

Review of Local Government Ethical Standards: Stakeholder Consultation

RESPONSE SUBMITTED ON BEHALF OF TENDRING DISTRICT COUNCIL

Consultation questions

The Committee invites responses to the following consultation 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.**

The structures, processes and practices in place at a local level do work however, the Standards Committee does not regard the sanctions available to be sufficient as a deterrent to ensure high standards of conduct by all councillors, at district or parish and town council level.

Concern has been raised that the District Council's Monitoring Officer, has the statutory responsibility for dealing with complaints at a Town and Parish Council level, without any contribution to the resources involved. District Councils are therefore subsidising the local councils in responding to time-consuming complaints, which often originate due to misunderstanding or poor communication with the residents. Recent case-law has enforced the position that the District Council is the Primary Authority for such matters, with very limited powers or responsibility resting with the Local Councils. Even with a robust filtering system in place, within a high parished area considerable resources are required to respond. The Standards Committee expressed a desire to be able to exercise discretion to devolve powers to a Parish Council in an attempt to informally resolve matters prior to referral to District Council.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?**

The most significant gap in the current regime is most certainly the lack of sanctions. Sanctions which have been available since the Localism Act 2011 are only sufficient for certain breaches of the Code of Conduct. The levels of sanctions are sometimes inadequate and are not compatible with the objective to ensure high standards are maintained.

The majority of sanctions rely on the co-operation of a Group Leader, but this is only possible if the Councillor who has breached the Code of Conduct is part of a political group.

The Standards Committee also expressed its concern as to the extent on which the Freedom of Expression (Article 10) could be used as a defence by a Councillor in an alleged breach of the Code of Conduct and considered the reliance to be too wide and inconsistent with the Nolan Principles.

Codes of Conduct

- 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?**

Since its adoption under the Localism Act 2011, the Council and the Standards Committee have kept the Code of Conduct under review and made substantial revisions in 2013 and minor changes in 2018. These reviews were undertaken in response to ensuring the Code was fit for purpose, clear and easily understood by both councillors and members of the public.

Mandatory Code of Conduct training sessions are delivered as part of an induction programme for newly and re-elected members. Periodically through the term of office Code of Conduct sessions are repeated, with the aim to be delivered annually. Most councillors attend these however; with the exception of reporting the training attendance to the Standards Committee it is difficult to enforce compulsory attendance.

The District Council's Monitoring Officer also provides periodical training to Town and Parish Councils, or in response to a matter of complaint or concern.

- 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.**

Since the significant review of its Code of Conduct in 2013, the Council is satisfied that its adopted Code is consistent with the Nolan Principles, and contains appropriate requirements for registering and declaring Councillors' interests.

Investigations and decisions on allegations

- 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?**

The Council has a formal Complaints Procedure which has been adopted by Council, following recommendations from the Standards Committee. Since its adoption, the Local Government Ombudsman, in response to a complaint, decided that the Council's procedures were robust and reasonable.

The Monitoring Officer follows these procedures for every complaint, with the exception that sometimes timescales slip due to capacity and resources.

The Independent Persons believe that some cases take a long time to finalise, but accepting the procedure is being followed. However, prior to determination there is often trial by media.

- 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?**

Reports to the Standards Committee following an investigation include the outcome of consultation with an Independent Person. The Independent Persons are invited to all Standards Committee meetings and are able to comment on matters on the agenda (whether investigations or not). If the Standards Committee adjourns to debate an investigation, the Independent Persons are invited to listen to the debate and the Chairman will seek their views prior to the Committee reconvening.

One of the Council's Independent Persons fulfils the role for another council and different processes exist for consulting the Independent Person. Some involve consultation on all matters at any early stage, whereas Tendring District Council has encouraged less consultation on complaints requiring no further action with more involvement on matters requiring informal resolution or investigation.

Whilst accepting that every case is different, the Independent Persons, with the support of the Standards Committee would appreciate national guidance on the role of the Independent Person.

- 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?**

The Council's Complaints Procedure provides flexibility to allow an investigation to be outsourced with such a decision being taken by the Monitoring Officer taking into account any potential conflict of interest, capacity and skills. A Deputy Monitoring Officer is also in place which can assist with any potential conflict of interest with a separation of duties.

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?**

Extract from Council's Complaints Procedure:

What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?

