

REPORT OF THE MONITORING OFFICER/ CITY SOLICITOR

TO

STANDARDS COMMITTEE

ON

30 June 2022

TITLE: The Government Response to the Committee on Standards in Public Life's Review of Local Government Ethical Standards

RECOMMENDATIONS:

1. That the Standards Committee note the Government's response to the report of the Committee on Standards in Public Life.
 2. That the City Solicitor and Monitoring Officer submit a report to a future meeting of the Standards Committee with recommendations regarding the Local Government Association updated model code of conduct.
 3. That the City Solicitor and Monitoring Officer submit a report to a future meeting of the Standards Committee with an update regarding the best practice recommendations of the CSPL that it recommended be adopted by local authorities
- .
-

EXECUTIVE SUMMARY: This report advises the Standards Committee of the Government's response to the report of the Committee on Standards in Public Life's review of local government ethical standards.

BACKGROUND DOCUMENTS:

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report:

The Committee on Standards in Public Life (CSPL) report on Local Government Ethical Standards is available at:

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

- The Government's response to the CSPL recommendations is available at:

<https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report/government-response-to-the-committee-on-standards-in-public-life-review-of-local-government-ethical-standards>

- The Local Government Association Model Councillor Code of Conduct is available at:

<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>

KEY DECISION: NO

DETAILS:

1.0 The Committee on Standards in Public Life Report

1.1 The Committee on Standards in Public Life (“the CSPL”) advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders.

1.2 The CSPL has undertaken a review of local government ethical standards. The terms of reference for the review were to:

- 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; and
 - e. Whistleblowing.
- Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
- Make any recommendations for how they can be improved; and
- 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

1.3 Following the completion of its review the CSPL published a report on 30 January 2019. A copy of the CSPL report (“the CSPL report”) is available at:

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

1.4 In its report the CSPL made 24 recommendations to the government to improve ethical standards in local government.

2.0 The Government Response to the CSPL Recommendations

2.1 On 18 March 2022 the Government published its response to the CSPL recommendations. A copy of the Government response is available at:

<https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report/government-response-to-the-committee-on-standards-in-public-life-review-of-local-government-ethical-standards>

2.2 In summary the government response to the CSPL recommendations are:

Recommendation 1 – The Local Government Association (“the LGA”) should create an updated code of conduct

Government response - The LGA published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.

Salford City Council Monitoring Officer comment - The merits of adopting the LGA updated model code of conduct will be considered as part of a wider review of the Council’s constitution that is to be undertaken by the Monitoring Officer over the next 18 months and presented to the Standards Committee at the appropriate time during that review.

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 Regulations should be amended to clarify that a councillor does not need to register their home address on an authority’s register of interests

Government response - The government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address. Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

Monitoring Officer comment – Noted. Candidates in local elections are no longer required to have their home addresses shown on the election papers. The Localism Act 2011, and regulations made under it, do require Members to record on their published register of interests the address of any land or property that they or their partner own or lease within the area of SCC and also the names of their employers. However under section 32 of the Localism Act, copies of the register of members’ interests which are available for inspection or published must not include details of a member’s sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the Member and the Monitoring Officer consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation. If any Member considers that the disclosure of their home address, and/or the names of their or their partner’s employers on their register of interests could lead them being subject to violence or intimidation then arrangements can be made to withhold that information.

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

Government response - The government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media. It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

Monitoring Officer comment – This will be considered by the Monitoring Officer as part of her review of the merits of adopting the LGA updated model code of conduct. In March 2019 the Council adopted an updated specific Social Media Policy and Guidelines for councillors which addresses the issue of 'blurred identities' online.

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

Government response - The LGA have updated their own suggested code of conduct to state that the code applies when "[a member's] actions could give the impression to a reasonable member of the public with knowledge of all the facts that [they] are acting as a [member]". It is for individual local authorities to ensure that their codes of conducts are regularly updated, comprehensive and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code. The government will keep this matter under review but has no immediate plans to amend the regulations.

Monitoring Officer comment - This will be considered by the Monitoring Officer as part of her review of the merits of adopting the LGA updated model code of conduct. Members are offered training with the Monitoring Officer on their Code of Conduct as part of their induction programme after election. .

