

1. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

1.1 According to the Local Government Association there are over 18,000 Councillors in the local authorities they represent. In addition the National Association of Local Councils estimates there are some 80,000 Parish and Town Councillors. Set against those numbers the examples of significantly poor behaviour from Councillors are low in number. To that extent therefore the arrangements appear to work most of the time.

However, the current regime suffers from:

- An inadequate national regime – the legislation is poorly drafted, it is difficult to apply and has obvious gaps.
- Inconsistency – with different Councils applying different codes Different codes may apply even within one area with dual hated Members having to apply different standards depending on whether they are acting on Parish or City business.
- An absence of appropriate sanctions for the most serious misconduct.
- Not being up to the challenge of tackling poor behaviour from Members towards Officers. Standards complaints processes are better suited to dealing with external complaints. That though does leave a gap where Member/Officer relations require improvement. This is particularly the case where Group discipline is not being applied effectively or, as with many Parish and Town Councils, where there are no political groups.
- Not being established to deal with governance failings in Parish and Town Councils which, along with issues

relating to individual relationships, constitute the bulk of Parish complaints.

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

2.1 See answer to (a)

3. *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?*

3.1 Local authorities are free to adopt their own codes of conduct and so there is variation even within local areas. It is difficult to understand why behaviour which may be considered inappropriate within one Council should be permissible in another area, or worse still, in another Council operating in the same area. As the number of cross border bodies increases with, for example, new Combined Authorities and Sub National Transport Bodies the significance of this issue can only grow.

3.2 The previous Standards Board issued regular bulletins and annual case reviews which gave an opportunity to see how the Code of Conduct might be applied in practice. Some of the devolved regimes have adopted guidance to run alongside their codes giving similar practical examples. The City of York Council is in the process of reviewing its code and developing guidance along these lines.

4. *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.

4.1 No, there is no obvious reason why different arrangements should apply in different Councils - at least at the same tier.

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

5.1 In our experience, yes.

6. 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?

6.1 In York the Monitoring Officer has delegated powers to assess whether a complaint requires investigation and to instigate such an investigation. These decisions are made in consultation with the Independent Persons. That consultation exceeds statutory requirements but is considered to be appropriate. These powers were granted as a result of the Standards Committee's experience of the previous national regime where a reasonably high proportion of cases requiring a Sub Committee to be convened, were either hopeless from the outset or obviously required investigation.

6.2 York has appointed two Independent Persons and both are consulted on all cases. The Standards Committee considers this to be a particular strength of the York processes.

6.3 The Monitoring Officer also has power to secure local resolutions of complaints in consultation with the Independent Persons. Again this power came about as a result of the Standards Committee's experience of cases under the previous national arrangements ,

- 6.4 The Monitoring Officer can choose not to exercise delegated powers and refer cases to a Sub Committee. When these Sub Committees meet they are also advised by the Independent Persons. In addition the Monitoring Officer reports at meetings of the Standards Committee on all complaints.
- 6.5 Investigations are normally carried out either by a member of the Monitoring Officer's staff, a colleague from another Council or a volunteer who was formerly an independent Chair of a Standards Committee. These arrangements work well but the Committee recognises that some cases require external investigation. The cost of securing external investigators is a concern to the Committee.
- 6.6 Where a breach of the code has been identified and local resolution has not been deemed appropriate hearings are arranged before a Sub Committee of Members advised by the Independent Persons. The Committee has chosen to adopt an investigatory rather than an adversarial approach to hearings - more akin to a Coroner's inquest than a tribunal. The Committee considers that this is likely to be a better approach for local hearings but has had only limited of applying the approach in practice.
- 7. 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?**
- 7.1 As previously stated in York two Independent Persons have been appointed and both are consulted on both the decision as to whether a case should be investigated and on cases which have been subject to investigation. The Standards Committee considers that there is a strong case for suggesting that

Independent Persons should be involved in the decision as to whether or not a case is investigated. The Standards Committee also believes that having the opportunity to take the views of more than one Independent Person is advantageous.

7.2 The current statutory provision that the Independent Person may be consulted by a Member who is the subject of an allegation is rarely used in practice and not entirely satisfactory.

8. 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?

8.1 Monitoring Officers have always had numerous roles in the Standards process. This does create potential conflicts of interest.

8.2 Monitoring Officers may have advised on whether a particular interest has to be declared. Depending on local procedures they may then be responsible for receiving complaints, deciding on whether they should be investigated, investigating themselves or appointing an investigator and advising the decision makers. On some occasions they may also be asked by a potential complainant as to whether they have grounds for complaint.

8.3 Most Monitoring Officers have a legal background and are used to managing potential conflicts of interest. Some of them can be mitigated by the published arrangements an authority adopts. For example the answer to the question as to whether someone has grounds for a complaint may well be as simple as pointing the person to the Code of conduct and criteria that will be used in assessing that complaint.

