

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.