

**UPDATE ON RECENT DEVELOPMENTS IN STANDARDS IN LOCAL GOVERNMENT AND REVIEW OF THE CODE OF CONDUCT FOR MEMBERS**

**REPORT OF THE ASSISTANT DIRECTOR OF LAW AND GOVERNANCE**

**1 Purpose of Report**

- 1.1 The purpose of this Report is to update Members on recent developments in relation to ethical standards in local government and to invite the Committee to
- Consider the recommendations of the Committee on Standards in Public Life (CSPL) following their review of Local Government Ethical Standards and note the best practice recommendations identified
  - Note the consultation draft Model Code of Conduct for Members recently issued by the Local Government Association (LGA) in response to the recommendations of the CSPL, and delegate authority to the Monitoring Officer in consultation with the Chair of Standards Committee and Independent Person, to respond to the consultation on behalf the Committee
  - Endorse an amendment to the Council's current Member Code of Conduct in response to a resolution of full Council in September 2019
  - Note that further reports will be provided on developments in respect of the outcome of the LGA consultation on the Code and implementation of the recommendations from the CSPL.

**2 Background**

- 2.1 Since 2000, legislation has been in place with a view to supporting high ethical standards in local government. This legislation, amongst other matters, required local authorities to adopt a Code of Conduct for Members and associated procedures for the handling of alleged breaches of the adopted Code. The precise nature of these arrangements has changed over time with movement from a largely unregulated approach, through a highly centralised system involving the Standards Board for England, to the current local arrangements with which Members are familiar.
- 2.2 The Committee on Standards in Public Life (CSPL) is an advisory non-departmental body that advises the Prime Minister on ethical standards across the whole of public life in England. In that context the CSPL has previously published reports and made recommendations on ethical standards in local government and as the current legislative arrangements have been in place since the Localism Act 2011, the CPSL wished to look at the current framework to see whether it

remains conducive to promoting and maintaining good ethical standards in local authorities. To that end the CPSL undertook a review of the current framework and, following a period of consultation, in 2019 produced a report of their review “Local Government Ethical Standards”.

A copy of the executive summary of the report is attached at Appendix 1. The conclusions of the CSPL are referred to further below together with their recommendations to Government and to other specific groups of public-office holders, which largely require changes to primary and secondary legislation. A copy of the recommendations is attached at Appendix 2.

- 2.3 One of the CPSL recommendations is that the LGA “should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government”. A consultation draft of such a model code has now been produced by the LGA and the draft is attached at Appendix 3.
- 2.4 The CSPL also makes “best practice recommendations” to local authorities which may be adopted without legislative change. The best practice recommendations are attached at Appendix 4. The CSPL states that the best practice recommendations “should be considered a benchmark of good ethical practice”. These recommendations are of note as they relate to practice and procedure in the handling of complaints about Member behaviour and where these are not currently in place within the authority, the CSPL urges that they are implemented to improve ethical standards in local government. The CSPL have stated their intention to review implementation of their best practice recommendations during 2020, however, the subsequent onset of the current Covid 19 crisis will have impacted on such stated timescales. Many of the recommendations are already reflected in the Council’s arrangements, for example, the inclusion in the Code of a prohibition on bullying, accessibility of the Code, involvement of the Independent Person in decisions on whether to undertake a formal investigation, and publication of gifts and hospitality as part of the Register of Interests, which is updated on an ongoing basis. There are however some differences, for example, the Code does not expressly prohibit harassment, nor contain definitions or examples of behaviour that would amount to bullying or harassment. Also, the Council previously appointed two Independent Persons but in recent years has appointed only one. This has not however created any difficulties. In addition, while the Code has been amended since it’s initial adoption, it is not formally reviewed on an annual basis.
- 2.5 At the meeting of full Council on 16 September 2019 Council expressed its support for the adoption of the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism and expressed the view that the definition be implemented in a range of ways within the Authority.

This included the introduction of a reference to the IHRA Working Definition in the Code of Conduct for Members.

### **3 The CPSL Report- Local Government Ethical Standards**

- 3.1 The CSPL notes in its report that the vast majority of councillors uphold high standards of conduct, but also states that there is “clear evidence of misconduct by some councillors”. The majority of those cases relate to bullying, harassment or other disruptive behaviour. The CSPL also found evidence of “persistent or repeated misconduct by a minority of councillors”.

