

APPENDIX E TO THE MINUTES OF THE MEETING OF THE DETERMINATIONS & DISPENSATIONS COMMITTEE HELD ON 9 APRIL 2018

Review of Local Government Ethical Standards: Stakeholder Consultation

By way of general introduction and context to the following responses, it should be appreciated that the Devon & Somerset Fire & Rescue Authority is a combined authority, with membership not directly elected but rather appointed from four constituent authorities (Devon County Council, Somerset County Council, Plymouth City Council and Torbay Council).

Nonetheless, this Authority is still required to operate its own “standards” arrangements as required by the Localism Act, as is each of its constituent authorities.

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.

While this Authority has not experienced a high number of complaints, it is felt that the ability to determine matters at a local level and to set the procedures by which complaints have to be managed has delivered benefits, particularly in allowing for the introduction of a robust assessment procedures to filter out genuine complaints from those which are clearly malicious, tit-for-tat or politically motivated.

The lack of consistency in Code content across local authorities, however, is an issue (given that our Authority Members also serve on at least one other local authority, with its own Code of Conduct) as is the ability to impose meaningful sanctions in the (albeit rare) instances where a breach of the Code has been established.

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

As indicated above, it is felt that the significant gaps are:

- The inability to apply meaningful sanctions for certain breaches of the Code of Conduct; and*
- The lack of consistency with regards to the way a code should be worded and applied across all local authorities.*

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood?

The Localism Act 2011 only gives limited guidance on what should be in the Code of conduct that it is a requirement for each authority to adopt. Similarly, suggested Codes produced as examples by bodies such as the Local Government Association offered little other than to reiterate the requirements of the Act and associated Regulations on disclosable pecuniary interests.

When the new regime was introduced, this Authority held discussions with its appointing constituent authorities with a view to seeking to agree a consistent Code. For political reasons this was not possible and it is felt the variations in resulting Codes, while in some cases subtle, have nonetheless not aided in promoting either clarity or understanding for elected members and the public.

This Authority is of the view that, while there were undoubtedly problems in the previous regime, these were not rooted in the former Model Code which it is felt was robust, proportionate and easily understood. Consequently, the Authority would request that, as part of the review of ethical standards, consideration is given to the introduction of a national statutory Code based on that in use up until 2012.

- d. Do the codes cover an appropriate range of behaviours?

Given the limited statutory requirements of what is to be in a Code and the limited guidance that has since been issued it is a matter of subjective interpretation as to whether the Code covers an appropriate range of behaviours.

This Authority has based its Code on the former statutory Code and in this respect feels that it does cover an appropriate range of behaviours.

- e. What examples of good practice, including induction processes, exist?

This Authority features a session on its Code of Conduct in its induction process for newly appointed Members. As with other issues, however, securing attendance can be difficult. It is felt that consideration should be given to introducing a statutory requirement to attend Code of Conduct training at least once a year in support of the statutory duty to promote and maintain high standards of conduct.

- f. 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.

No. It is felt that the aspect of Codes including "...appropriate provision (as decided by the local authority) for registering and declaring councillors' interests" is too open to individual interpretation and has resulted in a diverse range of codes in England, to the detriment of clarity and understanding both by elected members and the public.

Investigations and decisions on allegations

- g. Are allegations of councillor misconduct investigated and decided fairly and with due process?

As there is no set process it is for individual councils to interpret this as they consider appropriate. That having been said, this Authority has adopted procedures which it considers are fit for purpose in ensuring that any complaints received are dealt with impartially and with consistency.

- h. What processes do local authorities have in place for investigating and deciding upon allegations?

The procedures for assessing and dealing with complaints as adopted by this Authority are attached to this submission.

- i. Do these processes meet requirements for due process?

This Authority considers that they do.

- j. Should any additional safeguards be put in place to ensure due process?
This Authority would strongly support a robust ‘filtering’ process (as included in its procedures) for initial assessment of complaints to help prevent malicious, vexatious or tit for tat complaints which in the past have caused people to view the process a complainants charter.
- k. 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?
This Authority considers that it is.
- l. Should this requirement be strengthened?
While the current requirement is that the views of the Independent Person must be sought prior to decisions being made on allegations that have been investigated, this Authority has also used the flexibility under the Act to seek the views of the Independent Person in other circumstances (e.g. at initial assessment stage).
- m. If so, how?
Further guidance could be issued on the role of the Independent Person – perhaps based on “best practice” case studies of other authorities.
- n. 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?
Yes, this is possible and something this Authority has considered in developing its assessment procedures which currently allow for, amongst other things:
- *initial assessments of sensitive allegations (for example, where the Monitoring Officer may previously have advised the Member concerned on the subject matter of the allegation) to be conducted by a small committee of Members; and*
 - *investigations to be undertaken by experienced staff external to this organisation.*
- o. How could Monitoring Officers be protected from this risk?
This Authority is perhaps fortunate in that, to date, it has not faced a significant number of complaints. On this basis, the Authority considers the safeguards it currently has in place (see answer to [n] above) are probably sufficient and proportionate.

