sup>32</sup> Written evidence 212 (Hoey Ainscough Associates)

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



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively<sup>34</sup>

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

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

**Jonathan Goolden,  
Wilkin Chapman LLP**

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

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

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

**Jonathan Goolden,  
Wilkin Chapman LLP**

**Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.**

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

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

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

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

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

36 Jonathan Goolden, Roundtable, 18 April 2018

37 Jonathan Goolden, Roundtable, 18 April 2018



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

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

### Example of a clear code of conduct

Extract from Plymouth City Council code of conduct<sup>38</sup>

#### *Disrepute*

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

#### *Misuse of position*

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

#### *Use of council resources*

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

#### *Advice of Monitoring Officer and Responsible Finance Officer*

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

#### *Giving reasons for decisions*

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

**Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.**

### Councillors' interests

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

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

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

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

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

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

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

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

### **The Disclosable Pecuniary Interests (DPI) arrangements**

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

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

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





## Registering interests

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

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

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

### Cornerstone Barristers

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

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

## Pecuniary interests

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

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

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

## Non-pecuniary interests

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

<sup>39</sup> Written evidence 281 (Cornerstone Barristers)

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

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

**Mid Sussex District Council**

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

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

**London Borough of Croydon**

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

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

40 Written evidence 50 (Mid Sussex District Council)  
 41 Written evidence 166 (London Borough of Croydon)  
 42 Written evidence 151 (Andrew Maughan, Camden Council)



**Recommendation 5: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**

### Gifts and hospitality

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

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

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

### Transparency International UK

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

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

**Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**

<sup>43</sup> Written evidence 315 (Transparency International UK)

<sup>44</sup> Available online at: [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0005/141773/ca-part-3-locals-ew.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf), 20

**Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.**

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

**Cabinet Office principles for accepting gifts or hospitality**

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

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

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

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

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

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

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



### Partner and family interests

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

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

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

### Declaring and managing interests

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

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

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

#### North Hertfordshire District Council

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.<sup>49</sup>

#### Ashford Borough Council

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

<sup>48</sup> Written evidence 22 (North Hertfordshire District Council)

<sup>49</sup> Written evidence 138 (Ashford Borough Council)



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

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

### Tests for actively managing interests in the devolved codes

#### Scotland

“Whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.”<sup>50</sup>

#### Wales

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

#### Northern Ireland

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

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

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

50 Scotland Code of Conduct for Councillors, para 5.3

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

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



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

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

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

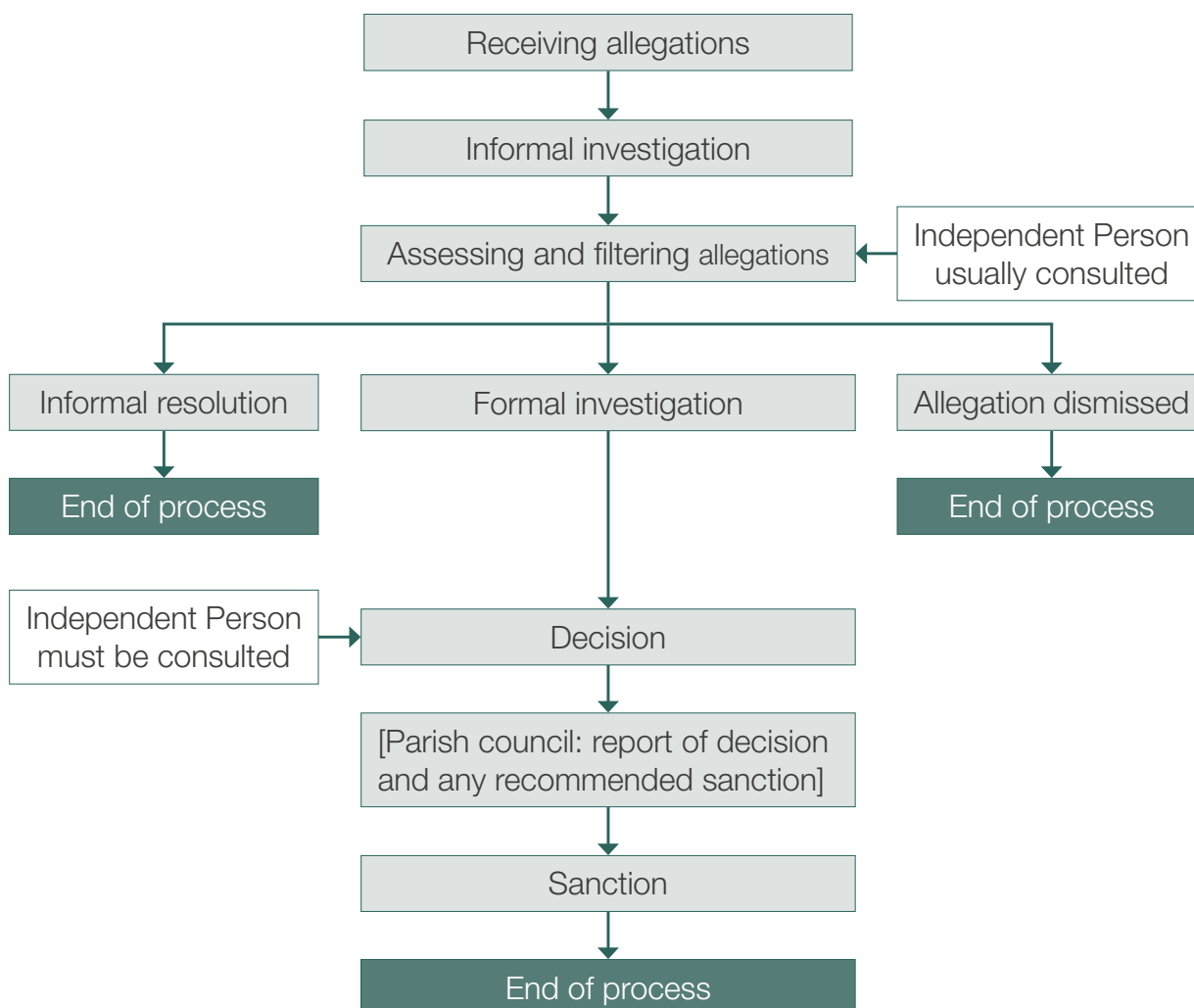
**Recommendation 7: Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in relation to that matter”.**

# Chapter 3: Investigations and safeguards

## Investigations

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

### The current investigation process







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

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

### Filtering complaints

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

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

### Northern Ireland Local Government Commissioner for Standards public interest test

#### 1 'CAN' we investigate your complaint?

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

#### 2 'SHOULD' we investigate your complaint?

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

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

### Safeguards

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

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

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

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

### Independent Persons

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

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

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

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

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

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

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

55 Written evidence 209 (Richard Stow)



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

### London Borough of Sutton

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

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

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

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

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

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

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

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

<sup>56</sup> Written evidence 311 (London Borough of Sutton)

**Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.**

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

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

**Dr Peter Bebbington,  
Independent Person**

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

**Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.**

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

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

**Hoey Ainscough Associates**

**Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.**

<sup>57</sup> Dr Peter Bebbington, Roundtable, 18 April 2018

<sup>58</sup> Written evidence 212 (Hoey Ainscough Associates)



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

**Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.**

We have noted recent First Tier Tribunal cases<sup>59</sup> which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

**Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.**

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

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



## Strengthening and clarifying the role of the Independent Person

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

### Standards committees

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

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

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

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

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

<sup>60</sup> Localism Act 2011, sections 27(4) and 28(8)



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

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

#### **Wychavon Borough Council**

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

**Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.**

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

#### **Appeals and escalation**

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

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

<sup>61</sup> Written evidence 211 (Peter Purnell)

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

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

### Lawyers in Local Government

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

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

### London Borough of Sutton

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

### Common issues with local authority standards processes considered by the Local Government Ombudsman<sup>65</sup>

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

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

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

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

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





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

### **Local Government Ombudsman**

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

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

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

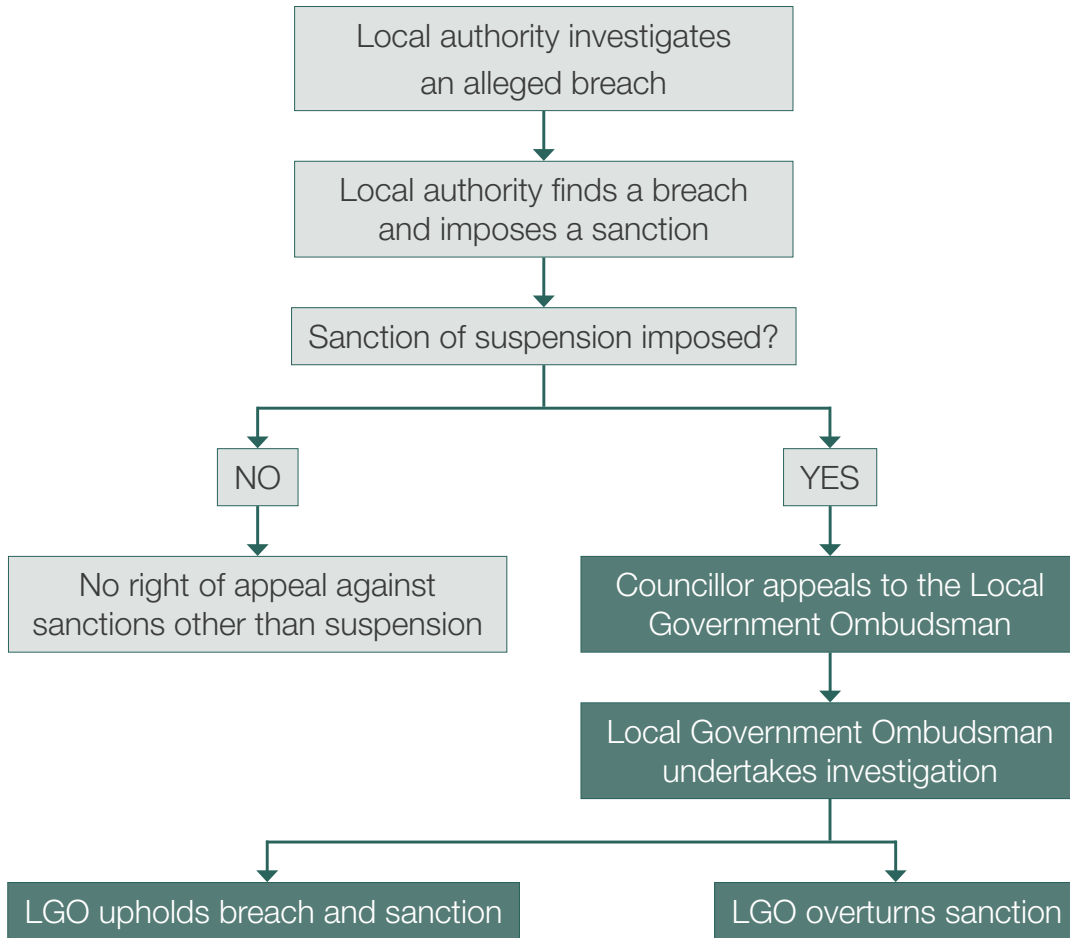
a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman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

