

Annex B

Local Government Ethical Standards

Executive Summary

The Committee on Standards in Public Life (CSPL) is an advisory non-departmental public body sponsored by the Cabinet Office. The chairman and members are appointed by the Prime Minister. It monitors and reports on issues relating to the standards of conduct of all public office holders and promotes the seven principles of public life.

The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

- **Selflessness**
Holders of public office should act solely in terms of the public interest.
- **Integrity**
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity**
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability**
Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness**
Holder of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honest**
Holder of public office should be truthful.
- **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Committee, in its report published January 2019 on local government ethical standards, identified 15 'best practice recommendations' which represent a benchmark for ethical practice, which local authorities should implement. In the report it said that the implementation of these best practice recommendations would be reviewed in 2020. Due to the pressures of COVID-19, the Committee did not look for an immediate response, but asked for a progress report in the autumn of 2020.

The review was not prompted by any specific allegations of misconduct, but rather to assure the Committee that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

The report also makes 26 recommendations, the vast majority are aimed at Government to implement through legislative changes; one is to the Local Government Association that it should: "create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government." (see Endnote i)

Below are the 15 'best practice recommendations' made by the CSPL in its report which are directed to local authorities, with the CSPL's expectation "that any local authority can and should implement them". Also included below are extracts from the report setting out the some of the rationales for the recommendations.

An audit has been undertaken of Buckinghamshire and Milton Keynes Fire Authority in terms of compliance with these recommendations, and its findings are included below.

Best Practice Recommendations

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.

The CSPL Report states:

"Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient".

"Harassment is defined in the Equality Act 2010 as "unwanted conduct related to a relevant protected characteristic", which has the purpose or effect of violating an individual's dignity or "creating an intimidating, hostile, degrading, humiliating or offensive environment" for that individual"

The CSPL Report continues:

"These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression"

The CPSL Report quotes from the [ASAS non statutory guidance; Bullying and Harassment at Work, A guide for managers](#) which includes a non-exhaustive list of ten examples of bullying behaviour, including: Spreading malicious rumours, or insulting someone by word or behaviour; Exclusion or victimisation Unfair treatment; Overbearing supervision or other misuse of power or position Unwelcome sexual advances. The CPSL Report does not put forward suggested examples of harassment.

Findings:

The Authority's current Code of Conduct for Councillors and Co-opted Members, states: 1(2) "You must not: (b) bully any person". There is no reference to prohibitions on harassment nor definitions nor examples of either bullying nor harassment.

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.

The CSPL Report states that:

"Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

"Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain."

Findings:

The Authority's Code of Conduct could be updated with the following wording:

"You must comply with any formal standards investigations."

"You must not make trivial or malicious allegations against other councillors or members of the public."

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.

The CSPL Report states that:

"We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. [...] The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance. [...]"

"A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised."

Findings:

The Authority's Code of Conduct has not been formally reviewed/amended since 2012.

The LGA held a consultation exercise about its draft member code of conduct which ran for 10 weeks from Monday 8 June until Monday 17 August 2020.

The LGA has stated that once it has reviewed the feedback it will "develop a final draft, which will be reviewed by the LGA's Executive Advisory Board before being presented to the next LGA General Assembly, which we hope will be held in the Autumn of 2020."

Milton Keynes Council is proposing that once the final version of the LGA Model Code is available, the Standards Committee will be able to consider it and whether to recommend that the Council adopts it, with (or without) modifications [Standards Committee – 23 July 2020](#)

Buckinghamshire Council is proposing to review its Code of Conduct annually, but external consultation is not currently proposed [Standards and General Purpose Committee – 2 July 2020](#)

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.

The CSPL Report states:

“Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective.”

“Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority’s website, or as an annex to an authority’s constitution.”

Findings:

The Authority already does this.

All Members appointed to the Buckinghamshire & Milton Keynes Fire Authority undertake to observe the Code of Conduct for Councillors and Co-opted Members each year before the annual meeting in June.

The Code of Conduct for Councillors and Co-opted Members is sent to each new Member as part of their induction pack.

The Code of Conduct for Councillors and co-opted Members is available to both Councillors and the public on the Buckinghamshire Fire & Rescue Service website:

[Code of Conduct for Councillors and Co-opted Members](#)

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.

The CSPL Report states that:

“Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.”

“The Committee has seen evidence that the accessibility and timeliness of local authorities’ registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.”

Findings:

The Authority does not in its Code of Conduct require its Members to register or declare gifts and hospitality.

These are currently covered in the respective Codes of Conduct of the appointing councils

- ***Buckinghamshire Council Code of Conduct:***

Gifts and Hospitality

2.32. *In addition to the registration of interests, the Council requires councillors and co-opted members to register any gifts and hospitality worth **£25** or more they have received with the Monitoring Officer.*

2.33. *Councillors and co-opted members must:*

- a. register any gifts and hospitality with the Monitoring Officer within 28 days of being elected or appointed to office;*
- b. register any gifts and hospitality within 28 days of the Council's Code of Conduct becoming applicable;*
- c. register any gifts and hospitality with the Monitoring Officer within 28 days of receiving them;*
- d. declare any gifts and hospitality at any meeting of the Council at which they are present, where a relevant matter is being considered;*
- e. register any gifts and hospitality declared at a meeting, within 28 days of disclosing it.*

- **Milton Keynes Council Code of Conduct:**

D. Gifts and Hospitality

Councillors of Milton Keynes Council must:

*1 for inclusion in the Register of Interests for a period of [three years], notify the Monitoring Officer within 28 days and in writing of the receipt of any gift, benefit or hospitality with a value in excess of **£100** which they have accepted as a Councillor from any person or body other than the authority.*

2 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved for this purpose as set out in the Council's protocol on gifts and hospitality.