Recommendation 5 – The relevant Regulations 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 response - Unpaid roles may need to be declared, if it is relevant to council business, and councillors should recuse themselves, if necessary, if discussions relate to private bodies they are involved in. The government is

mindful that councillors have a right to a private life, and rights of freedom of association outside their role as a councillor. It is frequently the case that people in public life have a complex pattern of interests and play a variety of roles with different types of organisations, including community interest groups and charities. The government will keep this matter under review but has no immediate plans to amend the regulations.

Monitoring Officer comment – Noted

Recommendation 6 – Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record gifts and hospitality 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 response - The LGA's suggested code of conduct published in January 2021 includes a requirement for members to "register... any gift or hospitality with an estimated value of at least £50". However, it did not contain any requirements relating to the total value of gifts or hospitality received from the same source over a sustained period. Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available.

Monitoring Officer comment – The SCC Code of Conduct for Members requires Members to include in their register of gifts and hospitality any gifts or hospitality they receive with an estimated value of at least £100.

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 an 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 the matter"

Government response - Section 31 of the Localism Act 2011 requires that a councillor must not participate in a discussion or vote on a matter where they have a disclosable pecuniary interest [DPI] in any matter to be considered at the meeting. The Committee's report reflects concerns that the [DPI] arrangements infringe on the privacy of a councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved. The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

Monitoring Officer comment - Noted. The SCC Code of Conduct for Members includes provisions relating to declaration of personal prejudicial interests and withdrawal from the meeting during discussion of such items.

Recommendation 8 – The Localism Act 2011 should be amended to require that Independent Persons [IPs] are appointed for a fixed term of 2 years, renewable once

Government response - The government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities. Discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. When local authorities have found effective [IPs] who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.

Monitoring Officer comment – The Council currently has two Independent Persons. Ms Donna Allen was appointed as an Independent Person by full Council on 18th November 2020 with an initial term of four years. Ms Caroline Wolfenden, who had held the role since July 2019, was appointed by full Council at its meeting on 17th March 2021 for a term of four years.

Recommendation 9 – The Local Government Transparency Code should be updated to provide that the view of the [IP] in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes

Government response - The government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices. The substantive policy suggestion has merit but will depend on circumstances. In cases where there is no case to answer from an unfounded complaint, it should not necessarily be a legal requirement to publish details of that unfounded complaint.

Monitoring Officer comment – The Monitoring Officer includes the view of the Independent Person in decisions that are published.

Recommendation 10 – A local authority should only be able to suspend a councillor where the authority’s [IP] agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction

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

Recommendation 13 – Councillors should be given the right to appeal to the Local Government Ombudsman [LGA] if their local authority imposes a period of suspension for breaching the code of conduct

Recommendation 14 – The [LGA] 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, an appeal by a councillor who has had a suspension imposed. The [LGO’s] decision should be binding on the local authority

Recommendation 16 – Local authorities should be given the power to suspend councillors, without allowances, for up to 6 months

Government response to the above group of recommendations - There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime. It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors. On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box. As part of the government’s response to the Committee’s report on intimidation in public life, the government recommended that every political party establish their own code of conduct for party members, including elected representatives. The government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall

below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

Monitoring Officer comment - Noted

Recommendation 11 – Local authorities should provide legal indemnity to [IP's] if their views or advice are disclosed. The government should require this through secondary legislation if needed

Government response - The government agrees in principle. Initial soundings with the sector indicate that some local authorities already provide legal indemnity for [IP's]. The government endorses providing legal indemnity for [IP's] as local authority best practice but does not currently see the need to require this through secondary legislation.

Monitoring Officer comment – The Council's indemnity policy for Members and officers includes cover for Independent Persons and co-opted members.

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

Government response - The government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled and would encourage this as best practice by the sector. The government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

Monitoring Officer comment – This information is published in the annual report to the Standards Committee.

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

Government response - The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment. The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.

Monitoring Officer comment – The further view of the Government will be considered by the Monitoring Officer, once issued, and reported to the Standards Committee.