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

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

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

### Proposed appeals process





**Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.**

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

**Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**

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

### Promoting openness and transparency

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

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

**Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.**

**Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.**

**Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.**

## **Avoiding legalisation**

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

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

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



## Chapter 4: Sanctions

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

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

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

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

### The purpose of sanctions

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

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

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

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

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

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

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

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

### **The current sanctions arrangements**

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

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

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





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

### **Tonbridge and Malling Borough Council**

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

### **Taunton Deane Borough Council**

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

### **Hoey Ainscough Associates**

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

### **David Prince CBE**

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

### **Party group discipline**

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

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)

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

**Hoey Ainscough Associates**

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

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

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

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

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

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

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

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

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **The sanction of the ‘ballot box’**

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

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

**Sandwell Metropolitan Borough  
Council**

<sup>77</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

<sup>78</sup> Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

<sup>79</sup> Written evidence 239 (Sandwell Metropolitan Borough Council)



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

### **Wycombe District Council**

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

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

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

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

### **Cllr David Gaye**

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

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

### **Cornwall Council**

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

80 Written evidence 186 (Wycombe District Council)

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

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)

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

### Sanctions in the devolved standards bodies

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

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

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

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

### Stronger sanctions

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

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

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

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

<sup>84</sup> Written evidence 106 (Standards Commission for Scotland)

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

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



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

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

### **Giving legal certainty to councils**

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

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

**Recommendation 17: The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.**

### **Criminal offences in the Localism Act 2011**

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

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

**Taunton Deane Borough Council**

87 Written evidence 131 (Taunton Deane Borough Council)



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

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

### Disqualification of councillors

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

### Current law on the disqualification of councillors

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

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

They are also disqualified if they:

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

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



# Chapter 5:

## Town and parish councils

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

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

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

### Autonomy and accountability of parish and town councils

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

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

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

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

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

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

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

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

**Cornwall Association of Local Councils**

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

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

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

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

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

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





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

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

### Misconduct in parish councils

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

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

**Hoey Ainscough Associates**

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

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

**Society of Local Council Clerks**

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

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

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

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)

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

**Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.**

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

**Society of Local Council Clerks**

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

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

**Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.**

### **Investigations and sanctions in town and parish councils**

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

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

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

93 Written evidence 197 (Society of Local Council Clerks)



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

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

#### **Cornwall Council**

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

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

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

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

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

**Recommendation 20: Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.**

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

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

#### **Wychavon Borough Council**

<sup>94</sup> Written evidence 206 (Cornwall Association of Local Councils)

<sup>95</sup> Written evidence 147 (Cornwall Council)

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

<sup>97</sup> Written evidence 78 (Wychavon Borough Council)

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

**Recommendation 21: Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.**

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

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

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

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

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

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313\_99\_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



# Chapter 6: Supporting officers

## Role of the Monitoring Officer

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

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

**Max Caller CBE**

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

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

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

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

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

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

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

<sup>101</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>102</sup> For example, in sections 59, 60, 66 of the Local Government Act 2000

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

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

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

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



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

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

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

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

### Lawyers in Local Government

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

**Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.**

<sup>105</sup> Written evidence 228 (Lawyers in Local Government)



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

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

### Standing of statutory officers

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

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

### Lawyers in Local Government

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

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

**Recommendation 22: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.**

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

<sup>107</sup> Written evidence 228 (Lawyers in Local Government)

## Training of officers

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

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

**Max Caller CBE**

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

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

**Dame Stella Manzie DBE**

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

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

## Whistleblowing

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

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

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

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

**Protect**

<sup>108</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>109</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

<sup>110</sup> Written evidence 305 (Protect)





**Recommendation 23: The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.**

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

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

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

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

### **Protect**

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

<sup>111</sup> Written evidence 305 (Protect)

# Chapter 7:

## Councils' corporate arrangements

### A more complex environment

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

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

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

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

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

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

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

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



## Resulting governance challenges

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

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

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

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

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

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

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

## Responding to the new governance challenges

### Setting up separate bodies

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

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

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

<sup>113</sup> Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

<sup>114</sup> “What next for care and health?”, *Municipal Journal*, 22 February 2018, 16

<sup>115</sup> Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

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

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

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

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

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

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

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

**Potential advantages of council nominees as board directors or trustees**

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

<sup>116</sup> Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)



### Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected<sup>117</sup>

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

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

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

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

117 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

118 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

119 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

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



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

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

**Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.**

### Local Enterprise Partnerships (LEPs)

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

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

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

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

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

<sup>121</sup> Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

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

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



strategies and decision-making, without impacting on good governance".<sup>124</sup>

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

### Ethical standards and corporate failure

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

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

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

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

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

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

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

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

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

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

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

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

### **Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)<sup>127</sup>**

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

**Dame Stella Manzie DBE**

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

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690731/Best\\_Value\\_Inspection\\_NCC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf)

<sup>130</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

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

**Max Caller CBE**

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

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

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



# Chapter 8: Leadership and culture

## Leadership

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

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

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

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.<sup>132</sup>

**Dame Stella Manzie DBE**

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

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

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

<sup>132</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

## Turning around a culture

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

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

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

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

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

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

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

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

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

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

**Dame Stella Manzie DBE**

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

<sup>133</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>134</sup> Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

<sup>135</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



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

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

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

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

### The role of political groups

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

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

**Dame Stella Manzie DBE**

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

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

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

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

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

<sup>136</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>137</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



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

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

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

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

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

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

### **Building an ethical culture**

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

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

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

<sup>138</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



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

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

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

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

**Recommendation 25: Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.**

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

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

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

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

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

<sup>139</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



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

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

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

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

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

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

**Darryl Chamberlain, editor, 853 blog**

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

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

<sup>141</sup> Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

<sup>142</sup> Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



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

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

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

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

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

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

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

<sup>143</sup> Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

<sup>144</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

# Conclusion

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

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

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

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

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

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



# Appendix 1: About the Committee on Standards in Public Life

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

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

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

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

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

## Membership of the Committee, as of January 2019

Lord (Jonathan) Evans of Weardale KCB DL,  
Chair

The Rt Hon Dame Margaret Beckett DBE MP  
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah  
(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

## Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.

# Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
  - research on the legal framework for local government standards
  - analysis of a sample of 20 principal authority codes of conduct
  - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

## Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

\* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting

## Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

### Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council





## Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government

## Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

\*Follow-up telephone conversation



**Committee on Standards in Public Life**

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January 2019

## Wiltshire Council

### Standards Committee

1 May 2019

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### Recommendations of the Constitution Focus Group

#### Purpose of Report

1. This report asks the Standards Committee to consider recommendations of the Constitution Focus Group in relation to the following:
  - Part 10 of the Constitution: Contract and Procurement Regulations
  - Protocol 8 of the Constitution: Partnership Protocol
  - Protocol 10 of the Constitution: Code of Corporate Governance

#### Background

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist in carrying out this function.
3. The Focus Group met on 10 April 2019 to review sections of the constitution, including those as detailed in paragraph 1.
4. The relevant minutes extract of the Focus Group meeting listed in paragraph 3 can be found at **Appendix 1**.

#### Main Considerations

##### Part 10 of the Constitution

5. The contract and procurement regulations were last reviewed and updated at Full Council on 12 July 2016. This had involved the transfer of more of the technical information into online manuals for council officers as it was considered an unnecessary level of detail for a high level constitutional document, whilst retaining the underlying core principles and rules.
6. The Focus Group was provided with an updated version of the contract and procurement regulations, which sought to further simplify and clarify the processes to be followed, correcting out of date information, and setting out more clearly the responsibilities of certain roles and the working practices that should be followed. For example, clarifying the role of the Head of Strategic Procurement in place of the former Procurement Board.
7. The Focus Group considered the changes proposed to be appropriate and necessary, and also requested additional clarifications if necessary in respect of the processes in relation to extraordinary contract exemptions.
8. A table setting out details of the changes and the revised version of the document is included at **Appendix 2**. The existing protocol is included at **Appendix 3**.

## Protocol 8: Partnership Protocol

9. Protocol 8 of the Constitution has not been revised since 2010. In that time the economic context in which the Council operates has changed significantly, as has the partnership landscape. The Focus Group was advised and agreed that the existing protocol was no longer fit for purpose, in part because it sits outside and at odds with the present commercial policy and approach. A wider partnership working framework was felt to be appropriate, and that this sit outside of the Constitution. The partnership working framework would be for adoption by Cabinet.
10. On 22 May 2018 the terms of reference for the Audit Committee were approved by Full Council, to include reviewing the arrangements for governance of partnership working. Therefore, the Audit Committee on 17 April 2019 considered **and recommended Cabinet to adopt** a proposed partnership working framework. The papers for that meeting are available at [this link](#).

The Standards Committee is therefore asked to note the Audit Committee's recommendation to Cabinet regarding adoption of the partnership working framework and, accordingly, recommend Full Council to approve the removal of Protocol 8 from the Constitution.