Sanctions

- p. Are existing sanctions for councillor misconduct sufficient?
The sanctions that are available for failing to register or act in accordance with the provisions of the Localism Act 2011 where a member has a disclosable pecuniary interest are considered to be sufficient. However, the method of employing these sanctions, referral to the police, a police investigation and a possible court hearing, are considered to be cumbersome and very costly to the public purse.

Even though (as previously indicated) this Authority has not had to deal with many complaints, it nonetheless feels – on the basis of the limited experience it has had – that those sanctions which would seem to be open, under the current legislative arrangements, for other breaches of the Code of Conduct (for example, failure to declare ‘interests other than disclosable pecuniary interests’) are very limited, particularly where a potentially serious “other” breach is concerned (e.g. bullying/harassment; complaints involving equalities issues).

- q. What sanctions do local authorities use when councillors are found to have breached the code of conduct?

In line with the current legislative provisions, this Authority has agreed the following sanctions to apply for Code breaches other than those relating to disclosable pecuniary interests:

- reporting the finding to the Authority for information and publishing the finding in local media;*
- a recommendation to the Authority that the Member concerned be removed from any or all Committees or Sub-Committees of the Authority;*
- instructing the Monitoring Officer to arrange training for the Member;*
- removing the Member concerned from all outside appointments to which s/he has been appointed or nominated by the Authority;*
- withdrawing facilities provided to the Member by the Authority, such as e-mail and Internet access; or*
- Excluding the Member from the Authority’s offices or other premises, with the exception of meeting rooms as necessary for attending Authority, Committee and Sub-Committee meetings.*

- r. Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

No. It is not considered that the sanctions as listed at [p] above (which would seem to be the only available sanctions under the current legislative provisions for Code breaches other than those relating to disclosable pecuniary interests) represent any real or effective sanctions for what might be more serious “other” breaches – certainly in terms of how these might be perceived by the public. This in turn weakens what is purported to be the underlying purpose of the current regime – to promote high standards of conduct in public life.

- s. Should local authorities be given the ability to use additional sanctions?

Yes.

- t. If so, what should these be?

There should be limited powers of suspensions up to six months as was exercised under the previous ethical standards regime. Suspensions should be issued only by a hearing panel of a Standards Committee in those instances where the proven “other” breach is considered to warrant such a sanction.

Declaring interests and conflicts of interest

- u. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

No. As a minimum it should not be left to individual councils to have in their standing orders the requirement for a member to remove themselves if they have a disclosable pecuniary interest. It should be a statutory requirement for a member to always remove themselves if they have any interest, whether disclosable pecuniary interest or otherwise, where such an interest might reasonably be perceived as impacting upon the ability of the Member concerned to act in the public interest.

- v. 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 this Authority has no real practical experience of this aspect of the Code, it is of the view that these statutory duties are appropriate.

- w. 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.

At present, this Authority's Code in essence replicates the provisions of the former Model Code in terms of the registration, declaration and management of interests other than disclosable pecuniary interests. As indicated in previous responses, while these are considered appropriate and proportionate in the context of upholding high standards of conduct in public office, consistency across the piste is lacking, given that not every local authority will necessarily have the same provisions. For this reason (and given that our Authority Members are also members of at least one other local authority), having a consistent set of rules, i.e. a Model Code, would be beneficial.

Whistleblowing

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

The Authority's Constitutional Governance Framework includes a well-established whistleblowing policy which accords with existing legislation and best-practice. This policy is reviewed at least annually, along with other documents in the Authority's Constitutional Governance Framework, to ensure it remains fit for purpose. The Authority is of the view that these arrangements are satisfactory.

Improving standards

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

As indicated in previous responses, general awareness raising during new Member induction is fundamental but securing attendance at such sessions can be problematic. Sharing best practice with neighbouring local authorities, including close working relationships between Monitoring Officers, is also beneficial.

It is felt that all Authority's should adopt annual training on the Code of Conduct, which this Authority is to introduce from this year.

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

As indicated in previous responses, it is felt that the introduction of a standard Model Code (based on the previous Model Code), together with more meaningful sanctions for breaches other than disclosable pecuniary interests, would promote greater consistency and understanding for both elected Members and the public.

Intimidation of local councillors

- aa. What is the nature, scale, and extent of intimidation towards local councillors?

This Authority has no real experience of this and as such does not feel in a position to comment.

- bb. What measures could be put in place to prevent and address this intimidation?

See response to [aa] above.