

BUSINESS REPORT**REPORT OF THE LEGAL ADVISER AND
MONITORING OFFICER****For Information****1. PURPOSE OF REPORT**

- 1.1 To inform the Committee of the Government's response to the Committee on Standards in Public Life review of local government ethical standards (January, 2019).

2. RECOMMENDATIONS

- 2.1 That Members note the contents of this report.

3. INTRODUCTION

- 3.1 The Committee on Standards in Public Life (CSPL) was established in 1994 as an independent advisory non-departmental body, with a remit that included advising the Prime Minister on ethical issues relating to standards in public life. In 2018, the Committee announced a review of Local Government ethical standards with a '*call for evidence*' to which this Committee submitted a response.
- 3.2. Integral to the recommendations made in the resulting report was that the Local Government Association (LGA) should create an up-dated model code of conduct. Previous reports have covered this issue and the Authority have adopted within its own Code of Conduct some of the features from the model code produced by the LGA. Further, the Authority adopted the recommendation that its Independent Persons should be appointed for a fixed two year term. It was a feature of the report that local authorities should be given the power to suspend councillors, without allowances, for up to six months. There would also be a role for the Local Government Ombudsman to investigate complaints alleging breaches of the code of conduct and the appropriate sanction on an appeal by a councillor who has had a suspension imposed.
- 3.3 Whilst some of the recommendations from the CSPL report could be implemented as '*best practice*' the majority of recommendations would require primary legislation or were otherwise contingent on bodies, such as the LGA, bringing forward proposals.

4. THE GOVERNMENT'S RESPONSE

- 4.1 The Government's response to the CSPL review of local government ethical standards is appended herewith (**Appendix 1**) for the information of Members.
- 4.2 The Committee will note the view of Government that local authorities (including Fire and Rescue Authorities) should decide locally on whether to adopt in whole or in part the LGA model code as published in January, 2021, or not at all. It still remains a statutory requirement under Section 28 of the Localism Act, 2011, that an authority must adopt a code consistent with the principles of;
- selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership
- 4.3 The CSPL had recommended that candidates standing for public office should not be required to publicly disclose their home address. Whilst the Government was '*open and receptive to further steps to help prevent intimidation*' the importance of a home address being registered internally with the Monitoring Officer was highlighted to avoid any conflicts of interest. That said, the Government will engage with interested parties to proceed with this recommendation.
- 4.4 The Members Code of Conduct is only engaged when a Member is '*acting in an official capacity*' (Section 27(2) of the Localism Act, 2011 refers). The CSPL had recommended that there should be a presumption of a Member so acting, particularly on '*publicly accessible social media*' sites. The Government's view is that there should be an explicit boundary between a Member's public life and their private or personal life. The Authority's Code reflects the statutory position in that the Code has application when the Members acts in the role as a representative of the Authority.
- 4.5 The Government has stated that although they will keep under review The Relevant Authorities (Disclosable Pecuniary Interests) Regulations, 2012, there was no plans to amend that would require the registration of '*unpaid roles*' or those which would otherwise '*influence opinion or public policy*.'
- 4.6 There was a recommendation for registration of gifts and hospitality over £50 or totalling £100 over a year from a single source. It is the Government's view that public bodies should have autonomy to set a financial level for gifts and hospitality within their codes of conduct. The Authority's Code requires registration of gifts and hospitality over £25, which was a requirement under the previous Code operating in compliance with the provisions of the Local Government Act, 2000. Members have been of a view that this lower threshold was important to ensure that such gifts/hospitality placed an onus on Members to record and would hopefully avoid Members being compromised.

- 4.7 The CSPL had recommended that Section 31 of the Localism Act, 2011, should be repealed. This provision requires the non-participation of a Member in a matter upon which they have a disclosable pecuniary interest. The CSPL preferred a position where a requirement was included within an authority's Code whereby a councillor would not participate in a matter whether they had a registered interest or not. Although Government will keep matters under review there is no present intention to repeal Section 31.
- 4.8 Crucially the Government opposes the recommendation that Independent Persons should be appointed for a fixed term of two years, renewable once. This is in part a reflection on the difficulty encountered by authorities in recruiting to these roles and also the retention of individuals so trained. The Authority did proceed with this CSPL recommendation on the basis of following 'best practice'. However, it is suggested that the Authority reverts to four year appointments without any imposed time limit for re-appointments to these roles when they are next before the Authority for consideration (2023) and that such appointments are based solely on merit. A recommendation that the Local Government Transparency Code should incorporate the view of the Independent Persons has been rejected.
- 4.9 The Government recognises that there is currently no legislation that provides for the suspension of a councillor for breach of the Code of Conduct. The view of the Coalition Government was that Councillors are ultimately held accountable through the ballot box. Nevertheless the Government has signalled its intention to engage with other stakeholders on this subject, most likely through a future consultation exercise.
- 4.10 There is broad agreement that authorities should provide legal indemnity to Independent Persons acting in their roles and that the Local Authorities (Standing Orders) (England) (Amendment) Regulations, 2015, should be amended to provide disciplinary protections for statutory officers in all disciplinary matters, not just dismissal. The 2015 Regulations introduced a procedure whereby the views of a panel of Independent Persons had to be taken into account on matters of dismissal in cases involving the three statutory officers (Head of Paid Service, S.151 Officer and Monitoring Officer) as opposed to the previous appointment of a person whose report was generally binding on the authority.
- 4.11 Other measures include; the further consideration of lawfully barring councillors from authority premises/withdrawing facilities and councillors being included within the list of 'prescribed persons' for the purposes of the Public Interest Disclosure Act, 1998, to allow 'whistle-blowing' disclosures to be made and thereby allowing '*a further check and balance against council corruption or wrongdoing*'.

5. CONCLUSION

- 5.1 The Government have stressed a commitment to working with local government and representative authorities in ensuring the highest ethical standards. However, the Chair of the CSPL, Lord Evans of Weardale, has commented:

‘While we note the government’s commitment to further work to support local government, the Committee is disappointed that many of its careful recommendations have not been accepted. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach.

We are pleased that many local authorities have already reviewed their approach as a result of this work and are adopting the best practice points from the report. Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence.’

- 5.2 It therefore remains to be seen what further consultation exercises will arise but the Committee will be appraised of all future developments.

PETER DEVLIN
LEGAL ADVISER AND MONITORING OFFICER