## Protocol 10: Code of Corporate Governance

11. Protocol 10 forms part of the overarching assurance framework of the Council, and has not been reviewed since 2010. As part of its work in relation to the Annual Governance Statement of the Council, the Audit Committee considered at its meeting on 17 April 2010 an updated version of Protocol 10.
12. The revised protocol reflects updated CIPFA<sup>1</sup> guidance regarding the following principles:
  - Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law
  - Ensuring openness and comprehensive stakeholder engagement
  - Defining outcomes in terms of sustainable, economic, social and environmental benefits
  - Determining the interventions necessary to optimize the achievement of the intended outcomes
  - Developing the Council's capacity, including the capability of its leadership and the individuals within it
  - Managing risks and performance through robust internal control and strong public financial management
  - Implementing good practices in transparency, reporting and audit, to deliver accountability
13. The Audit Committee recommended adoption of the proposed new Code of Corporate Governance by Cabinet and adoption by full Council as part of the Constitution in place of the current protocol. . The papers for that meeting are available at [this link](#). The Standards Committee is asked to note the recommendation of Audit as part of its regular report on Constitutional changes to Full Council.

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<sup>1</sup> Chartered Institute of Public Finance and Accountancy

### **Safeguarding Implications**

14. There are no safeguarding issues arising from this report.

### **Equalities Impact of the Proposal**

15. There are no equalities impacts arising from this report.

### **Risk assessment**

Implementation of these changes will strengthen the Council's corporate governance, including its risk management arrangements.

### **Financial Implications**

16. There are no financial implications arising from this report.

### **Legal Implications**

17. The recommendations in this report are consistent with the council's duties under relevant legislation.

### **Public Health Impact of the Proposals**

18. There are no public health impacts arising from this report.

### **Environmental Impact of the Proposals**

19. There are no environmental impacts arising from this report.

### **Proposal**

20. **To note the Audit Committee's recommendation to Cabinet regarding adoption of the partnership working framework and, accordingly, recommend Full Council to approve the removal of Protocol 8 from the Constitution**
21. **To note the Audit Committee's recommendation to Cabinet to adopt the revised Code of Corporate Governance and, accordingly, recommend Full Council to approve the revised version to replace Protocol 10 to the Constitution.**

**Ian Gibbons, Director, Legal, Electoral and Registration Services (and Monitoring Officer)**

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Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504,  
[kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

### **Background Papers**

[17 April 2019 Audit Committee](#)

### **Appendices**

Appendix 1 - Minutes extract of the Constitution Focus Group, 10 April 2019

Appendix 2 - Schedule of Changes and Revised Part 10

Appendix 3 - Existing Part 10



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**MINUTES EXTRACT OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 10 APRIL 2019 AT SALISBURY ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.**

18 **Part 10: Procurement and Contract Regulations**

The Focus Group received details of proposed changes to Part 10 of the Constitution, correcting out of date information and seeking to simplify and clarify the processes for procurement within the Council alongside work to improve the existing procurement manual for officers.

Details were sought on the level of responsibility the wording placed on the Head of Procurement rather than the defunct Procurement Board, how procurement and other risks were being identified, reported and actioned between the procurement team and the services and the existing rules in relation to extraordinary exemptions. In particular it was requested that additional drafting be considered if necessary to ensure processes in relation to extraordinary exemption were sufficient.

**Resolved:**

**Taking account of the comments made at the meeting, that the Standards Committee recommend Council approve the proposed changes.**

19 **Protocol Updates**

The Focus Group noted that the Audit Committee would be considering proposals in relation to partnership working and corporate governance, which would replace Protocol 8 and update Protocol 10 respectively.

**Resolved:**

**Subject to the decision of the Audit Committee, that the Standards Committee recommend Council remove Protocol 8 of the Constitution and update the number of other protocols accordingly, and approve the changes to Protocol 10.**

20 **Urgent Items**

There were no urgent items.

(Duration of meeting: 12.30 - 2.15 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic & Members' Services, direct line 01225 718504, e-mail [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

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**Amendments to PROCUREMENT AND CONTRACT RULES**

Original Clause	Original Wording	New Wording	Reasoning
<b>Procurement and Contract Rules</b>			
<b>1</b>	<b>Introduction</b> 1.1 to 1.5 retained as is		
	<p>1.6 Concession Contracts</p> <p>1.6.1 For public works concession contracts, subsidised works and subsidised service contracts connected to subsidised works (i.e. contracts under which the contractor is given the right to exploit the works) the council will be obliged to ensure that the concessionaire complies with relevant EU Regulations. Further advice is given in the Procurement Manual and a senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy</p> <p>1.7 Utilities</p> <p>1.7.1 Procurement of utilities is covered by The Utilities Contract Regulations 2006. This includes postal services but excludes telecommunications. For further information on scope of the Utilities Contract Regulations 2006 please refer to the Procurement Manual. A senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy</p>	<b>Deleted</b>	<p>Current wording is out of date and we have already referred to English and European Law so don't believe we should specifically refer to these particularly as they change.</p> <p>Agreed by Legal</p>
	1.8 A list of the definitions used in these Rules is given at Appendix 1 attached to this Section A.	<b>Retained but updated removing definitions that are no longer applicable and adding new as required</b>	
<b>2.</b>	<b>Objects</b>	<b>Remains as is</b>	
<b>3.</b>	<b>Principles</b>		
	3.1 All Procurements must comply with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules, English law and European law in force in England. All procurements must remain, within budget both in year and the Medium Term Financial Plan assumptions unless approved in line with the Financial Regulations.	<p>3.1 It is the responsibility of the Corporate Directors Service Directors to ensure that the purchase of goods, services and works comply with:</p> <ul style="list-style-type: none"> <li>a) English Law</li> <li>b) The Public Contracts Regulations (Utilities Contract Regulations and Concessions Contract Regulations) that are currently enforced</li> <li>c) The Council's Constitution including these Procurement and Contract Rules, Financial Regulations and Financial Procedure Rules</li> <li>d) The Procurement Manual</li> <li>e) Compliance with the Councils decision making process</li> </ul>	<p>Changed for clarity</p> <p>Agreed by Legal</p>

	3.2 to 3.4 retained as is		
	3.5 When any employee of either the council or of a service provider may be affected by any transfer arrangement under a Procurement or re-Procurement, issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) must be considered and the Wiltshire Pension Fund must be consulted at the planning stage of the Procurement. Recognised trades union consultation must be carried out in compliance with the Externalisation, Procurement and the Workforce Agreement published on the Intranet (or any document which replaces or supplements that agreement). See further the Procurement Manual.	<b>Deleted</b>	Danger of going into specific details in constitution is TUPE more important than environment or health and safety, best dealt with in Procurement Manual?  Agreed by Legal
	3.7 Each Associate Director shall: 3.7.1 to 3.7.4 wording remains as is	Re numbered to 3.6 Each Director shall: Renumbered 3.7.1 to 3.7.4 to 3.6.1 to 3.6.4	Associate Director no longer a position
	3.7.6 through to 3.9 remain as is (but renumbered)	<b>Renumbered 3.6.3 to 3.8</b>	
	3.10 Key Performance Indicators will be used to monitor the operation of these Rules in accordance with the Procurement Manual. Results will be reported to Corporate Directors and Associate Directors regularly.	<b>Delete</b>	These are currently not undertaken and better dealt with in the Procurement Manual  Agreed by Legal
	3.11 Remains as is	<b>But renumbered 3.9</b>	
	3.12 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. The rules on State Aid are set out in the Procurement Manual.	3.10 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. <b>The rules on State Aid are set out in the Procurement Manual. Delete Red</b>  <b>Renumbered</b>	I think for complicated areas like state aid or TUPE clients should be engaging with procurement and legal rather than reading a guide and trying to do it themselves  Agreed by Legal
	<b>APPENDIX 1</b>	<b>Retained but updated deleting</b>	
<b>B</b>	<b>PROCUREMENT PROCEDURE</b>		
<b>4</b>	<b>Planning each Procurement</b>		
	4.1 Remains as is		
	4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of such Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.	Wording remains	Much more clarity how this will be achieved is required in the Procurement Manual
	4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Associate Director will be responsible for the Procurement Plan for his or her service area.	4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each <b>Associate</b> Director will be responsible for the Procurement Plan for his or her service area.  <b>Delete Associate</b>	The corporate benefit for procurements will come out of Category Strategies that may then required Council or County wide procurements.
	4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. They must also agree with Accountancy, before a Procurement Plan is submitted, that the council has the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of	4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. <b>They must also agree with Accountancy, before a Procurement Plan is submitted, that the council has</b>	The procurement plan is an overall plan of what is likely to be procured, this clause then starts talking about individual plans, these are Sourcing Plans which are dealt with in the Procurement

	contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract	<p>the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract</p> <p>Delete red wording</p>	Manual and will require confirmation by accountancy that budget is in place for each procurement before it commences.
5	<p><b>Corporate Corporate Procurement and Commissioning Board governance and approval of Tender Level Procurements</b></p> <p>5.1 The Corporate Procurement and Commissioning Board will regularly review procurement and commissioning governance and recommend changes which enhance performance and added value activities.</p> <p>5.2 The general powers of the Corporate Procurement and Commissioning Board are:</p> <p>5.2.1 To scrutinise and challenge planned Tender Level and outcomes/outputs of the procurement;</p> <p>5.2.2 To consider and recommend Tender Level Procurement spend at the assessment phase;</p> <p>5.2.3 To monitor the value added by the check and challenge system.</p> <p>5.3 The reporting relationships between service areas, the Corporate Procurement and Commissioning Board, the Strategic Procurement Hub, Accountancy and Legal Services are set out in the Procurement Manual.</p> <p>5.4 Every Potential Tender Level Procurement will be subject to an independent Value assessment carried out in accordance with these Rules and the Procurement Manual, unless exempted from this process by the Corporate Procurement and Commissioning Board.</p> <p>5.5 Each assessment report will be led by an Officer of the Strategic Procurement Hub. The Officer will work in collaboration with the relevant Commissioning Officer(s), including Legal and Accountancy, during the assessment and throughout the Procurement.</p> <p>5.6 The Corporate Procurement and Commissioning Board will consider each assessment in order to check, challenge and approve Tender level procurements. Approval will be required from the Corporate Procurement and Commissioning Board before Tender Level Procurements can progress.</p> <p>5.7 All procurement related Cabinet Reports must be approved by the Corporate Procurement and Commissioning Board prior to submission.</p>	<p>Delete and replace with below</p> <p><b>5. Responsibilities of the Head of Procurement</b></p> <p>5.1 To ensure procurement process is followed and that Sourcing Plans and Regulation 84 Reports are prepared and approved in accordance with the Rules</p> <p>5.2 Regularly review procurement governance, considering any relevant audit reports, changes in external regulations, laws, views from legal and accountancy teams and Council Strategy.</p> <p>5.3 To ensure all procurement related Cabinet Reports are reviewed by the Head of Procurement and approved by the Director for Finance and Procurement prior to submission to the Cabinet</p>	The Board does not currently meet, the role of the Head of Procurement should ensure governance is in place working with Legal, Finance and Audit
6.	<b>Procurement Procedure</b>		
	6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the Procurement Manual.	6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the flow charts in	We have simplified the Procurement Manual and added flowcharts to make processes clearer