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

The CSPL Reports states:

"The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so."

"The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local

Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'."

Findings:

The Authority's current Complaints Procedure Flowchart includes reference to a public interest test against which allegations are filtered i.e. 'Can we investigate a complaint' and 'should we investigate a complaint'.

It states at 2.1.3:

*"In the absence of formal sanctions available to the Monitoring Officer to apply in the event of a breach of the Code the Authority expects this complaints procedure to be proportionate to the issues raised and the expected outcomes. **The Monitoring Officer will therefore take into account the wider public interest and the cost to the public purse of undertaking any investigation into alleged breaches of the Code. Complaints are, therefore, only likely to be taken forward for investigation where the allegations are reasonably considered to be serious matters.**" [emphasis added]*

The standards bodies in Scotland (the Ethical Standards Commissioner), Wales (the Public Services Ombudsman for Wales) and Northern Ireland (Northern Ireland Local Government Commissioner) all make use of a 'public interest' test when filtering complaints. The CPSL believes that these tests set clear expectations to those making complaints and ensure consistency of approach.

The Monitoring Officer consults with one of the Independent Persons before making an initial assessment of complaints but does not do so against published criteria.

The Public Services Ombudsman for Wales, for example, publishes a list of non-exhaustive criteria such as whether:

a member has deliberately sought a personal gain at the public expense for the member or others, misused a position of trust;

there evidence of previous similar behaviour on the part of the member;

an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances; and

the breach motivated by any form of discrimination against ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity.

These are the type of factors that would be taken into account when the Monitoring Officer consults with an Independent Person.

These could be published as part of the Complaints Procedure.

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

The CSPL Report states:

"[...] it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process"

"Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation."

Findings:

Buckinghamshire & Milton Keynes Fire Authority is required by section 28 (7) of the Localism Act 2011 to appoint at least one Independent Person whose views must be sought and taken into account before making a decision on a complaint that it has decided to investigate. The Authority has a panel of four 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.

The CSPL Report states:

"We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly."

Findings:

The Director of Legal and Governance/Monitoring Officer consults with an Independent Person as to whether a formal investigation on an allegation should be undertaken.

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.

The CSPL Report states:

"Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations."

Findings:

This procedure is set down in the Authority's procedure.

'After the Decision Notice has been sent to the Complainant and the Member complained about, the Authority will publish the Decision Notice on its website. This will be prepared having regard to any professional advice and the information it contains will depend upon what information the Monitoring Officer decides should be provided. Normally, however, the Decision Notice will contain the complainant's name and a written summary of the complaint; the Monitoring Officer's decision; and record the main points the Monitoring Officer considered, the conclusion and the reasons.'

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.

The CSPL Report states:

"We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee."

Findings:

Buckinghamshire & Milton Keynes Fire Authority's complaints procedure gives straightforward and accessible guidance on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes and is easily available on the Authority's website: Complaints Procedure.

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.

Findings:

Not applicable to a Combined Fire and Rescue Authority.

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.

Findings:

Not applicable to a Combined Fire and Rescue Authority.

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.

The CSPL Report states:

"[...] serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length."

Findings

Arrangements are in place for the Directors for Legal and Democratic Service at Buckinghamshire Council and Milton Keynes Council to act for the Monitoring Officer should there be any conflicts of interest, or absence of illness of the Monitoring Officer.

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.

Findings:

Not applicable (there are no separate outside arm's length bodies on which Members sit)

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

The CSPL Report states:

"Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils. The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council."

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high profile cases of corporate governance failure."

"The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit."

"Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader[s] of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary."

Findings:

The Chief Fire Officer holds regular meetings with the political group leaders.

i Endnote

Local Government Association Model Member Code of Conduct

The LGA held an event on Civility in Public Life with a range of stakeholders at the end of 2019 and three consultation workshops at the beginning of 2020.

Its consultants have also examined examples of good practice, both in local government and other professions. The LGA consultation draft model member code of conduct is the result of this initial work. It is the intention to create additional guidance, working examples and explanatory text.

The LGA states that it is providing this model member code of conduct for consultation as part of its work supporting the sector to continue to aspire to high standards of leadership and performance.

The feedback from the consultation will be reviewed by the LGA's Executive Advisory Board before being presented to the next LGA General Assembly, which would be held in Autumn 2020.

The model member code of conduct has been developed in collaboration with the sector and will be offered as a template for councils to adopt in whole and/or with local amendments.

The LGA states that it will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation; and that, once finalised, the LGA will also offer support, training and mediation to councils and councillors on the application of the Code.