

Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life. High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public officeholders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive. An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.

List of recommendations

Number	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
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
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
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
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

Number	Recommendation	Responsible Body
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
<p>COMMENT</p> <p>This Authority’s Code of Conduct already contains this provision.</p>		
8.	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
<p>COMMENT</p> <p>Although currently not a statutory requirement at present, the Authority could determine itself that the term of office for the Independent Person should be fixed at two years, renewable once.</p>		
9.	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
<p>COMMENT</p> <p>As a matter of good practice, the Authority could determine that this should happen in any event. In recent previous hearings, the view of the Independent Person has been recorded in the minutes.</p>		
10.	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government

Number	Recommendation	Responsible Body
11.	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government/all local authorities
COMMENT <p>This Authority has, since its establishment, had in place an indemnity for officers and Members against reasonable costs which may be incurred in securing appropriate legal advice and representation in respect of civil or criminal proceedings. This indemnity extends to defending a claim for defamation. It is considered that the Authority could (using Section 5A of the Fire & Rescue Services Act 2004 [as inserted by the Localism Act 2011]) provide Independent Person(s) (and co-opted members) with a similar indemnity.</p>		
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.	Government
13.	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government
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 are rejected as trivial or vexatious; and any sanctions applied.	Government
COMMENT <p>It is considered the Authority could adopt this recommendation now, as a matter of best practice and in the interests of greater transparency.</p>		
16.	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government

Number	Recommendation	Responsible Body
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
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

List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

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.

COMMENT

The Authority's current Code already provides, at paragraph 4.2(4), a prohibition on bullying and defines what constitutes bullying. It is proposed that this paragraph of the Code be amended to refer also to "harassment" and contain the following definition of what constitutes "harassment":

"harassment" may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:

- spoken or written words or abuse;
- offensive tweets, e-mails or comments on social networking sites;
- images and graffiti;
- physical gestures;
- facial expressions; and
- jokes

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.

COMMENT

The Authority's current Code does not contain such provisions at present, albeit that the procedures for dealing with complaints provides for the Monitoring Officer, following consultation with the Independent Person, to decide to take no further action on a complaint if it is considered that the complaint appears to be simply malicious, politically motivated or "tit-for-tat".

It is felt that the Authority's Code should be amended to include the following as an additional General Obligation to paragraph 4.1 (you must....):

(6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness.

The Authority's Code could be amended to include the following as an addition to paragraph 4.2 (you must not....)

(10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.

It should be noted, though, that inclusion of these issues in the Code will mean that any perceived breach of these provisions will of itself be, on the face of it, a breach of the Code of Conduct.

<p>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.</p>
<p>COMMENT</p> <p>This Authority reviews its Code annually and in consultation with neighbouring authorities as necessary to seek to ensure consistency of practice. Views of the public or community organisations are not sought at present.</p>
<p>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.</p>
<p>COMMENT</p> <p>Both the Authority Code and guidance on making a complaint are readily accessible (in 3 clicks) from the Devon & Somerset Fire & Rescue Service (the Service) website Home Page.</p>
<p>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.</p>
<p>COMMENT</p> <p>The Authority currently publishes its Gifts and Hospitality register on its website and this is updated as required. At present, though, it is not in an accessible format, but this will be explored.</p>
<p>Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.</p>
<p>COMMENT</p> <p>The Authority's current Guidance on Making a Complaint currently identifies criteria against which allegations are initially filtered. These are based on criteria used by the former Standards Board for England to filter allegations and identify those instances when it would not be in the public interest to take action in relation to any complaint received.</p> <p>It is suggested, though, that the Guidance could be amended to include the words (the Public Interest Test) after the "Other Assessment Criteria" sub-heading and then amending the introductory paragraph to read "If your complaint meets the above criteria, it may be that the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies:"</p>
<p>Best practice 7: Local authorities should have access to at least two Independent Persons.</p>
<p>COMMENT</p> <p>It is felt that this could be beneficial in providing resilience in dealing with complaints in a timely manner. As such, it is proposed that the Authority should seek to appoint a second Independent Person. Additionally, given Recommendation 8 (see recommendations above), it is proposed that the Term of Office for both Independent Persons should be limited to two years, renewable once.</p>

<p>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.</p>
<p>COMMENT</p> <p>The Authority's current Guidance on Making a Complaint already provides for the Independent Person to be consulted at all stages of the process up to and including a decision to investigate and, as required by statute, prior to any decision being taken on an allegation that has been investigated.</p>
<p>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.</p>
<p>COMMENT</p> <p>The Authority's current process provides that any matter which has been subject to investigation should then be determined by the Standards Committee. Full Minutes of such meetings have been published on the Authority's website. The Minutes include all of the issues identified in Best Practice and also record the views of the Independent Person (see Recommendation 9 above and the associated comment to this recommendation).</p> <p>Going forwards, it is recommended that, for those matters which have been subject to investigation but where either no breach of the code is found and/or no sanction is recommended, then the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person. It is also recommended that, for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the 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 (or other action) applied.</p>
<p>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.</p>
<p>COMMENT</p> <p>The Authority's Guidance on Making a Complaint (which includes the process for handling complaints and estimated timescales) is published on the Service website.</p>
<p>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.</p>
<p>COMMENT</p> <p>Not applicable to this Authority</p>

<p>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.</p>
<p>COMMENT</p> <p>Not applicable to this Authority</p>
<p>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.</p>
<p>COMMENT</p> <p>To maintain the safeguard the Monitoring Officer from potential conflicts of interest, the Service currently has arrangements in place to enable investigations to be undertaken independently.</p>
<p>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.</p>
<p>COMMENT</p> <p>This Authority has established Red One Ltd. in accordance with the relevant legislation to undertake trading on a commercial basis. Red One Ltd. is referenced in the Authority's annual governance statement. Red One Ltd. is, though, a separate legal entity that operates under the provisions of the Companies Act and its Board meetings will discuss matters which are commercially sensitive and to which exemptions for this purpose are provided by the Freedom of Information Act. For this reason, it is not felt appropriate that Red One Ltd. should publish its board agendas etc. in an accessible place.</p>
<p>Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</p>
<p>This Authority does not have political groups with leaders or whips. It is suggested that a proportionate response to this best practice recommendation would be to discharge it through meetings of the Standards Committee.</p>