		the Procurement Manual. Red writing added	
	6.2 remains as is		
	6.3 A Request for Quotes (RfQ) procedure may be used for spend below the threshold defined for supplies and services in the EU Regulations for advertising contracts in the Official Journal of the European Union. Strategic Procurement Hub Officers may consider that an RfQ is not the best route to manage procurements below that threshold and may, for example, recommend a tender or use of a Public Buying Organisation framework where it is appropriate to do so. For procurements above EU Regulation thresholds as detailed in the Procurement Manual, a compliant procedure must be followed.	<b>Deleted</b>	Suggest deleted as this sort of detail should be in Procurement Manual  Agreed by Legal
<b>7.</b>	<b>Form of Contract and Tender Documentation</b>		
	7.1 to 7.3 Remain as is		
<b>8.</b>	<b>Receiving and Opening Tenders</b>		
	8.1 All tenders must be received and opened in accordance with the council's "Tender Receiving and Opening Procedures" These can be found in the Procurement Manual.	8.1 All tenders must be received and opened in accordance with the council's <del>"Tender Receiving and Opening Procedures"</del> These can be found in the details set out in the Procurement Manual.	The majority of tenders will be received by the electronic portal
<b>9.</b>	<b>Awarding Contracts and Audit Trails</b>		
	9.1 to 9.3 remain as is		
	9.4 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to Associate Directors (and their nominees) in accordance with the Scheme of Delegation.	9.4 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to <del>Associate</del> Directors (and their nominees) in accordance with the Scheme of Delegation.	Directors Schemes of Delegation may now refer to the Delegated Authorities Matrix
	9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation)  9.5.1 Solicitor to the Council for all contracts or, 9.5.2 Associate Director for Corporate Office, Programme Office and Procurement	9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation)  9.5.1 Solicitor to the Council for all contracts or, 9.5.2 The Director of Finance and Procurement  <del>9.5.2 Associate Director for Corporate Office, Programme Office and Procurement</del>	Signing is currently carried out by SPH this is not reflected here so changed
	9.6 Cabinet approval must be obtained for any contract (or programme) which:  9.6.1 Involves a key decision under this Constitution (see Part 1 paragraph 9);	9.6 Cabinet approval must be obtained for any contract (or programme) which:  9.6.1 Involves a key decision under	Out of date reference removed and updated



		this Constitution <del>(see Part 1 paragraph 9);</del> (see Part 1 paragraph 4.2.7)	
	9.6.2 to 9.7 remain as is		
<b>10</b>	<b>Contracts to be executed under Seal</b> Whole section remains as is		
<b>C</b>	<b>CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION</b>		
<b>11</b>	<b>General</b>		
	11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, vendor accreditation and registration processes set out in the Procurement Manual.	11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, <del>vendor accreditation and registration processes</del> set out in the Procurement Manual.	Vendor accreditation and registration more linked to SRM outside of manual?
<b>12.</b>	<b>Extensions to Contracts or Framework Agreements</b>		
	12.1 to 12.5 remain as is		
	12.6 Where the value of an extension exceeds £100,000.01 written approval must be obtained following consideration of a written report. The report should be addressed to the Head of Strategic Procurement and will be considered by the following officers as well as the Cabinet Member for Procurement:  12.6.1 Corporate Director 12.6.2 Head of Strategic Procurement (or nominee); 12.6.3 Head of Legal Services (or nominee); 12.6.4 Section 151 Officer.	<b>Deleted</b>	Where an extension is allowed for within the contract the total value including extensions should have already been approved, if the contract does not allow for an extension then for contracts over EU Threshold this becomes an Extraordinary Exemption
	12.7 remains as is		
	12.8 New Clause	12.8 Where an extension does is not allowed under the existing contract then the request to extend will need to follow the extraordinary exemption route.	To ensure we are clear that extensions outside of what the contract allows are non-compliant
<b>13</b>	<b>Variations to Contracts</b>		
	13.1, 13.3 and 13.4 remain as is		
	13.2 All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5. Nil value variations may be signed by the Senior Category Manager.	All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5. <del>Nil value variations may be signed by the Senior Category Manager.</del> Red wording Deleted	The Head of Finance and Procurements Scheme of Delegation covers these specifics and they do not need to be in the constitution
<b>14</b>	<b>Exceptions to these rules</b>		
	Whole section remains as is 14.1 to 14.3.2		
	14.3.3 Collaborative/Joint Purchasing – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Crown	14.3.3 Collaborative/Joint Purchasing – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable	This is a route to market that is acceptable under PCR 2015 so not required to be an exemption, will be identified in Sourcing Plan

	Commercial Services or successor contracts, etc.	legislation including, where relevant, the EU Procurement Directives. <del>This includes any recognised wider public sector agreements including, for example, Crown Commercial Services or successor contracts, etc.</del> Red section deleted	
<b>Extraordinary Exemptions (this whole section is remodelled)</b>			
	<p>14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an “Extraordinary Exemption”.</p> <p>14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.</p> <p>Procedure for Exemptions and Extraordinary Exemptions</p> <p>14.6 Exemption requests made for one of the reasons under rule 14.3 must be submitted to a Business Partner in the Strategic Procurement Hub. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.</p> <p>14.7 An Exemption will be either:</p> <p>14.7.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;</p> <p>14.7.2 held pending a request for further information (where appropriate);</p> <p>14.7.3 rejected stating the reasons why; or</p> <p>14.7.4 referred to Cabinet for determination.</p> <p>14.8 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement (“Extraordinary Exemption Request Form”). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.</p> <p>14.9 An Extraordinary Exemption will be either:</p> <p>14.9.1 approved by two of the following three designated officers:</p> <p>14.9.1.1 The Head of Procurement;</p> <p>14.9.1.2 The Solicitor to the Council (or nominee); and</p> <p>14.9.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;</p> <p>14.9.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.9.1, 14.9.3 or 14.9.4;</p> <p>14.9.3 rejected stating the reasons why; or</p> <p>14.9.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.9.1.</p>	<p>14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an “Extraordinary Exemption” <del>or is an extension not allowed under the existing contract.</del></p> <p>14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.</p> <p>14.6 Service Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.</p> <p>14.7 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.</p> <p>14.8 All Exemption requests which would contravene English law or European law in force in England will be rejected.</p> <p>14.9 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule 7. A copy of the Exemption will be retained by the Strategic Procurement Hub.</p> <p><b>Procedure</b></p> <p>14.10 Exemption requests made for one of the reasons under rule 14.3 must be submitted to <a href="mailto:ProcurementUnit@wiltshire.gov.uk">ProcurementUnit@wiltshire.gov.uk</a>. <del>It is recommended that the SPH are engaged to support the development of the exemption. a Business Partner in the Strategic Procurement Hub. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.</del></p> <p>14.11 An Exemption will be either:</p> <p>14.11.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;</p> <p>14.11.2 held pending a request for further information (where appropriate);</p>	In rewriting this we are trying to make the process clearer, a flow chart has been added to the Procurement Manual to simplify.

<p>14.10 Within 10 working days of an Extraordinary Exemption approval made under rule 16, details of the approval decision and the attendant business case will be:</p> <p>14.10.1 notified to the relevant Cabinet Member; and</p> <p>14.10.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.</p> <p>14.11 Service Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.</p> <p>14.12 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.</p> <p>14.13 All Exemption requests which would contravene English law or European law in force in England will be rejected.</p> <p>14.14 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule 7. A copy of the Exemption will be retained by the Strategic Procurement Hub.</p>	<p>14.11.3 rejected stating the reasons why; or</p> <p>14.11.4 referred to Cabinet for determination.</p> <p>14.12 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement ("Extraordinary Exemption Request Form"). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.</p> <p>14.13 An Extraordinary Exemption will be either:</p> <p>14.13.1 approved by two of the following three designated officers:</p> <p>14.13.1.1 The Head of Procurement <b>and one of either</b></p> <p>14.13.1.2 The Solicitor to the Council (or nominee); and</p> <p>14.13.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;</p> <p>14.13.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.11.1, 14.11.3 or 14.11.4;</p> <p>14.13.3 rejected stating the reasons why; or</p> <p>14.13.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.11.1.</p> <p>14.14 Within 10 working days of an Extraordinary Exemption approval made under rule 14, details of the approval decision and the attendant business case will be:</p> <p>14.14.1 notified to the relevant Cabinet Member; and</p> <p>14.14.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be</p>	
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		appropriate for legal reasons.	
15	<b>Partnerships and Grants</b> Remains as is		

# Part 10

## Procurement and Contract Rules

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# Part 10

## Procurement and Contract Rules

### SECTION A

### GENERAL

#### 1. Introduction

- 1.1 These Procurement and Contract Rules (the “Rules”) are the standing orders which apply to the acquisition of all supplies, services and works by or on behalf of the council. This includes council controlled schools and where the council acts as lead commissioner on behalf of a third party using external funds.
- 1.2 These Rules apply to the whole lifecycle of the procurement process, from initial concept to the end of an asset’s useful life or the end of the contract liability period.
- 1.3 These Rules are divided into Sections A, B and C:
  - 1.3.1 Section A (“General”) sets out the Objects and Principles of these Rules;
  - 1.3.2 Section B (“Procurement Procedure”) sets out the rules for planning a Procurement and the procedure which must be followed for every Procurement up to signature of the relevant contract; and
  - 1.3.3 Section C (“Contract Maintenance, Monitoring and Administration”) sets out the rules for managing the relevant contract until termination or expiry together with other administration matters.
- 1.4 These Rules must be read in conjunction with the Procurement Manual, an online toolkit which gives detailed instructions and guidance in their implementation. The Procurement Manual will be updated from time to time and officers must always refer to the latest information as published on the Intranet.
- 1.5 These Rules do not apply to:
  - 1.5.1 contracts of employment; or,
  - 1.5.2 contracts that relate solely to the purchase or acquisition of land; or,
  - 1.5.3 contracts awarded by schools which are outside the control of the council such as academies and foundation schools, or
  - 1.5.4 Investment Manager contracts awarded by the Wiltshire Pension Fund Committee

- 1.8 A list of the definitions used in these Rules is given at Appendix 1 attached to this Section A.

