

Review of Local Government Ethical Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

Dear Sir/Madam,

This submission is made on behalf of the Audit and Governance Committee of the Cleveland Fire Authority which met to consider this stakeholder consultation on 23 February, 2018. The Fire Authority was established through The Cleveland Fire Services (Combination Scheme) Order 1995, and its Brigade exercises core and other functions under the Fire and Rescue Services Act, 2004. The members and co-opted members of the Fire Authority are bound by a Code of Conduct which fully complies with the requirements under the Localism Act, 2011.

The responses of the Committee are set out below:

- 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.**

As a preliminary, it is important to state that the Committee has no issue with the high standards of conduct within the Fire Authority; however, it is not convinced that the existing standards, processes and practices are in themselves adequate to ensure this. Whilst the Committee notes; the 'duty to promote and maintain high standards of conduct' under Section 27 of the Localism Act, 2011, the minimum requirements through a citation of the principles of conduct in public life within the terms of a Code of Conduct and the involvement of Independent Persons within the 'arrangements' for dealing with complaints, the fundamental issue was the lack of sanctions within the present regime.

For its part, the Fire Authority have incorporated many of the features of good ethical governance that was initially introduced through the provisions of the Local

Government Act, 2000 (Part III refers) and regulations made thereunder as well as guidance issued by the then Standards Board for England (which offered some oversight of the ethical conduct system), such as the retention of the references to personal and prejudicial interests as well as the term 'disclosable pecuniary interests' as introduced under the 2012 Regulations, the obligation to declare 'gifts and hospitality' and encompassing all the 'general principles of public life' including; 'respect for others' and 'duty to uphold the law' which are not mentioned within Section 28 of the 2011 Act, but appreciating how an Authority could 'craft' its own Code. Members of the Committee would welcome the universal application of these elements.

The Committee formed the unanimous view that the public expected the highest standards in the ethical behaviour and conduct of its members. This could be seriously undermined and indeed eroded, where available 'sanctions' could be inadequate to deal with to any misconduct in public office. Although, the 'offence provision' within Section 34 of the 2011 Act was noted, prosecutions had been few and it did not appear to be the case that the DPP (whether for evidential or resource implications or a mixture of both) had entertained the taking of such proceedings in the overall context of criminal proceedings. Where prosecutions had arisen, the penalty was invariably to the lower end of the sentencing scale and without disqualification from office (the case of 'Cllr Spencer Flowers' being a case in point).

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

As indicated above, the Committee felt that the most 'significant gap' in the present system was an inert and passive system of available sanctions, particularly when assessed against those sanctions that were previously available under the Local Government Act, 2000. Errant behaviour of an elected member might well come within a proportionate remedy of training or the issuing of an apology, but it might also require consideration of suspension or disqualification: sanctions which would only presently be available following the outcome of a successful prosecution under Section 34 of the 2011 Act.

The Committee noted the consultation through the then Department for Communities and Local Government (DCLG) on the 'Disqualification Criteria' for Councillors and Elected Mayors, but this was only a consideration in regard to their election to office (Section 80 of the Local Government Act, 1972 refers). Members believed that without a forceful system of available sanctions the present system had been seriously undermined. Although a basis for change had been so-called 'ill- founded and malicious complaints' being made, it was considered that the system for investigation of complaints was sufficiently robust to detect such contentions. It was further mentioned that any party political influences as the drivers for any complaint would also be detected.

Generally, the 'arrangements' for dealing with complaints were sound, through experienced officers (often those exercising their Monitoring Officer role) with the assistance of competent Independent Persons. It should be noted that the Independent Persons within the Fire Authority take a full participatory role within the work of the Audit and Governance Committee and their views are accommodated within this response.

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?**

The Fire Authority's Code of Conduct is clear in its language and has been supplemented through DCLG and LGA guidance issued in connection with the provisions in the Localism Act, 2011. In addition the regulations covering 'disclosable pecuniary interests' has been annexed.

Protocols exist between the Monitoring Officer of the Fire Authority and his colleagues within the local authorities constituting the Cleveland Fire Area to ensure some degree of uniformity in the Codes of Conducts and approaches to training, induction programmes etc., Good practice exists through the Lawyers in Local Government (LLG) and particularly through the discussion and dissemination of good practice through the Fire Lawyers Network.

- 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.**

The consistency with the 'Seven Principles of Public Life' is justifiably seen as the minimum requirements for a Code of Conduct but should ideally include all the ten 'General Principles' as most notably absent is the 'duty to uphold the law' together with 'respect for others' (see above). The provisions for the registration and declaration of interests of Councillors (and co-opted members) are adequate.

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?

Local authorities need to have in place 'arrangements' under which 'allegations' of member misconduct can be investigated (Section 28(6) of the 2011 Act refers). The Fire Authority has published guidance, in unison with most public bodies, on the processes to be followed, together with the procedures for hearing complaints, following the outcome of an investigation. These details can be accessed through the Authority's Constitution and are referenced through the Authority's website and are available in hard copy format.

As indicated, the Authority engages with its Independent Persons from the receipt of a complaint rather than seeking their views before a decision is taken on a matter that has led to an investigation (Section 28 (7) of the 2011 Act refers). Conscious of Human Rights implications (Articles 6 and 8 primarily) the Authority's procedures allow for representation, and protocols have been developed within the Tees Valley to deal with conflicts of interest amongst other matters. It is therefore considered that the procedures in place are sufficiently robust and have been refined since the introduction of the ethical standards regime under the Local Government Act, 2000.