In addition, CSPL is 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. It considered whether there is a need for a central body to govern and adjudicate on standards but concluded there is “no reason to reintroduce” that.

- 3.2 The recommendations by the CSPL set out in Appendix 2 relate to codes of conduct, declaring interests, investigations and safeguards, sanctions, parish councils and leadership and culture and are described further below.

- 3.2.1 **Codes of Conduct:** the CSPL notes the variation in length, quality and clarity of Codes of Conduct which “creates confusion” among members of the public and Councillors representing different tiers of local government. Many Codes do not address areas such as the use of social media and bullying and harassment. The CSPL has therefore recommended that the LGA create an updated model Code of Conduct. The model code is voluntary and able to be adapted by an Authority to reflect local circumstances. The LGA has undertaken this work in consultation with local government stakeholders and the consultation draft Code is attached at Appendix 3.

In addition, it recommends that the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make it clear that the “land” category does not require a Councillor to register his/her home address.

It also recommends that Councillors should be presumed to be acting in an official capacity in their public conduct. This would include their comments on publicly accessible social media.

- 3.2.2 **Declaring Interests:** The CSPL received evidence that the current Disclosable Pecuniary Interests arrangements are “not working”: they are unclear and too narrow. It recommends that the current requirements for registering interests 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.

Most of the codes seen by the CSPL required Councillors to register gifts and hospitality in some way. However, there was a variation in thresholds. The CSPL was concerned about the use of high thresholds. It therefore recommends that Councillors should be required to record gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source.

In addition, it recommends that the current rules about not participating in a discussion, or voting, where the Councillor has “a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”, should be repealed and replaced with an objective test. The Localism Act does not specify how closely related an interest must be to the matter under consideration to count as an interest “in” that matter. Therefore, the CSPL recommends that local authorities should be required to include in their code 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 discussion or decision- making in relation to that matter”.

It also recommends that the current criminal offences relating to Disclosable Pecuniary Interests should be abolished.

**3.2.3 Investigations and Safeguards:** The CSPL acknowledges that the Independent Person is an important safeguard in the current system and concludes that the role should be strengthened and clarified. It recommends that the Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of 2 years, renewable once. In addition, the view of the Independent Person should be formally recorded in a decision notice or minutes.

It also recommends that local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed.

CSPL states that local authorities should maintain a standards committee and recommends that councils should be given the power to establish decision-making standards committees with voting independent members and voting members from parish councils, to decide on allegations and impose sanctions.

3.2.4 **Sanctions:** The CSPL states 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”. It therefore recommends that local authorities should be given the power to suspend Councillors, without allowances, for up to 6 months.

In addition, it recommends that a local authority should only be able to suspend a Councillor where the Independent Person agrees with the finding of breach and also agrees that suspension would be a proportionate sanction.

The CSPL recommends that a Councillor or Parish Councillor who is suspended should be given the right to appeal to the Local Government Ombudsman. The Ombudsman’s decision would be binding.

In addition, the power to bar Councillors from local authority premises or withdraw facilities as sanctions should be clarified and “put beyond doubt in legislation if necessary”.

3.2.5 **Parish Councils:** The CSPL recommends that parish councils should be required to adopt the code of their principal authority, with the necessary amendments, or the new model code.

It also recommends that 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 principal authority.

3.2.6 **Leadership and culture:** The CSPL considers that an ethical culture needs leadership from a local authority’s Standards Committee, its Chief Executive, political Group Leaders and the Chair of Council. As part of this, the CSPL recommends that Councillors should be required to attend formal induction training by their political groups.

3.3 The Best Practice recommendations to local authorities do not require legislative changes and include the following:

- Codes of Conduct should include prohibitions on bullying and harassment and a requirement to comply with formal standards investigations
- an annual review of the Code of Conduct
- access to at least 2 Independent Persons, and
- regular meetings of senior officers and political Group Leaders or Group Whips to discuss standards issues.