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

Government response - It is a criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption. The government does not agree with this recommendation, but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption. The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

Monitoring Officer comment - None

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

Government response - The government does not agree that this is necessary and has no plans to repeal Section 27(3) of the Localism Act 2011. The government considers that the adoption of the principal authority's code or the new model code is a matter for local determination. There are merits in achieving consistency within principal authority areas to eliminate potential confusion amongst constituents and elected members but there may be instances where a parish council may want to add to the code of their principal authority to reflect local circumstances.

Monitoring Officer comment – Salford does not have any parish councils.

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

Government response - The government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

Monitoring Officer comment – Salford does not have any parish councils.

Recommendation 22 – The [relevant] Regulations should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal

Government response - The government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the 2 other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations. The government will engage with sector representative bodies of all tiers of local government to seek views on amending the [relevant] Regulations to provide disciplinary protections for statutory officers.

Monitoring Officer comment - Noted

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

Government response - The government agrees with the principle that openness is essential. Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites, and Government is recommending that this is adopted as a best practice recommendation. The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.

Monitoring Officer comment - Noted The Council’s Whistleblowing Policy is available on the public website and can be located by entering a search for “whistleblowing”. The Policy provides a named contact for our external auditors (Karen Murray – Lead Partner, Mazars)

Recommendation 24 – Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1988

Government response - Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. Local councillors would not meet the criteria of being external to an individual’s workplace in relation to matters affecting the council and could therefore not be considered as a ‘prescribed person’ for the purposes of the [Act]. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor

General (National Audit Office), or a Member of Parliament. However, the government recognises that this may provide a further check and balance against council corruption or wrongdoing and is open to further representations on the matter on how local accountability can be strengthened in this regard.

Monitoring Officer comment - Noted. The Council's Whistleblowing Policy contains a link to the gov.uk site, where those wishing to make an external disclosure can find the contact details for all current prescribed persons.

3.0 The Local Government Association's Updated Model Code of Conduct

3.1 In relation to the Local Government Association's Updated Model Code of Conduct the Government's response was:

- The Localism Act 2011 states that relevant authorities must promote and maintain high standards of conduct by members and co-opted members. It requires these authorities to adopt a code of conduct for their councillors. Authorities can determine the content of their own code of conduct. However, codes must conform to the 7 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Relevant authorities for the purposes of these requirements include local authorities in England and parish and town councils.
- It is for individual councils to set their own local code, in line with the Act. The government has previously published a light-touch illustrative code of conduct.
- The LGA has worked with sector representative bodies to update its own suggested code of conduct, with the intention that this new suggested code could establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances and priorities. The LGA published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.

3.2 The existing SCC Code of Conduct for Members conforms to the 7 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. The merits of adopting the LGA updated model code of conduct will be considered as part of a wider review of the Council's constitution that is to be undertaken by the Monitoring Officer over the next 18 months. Recommendations regarding the LGA model code of conduct will be reported to the Standards Committee at the appropriate time during this review. .

4. Recommendations

4.1 The recommendations are at the beginning of this report.

KEY COUNCIL POLICIES: The Council’s Code of Conduct for Members

EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS: N/A

ASSESSMENT OF RISK: The Council has a statutory duty to have in place Arrangements under which allegations that an elected or co-opted Member of the Council has failed to comply with the Council’s Code can be considered and decisions made on such allegations. Failure to do so would mean the Council is in breach of that duty and therefore at risk of challenge which in turn would also cause reputational damage to the Council. The Arrangements which the Council has in place also need to be transparent, effective, and fair otherwise there will be a loss of confidence around how allegations that the Code has been breached amongst both the public and councillors. It is anticipated that the Council will be able to meet its obligations, so the risk is considered low.

LEGAL IMPLICATIONS Supplied by: **Peter Hassett, Senior Lawyer, Shared Legal Service**

These are set out in the body of the report

FINANCIAL IMPLICATIONS Supplied by: N/A

PROCUREMENT IMPLICATIONS Supplied by: N/A

HR IMPLICATIONS Supplied by: N/A

CLIMATE CHANGE IMPLICATIONS Supplied by: N/A

OTHER DIRECTORATES CONSULTED: N/A

CONTACT OFFICER: **Iolanda Puzio City Solicitor**

TEL NO: **0161 793 3620**

WARDS TO WHICH REPORT RELATES: ALL