

## Appendix A

### **RESPONSES TO COMMITTEE ON STANDARDS IN PUBLIC LIFE** **ETHICAL STANDARDS STAKEHOLDER CONSULTATION**

1. Are the existing structures process and practices in place working to ensure high standards of conduct by local councillors? If not please say why.
2. What if any are the most significant gaps in the current ethical standards regime for local government?

These two questions are answered together. Since 2012, Wycombe District Council itself has, fortunately not encountered any cases which have been viewed as meriting formal investigation. It has voluntarily maintained its freestanding Standards Committee.

However, this does not in itself indicate that the current regime overall is entirely satisfactory. We are aware for example that the Chair of the Sandwell MBC standards committee has recently expressed concerns about the limits on actions which can be taken against members within the Localism Act framework, and the “extremely high threshold” police forces must apply with considering Misconduct in Public Office offences.

Anecdotally, there has been much concern expressed about the limitation on sanctions available under the current regime, and doubtless this will be expressed by other respondents with more urgent and pressing local need for a more stringent system. For serious breaches of the Code of Conduct, the absence of disqualification or suspension sanctions significantly reduces the effectiveness of the regime, and in cases of serious misconduct could significantly reduce public faith in the arrangements.

The change in the standards regime enacted by the Localism Act 2011 was profound, with a number of key relaxations compared to previously. Notably, combined with the abolition of Standards for England and the extension of the practice of all member conduct complaints being handled locally with no central national structure in place, sanctions were also greatly curtailed by the removal of suspension and disqualification. The removal of the need to abide by a Model Code gave rise to local differences, which though all based on the Nolan Principles, has allowed the danger of different interpretations of the same behaviour.

Locally, our Code has appeared to be adequate so far, but if a serious case arose, it could prove to have severe limitations in providing an effective sanction.

Some checks and balances apply, notably the requirement to consult the Independent Person’s view when deciding if a complaint merits formal investigation or not, but this in itself not sufficient. In cases where really serious misconduct

happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue. Accordingly we believe that strong consideration should be given to reintroducing the sanctions of suspension and disqualification in some way.

### *Codes of conduct*

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?
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.

Wycombe District Councillors undergo standards training as part of their induction, and Standards Committee and the Monitoring Officer support periodic refresher training. Parish and Town Council representatives are invited to some sessions.

The Nolan principles have been in place since 1994 and generally have stood the test of time as a benchmark to underpin descriptions by which conduct in public office should be judged. However, whilst Codes must abide in general by these principles, there is considerable scope for different content of Codes, not only between different tiers of local government, but within those tiers.

For example, anecdotally, we are aware of at least one Code which does not include a prohibition against bringing the authority into disrepute, which appears to omit a significant requirement covered in many other codes.

The difference between Disclosable Pecuniary Interests and their implications and "other interests" and their implications is also a complex area, and can easily be misunderstood by lay people.

Any consideration given to ways in which Codes of Conduct can be clarified should focus on these areas. We also believe there is a strong case for reintroducing a mandatory Model Code to promote consistency across the country and reduce scope for differing requirements and interpretations of what behaviour is and is not judged acceptable.

## *Investigations and decisions on allegations*

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

Wycombe District Council, in common with many other District Councils, following an initial sifting process to ensure the matter genuinely falls within the Code ambit, operates a 3-stage system where if after response at Stage 1 from the subject member a complainant remains dissatisfied, Stage 2 involves the Monitoring Officer in consultation with an Independent Person determining whether a matter should be formally investigated, and Standards Committee would become involved at Stage 3 if an investigation is carried out.

Given the current framework, and since the abolition of an external independent body to handle conduct complaints, the risk of appearance of partiality in respect of internal complaints handling is unavoidably raised.

Monitoring Officers undertake a complex role, and have employment rules and in many cases professional conduct rules by which they must abide. However, the internalisation of the standards complaints process would make it difficult to effectively refute a vigorous accusation of partiality, no matter how impartial the parties involved may genuinely be.