## **2. Objects**

- 2.1 These Rules have three objects:
- 2.1.1 to deliver Best Value;
  - 2.1.2 to manage and reduce the council's corporate risk;
  - 2.1.3 to ensure accountability for all procurement decisions.

## **3. Principles**

- 3.1 It is the responsibility of the Directors to ensure that the purchase of goods, services and works comply with:
- a) English Law
  - b) The Public Contracts Regulations (Utilities Contract Regulations and Concessions Contract Regulations) that are currently enforced
  - c) The Council's Constitution including these Procurement and Contract Rules, Financial Regulations and Financial Procedure Rules
  - d) The Procurement Manual
  - e) Compliance with the Councils decision making process
- 3.2 Whether or not a Procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular, this means all Procurements must be carried out in a fair, open and transparent way.
- 3.3 Any change to the relevant English or European law must be observed until these Rules are revised. If these Rules or the Procurement Manual conflict in any way with English law or European law in force in England then that legislation takes precedence.
- 3.4 The strategic advice of Legal Services and the Strategic Procurement Hub and accountancy must be sought during the earliest stages of planning any Procurement. See further Section B of these Rules.
- 3.5 All Procurements must comply with the Best Value processes set out in the Procurement Manual.
- 3.6 Each Director shall:
- 3.6.1 be responsible for all Procurements undertaken for his or her service area;
  - 3.6.2 ensure that Best Value is achieved in all Procurements for his or her service area;
  - 3.6.3 ensure that during the earliest stages of planning any Procurement for his or her service area:



- 3.7.3.1 the strategic advice of Legal Services, Accountancy, Human Resources and the Strategic Procurement Hub is sought; and
  - 3.7.3.2 where appropriate, TUPE is considered and the Wiltshire Pension Fund consulted,
  - 3.6.4 assess the ability to join up spending / contracts across other service areas to secure efficiencies and value for money
  - 3.6.5 implement and operate a Scheme of Sub-delegation for his or her service area;
  - 3.6.6 in conjunction with the Strategic Procurement Hub, Accountancy and Legal Services, ensure that training on these Rules and the Procurement Manual is provided to Budget Managers and Commissioning Officers in accordance with the Procurement Manual;
  - 3.6.7 ensure that all Procurements for his or her service area are conducted in a fair, open and transparent way;
  - 3.6.8 ensure that Budget Managers in his or her service area comply with the duties listed at rule 3.8 below;
  - 3.6.9 ensure that Commissioning Officers in his or her service area comply with the duties listed at rule 3.9 below.
- 3.7 Each Budget Manager shall for all Procurements within his or her remit:
- 3.7.1 ensure compliance with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules and EU Regulations (where applicable);
  - 3.7.2 ensure that the Best Value processes set out in these Rules and the Procurement Manual are achieved;
  - 3.7.3 ensure that only standard documentation or documentation approved by Legal Services is used in accordance with rule 7 below;
  - 3.7.4 operate within an effective check and challenge system and in line with the Behaviours Framework;
  - 3.7.5 ensure that the requirements from the Strategic Procurement Hub to provide information and documentation for the Corporate Contracts Register set out in these Rules are complied with in a timely manner.
- 3.8 Commissioning Officers must comply with these Rules and the Procurement Manual.
- 3.9 A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger the procurement processes set out in these Rules.
- 3.10 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties.

**APPENDIX 1**  
**Definitions**

In these Rules, the following words and phrases have the following meanings:

<b>Behaviours Framework</b>	The council's set of core behaviours which define how officers are expected to carry out their roles
<b>Best Value</b>	The optimum combination of whole life cost and benefits to meet the council's requirements, and includes consideration of social responsibility, equality, economic factors and sustainability
<b>Budget Manager</b>	An officer with budgetary responsibility for the spend relating to a Procurement
<b>Contractor</b>	Provider contracted to furnish supplies or undertake works
<b>Commissioning Officer</b>	An officer with strategic responsibility for commissioning a service
<b>Contract Management</b>	The administration of a completed contract by council officers to include ensuring compliance with its terms and conditions and implementation of any required variation
<b>Corporate Contracts Register</b>	The central repository of (i) key contract information as required under the Transparency Act
<b>EU Regulations</b>	The <a href="#">Public Contracts Regulations 2015</a> , <a href="#">Concessions Contracts Regulations 2016</a> and <a href="#">Utilities Contracts Regulations 2016</a>
<b>EU Threshold</b>	A financial threshold for supplies, services or works above which the EU Regulations apply, where EU Threshold is used in these rules unless specifically stated it shall be the threshold for supplies and services.
<b>Exemption</b>	Has the meaning given in rule 14
<b>Financial Regulations</b>	The Financial Regulations set out in the council's constitution as updated from time to time, which provide financial controls around commitments including contracts
<b>Framework Agreement</b>	An agreement which allows the council to call-off from a supplier a range or pre-defined supplies or services. Each call-off constitutes a standalone contract made on the terms and conditions of the Framework Agreement
<b>Grant</b>	Has the meaning given in Protocol 8 ("Wiltshire Council Partnership Protocol") of the constitution as updated from time to time

<b>Invitation to Tender (ITT)</b>	An invitation to tender documents in the form required by these Rules
<b>OJEU</b>	The Official Journal of the European Union
<b>Partnership</b>	Has the meaning given in Protocol 8 (“Wiltshire Council Partnership Protocol”) of the constitution as updated from time to time
<b>Procurement</b>	The acquisition on behalf of the council of supplies, services or works of any value or type to include the entire process from initial planning to the end of the contract liability period or the end of an item’s useful life
<b>Procurement Manual</b>	The council’s online Procurement Manual as updated by the Head of Strategic Procurement from time to time and published on the Intranet
<b>Procurement Plan</b>	The schedule demonstrating a minimum of 12 months’ forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual
<b>Purchase Order</b>	An order detailing the products or services required by the council. Sending a Purchase Order to a supplier constitutes a legal offer by the council to buy products or services. Acceptance of a Purchase Order by a supplier usually forms a one-off contract between the council and the supplier, so no contract exists until the Purchase Order is accepted
<b>Regulation 84 Evaluation Report</b>	Report recommending the award of a contract following a procurement process (Template held by SPH)
<b>Service’s Responsible Officer</b>	The Officer responsible for the commissioning and delivering the outcomes from the procurement process
<b>Rules</b>	These Procurement and Contract Rules
<b>Scheme of Sub-delegation</b>	Delegation by corporate and Associate Directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the constitution as updated from time to time
<b>Sourcing Plan</b>	Required for all over EU Threshold tenders which lays out procurement options and recommended approach which must be approved by the Head of Procurement or their Nominee
<b>SPH</b>	Strategic Procurement Hub, central procurement team

<b>Tender</b>	A supplier's formal written offer made in competition to supply specified supplies or services or carry out specified work at a stated cost or rate, made in response to an Invitation to Tender
<b>Tender Level Procurement</b>	Expenditure which exceeds the EU Regulation thresholds at which an advert must be placed in the Official Journal of the European Union

# **SECTION B**

## **PROCUREMENT PROCEDURE**

### **4. Planning each Procurement**

- 4.1 Save where an Exemption is granted under rule 14 below, every Tender Level Procurement or complex or resource intensive procurement below tender level must be planned in accordance with these Rules and the Procurement Manual.
- 4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of such Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.
- 4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Director will be responsible for the Procurement Plan for his or her service area.
- 4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. They must also agree with Accountancy, before a Procurement Plan is submitted, that the council has the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract

### **5. Responsibilities of the Head of Procurement**

- 5.1 To ensure procurement process is followed and that Sourcing Plans and Regulation 84 Reports are prepared and approved in accordance with the Rules
- 5.2 Regularly review procurement governance, considering any relevant audit reports, changes in external regulations, laws, views from legal and accountancy teams and Council Strategy.
- 5.3 To ensure all procurement related Cabinet Reports are reviewed by the Head of Procurement and approved by the Director for Finance and Procurement prior to submission to the Cabinet

### **6. Procurement Procedure**

- 6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the flow charts in Procurement Manual.
- 6.2 The value of the contract is the total value of the contract over its full duration including any extensions. Where the contract term is indeterminate or indefinite the value will be 48 times the monthly cost. When estimating the total value of a contract over its term, including extensions, all elements of cost must be considered not just the invoice value to be paid for the supplies, services or works.

## **7. Form of Contract and Tender Documentation**

- 7.1 All Procurements, regardless of value, must either:
  - 7.1.1 use the council's appropriate un-amended model contract available on the Intranet as updated from time to time; or
  - 7.1.2 be referred to Legal Services to review the proposed contract or produce a new contract as appropriate.
- 7.2 In addition to the requirements of rule 7.1 all Procurements must either:
  - 7.2.1 use the SAP Purchase Order procedure; or
  - 7.2.2 the Form of Agreement for low value one-off procurement of supplies and services; or
  - 7.2.3 use the council's un-amended standard tender templates which are available on the Intranet as updated from time to time; or
  - 7.2.4 be referred to the Strategic Procurement Hub to review the proposed tender documentation in conjunction with Legal Service7.3 Legal Services shall in conjunction with the Strategic Procurement Hub keep current and formally review all model contracts at least annually.
- 7.4 Contract Managers must provide relevant information required and register contract details on the corporate Contracts Register
- 7.5 The Strategic Procurement Hub shall in conjunction with Legal Services review all standard tender templates at least annually.
- 7.6 Where there is an existing, appropriate authorised contractual arrangement this must be used unless a business case led by the relevant Officer in the Strategic Procurement Hub is properly approved.

## **8. Receiving and Opening Tenders**

- 8.1 All tenders must be received and opened in accordance with the details set out in the Procurement Manual.

