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Policy and Corporate

Review of Local Government Ethical
Standards
Committee on Standards in Public Life
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Date 14 May 2018

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Dear Sir or Madam

Review of Local Government Ethical Standards: Stakeholder Consultation Response

This response has been agreed by Colchester Borough Council's Governance and Audit Committee following a consultation of all Borough Councillors.

a. 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. It is broadly considered that the existing structures, processes and practices in place within the Borough Council do ensure that high standards of conduct are maintained by councillors. However there remains the concerns that there are no real consequences in relation to breaches of the Code of Conduct as the legislation does not permit the use of sanctions – only recommendations.
2. The Borough Council's process is administered by the Monitoring Officer, who will always advise and who will measure any situation against the Borough Council's agreed Localism Act 2011 Arrangements.
3. Concerns had been raised about the need for "member to member" protocols. Some so called "political banter" is actually bullying. Occasionally there appears to be very little respect shown by some councillors to others in opposing parties which makes it very difficult to have a meaningful and constructive dialogue.
4. Overall councillors of Colchester Borough Council behave well and in our experience any misdemeanours have not been so serious that they cannot be dealt with by the current system.

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

5. It is considered that one of the most significant gaps is in relation to councillor to councillor respect for each other this especially online which can amount to bullying. It is felt that there can be too much emphasis on gaining political points at the expense of another member, trying to belittle other councillors.



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6. The Borough Council is aware of the changing role of social media and is delivering press and social media training for councillors. This is important to ensure all councillors are aware that they not only represent their residents, their political party but also the council 'corporate'. Social media should be used carefully to ensure ethical standards are not breached and action taken against those who publish inappropriate comments.
7. The most significant gap is the lack of the ability to apply any binding sanctions of a member that has found to have breached the Code of Conduct. This is particularly true of more serious allegations; for example bullying where a sanction is required i.e. suspension for an appropriate period of time to act as a form of a deterrent. This is true where a political groups does not deal with it.

Codes of Conduct

c. 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?

8. It is felt that the Borough Council's code of conduct is clear and is easily understood but councillors should have regular reminders. The code of conduct could be extended to specially cover conduct in the Council Chamber. Again concerns are raised regarding the fact that the code has no binding sanctions to deal with inappropriate behaviours especially in relation to the use of social media. It is felt that there needs to be clarity around the use of social media in councillor's private lives and how it can impact on their role as a councillor.

d. 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.

9. The Borough Council has adopted a Code of Conduct which is consistent with the seven principles of public life. The code also includes appropriate provisions for registering and declaring Disclosable Pecuniary Interests and pecuniary and non-pecuniary interests which broadly seem to be understood and work in practice. However (apart from Disclosable pecuniary Interests) there are no binding sanctions for failing to declare pecuniary and non-pecuniary interests.

Investigations and decisions on allegations

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

10. The Borough Council in accordance with the Localism Act 2011 has adopted "Arrangements" for dealing with councillor complaints and keeps this under annual review. However due to the abolition of the former statutory Standards Committee by the Localism Act 2011 regime, the process has the danger of becoming political.

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11. However it is felt that allegations of councillor misconduct investigated in accordance with the Borough Council's Arrangements are decided fairly and with due process by both the Borough Councils' Monitoring Officer and the Governance and Audit Committee which deals with complaints. However again despite the robustness of the process the lack of binding sanctions can cause an issue.

i. 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?

12. The Borough Council, in accordance with the Localism Act 2011 adopted "Arrangements" for dealing with councillor complaints. This process is published on the Borough Council's website and is transparent and visible which is its strength. It is generally felt that any referral follows a clear process which ensures everyone is aware of the procedures. Concerns have been raised regarding the lack of independence input in the current regime unlike under the pre Localism Act arrangements which ensured that there was much more emphasis on independence by having Independent Members in the majority on the Standards Committee.

13. We do not believe that any further safeguards are required. However as mentioned above more information and guidance regarding the use of social media would be beneficial.

ii. 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?

14. The Borough Council's Independent Persons work very closely with the Monitoring Officer particularly in the initial assessment stage of any allegation and their opinions are respected. However their role could be strengthened by them having a stronger role at any hearings. The current legislation only provides for them to be consulted but not able to vote. Under the previous statutory Standards Committee which had an independent chair, the independent members were able to vote and also brought impartiality to the proceedings.

iii. 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?

15. It is considered that Monitoring Officers need to be independent and apolitical and should be protected by their terms and conditions. The Borough Council has an agreed Monitoring Officer protocol in its Constitution which affords this.

16. In a situation where a Monitoring Officer was under a conflict of interest, we would expect him/her to raise it with the Chief Executive, who may take other action for example involve a Monitoring Officer from another Council via a reciprocal arrangement

Sanctions

f.

f. Are existing sanctions for councillor misconduct sufficient?

17. The Localism Act 2011 when it repealed the Local Government Act 2000 councillor conduct provisions repealed the ability for binding sanctions to be imposed. This included the ability to suspend a councillor from office for up to 6 weeks. This provision was used sparingly and only in the most serious of allegations of misconduct.

