

Initial Comments on Consultation Questions

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

Comment

The Code of Council adopted by the Borough Council exceeds the minimum required provisions and is based upon the pre- Localism Act statutory version of the Code. A suitably adapted version of that Code has also, upon the recommendation of the Borough Council Standards Committee, been adopted by the 5 Parish Councils operating within the Borough. Experience of the operation of the Code of Conduct over the past 6 years has resulted in very few complaints about Borough (or Parish) Councillor conduct and even fewer instances where there has, following consideration of a complaint, been found to be a breach of the Code of Conduct.

One of the advantages of the current regime (as compared to the pre- 2012 position) is that there is discretion to resolve complaints informally. This is helpful as, for less serious complaints, there can be a quicker resolution to the matter without the bureaucracy that existed previously.

The most significant gap, however, is the lack of sanctions to address any serious breaches of the Code of Conduct which is further referenced below (f).

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?

Comment

The CBC Code of Conduct is based upon the pre-Localism Act statutory Code. Members chose to adopt a Code which reflects the Nolan principles, with requirements that go beyond the statutory minimum. Members of the Council have all attended comprehensive training on the Code of Conduct, This training is compulsory as part of the Induction process carried out within a few days of election to office. Members are encouraged to seek advice from the Monitoring Officer / Deputy and frequently do so if at all unsure as to the implications of the Code of Conduct. The most frequent queries arise on the matter of interest declaration. The same training and advice opportunity is offered to all Parish Councillors (and Clerks) within the Council area and has been relatively well taken up with individual bespoke sessions / refresher sessions carried out for Parish Councils on request.

- 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.

Comment

The requirement for a Code of Conduct to reflect the Seven Principles is appropriate; however, a consistent Code of Conduct across Local Government would be of benefit to facilitate public awareness of the standards of conduct which are expected across Local Government. This would also assist Members who are elected to more than one Local Authority, each of which could have different conduct requirements, albeit all containing the statutory provisions and being based on the Seven Principles.

Investigations and decisions on allegations

- e. 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?

Comment

The Council has made arrangements for allegations of misconduct to be investigated and decided fairly. These arrangements include a delegation to the Monitoring Officer to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and to arrange for investigation. The delegation also enables the Monitoring Officer to seek local resolution of complaints without investigation where it is possible to do so. Where an investigation is undertaken, this is done by a suitably qualified officer (normally from One Legal) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It has to be recognised that there is a significant cost to the authority in resourcing an investigation and consequently these are likely only to occur where it is considered to be in the public interest to do so.

The role of the Independent Person is critical to the objectivity and fairness of the process. At CBC, the Independent Persons are also non-voting co-opted members of the Standards Committee. The review may consider whether it would be appropriate for Independent Persons to be full voting members of Standards Committees.

As stated above, investigations are dealt with independently of the Monitoring Officer and there is an appointed Deputy Monitoring Officer which should reduce the risk of there being conflicts of interest. Whilst there is no experience at CBC of undue pressure being applied, the review could consider whether it may be appropriate for Independent Persons to have a role in supporting Monitoring Officers should such circumstances occur. There is also a Protocol for Member / Officer Relations which assists in forming and maintaining good Member / Officer working.

Sanctions

- f. 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?

Comment

The sanctions available are restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body. These sanctions are not sufficient to deter serious breaches and neither are there additional sanctions available in the event that a Councillor who has been found to be in breach of the Code of Conduct, refuses to accept the sanction (e.g. apology).

It is appreciated that the basis for removal of sanctions such as suspension and disqualification was that a Councillor's tenure should be determined by the electorate. However, the sanctions available currently would appear to be insufficient in cases where there have been serious and potentially repeated breaches of the Code. Members of the public who have occasion to raise concerns about conduct have been surprised at the limited sanctions available.

Declaring interests and conflicts of interest

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

Comment

The Standards Committee will be aware of the serious concerns which have been raised with the Government and the Information Commissioner about the potential conflict of the current DPI registration and publication requirements with Data Protection and Human Rights legislation, particularly as these relate to third parties (spouses and partners etc.) who have not been elected to any office. These are not repeated in these initial comments but the Monitoring Officer would intend to write separately in some detail on this point which is of increasing concern given the requirements of the General Data Protection Regulations which take effect in May.

The Borough Council interest registration and declaration requirements exceed the statutory minimum and requires disclosure of “other interests” including bodies in which the Member holds a position of management or control whether or not appointed by the Council and to charitable bodies, lobby groups and other public bodies. Members are also required to disclose gifts and hospitality which they have received where it is worth an estimated value of £50 or more.

Where Members have an “other interest” and a decision on a matter affects, for example, the financial position of that other interest, Members are required, by the Code of Conduct to declare the interest and not to speak or vote unless dispensation has been received.

The Council has also amended its Standing Orders to reflect the requirement to leave the meeting when Members are precluded from participation.

These arrangements have proved satisfactory.

Whistleblowing

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

Comment

The Council has a Whistleblowing Policy which is available for use by the public, Councillors and officials and this appears, to date, to have been satisfactory.

Improving standards

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

Comment

Local Authorities should, as CBC, ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also ensure that it is clear that the Monitoring Officer (or Deputy / representative) and Independent Persons are available to provide advice /guidance to individual Members on all aspects of the Code of Conduct. The Code of Conduct should be regularly reviewed to ensure that the Council considers it fit for purpose and complaints that Councillors have failed to comply with the Code of Conduct should also be reviewed by Members (in CBC’s case the Standards Committee) to identify any action which may be necessary e.g. training.

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

Comment

The review provides the opportunity to resolve the tension between the statutory requirement to have in place arrangements to deal with complaints and the sanctions available to respond to breaches of the Code of Conduct. If there are not to be meaningful sanctions which act as a deterrent then the requirement for the formality of investigating complaints should be reconsidered. The current regime of requiring a formal process which is fair with “due process” is costly to the Council’s resources

and creates expectation on the part of complainants that serious breaches will be dealt with proportionately which is not always possible given the constraint on sanctions.

Intimidation of local councillors

- k. 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?