8.4 Many Councils operate informal mutual aid schemes so a Monitoring Officer for one Council will support another. These

arrangements can work well and should be encouraged. Some Monitoring Officers use volunteers to support parts of the process – tapping in on the skills of former independent Members lost when the Localism Act 2011 was enacted.

- 8.5 However, Monitoring Officers should be entitled to expect that adequate budgetary provision will be available where they determine that external support is required. If supporting the standards regime were added as a duty of Monitoring Officers under section 5 of the Local Government and Housing Act 1989, then the employing authority would have a statutory obligation to provide the required resources.
- 8.6 Monitoring Officers may be subject to pressure when performing these duties. This is likely to a greater issue where political groups do not take a proactive approach to enforcing party discipline and the issue cannot easily be addressed through a conversation with the relevant Whip and Group Leader.. There are many ways this could be addressed including:
- A role for the Independent Persons in providing support to the Monitoring Officer
 - The reintroduction of statutory employment protection for Monitoring Officers
 - The creation of a national whistle blowing hotline for Monitoring Officers given that the use of local arrangements. is likely to be difficult.

9. Are existing sanctions for councillor misconduct sufficient?

- 9.1 For most cases yes. However, the sanctions available are not sufficient to deal with a relatively small number of serious cases of misconduct.

10. 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?

10.1 The City Council has identified the following possible sanctions:

- Censure the Councillor;
- Formally report its findings to the City Council *or* Parish Council for information;
- Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to Council that the Leader be removed from Office
- Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Councillor;
- Remove *[or recommend to the Parish Council via the Clerk/Chair that the Councillor be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- Withdraw *[or recommend to the Parish Council via the Clerk/Chair that it withdraws]* facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access.

10.2 Most Councillors want to behave properly and the sanction of public censure would impact on them significantly. There is

though a smaller group who may regard being sanctioned as something of a badge of honour.

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

11.1 Yes, removal of special responsibility allowances for a defined period of time would have a deterrent value. Suspension or disqualification from office are sanctions which should be available but such draconian sanctions would need to be imposed by an external agency.

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

12.1 The arrangements to register disclosable pecuniary interests are open to some improvement. Given that they are defined in a statutory instrument it has hardly surprising that the wording is legalistic. It is though perhaps asking a lot to expect all Councillors to realise what a “beneficial interest” in land constitutes or to know when a contract has been “fully discharged”.

12.2 Whether other interests should be registered may be a matter for debate. The view in York is that the previous national code had it about right in requiring certain outside body appointments to be included on the register.

12.3 The arrangements for declaring disclosable pecuniary interests are seriously flawed. It is generally recognised that this was a poorly drafted piece of legislation. The concept of “having” a disclosable pecuniary interest stretched the English language to such an extent that the Government guidance abandoned it in favour of the more satisfactory question as to whether business relates to a registerable interest. Unfortunately that causes its

own problems as the question arises then as to how close that interest has to be. The Courts in recent cases seem to be giving us an answer of “quite close” so in *The Queen on the Application of Freud v Oxford City Council*, the employment of Chair of the Planning Committee by University would not apparently have given him a DPI because he wasn’t employed in that part of the University. Similarly in *Kelton v Wiltshire Council v HPH LTD* the Councillor was a director of a Housing Association which was being lined up to deliver affordable housing on a development. He avoided having a DPI because the Association was not contractually committed to the project.

- 12.4 Councillor Flower from Dorset may therefore count himself more than a little unlucky to have gained a criminal record for his indiscretion but it seems questionable whether any of the three Councillors acted wholly in accordance with the highest standards of conduct.
- 12.5 The answer to this is to abolish the criminal offence and have a more comprehensive code. Other legislation can properly deal with corrupt behaviour. Most cases should be dealt with through the standards system.
- 13. 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?**
- 13.1 No, for the reasons set out above.

14. 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.

14.1 The City of York Council has retained a slightly modified version of the previous national code’s requirement to declare personal interest and withdraw from meetings where that decision is “prejudicial”.

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

15.1 The Council has published arrangements for receiving complaints from the public –either about standards matters or more generally.

15.2 The Council has an internal whistle blowing policy which follows best practice guidelines. However, it is not obvious that this provides a clear route for a Monitoring Officer to raise concerns. In Councils where the Monitoring Officer feels unable to raise his or her concerns it may well be that other senior Officers feel similarly.

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

16.1 Political groups could be supported to exert stronger internal discipline. However, this may be difficult in areas where the political balance is close.

16.2 Parish Councils could ensure that their Clerks have the skills necessary to undertake this sometimes complex role whether by having undertaken sufficient appropriate training or having obtained a relevant qualification.

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

17.1 The Localism Act provisions should be abolished. A comprehensive national code should be put in place with national arrangements for dealing with the most complex or serious cases.

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

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

18.1 This is a significant issue. Intimidation is not though restricted to local councillors. Council officers are also, regularly subject to intimidation in some areas and, unlike councillors, lack the freedom to respond.

18.2 Intimidation is largely through social medial, comments on local press websites and misuse of public participation seasons at Council meetings. This is happening on a daily basis and sometimes more often.