- 8.1 *The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-*
- 8.1.1 *Publish its findings in respect of the Member's conduct on the Council's website;*
- 8.1.2 *Report its findings to Council (or to the Town or Parish Council) for information;*
- 8.1.3 *Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;*
- 8.1.4 *Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;*
- 8.1.5 *Instruct the Monitoring Officer to (or recommend that the Town or Parish Council) arrange training for the member;*
- 8.1.6 *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (or recommend to the Town or Parish Council that the Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town or Parish Council);*
- 8.1.7 *Recommend to relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of (or recommend to the Town or Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or*
- 8.1.8 *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the exclusion of (or recommend that the Town or Parish Council exclude) the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.*

Lack of Sanctions:

The Standards Committee, Independent Persons and Monitoring Officer collectively believe that the sanctions available since the Localism Act 2011 came into force are insufficient.

It is understood that the power to suspend was removed for local authorities due to being abused for political purposes nationally, however this has left a regime which could be regarded as toothless. Simply relying on reputation alone and selection by the electorate every 4 years does not reinforce the statutory duty to promote and maintain high standards of conduct. There remain instances whereby suspension would be appropriate and strong consideration should be given to recommend reinstating this power especially if criminal offences have been obtained during term of office. To avoid the power to suspend being abused, national guidance could be produced in this regard to assist in its application.

ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Although criminal offences may not necessarily relate to the role of a Councillor, the Standards Committee would prefer a Judge when handing down a decision and sentence to give consideration to suspension from a role in public office, rather than this decision rest with the Standards Committee, as this could be regarded as politically motivated.

If the power to suspend was reinstated for local government, guidance or criteria on exercising discretion could mitigate any attempts to abuse the power for political purposes. Such guidance could be similar to the type of sentencing guidelines issued for criminal offences. For example, a criminal conviction = probable suspension with the period being determined on the level of sentence. Improper use of resources could equate to a suspension of X weeks. These would recognise serious breaches compromising the Principles of Public Life.

It is unclear whether the Scheme of Allowances (in accordance with the Local Authorities (Members Allowance) (England) Regulations 2003) could permit a sanction to suspend a member's basic allowance, if a breach of the Code of Conduct had been found. If this is not currently permissible, the Standards Committee consider that financial penalty may act as a stronger deterrent.

Declaring interests and conflicts of interest

- 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?

Whilst the Standards Committee understand the importance of declaring and managing conflicts of interest, it was queried why such a regime does not apply equally to MPs. The District Council is the local planning authority and will be making decisions on property in its area, however the Secretary of State and other government departments are also responsible for decisions affecting local areas.

- 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.**

The Code of Conduct includes Personal Interests which are locally defined categories and are considered adequate.

Whistleblowing

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

Tendring District Council has a Whistleblowing Policy (issued by Human Resources in 2015) which is monitored by the Audit Committee. This document is due to be reviewed in June 2018.

Improving standards

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

Further research is required to establish whether this is permissible however, the Standards Committee are interested in whether the Scheme of Allowances in accordance with the Local Authorities (Members Allowance) (England) Regulations 2003 could be linked to attendance of committee meetings and training/briefing sessions. The reasoning behind this idea is to ensure more Members participate in the business of the Council at its meetings, undertake training sessions and attend All Member Briefings on local and national issues.

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

Reinstating the power to suspend following breach of the Code of Conduct in appropriate cases.

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?

Harassment and intimidation follows unpopular decisions or individuals not satisfied with the political make-up of the Council. Although, the police do support individual councillors who raise incidents, often speaking to those who have or potentially could be committing public order offences, the increase in the use of social media and the manner in which comments are made and councillors targeted, the Standards Committee felt more protection may be required.

Whilst the Council has the ability to issue warning letters and refuse access to meetings for disorderly conduct at meetings, it has limited powers to address the use of social media against individual councillors, appreciating the right of freedom of expression and use of council resources.

The Standards Committee felt that national guidance for elected members on tools available to them for their protection when fulfilling a role in public office would be useful.

This submission is made by the Monitoring Officer, Mrs Lisa Hastings on behalf of Tendring District Council through consultation with its Standards Committee and Independent Persons. The reason for submitting the consultation response is due to having responsibility for and practical experience of operating the ethical standards framework at the Council.

The Monitoring Officer sending the response can be contacted using the following email address: lhastings@tendringdc.gov.uk

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