The existence of the Independent Person role provides some safeguards to the role of the Monitoring Officer in complaints sifting. However, inclusion into role of Independent Person by the Local Authorities

(Standing Orders) (England) (Amendment) Regulations 2015 of the role of belonging to the panel considering dismissal of one of the Council's Statutory Officers including potentially its Monitoring Officer actively undermined their perceived independence because they could find themselves in the difficult and potentially conflicting position of contributing to a decision affecting the employment of the very person by whom, in the main aspect of their role, they are likely to be consulted, and therefore be perceived to work with, in relation to member conduct complaints. So far this eventuality will have been rare (if indeed it has happened at all) but the extension of the role in this way has risked potentially compromising an Independent Person's impartiality in this way with a consequent negative impact on the perception of their role, for those who understand the nature of the role properly.

Representations were made at the time arguing against this addition to the Independent Person's role.

Any consideration of these questions should seriously consider removal of this 2015 aspect of the Independent Person's role.

## *Sanctions*

### 6. Are existing sanctions for councillor misconduct sufficient?

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

As noted above these comments are theoretical rather than based on local experience over the past four years, as there have been no instances of breach being found after investigation.

However, we have commented on the inadequacy of current sanctions above. Wycombe DC's sanctions are limited to, but include all of those available in law, which centre around various types of adverse publicity for members who have been found to breach the Code. These sanctions might cause some subject members to consider their position, but for members who have no intention of resigning even if a serious breach was found, and examples have arisen (though not in Wycombe) the system is ineffective.

The reintroduction of suspension or disqualification as an ultimate sanction should be seriously considered.

### *Declaring interests and conflicts of interest*

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

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?

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.

As required by legislation, the list of Disclosable Pecuniary Interests is set out within Wycombe DC's Code of Conduct, and the definition of "other interests" matches those within many similar authorities.

A key weakness in the current regime is that for "other interests" councillors are not under a duty to withdraw, having declared such an interest. This could mean, for example, that a member could participate in the planning application of a friend or family member other than their spouse and not breach their Code. Wycombe District Council's Code has been strengthened to make withdrawal obligatory for both DPIs and "other interests". However, this distinction and the very rationale for doing so is not straightforward. Any review of the framework should include careful scrutiny of this area, debate on exactly what interests are and are not considered to require a member to absent themselves from the decision making process, and how clarity could be improved and simplified.

### *Whistleblowing*

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

Like many authorities, Wycombe District Council has a Whistleblowing Policy which its employees and contractors can make use of, which is regularly reviewed, compliant with legislation, and publicly available, allowing issues to be raised where necessary. Use of this process is rare. There is no reason so presume that it is in any way unsatisfactory.

In relation to the public, again like other authorities, the Council has a general complaints system which can be used to deal with all other aspects excluding member conduct, and ultimately the Local Government Ombudsman has legal powers to make recommendations on complaints and the Monitoring Officer has a duty to report to Cabinet under S5A of the Local Government and Housing Act 1989 in maladministration cases.

Councillors have access to senior officers to raise any issues which are of concern to them, and the Council has a Member/Officer Protocol as part of its Constitution.

No other “whistleblowing” requirements or improvements are obvious at this time.

### *Improving standards*

9. What steps could *local authorities* take to improve local government ethical standards?
10. What steps could *central government* take to improve local government ethical standards?

Local authorities in general already take steps to support ethical standards, and are obliged to have arrangements in place for doing so in accordance with prevailing legislation. These must be compliant with statute and cannot exceed that or they would be ultra vires. Generally, the number of really high profile examples of member misconduct are relatively few, but when they do arise, public faith can be damaged.

Some councils have chosen to merge the functions of their Standards Committees into other committees, such as Audit or Governance Committees, with or without the “Standards” title still included. Though this may have some justification in terms of efficiency of workload, it could result in a perception that ethical standards has a lower priority than it should. Having freestanding Standards Committees, or at least including this function in the committee title, can help raise the profile of this work.

Central Government should continue and where necessary improve its engagement with the CSPL to engage in the debate on how the current system is working, and establish how the best aspects of the current regime, and the previous pre-2012 regime could be selected and combined to avoid both the perceived over-bureaucracy of the previous system, and fragmentation and lack of sanctions of the current one, to forge an improved future system.

### *Intimidation of local councillors*

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

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

This is a very broad question and perceptions will be specific to individual members.

Wycombe District Councillors have been made aware of this consultation through a report to Standards Committee and the minutes being noted by full Council. The separate work and recent report of the CSPL on Intimidation in Public Life, including its various and detailed proposed measures to address potential intimidation has also been highlighted and noted, and actioned in terms of the recommendation to the Monitoring Officer.

Individual members may wish to provide more information about their perceptions and measures to address intimidation.