- 3.4 The Best Practice recommendations are set out in full in Appendix 4. As referred to above, the Committee will see that there are a small number of aspects of practice and procedure which would require adjustment to secure consistency with the CSPL recommendations. As the Government is yet to respond to the CSPL recommendations, and the consultation process on the LGA Model Code is ongoing, the Committee may consider it appropriate to await further developments in these areas, prior to considering any further amendments to the current Code of Conduct, in addition to the amendment required to reflect Council's resolution on antisemitism. It is however proposed that in the meantime, officers review the Arrangements for Dealing with Complaints in the light of experience, and also having regard to the best practice recommendations, and bring a further report to Committee on any updates recommended to the procedure document.
- 3.5 Although the CSPL Report Executive Summary, the Recommendations to Government and other specific groups of public office holders, together with the Best Practice recommendations to local authorities are attached to this report, a full copy of the CSPL report can be accessed here: [CSPL report](#)

#### **4 Member Code of Conduct**

- 4.1 At paragraph 3.2.1 above it is noted that the variation in length, quality and clarity of Member Codes of Conduct "creates confusion" among members of the public and Councillors representing different tiers of local government. It is also noted that many Codes do not address areas such as the use of social media and bullying and harassment. As a result, one of the CSPL recommendations requested that the LGA produce a model Member Code of Conduct to be used as a template (with local amendments as appropriate) for adoption by all tiers of local government, thereby enabling a consistency in approach.
- 4.2 As referred to above, the LGA have recently produce a consultation draft model Member Code of Conduct in consultation with the local government sector and this is attached at Appendix 3. The LGA have stated that "it is the intention to create additional guidance, working examples and explanatory text. We very much welcome comment on the consultation draft. We would particularly like to know if it stands up to the new ways of working that have been introduced [as a result of the Covid-19 emergency] and gives enough of a steer on social media and online activity." The consultation period runs until Monday 17 August 2020. It is recommended that in order to respond within that timescale, the Committee delegates authority to the Monitoring Officer in consultation with the Chair of the Standards Committee and Independent Person, to respond on its behalf.

- 4.3 Although the LGA have now produced a consultation draft Code of Conduct, it is not known when a final draft will emerge and, depending on the nature and volume of responses to the consultation now underway, this may not be for a significant period of time. In the meantime, at the meeting of full Council in September 2019, a motion was considered and agreed which, amongst other matters, stated that the Working Definition of Antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA) should be used by the Authority when considering complaints of breaches of the Member Code of Conduct relating to antisemitism. It is proposed that this be reflected in the current Member Code of Conduct in accordance with the wording shown in italics in the extract of the Code as set out in Appendix 5, to reflect the resolution of full Council.
- 4.4 The amendment proposed provides that the Working Definition of Antisemitism will be used, in conjunction with the examples of antisemitism identified and agreed by the IHRA Plenary in Bucharest on 26 May 2016, where relevant allegations of breaches of the Code of Conduct are made against Members. The amendment encompasses instances where antisemitism is alleged to have arisen or is identified following a complaint.

## **5 Recommendations**

- 5.1 The Committee is recommended to:
- 5.1.1 Consider the recommendations of the Committee on Standards in Public Life (CSPL) following their review of Local Government Ethical Standards and note the Best Practice recommendations.
  - 5.1.2 Note the consultation draft Model Code of Conduct for Members recently issued by the Local Government Association (LGA) in response to the recommendations of the CSPL and delegate authority to the Monitoring Officer, in consultation with the Chair of Standards Committee and Independent Person to respond to the consultation on behalf of the Committee.
  - 5.1.3 Endorse the amendment of the Council's current Member Code of Conduct to include reference to the International Holocaust Remembrance Alliance Working Definition of Antisemitism as set out in Appendix 5 to this report.
  - 5.1.4 Note that further reports will be provided on developments in respect of the outcome of the LGA consultation on the Code and implementation of the recommendations from the CSPL.

## **6 Background Papers**

Local Government Ethical Standards: A Review by the Committee on Standards in Public Life (January 2019)

[CSPL Report on Local Government Ethical Standards](#)

Local Government Association Model Member Code of Conduct (Consultation Draft) June 2020

[LGA Model Member Code of Conduct \(Consultation Draft\)](#)

International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism

[IHRA Working Definition of Antisemitism](#)

Minutes of the meeting of full Council 18 September 2019

[Minutes of Council Meeting 18 September 2019](#)



## **Appendix 1**

### **Local Government Ethical Standards: A Review by the Committee on Standards in Public Life**

#### **Executive Summary**