

agenda item 8	
AGS/30/19	
Report title: Standards Update	
Report to: Audit, Governance and Standards Committee	
Report author: Paul Turner, Director, Legal and Assurance and Monitoring Officer	
Date of Meeting: 25 March 2019	For: Decision
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County Divisions affected: All Essex	

1. Summary

- 1.1 In 2018 the Committee on Standards in Public Life asked for comments from local authorities about standards in local government. ECC's Audit Governance, and Standards Committee responded to the consultation.
- 1.2 This report informs the Committee about the outcome of the Committee on Standards in Public Life review of Local Government Ethical Standards

2. Recommendations

- 2.1 That the report be noted.
- 2.2 That the Committee notes that the monitoring officer proposes to adopt the practice of consulting an independent person if it is proposed not to investigate a complaint.

3. Background

- 3.1 The current standards systems were created by the Localism Act 2011. It replaced the previous system which the Government of the day considered to be bureaucratic and encouraged petty complaints and noted that some councillors were reported not have confidence in the Standards Board for England or of the decisions by local authorities.
- 3.2 Standards of behaviour across the UK public sector are monitored and reviewed by the Committee for Standards in Public Life (CfSPL). Following the implementation of the Localism Act 2011 the CfSPL has raised questions as to whether the new system is fit for purpose.
- 3.3 In 2018 it asked local authorities and others involved in local government to say what they thought about the operation of the standards system and asked a number of questions in a consultation paper. This committee submitted a response to the consultation following a report at the March 2018 meeting.
- 3.4 The CSPL undertook a review with the following terms of reference:

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

4. The Outcome of the Review undertaken by the CSPL

- 4.1 The review report runs to over 100 pages and makes twenty six recommendations as follows:

	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 ECC note: This reflects the Committee's comments that having multiple codes is confusing for councillors.
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 ECC note: This would need to be coupled with a requirement to declare interests if it affected a councillor's home and other legislative changes would be needed if the aim is to not publish Councillors' addresses.
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	Government

	Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	ECC already takes this approach where possible
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 ECC note: The ECC member code requires these to be registered and interests declared at meetings.
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 ECC note: The ECC code requires this, but with a threshold of £25 – perhaps this limit is ripe for review?
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 ECC note: This broadly reflects the view expressed by the Committee in response to the consultation. The ECC code reflects this as far as it can.

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	Government ECC does not publish this other than in an annual report to the Committee.

	are rejected as trivial or vexatious; and any sanctions applied.	
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government ECC note: This reflects comments made by ECC
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 ECC believes that the position is clear on this and that we are able to do so.
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
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
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- 4.2 The vast majority of the recommendations identify the government as the responsible body for implementation. We do not yet know how the Government will respond to this. Even if the Government responds positively, it is likely to be some considerable time before legislation is passed.
- 4.3 ECC could take action immediately to implement recommendation 6 by changing the threshold of registration of gifts and hospitality, but it is probably more sensible to wait and see if the LGA will publish a model code in the short to medium term.
- 4.4 If the Local Government Association creates a model code of conduct then we will report this to the Committee.

5. Best Practice

- 5.1 In addition to the recommendations the review also includes best practice recommendations which the CfSPL expect local authorities to consider implementing. The CfSPL have said that in 2020 they intend to review how and whether local authorities have implemented the recommended best practice.

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.

ECC Comment: The ECC code prohibits bullying and harassment but no definition or examples are contained within the code.

Recommendation: That the Monitoring Officer publishes guidance to members on what constitutes bullying and harassment.

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.

ECC Comment: Our code does not include these specific provisions but we have had neither difficulty with obtaining co-operation from Councillors nor with malicious allegations made by Councillors. The ECC Code includes a general prohibition against bringing the office of councillor into disrepute. Making malicious allegations or failing to co-operate with an investigation is likely to be considered to bring the office into disrepute.

Recommendation: No action recommended.

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.

ECC Comment: Our code is regularly reviewed – it was substantially revised in 2016 and has been the subject of minor changes since then.

Recommendation: No action required.

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.

ECC Comment: We comply with this best practice.

Recommendation: No action required.

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.

ECC Comment: The register is updated as requested by Members and is published on line on each councillor's page. Although it is very accessible, it is not made available in a downloadable format, we have received no demand for this.

Recommendation: No action required.

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

ECC Comment: The Committee has approved an investigation procedure which includes criteria against which allegations are tested. This is published on the ECC website.

Recommendation: No action required.

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

ECC Comment: We comply with this as we have two Independent Persons.

Recommendation: No action required.

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.

ECC Comment: Independent Persons are not routinely consulted at this early stage in the process. The Monitoring Officer may however consult an independent person and/or the Chair of the Audit, Governance and Standards Committee in cases where an investigation decision is finely balanced.

Recommendation: That the Monitoring Officer consults an independent person if it is proposed not to investigate a complaint.

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.

ECC Comment: ECC already complies with this.

Recommendation: No action needed.

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.

ECC Comment: We comply with this best practice.

Recommendation: No action needed.

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.

ECC Comment: Not applicable to ECC as ECC is not responsible for parish councils

Recommendation: None

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.

ECC Comment: We comply with this best practice.

Recommendation: No action needed.

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.

Comment: Whilst this is not specifically written into our procedure, it is not prohibited and the Monitoring Officer has the ability to seek assistance from third parties and would do so if it were felt to be a conflict of interest.

Recommendation: No action needed.

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.

ECC Comment: Our annual governance statement does include reference to separate bodies wholly owned by the Council. It is considered that the minutes of some company board meetings contain commercially sensitive information which should not be routinely published as some of our companies operate in competitive market places. ECC owned companies are however subject to the provision of the Freedom of Information Act 2000.

Recommendation: None.

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

ECC Comment: The Monitoring Officer and the Head of Democracy and Transparency regularly meet with group leaders at the Corporate Governance Steering Board and at the Constitution Working Group. Any group leader is welcome to meet with the same officers at any time

Recommendation: None

6 Conclusion

- 6.1 The CSPL believes that its recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards.
- 6.2 Most of the recommendations would require primary legislation – whose implementation would be subject to a decision of the government to legislate and the availability of Parliamentary time. The Committee considers that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by the Government relatively quickly.
- 6.3 The best practice the Committee have identified is, in most cases, already operating in a number of local authorities, including ECC.
- 6.4 Ultimately, the CfSPL believe that responsibility for ethical standards rests, and should remain, with local authorities. They also consider that senior councillors and officers must show leadership in order to build and maintain an ethical culture.
- 6.5 It is pleasing to note that, although there is never room for complacency with the maintenance and enforcement of ethical standards, ECC compares favourably with the recommendations and the best practice recommendations.

7. Financial Implications

7.1 This report has no financial implications.

8. Legal Implications

8.1 The standards system is required to be operated by law. Failure to operate an effective standards system can lead to offences being committed by members and decisions taken by the local authority being quashed.

9. Appendices

9.1 There are no appendices to this report

10. List of Background Papers

10.1 None. All background papers are published but members may find the following links helpful:

Report – Local Government Ethical Standards; A Review by the Committee on Standards in Public Life:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

ECC webpage about standards:

<https://www.essex.gov.uk/Your-Council/Councillors/Pages/How-to-complain-about-a-councillors-conduct.aspx>