## **9. Awarding Contracts and Audit Trails**

- 9.1 The results of any evaluation process must be recorded in writing by the Officer in the Strategic Procurement Hub responsible for leading the Procurement.
- 9.2 Any Officer awarding a contract must have sought confirmation from accountancy that the council has the funds available to meet all its financial obligations within the service AND under the contract prior to signature.
- 9.3 Commissioning Officers must be aware that the placing of any business with a third party constitutes a contractual commitment which must comply with these Rules. Placing an order off an approved contract may be undertaken by Officers with appropriate delegated budgets where those orders are placed against existing contracts based on pre-agreed terms and pricing. If any negotiations on price or changes to terms and conditions are required to place an order an Officer in the Strategic Procurement Hub must be contacted to determine how to proceed.
- 9.4 Unless the Contract involves a function reserved to Full Council, Cabinet or a

Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to Directors (and their nominees) in accordance with the Scheme of Delegation.

9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation)

9.5.1 Solicitor to the Council for all contracts or,

9.5.2 The Director of Finance and Procurement

9.6 Cabinet approval must be obtained for any contract (or programme) which:

9.6.1 Involves a key decision under this Constitution see Part 1 paragraph 4.2.7

9.6.2 exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;

9.6.3 involves the transfer of 50 or more employees in or out of the council; or

9.6.4 relates to a matter which is commercially, politically or strategically sensitive.

9.7 The legal requirements for issuing contract award notices must be followed.

## **10. Contracts to be executed under Seal**

10.1 Where a contract either:

10.1.1 exceeds £1m in value; or

10.1.2 is considered to be of a strategically important or politically sensitive nature; or

10.1.3 where the extended limitation period of 12 years would be of value,

the contract must be executed under seal, unless advised otherwise by Legal Services.



# **SECTION C**

## **CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION**

### **11. General**

- 11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, set out in the Procurement Manual.

### **12. Extensions to Contracts or Framework Agreements**

- 12.1 The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement.
- 12.2 The duration of Tender Level Procurements awarded under the EU Regulations may only be extended if provision for that extension was identified in the original OJEU Notice.
- 12.3 An extension should not be made where it would have the effect of changing the fundamental nature of the original contract and in no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Thresholds in force at that time.
- 12.4 The advice of the lead Officer in the Strategic Procurement Hub and Legal must be sought in relation to any proposals to extend a contract, even if a contractual option exists to explore if best value is offered from that option. This advice must be sought in an appropriate time period that would allow a new procurement to be undertaken if the advice is that the contract should not be extended.
- 12.5 All extensions must be fully documented and the signatories of the formal extension documents shall be Legal services or as specified within Rule 9.5.
- 12.6 Cabinet approval must be obtained for any extension where the decision falls under the criteria for a key decision under the Constitution.
- 12.8 Where an extension is not provided for under the existing contract then the request to extend will need to follow the extraordinary exemption route, unless the total value of the contract including extensions is less than the EU Threshold which case it will be treated as a normal exemption.

### **13. Variations to Contracts**

- 13.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new Procurement under these Rules.
- 13.2 All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5.

- 13.3 Any variation resulting in additional spend above the budgeted contract level will need approval in accordance with the Financial Regulations and must be funded before a decision to vary is taken.
- 13.4 Cabinet approval must be obtained for any variation where the decision falls under the criteria for a key decision under the Constitution.

## 14. Exceptions to these rules

- 14.1 These Rules apply to all supplies, services and works purchased by the council. However, subject to rule 14.2, a formal exemption to the requirements of one or more of these Rules may be considered where the Procurement in question is not subject to the EU Regulations or existing legislation i.e. for procurement where the RfQ procedure may be used. Guidance on the exemption process is in the Procurement Manual.
- 14.2 Formal exemptions cannot be used to remove the requirement:
  - 14.2.1 to use un-amended model contracts and standard tender templates, or to seek the advice of Legal Services and the Strategic Procurement Hub where the standard documentation must be amended, in accordance with rule 7 above;
  - 14.2.2 to seek the advice of Legal Services and the Strategic Procurement Hub for all Tender Level Procurements.
- 14.3 The Strategic Procurement Hub may grant formal exemptions which fulfil the following strict criteria (“Exemptions”):
  - 14.3.1 Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term utilities does not include telecommunications.
  - 14.3.2 Genuine emergencies – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flooding, major landslide etc. Any contract entered into by the council under this exemption must not be for a term of more than 6 months.
  - 14.3.3 Collaborative/Joint Purchasing – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives.
  - 14.3.4 Sole source of supply - Where suitable supplies or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the Strategic Procurement Hub using sourcing tools.

14.3.5 Urgent situations not of the council's own making – The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the council under this exemption must not be for a term of more than 6 months. Where extensions of contracts are entered into without an Opportunity Assessment, the Strategic Procurement Hub will seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.

14.3.6 Reasons of compatibility - If compatibility with existing supplies, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.

14.3.7 Procurements of a value of less than EU Threshold or extensions to contracts where the total value of the contract including extensions is less than the EU Threshold.

## **Extraordinary Exemptions**

14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an "Extraordinary Exemption"

14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.

14.6 Service Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.

14.7 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.

14.8 All Exemption requests which would contravene English law or European law in force in England will be rejected.

14.9 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule 7. A copy of the Exemption will be retained by the Strategic Procurement Hub.

## **Procedure**

14.10 Exemption requests made for one of the reasons under rule 14.3 must be submitted to [ProcurementUnit@wiltshire.gov.uk](mailto:ProcurementUnit@wiltshire.gov.uk). It is recommended that the

SPH are engaged to support the development of the exemption. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.

14.11 An Exemption will be either:

- 14.11.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;
- 14.11.2 held pending a request for further information (where appropriate);
- 14.11.3 rejected stating the reasons why; or
- 14.11.4 referred to Cabinet for determination.

14.12 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement ("Extraordinary Exemption Request Form"). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed

Extraordinary Exemption Request Forms should be scanned and submitted by email.

14.13 An Extraordinary Exemption will be either:

14.13.1 approved by two of the following three designated officers:

- 14.13.1.1 The Head of Procurement and one of either
  - 14.13.1.2 The Solicitor to the Council (or nominee);
- and

14.13.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;

14.13.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.11.1, 14.11.3 or 14.11.4;

14.13.3 rejected stating the reasons why; or

14.13.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.11.1.

14.14 Within 10 working days of an Extraordinary Exemption approval made under rule 14, details of the approval decision and the attendant business case will be:

14.14.1 notified to the relevant Cabinet Member; and

14.14.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.

## 15 Partnerships and Grants

These Rules do not apply to Partnerships and Grants that are approved under the relevant policies and procedures.

# Part 10

## Procurement and Contract Rules

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# Part 10

## Procurement and Contract Rules

### SECTION A

### GENERAL

#### 1. Introduction

- 1.1 These Procurement and Contract Rules (the “Rules”) are the standing orders which apply to the acquisition of all supplies, services and works by or on behalf of the council. This includes council controlled schools and where the council acts as lead commissioner on behalf of a third party using external funds.
- 1.2 These Rules apply to the whole lifecycle of the procurement process, from initial concept to the end of an asset’s useful life or the end of the contract liability period.
- 1.3 These Rules are divided into Sections A, B and C:
- 1.3.1 Section A (“General”) sets out the Objects and Principles of these Rules;
  - 1.3.2 Section B (“Procurement Procedure”) sets out the rules for planning a Procurement and the procedure which must be followed for every Procurement up to signature of the relevant contract; and
  - 1.3.3 Section C (“Contract Maintenance, Monitoring and Administration”) sets out the rules for managing the relevant contract until termination or expiry together with other administration matters.
- 1.4 These Rules must be read in conjunction with the Procurement Manual, an online toolkit which gives detailed instructions and guidance in their implementation. The Procurement Manual will be updated from time to time and officers must always refer to the latest information as published on the Intranet.
- 1.5 These Rules do not apply to:
- 1.5.1 contracts of employment; or,
  - 1.5.2 contracts that relate solely to the purchase or acquisition of land; or,
  - 1.5.3 contracts awarded by schools which are outside the control of the council such as academies and foundation schools, or
  - 1.5.4 Investment Manager contracts awarded by the Wiltshire Pension Fund Committee

## 1.6 Concession Contracts

1.6.1 For public works concession contracts, subsidised works and subsidised service contracts connected to subsidised works (i.e. contracts under which the contractor is given the right to exploit the works) the council will be obliged to ensure that the concessionaire complies with relevant EU Regulations. Further advice is given in the Procurement Manual and a senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy

## 1.7 Utilities

1.7.1 Procurement of utilities is covered by The Utilities Contract Regulations 2006. This includes postal services but excludes telecommunications. For further information on scope of the Utilities Contract Regulations 2006 please refer to the Procurement Manual. A senior officer in the Strategic Procurement Hub should be contacted for advice, who will also engage legal services and accountancy

1.8 A list of the definitions used in these Rules is given at Appendix 1 attached to this Section A.

## 2. Objects

2.1 These Rules have three objects:

- 2.1.1 to deliver Best Value;
- 2.1.2 to manage and reduce the council's corporate risk;
- 2.1.3 to ensure accountability for all procurement decisions.

## 3. Principles

3.1 All Procurements must comply with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules, English law and European law in force in England. All procurements must remain, within budget both in year and the Medium Term Financial Plan assumptions unless approved in line with the Financial Regulations.

3.2 Whether or not a Procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular, this means all Procurements must be carried out in a fair, open and transparent way.

3.3 Any change to the relevant English or European law must be observed until these Rules are revised. If these Rules or the Procurement Manual conflict in any way with English law or European law in force in England then that legislation takes precedence.

3.4 The strategic advice of Legal Services and the Strategic Procurement Hub and accountancy must be sought during the earliest stages of planning any Procurement. See further Section B of these Rules.



