

Croydon Council

REPORT TO:	ETHICS COMMITTEE
AGENDA ITEM NO:	7 MARCH 2019
SUBJECT:	REPORT OF A REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE, 30 JANUARY 2019
LEAD OFFICER:	JACQUELINE HARRIS BAKER, EXECUTIVE DIRECTOR OF RESOURCES AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR SIMON HALL CABINET MEMBER FOR FINANCE AND RESOURCES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT:	
<p>The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.</p> <p>The Committee on Standards in Public Life (“the CSPL”) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles which also form a part of the Council’s Code of Conduct for Members. The 30 January report is the conclusion of their review of the current state of ethical standards in Local Government and sets out a number of recommendations for improvements directed at legislative and governmental changes as part of ethical standards as well as a series of best practice recommendations directed to local authorities.</p>	
FINANCIAL IMPACT	
Implementation of the recommendations contained in this report shall be contained within existing budgets	

1. RECOMMENDATIONS

The Ethics Committee is asked to:

1.1 Note the contents of the report; and

1.2 Direct officers to undertake a gap analysis between the Council’s current Code of Conduct and ethics arrangements and the best practice recommendations set out in the review by the Committee on Standards in Public Life and report these to an upcoming Ethics Committee meeting for further consideration by Members.

2. EXECUTIVE SUMMARY

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This report provides details regarding the report of the Committee for Standards in Public Life report published on 30 January 2019.

3. DETAIL

- 3.1 The Committee on Standards in Public Life (the “CSPL”) was established in 1994 and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles. The full report, which runs to 108 pages and is therefore not attached, can be accessed here: <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>
- 3.2 Members previously received a report in February 2018 regarding participation in the consultation launched by the CSPL as part of their preparation of the report and a response was prepared by the Ethics Committee and submitted on behalf of Croydon Council detailing the Council’s experience of standards matters and highlighting areas of the current ethics arrangements in place under the Localism Act 2011 which the Ethics Committee (including its Independent Members) considered were operating well and areas where this was not the case. Members will also note that some of Croydon’s contributions to the consultation are specifically referenced in the report of the Committee
- 3.3 The terms of reference for the CSPL’s review were to:
- 3.3.1 Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors
 - b. Investigating alleged breaches fairly and with due process
 - c. Enforcing codes and imposing sanctions for misconduct
 - d. Declaring interests and managing conflicts of interest
 - e. Whistleblowing
 - 3.3.2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
 - 3.3.3. Make any recommendations for how they can be improved
 - 3.3.4 Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

- 3.4 The CSPL observed that 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.
- 3.5 High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.
- 3.6 The evidence received by the CSPL supports the view that the vast majority of councillors and officers maintain high standards of conduct. There was, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There was also evidence of persistent or repeated misconduct by a minority of councillors.
- 3.7 The CSPL were 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.
- 3.8 The CSPL considered that giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. The CSPL specifically considered whether there is a need for a centralised body to govern and adjudicate on standards, in the same way as there used to be the Standards' Board for England, however the Committee 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.
- 3.9 Of particular interest to Members will be the recommendations and identified best practice highlighted by the CSPL to improve ethical standards in local government. The recommendations are made to government and to specific groups of public office-holders and these recommendations include a number of changes to primary legislation, including the introduction of the right to suspend a member for up to 6 months, all of which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which the CSPL indicates could be implemented more swiftly. The government have a period of 3 months in which to formally respond to the CSPL recommendations. A full list of these recommendations is attached at Appendix A for Members' ease of reference.
- 3.10 The CSPL has also set out best practice recommendations for local authorities which they indicate should be considered a benchmark of good ethical practice, which the Committee expects that all local authorities can and should implement. The Committee has indicated that they propose reviewing the implementation of the best practice in 2020. A full set of the good practice recommendations are set out at Appendix B for Members' ease of reference

and Members are invited to direct officers to undertake a gap analysis comparing the Council's current Code and practices with the best practice recommendations with a view to reporting to Members at the next meeting for further consideration.

- 3.11 The report by the CSPL deals with a number of specific areas. Of particular interest to members will be the provisions relating to Codes of Conduct, declaring and managing interests, investigations and safeguards and sanctions. More detail is provided in relation to each of these areas below.

Code of Conduct:

- 3.12 Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. The CSPL found that there is considerable variation in the length, quality and clarity of codes of conduct and considered that this creates confusion among members of the public, and among councillors who represent more than one tier of local government. The CSPL considered that many codes of conduct fail to address adequately, important areas of behaviour such as social media use and bullying and harassment. The CSPL therefore recommends that an updated model code of conduct should be made available to local authorities in order to enhance the consistency and quality of local authority codes.
- 3.13 The CSPL considered that 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. There is a specific recommendation that 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

- 3.14 The CSPL found that the current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The CSPL recommends that the current requirements for registering interests should be updated to include categories of non-pecuniary interests. There is also a recommendation that 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

- 3.15 Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. The CSPL noted that each local authority should maintain a standards committee which 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.

- 3.16 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 CSPL considered that 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. The CSPL considered that the 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

- 3.17 There was consensus that 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 CSPL found that 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.
- 3.18 The CSPL therefore recommended to government that local authorities should 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.
- 3.19 Finally, the CSPL indicated that the current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL CONSIDERATIONS

- 5.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.

CONTACT OFFICERS: Jacqueline Harris-Baker, Executive Director of Resources and Monitoring Officer (ext. 62328)

BACKGROUND DOCUMENTS: None

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
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
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
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
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
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

Number	Recommendation	Responsible body
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
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
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

Number	Recommendation	Responsible body
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

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.

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.

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.

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.

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.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

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.

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.

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.

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.

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.

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.

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.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.