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18. It is considered that the current level of recommendations (as opposed to sanctions) are not sufficient to deal with the more serious allegations of misconduct. This is partly true regarding recommendations made to Parish Council's who can simply choose to ignore any recommendations made to them.
19. The lack of proper sanctions also causes concerns to the public who see that there are no real consequences to a breach of the code of conduct and that it is not worth them making a complaint because at the end of the process nothing of significance will happen to the councillor.

i. 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?

20. As mentioned above there are no binding sanctions imposed on councillors who are found to have breached the code of conduct. It is generally not considered that these are sufficient to deter breaches and where relevant to enforce compliance. At the Borough Council these recommendations would be made by a Hearings Sub-Committee of the Governance and Audit Committee which the relevant full council may or may not agree to endorse. Any actions recommended should be proportionate and commensurate with the circumstances of the particular case.
21. The current actions available under the Borough Councils "Arrangements" are:
 - (a) Report its findings to Council (or to the Parish Council) for information;
 - (b) Recommend to Council (or to the Parish Council) that the councillor be issued with a formal censure or be reprimanded
 - (c) Recommend to the councillor's Group Leader (or in the case of un-grouped councillors, recommend to Council or to Committees) that the councillor be removed from any or all Committees or Panels of the Council;
 - (d) Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the councillor;
 - (f) Recommend to Council to remove (or recommend to the Parish Council that the councillor be removed) from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish Council);
 - (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the councillor by the Council, such as a computer, website and/or email and internet access; or
 - (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

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

22. Further to above it is submitted that local authorities should be able to suspend councillors for a maximum period in specified circumstances which could be set out in legislation. This could be supplemented by an appropriate appeal process.

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

23. It is considered that the existing arrangements regarding the declaration of councillors interests and manage conflicts of interests are broadly satisfactory. The register of councillor's interests is published on the Borough Council's website and is transparent. The DCLG guidance has also been provided to all councillors and the Monitoring Officer and Democratic Services officers will always provide advice to councillors where any concerns are raised.

i. 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?

24. Councillors are required by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 to register and declare Disclosable Pecuniary Interests of both themselves and their spouse and/ or partner. It is considered that these are statutory duties are appropriate as they stand.

ii. 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.

25. It is councillor's responsibility to ensure that their register of interests is up to date. The Monitoring Officer will ensure that all new councillors receive as part of their induction training on registering and declaring interests. It is not the role of the Monitoring Officer to police the register of interests but to provide advice to councillors when issues or concerns arise. An annual reminder is considered sufficient for this purpose.

Whistleblowing

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

26. The Borough Council has an agreed Whistleblowing Policy which is reviewed annually by the Borough Council's Governance and Audit Committee and is considered fit for purpose. The Policy is published on the Borough Council's website and the process and protections are clearly stated.

Improving standards

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

27. Local Authorities themselves should ensure that their councillors are adequately trained on ethical standards and that their policies are regularly reviewed. The Borough Council's Governance and Audit Committee undertakes an annual review of the Code of Conduct and the "Arrangements" to ensure that both are fit for purpose and will recommend changes where appropriate.

28. Local Authorities need to ensure that all of their councillors are regularly trained on ethical standards issues.

29. Social media will continue to have an impact on ethical standards and it is an area that Local Authorities need to ensure that their councillors are adequately trained in and the implications it can have on the reputation of the office of councillor but also their political party and Authority.

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

30. The Local Government Act 2000 standards regime required councillors to sign up and agreed to be bound by the code of conduct. The Localism Act 2011 regime does not require a member to sign up and agree to be bound by the code of conduct and by implication the seven Nolan Principles. If the law was changed to require councillors to do this it may assist their understanding of the importance of ethical standards,

Intimidation of local councillors

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

31. Intimidation can take various forms. However one area where it seems to be increasing is via social media. Twitter in particular can sometimes incite ' keyboard warriors' which is often generated by a minority of residents some of whom see it as a game with no consequences as a degree of anonymity is provided or borderline incidents from other councillors.
32. Councillors have the ability to block persons on social media but experience shows that people tend to be politer in person than on line. Prevalent on social media and unpleasant is where councillors are subject to constant hounding including verbal abuse, threatening behaviour, constant emails bordering on harassment (with no protection for councillors), being accused of being corrupt taking bribes, late night phone calls and physical violence.
33. Public life in general has got angrier and councillors are subject to this anger as are others in public life. Some of the intimidation comes for a lacking of understanding of what a member does. Apathy and lack of interest in voting is common until a particular issue arises which affects them.

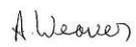
i. What measures could be put in place to prevent and address this intimidation?

34. In order to address intimidation issues the law would require strengthening and particularly around social media. However this has to be balanced with the right to freedom of expression. There is push to make social media companies nationally take more of a role in monitoring and limiting intimidatory behaviour on line which would be of benefit to both councillors and the public.
35. As a start political parties need to encourage their activists to consider their behaviour and language used on social media particularly towards councillors of opposing parties. The political parties should work together to try and eliminate this and to have arrangements in place to deal with it if and when it occurs.
36. If the intimidation amounts to harassment then the matter needs referring to the police who can deal with it appropriately. There should be protocols in place between the Local Authorities and the police for referring these types of cases easily and consistently which provides adequate protection.

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We hope that these comments will be of assistance to the Committee in its work and look forward to reading its findings in due course.

Yours sincerely,

A handwritten signature in cursive script that reads "A Weavers".

Andrew Weavers
Strategic Governance Manager & Monitoring Officer