- 3.5 When any employee of either the council or of a service provider may be affected by any transfer arrangement under a Procurement or re-Procurement, issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) must be considered and the Wiltshire Pension Fund must be consulted at the planning stage of the Procurement. Recognised trades union consultation must be carried out in compliance with the Externalisation, Procurement and the Workforce Agreement published on the Intranet (or any document which replaces or supplements that agreement). See further the Procurement Manual.
- 3.6 All Procurements must comply with the Best Value processes set out in the Procurement Manual.
- 3.7 Each Associate Director shall:
- 3.7.1 be responsible for all Procurements undertaken for his or her service area;
  - 3.7.2 ensure that Best Value is achieved in all Procurements for his or her service area;
  - 3.7.3 ensure that during the earliest stages of planning any Procurement for his or her service area:
    - 3.7.3.1 the strategic advice of Legal Services, Accountancy, Human Resources and the Strategic Procurement Hub is sought; and
    - 3.7.3.2 where appropriate, TUPE is considered and the Wiltshire Pension Fund consulted,
  - 3.7.4 assess the ability to join up spending / contracts across other service areas to secure efficiencies and value for money
  - 3.7.5 implement and operate a Scheme of Sub-delegation for his or her service area;
  - 3.7.6 in conjunction with the Strategic Procurement Hub, Accountancy and Legal Services, ensure that training on these Rules and the Procurement Manual is provided to Budget Managers and Commissioning Officers in accordance with the Procurement Manual;
  - 3.7.7 ensure that all Procurements for his or her service area are conducted in a fair, open and transparent way;
  - 3.7.8 ensure that Budget Managers in his or her service area comply with the duties listed at rule 3.8 below;
  - 3.7.9 ensure that Commissioning Officers in his or her service area comply with the duties listed at rule 3.9 below.
- 3.8 Each Budget Manager shall for all Procurements within his or her remit:
- 3.8.1 ensure compliance with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules and EU Regulations (where applicable);
  - 3.8.2 ensure that the Best Value processes set out in these Rules and the Procurement Manual are achieved;
  - 3.8.3 ensure that only standard documentation or documentation approved by Legal Services is used in accordance with rule 7

below;

- 3.8.4 operate within an effective check and challenge system and in line with the Behaviours Framework;
  - 3.8.5 ensure that the requirements from the Strategic Procurement Hub to provide information and documentation for the Corporate Contracts Register set out in these Rules are complied with in a timely manner.
- 
- 3.9 Commissioning Officers must comply with these Rules and the Procurement Manual.
  - 3.10 Key Performance Indicators will be used to monitor the operation of these Rules in accordance with the Procurement Manual. Results will be reported to Corporate Directors and Associate Directors regularly.
  - 3.11 A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger the procurement processes set out in these Rules.
  - 3.12 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties. The rules on State Aid are set out in the Procurement Manual.

EXISTING PART 10

**APPENDIX 1**  
**Definitions**

In these Rules, the following words and phrases have the following meanings:

<b>Behaviours Framework</b>	The council's set of core behaviours which define how officers are expected to carry out their roles
<b>Best Value</b>	The optimum combination of whole life cost and benefits to meet the council's requirements, and includes consideration of social responsibility, equality, economic factors and sustainability
<b>Budget Manager</b>	An officer with budgetary responsibility for the spend relating to a Procurement
<b>Contractor</b>	Provider contracted to furnish supplies or undertake works
<b>Commissioning Officer</b>	An officer with strategic responsibility for commissioning a service
<b>Contract Management</b>	The administration of a completed contract by council officers to include ensuring compliance with its terms and conditions and implementation of any required variation
<b>Corporate Contracts Register</b>	The central repository of (i) key contracts information and (ii) electronic copies of those contracts, which is maintained and owned by the Strategic Procurement Hub and annually monitored by Legal Services
<b>Corporate Procurement and Commissioning Board</b>	A duly constituted board whose purpose is to check, challenge and approve Tender Level Procurements. The Corporate Procurement and Commissioning Board will act as an "approval gateway" to ensure that Tender Level Procurements are: (i) robust in approach, (ii) legally compliant, (iii) strategically sound and (iv) competitively sourced
<b>Dynamic Purchasing System</b>	A completely electronic process for procuring commonly used goods or services generally available on the open market.
<b>EU Regulations</b>	<a href="#">Public Contracts Regulations 2006</a> , as amended by the <a href="#">Public Contracts (Amendment) Regulations 2009</a> for legacy contracts awarded under that regime, and the <a href="#">Public Contracts Regulations 2015</a> .
<b>EU Threshold</b>	A financial threshold for supplies, services or works above which the EU Regulations apply
<b>Exemption</b>	Has the meaning given in rule 14

<b>Financial Regulations</b>	The Financial Regulations set out in the council's constitution as updated from time to time, which provide financial controls around commitments including contracts
<b>Framework Agreement</b>	An agreement which allows the council to call-off from a supplier a range or pre-defined supplies or services. Each call-off constitutes a standalone contract made on the terms and conditions of the Framework Agreement
<b>Grant</b>	Has the meaning given in Protocol 8 ("Wiltshire Council Partnership Protocol") of the constitution as updated from time to time
<b>Invitation to Tender (ITT)</b>	An invitation to tender documents in the form required by these Rules
<b>OJEU</b>	The Official Journal of the European Union
<b>Value Assessment</b>	A detailed analysis of the route to Procurement and options for Procurement which is both legally compliant and offers Best Value, as set out in the Procurement Manual
<b>Partnership</b>	Has the meaning given in Protocol 8 ("Wiltshire Council Partnership Protocol") of the constitution as updated from time to time
<b>Procurement</b>	The acquisition on behalf of the council of supplies, services or works of any value or type to include the entire process from initial planning to the end of the contract liability period or the end of an item's useful life
<b>Procurement Manual</b>	The council's online Procurement Manual as updated by the Head of Strategic Procurement from time to time and published on the Intranet
<b>Procurement Plan</b>	The schedule demonstrating a minimum of 12 months' forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual
<b>Purchase Order</b>	An order detailing the products or services required by the council. Sending a Purchase Order to a supplier constitutes a legal offer by the council to buy products or services. Acceptance of a Purchase Order by a supplier usually forms a one-off contract between the council and the supplier, so no contract exists until the Purchase Order is accepted
<b>Rules</b>	These Procurement and Contract Rules
<b>Scheme of Sub-delegation</b>	Delegation by corporate and Associate Directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the constitution as updated from time to time

<b>Tender</b>	A supplier's formal written offer made in competition to supply specified supplies or services or carry out specified work at a stated cost or rate, made in response to an Invitation to Tender
<b>Tender Level Procurement</b>	Expenditure which exceeds the EU Regulation thresholds at which an advert must be placed in the Official Journal of the European Union

EXISTING PART 10

# SECTION B

## PROCUREMENT PROCEDURE

### 4. Planning each Procurement

- 4.1 Save where an Exemption is granted under rule 14 below, every Tender Level Procurement or complex or resource intensive procurement below tender level must be planned in accordance with these Rules and the Procurement Manual.
- 4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of such Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.
- 4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Associate Director will be responsible for the Procurement Plan for his or her service area.
- 4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. They must also agree with Accountancy, before a Procurement Plan is submitted, that the council has the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract

### 5. Corporate Procurement and Commissioning Board governance and approval of Tender Level Procurements

- 5.1 The Corporate Procurement and Commissioning Board will regularly review procurement and commissioning governance and recommend changes which enhance performance and added value activities.
- 5.2 The general powers of the Corporate Procurement and Commissioning Board are:
  - 5.2.1 To scrutinise and challenge planned Tender Level and outcomes/outputs of the procurement;
  - 5.2.2 To consider and recommend Tender Level Procurement spend at the assessment phase;
  - 5.2.3 To monitor the value added by the check and challenge system.
- 5.3 The reporting relationships between service areas, the Corporate Procurement and Commissioning Board, the Strategic Procurement Hub, Accountancy and Legal Services are set out in the Procurement Manual.
- 5.4 Every Potential Tender Level Procurement will be subject to an independent Value assessment carried out in accordance with these Rules and the

Procurement Manual, unless exempted from this process by the Corporate Procurement and Commissioning Board.

- 5.5 Each assessment report will be led by an Officer of the Strategic Procurement Hub. The Officer will work in collaboration with the relevant Commissioning Officer(s), including Legal and Accountancy, during the assessment and throughout the Procurement.
- 5.6 The Corporate Procurement and Commissioning Board will consider each assessment in order to check, challenge and approve Tender level procurements. Approval will be required from the Corporate Procurement and Commissioning Board before Tender Level Procurements can progress.
- 5.7 All procurement related Cabinet Reports must be approved by the Corporate Procurement and Commissioning Board prior to submission.

## **6. Procurement Procedure**

- 6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the Procurement Manual.
- 6.2 The value of the contract is the total value of the contract over its full duration including any extensions. Where the contract term is indeterminate or indefinite the value will be 48 times the monthly cost. When estimating the total value of a contract over its term, including extensions, all elements of cost must be considered not just the invoice value to be paid for the supplies, services or works.
- 6.3 A Request for Quotes (RfQ) procedure may be used for spend below the threshold defined for supplies and services in the EU Regulations for advertising contracts in the Official Journal of the European Union. Strategic Procurement Hub Officers may consider that an RfQ is not the best route to manage procurements below that threshold and may, for example, recommend a tender or use of a Public Buying Organisation framework where it is appropriate to do so. For procurements above EU Regulation thresholds as detailed in the Procurement Manual, a compliant procedure must be followed.

## **7. Form of Contract and Tender Documentation**

- 7.1 All Procurements, regardless of value, must either:
  - 7.1.1 use the council's appropriate un-amended model contract available on the Intranet as updated from time to time; or
  - 7.1.2 be referred to Legal Services to review the proposed contract or produce a new contract as appropriate.
- 7.2 In addition to the requirements of rule 7.1 all Procurements must either:
  - 7.2.1 use the SAP Purchase Order procedure; or
  - 7.2.2 the Form of Agreement for low value one-off procurement of supplies and services; or
  - 7.2.3 use the council's un-amended standard tender templates which are available on the Intranet as updated from time to time; or
  - 7.2.4 be referred to the Strategic Procurement Hub to review the proposed tender documentation in conjunction with Legal Services.

- 7.3 Legal Services shall in conjunction with the Strategic Procurement Hub keep current and formally review all model contracts at least annually.
- 7.4 Contract Managers must provide relevant information required and register contract details on the corporate Contracts Register
- 7.5 Legal Services shall in conjunction with the Strategic Procurement Hub review all standard tender templates at least annually.
- 7.6 Where there is an existing, appropriate authorised contractual arrangement this must be used unless a business case led by the relevant Officer in the Strategic Procurement Hub is properly approved.

## **8. Receiving and Opening Tenders**

- 8.1 All tenders must be received and opened in accordance with the council's "Tender Receiving and Opening Procedures" These can be found in the Procurement Manual.

