

## **Consultation response approved by the City of York Council's Standards Committee**

**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 few 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. As each Council may adopt its own code different codes may apply even within one area with dual hatted 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.
- Standards complaints processes perhaps being better suited to dealing with external complaints rather than those from within the organisation meaning that local authorities do need to ensure appropriate internal processes including processes for issues affecting Member/Officer relations.
- 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 above

**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 is 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.

3.3 The Standards Committee in York has encouraged councillors who wish to bring complaints against their colleagues to instead raise issues through the Leaders and Whips of the political groups. This has not entirely stopped complaints of this nature but it has been of some value in discouraging the use of the standards system for such purposes. The Standards Committee would support any assistance which could be given to political groups in promoting high standards of behaviour.

**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. There is, however, no independent assessment of the functioning of the operation of the Standards system.

**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. It generally results in speedier outcomes.
- 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. This process also assists in achieving speedier outcomes.
- 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 as is the time that investigations can take – although it is acknowledged that due process does require investigations to be undertaken properly and thoroughly.
- 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 councillors 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 experience 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 they 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 councillor who is the subject of an allegation is rarely used in practice and not entirely satisfactory. It can place the Independent Person in the difficult position of being seen to provide support to one party to a complaint. That could create an impression that their role as an independent adviser on the handling of a complaint has been compromised.

**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 these conflicts 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 In some Councils it may be possible to split these responsibilities between different Officers but not every Council will have that flexibility. Many Councils though operate informal mutual aid schemes so a Monitoring Officer for one Council will support another. These arrangements can work well, should reduce conflicts and ought to be encouraged. Some Monitoring Officers also 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. That can also help with the separation of roles.
- 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. 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 across all local authorities.
- 9.2 If the range of sanctions were to be expanded though there is likely to be a greater need for an external body to either impose those sanctions or act in an appellate function.

**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 ungrouped 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. Some individuals though do not have the same level of respect for the standards system and are less likely to respond to sanctions of this nature.

**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 after a standards process 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 a 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 interests 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. Councillors may also use these although Councillors have many other ways of raising concerns without following formal processes.

15.2 The Council has an internal whistle blowing policy which follows best practice guidelines.

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

16.1 It is important that political groups are supported to take a proactive approach to enforcing strong party discipline.

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.

- 17.2 Central government could take steps to encourage all political parties to support local political groups in identifying effective ways of maintaining group discipline.
- 17.3 The Committee on Standards in Public Life could be asked to prepare a model code of conduct to be adopted by all local authorities.

**18. 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?**

- 18.1 This is a significant issue. Intimidation can be through social media, comments on local press websites and misuse of public participation sessions at Council meetings. On occasions intimidation has extended to physical attacks.
- 18.3 Councillors need to be appropriately trained and supported if intimidation occurs. The development of national guidance on best practice in this area would be welcome.
- 18.4 Although this consultation relates to local councillors it is important that the Committee on Standards in Public Life recognises that such intimidation also extends to council officers. The impact of such behaviour is damaging on local democracy in a similar way to the impact of behaviours directed towards councillors.

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