(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?

Please see above.

(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?

As indicated, the Tees Valley Monitoring Officers Group have established protocols for dealing with conflicts of interest as well as the provision for mutual support and assistance. There are indemnity provisions available that would seek to protect Monitoring Officers and that would be accessible under an officer's contract of employment and guidance through such organisations as 'Lawyers in Local Government' although it is appreciated that in some cases this may not be sufficient to protect some officers in certain organisations who have not sufficiently embedded a culture of good ethical conduct within their own organisations. There might therefore be benefit from formalising arrangements to provide such protection by means of a national standard.

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?**

Existing sanctions are insufficient and therefore not always proportionate to any finding of fault to adhere to the provisions of a Code of Conduct. Available sanctions are the issuing of an apology, undergoing training and removal of facilities (provided this does not affect their role as councillor within their community). Such actions could to some degree militate against a repetition of such behaviour as the adverse publicity behind a finding of fault might still persist in the minds of the electorate, and this may temper the behaviour of a councillor subject to a sanction. However, such evidence of this as exists is purely anecdotal.

Clearly, a more robust regime of sanctions would restore and instil better public confidence in the present system and also hopefully act as a restraint upon a councillor who might contemplate engaging in behaviour which would generally be considered as being unacceptable.

- (ii) Should local authorities be given the ability to use additional sanctions? If so, what should these be?**

Disqualification and suspension, as was previously the case, with a limitation on the period of any disqualification/sanction with the most serious cases (see Section 34 examples) being reserved to the courts or potentially through a First Tier Tribunal system.

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?**

Existing arrangements over the declaration of interests are satisfactory. However, 'disclosable pecuniary interests' and their application should extend beyond 'spouse/partner' and should cover immediate members of the councillor's family (i.e. sons and daughters). Consequently, many public authorities have required such declarations as a provision within their Codes of Conduct and protocols, particularly, by way of example, in the exercise of the discharge of functions associated with acting as a Local Planning Authority. In the granting of permissions/consents and the award of contracts, as outlined in the DCLG guidance to accompany the 2011 Act, there is a need to ensure propriety in the acts of public bodies.

There is a consequent need for such guidance to be 'up-dated' and refreshed, which is singularly absent at present with a lack of clear direction. A void persists in the absence of the former Standards Board for England. Dispensations are a necessary feature and are used sparingly and in line with the limited application for any consideration of their use.

(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 Fire Authority still requires declarations that go beyond the stated requirements under the 2011 Act with the obligation to declare prejudicial interests which may go beyond pecuniary matters and involve other close members of a councillor's family (not simply a spouse/family) to ensure and instil public confidence. To do otherwise would seriously undermine the reputation of an organisation. Such provisions should be made mandatory.

Whistleblowing

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

Arrangements for whistleblowing within the Fire Authority are reflective of the Public Interest Disclosure provisions and the existing statutory framework. Individuals are encouraged to make disclosures without fear of victimisation and/or harassment. Further, it is an important consideration that a disclosure can be made to the Authority or to a number of bodies as indicated in its own accessible policies and procedures document. The more an ethical culture is embedded in an organisation the more likely an individual will utilise such procedures where they need to make a disclosure in the public interest.

Improving standards

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

The Fire Authority regularly reviews its ethical framework and provides training to its membership in addition to member development conducted through a councillor's constituent authority. Any 'improvement' must be led by government through legislation and guidance (both statutory and non-statutory) as ultimately it is through such measures that parameters are then set out in which public bodies should operate.

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

Introduction of a more robust sanctions regime (see generally above).

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors? What measures could be put in place to prevent and address this intimidation?

It is noted the recent investigation by the Committee on Standards in Public Life into intimidation of candidates at the last Parliamentary General Election and the measures that have followed i.e. anonymity of address details etc., Intimidation of Councillors is a present and serious factor. It can arise through a variety of incidents, such as local issues of controversy and emotion, political pressures, unrealistic expectations of the public and misinformation. There has been a discernible trend of hostility to local politicians. Health/Safety and Well-being training have become standard within induction and continuing development programmes for councillors. In cases, there has been reference to other agencies to offer mutual support and assistance. However, it appears this unfortunate face of 'public life' may be set to continue and again where legislation could be needed as a safeguard.

General observations

The Report to the Committee drew Members' attention to the founding purpose of the Committee on Standards in Public Life as being "*to examine current concerns about standards of conduct of all holders of public office...*" Members have previously expressed concern about the segmentation of standards; they would wish to see a consistent code applied to Elected, and Co-opted representatives and senior executives in all fields of public life.

Members are aware of the expansion of the seven 'Nolan Principles' to ten, through the addition of respect for others, duty to uphold the law and stewardship. Members have queried whether there needs to be a further expansion to address the wider issue of conduct that might bring a public authority into disrepute, Members would welcome the Committee on Standards in Public Life giving consideration to these issues, perhaps under the broad heading of 'Probity'.

I trust these representations are of assistance.

Yours sincerely,

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Chair of Audit & Governance Committee
Cleveland Fire Authority