## **9. Awarding Contracts and Audit Trails**

- 9.1 The results of any evaluation process must be recorded in writing by the Officer in the Strategic Procurement Hub responsible for leading the Procurement.
- 9.2 Any Officer awarding a contract must have sought confirmation from accountancy that the council has the funds available to meet all its financial obligations within the service AND under the contract prior to signature.
- 9.3 Commissioning Officers must be aware that the placing of any business with a third party constitutes a contractual commitment which must comply with these Rules. Placing an order off an approved contract may be undertaken by Officers with appropriate delegated budgets where those orders are placed against existing contracts based on pre-agreed terms and pricing. If any negotiations on price or changes to terms and conditions are required to place an order an Officer in the Strategic Procurement Hub must be contacted to determine how to proceed.
- 9.4 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to Associate Directors (and their nominees) in accordance with the Scheme of Delegation.
- 9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation)
- 9.5.1 Solicitor to the Council for all contracts or,
  - 9.5.2 Associate Director for Corporate Office, Programme Office and Procurement
- 9.6 Cabinet approval must be obtained for any contract (or programme) which:
- 9.6.1 Involves a key decision under this Constitution (see Part 1 paragraph 9);



- 9.6.2 exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;
- 9.6.3 involves the transfer of 50 or more employees in or out of the council; or
- 9.6.4 relates to a matter which is commercially, politically or strategically sensitive.

9.7 The legal requirements for issuing contract award notices must be followed.

## **10. Contracts to be executed under Seal**

10.1 Where a contract either:

10.1.1 exceeds £1m in value; or

10.1.2 is considered to be of a strategically important or politically sensitive nature; or

10.1.3 where the extended limitation period of 12 years would be of value,

the contract must be executed under seal, unless advised otherwise by Legal Services.

EXISTING PART 10

# SECTION C

## CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION

### 11. General

- 11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, vendor accreditation and registration processes set out in the Procurement Manual.

### 12. Extensions to Contracts or Framework Agreements

- 12.1 The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement.
- 12.2 The duration of Tender Level Procurements awarded under the EU Regulations may only be extended if provision for that extension was identified in the original OJEU Notice.
- 12.3 An extension should not be made where it would have the effect of changing the fundamental nature of the original contract and in no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Thresholds in force at that time.
- 12.4 The advice of the lead Officer in the Strategic Procurement Hub and Legal must be sought in relation to any proposals to extend a contract, even if a contractual option exists to explore if best value is offered from that option. This advice must be sought in an appropriate time period that would allow a new procurement to be undertaken if the advice is that the contract should not be extended.
- 12.5 All extensions must be fully documented and the signatories of the formal extension documents shall be Legal services or as specified within Rule 9.5.
- 12.6 Where the value of an extension exceeds £100,000.01 written approval must be obtained following consideration of a written report. The report should be addressed to the Head of Strategic Procurement and will be considered by the following officers as well as the Cabinet Member for Procurement:
- 12.6.1 Corporate Director
  - 12.6.2 Head of Strategic Procurement (or nominee);
  - 12.6.3 Head of Legal Services (or nominee);
  - 12.6.4 Section 151 Officer.
- 12.7 Cabinet approval must be obtained for any extension where the decision falls under the criteria for a key decision under the Constitution.

## 13. Variations to Contracts

- 13.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new Procurement under these Rules.
- 13.2 All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5. Nil value variations may be signed by the Senior Category Manager.
- 13.3 Any variation resulting in additional spend above the budgeted contract level will need approval in accordance with the Financial Regulations and must be funded before a decision to vary is taken.
- 13.4 Cabinet approval must be obtained for any variation where the decision falls under the criteria for a key decision under the Constitution.

## 14. Exceptions to these rules

- 14.1 These Rules apply to all supplies, services and works purchased by the council. However, subject to rule 14.2, a formal exemption to the requirements of one or more of these Rules may be considered where the Procurement in question is not subject to the EU Regulations or existing legislation i.e. for procurement where the RfQ procedure may be used. Guidance on the exemption process is in the Procurement Manual.
- 14.2 Formal exemptions cannot be used to remove the requirement:
  - 14.2.1 to use un-amended model contracts and standard tender templates, or to seek the advice of Legal Services and the Strategic Procurement Hub where the standard documentation must be amended, in accordance with rule 7 above;
  - 14.2.2 to seek the advice of Legal Services and the Strategic Procurement Hub for all Tender Level Procurements.
- 14.3 The Strategic Procurement Hub may grant formal exemptions which fulfil the following strict criteria ("Exemptions"):
  - 14.3.1 Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term utilities does not include telecommunications.
  - 14.3.2 Genuine emergencies – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen 'catastrophic' event or incident such as fire, bombing, flooding, major landslide etc. Any contract entered into by the council under this exemption must not be for a term of more than 6 months.
  - 14.3.3 Collaborative/Joint Purchasing – Where another authority/public body is acting as 'lead buyer' and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement

Directives. This includes any recognised wider public sector agreements including, for example, Crown Commercial Services or successor contracts, etc.

14.3.4 Sole source of supply - Where suitable supplies or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the Strategic Procurement Hub using sourcing tools.

14.3.5 Urgent situations not of the council's own making – The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the council under this exemption must not be for a term of more than 6 months. Where extensions of contracts are entered into without an Opportunity Assessment, the Strategic Procurement Hub will seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.

14.3.6 Reasons of compatibility - If compatibility with existing supplies, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.

#### Extraordinary Exemptions

- 14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an "Extraordinary Exemption".
- 14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.

#### Procedure for Exemptions and Extraordinary Exemptions

- 14.6 Exemption requests made for one of the reasons under rule 14.3 must be submitted to a Business Partner in the Strategic Procurement Hub. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.
- 14.7 An Exemption will be either:
- 14.7.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;
  - 14.7.2 held pending a request for further information (where

- appropriate);
- 14.7.3 rejected stating the reasons why; or
- 14.7.4 referred to Cabinet for determination.
- 14.8 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement (“Extraordinary Exemption Request Form”). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.
- 14.9 An Extraordinary Exemption will be either:
- 14.9.1 approved by two of the following three designated officers:
- 14.9.1.1 The Head of Procurement;
- 14.9.1.2 The Solicitor to the Council (or nominee); and
- 14.9.1.3 The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer;
- 14.9.2 held pending a request for further information (where appropriate) and then dealt with in accordance with rules 14.9.1, 14.9.3 or 14.9.4;
- 14.9.3 rejected stating the reasons why; or
- 14.9.4 referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.9.1.
- 14.10 Within 10 working days of an Extraordinary Exemption approval made under rule 16, details of the approval decision and the attendant business case will be:
- 14.10.1 notified to the relevant Cabinet Member; and
- 14.10.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.
- 14.11 Service Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.
- 14.12 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.
- 14.13 All Exemption requests which would contravene English law or European law in force in England will be rejected.
- 14.14 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule 7. A copy of the Exemption will be retained by the Strategic Procurement Hub.

## 15 Partnerships and Grants

These Rules do not apply to Partnerships and Grants that are approved under the relevant policies and procedures.

EXISTING PART 10

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## Wiltshire Council

### Standards Committee

1 May 2019

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#### Review of Protocol 12 of the Constitution: Update

##### Purpose of Report

1. This report updates the Standards Committee on initial work undertaken in respect of the review of Protocol 12 of the Constitution: Arrangements for dealing with Code of Conduct Complaints.

##### Background

2. At its meeting on 23 January 2019 the Standards Committee requested the Constitution Focus Group to oversee a review of the procedures relating to code of conduct complaints in response to concerns expressed to the Committee regarding the timeliness of dealing with complaints under the process. This also followed a review of the processes adopted by other local authorities in handling of code of conduct complaints. The arrangements operated by Wiltshire Council were last reviewed in February 2017.
3. The Constitution Focus Group discussed the arrangements and associated documentation at its meetings on 20 March 2019 and 10 April 2019. The Chairman and Vice-Chairman of the Standards Committee also discussed the arrangements at a meeting with officers and the Council's Independent Persons on 12 March 2019.

##### Main Considerations

4. In reviewing the existing arrangements it was discussed whether changes could be made to streamline the complaints process to make it more efficient and effective and reduce the risk of delays.
5. Consideration was also given as to whether the current assessment criteria needed to be revised to ensure that only those cases warranting formal investigation are pursued.
6. As detailed in a report taken to the Committee on 23 January 2019, the arrangements for overseeing code of conduct complaints in the Wiltshire Council area are detailed and robust and, in comparison to most authorities, include several stages of review. These stages had been included primarily to ensure member involvement when complaints against elected members were determined by officers in accordance with the arrangements.
7. The Focus Group noted arrangements in some other authorities where assessments were determined by a member sub-committee with no right of review.
8. The advantages of this approach were felt to be that it would enhance the role of members in the process by ensuring their involvement for all complaints which were received, not merely those which were requested for review, and would obviate the need for a review. It would improve the efficiency of the process.



9. Additionally, with every complaint to be determined by an assessment sub-committee assessment meetings could be regularly scheduled, for instance, on a monthly basis, scheduled and known in advance to all members of the Committee and any supporting officers. This would be a significant improvement on the current system where arrangements have to be made for each review of a complaint, which can result in delays due to availability constraints of members and officers.
10. The Focus Group will continue to explore the revision of the current process along these lines at its next meetings and will prepare recommendations for the Committee to consider at its next meeting.

#### **Safeguarding Implications**

11. There are no safeguarding issues arising from this report.

#### **Equalities Impact of the Proposal**

12. There are no equalities impacts arising from this report.

#### **Risk assessment**

13. There are no significant risks arising from this report

#### **Financial Implications**

14. There are no financial implications arising from this report.

#### **Legal Implications**

15. There are no legal implications arising from this report.

#### **Public Health Impact of the Proposals**

16. There are no public health impacts arising from this report.

#### **Environmental Impact of the Proposals**

17. There are no environmental impacts arising from this report.

#### **Proposal**

18. **To note the update on the review of the arrangements for dealing with code of conduct complaints in Wiltshire and to await the recommendations of the Constituion Focus Group.**

#### **Ian Gibbons, Director - Legal, Electoral and Registration Services (and Monitoring Officer)**

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#### **Background Papers**

None

**Appendices**  
None

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