



Review of Local Government
Ethical Standards Committee on
Standards in Public Life
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Dear Sirs

Review of Local Government Ethical Standards: Stakeholder Consultation

I have set out below, for consideration by the Committee for Standards in Public Life, the comments of the Cheltenham Borough Council Standards Committee following its consideration of the consultation on Local Government Ethical Standards. This submission uses the topic headings from the Consultation Document to provide information on how the conduct regime is operated within Cheltenham Borough Council and also to identify those areas where it is considered that the Committee might wish to consider amendments to the current standards arrangements.

1.0 Overview of existing structures, processes and practices

- 1.1 The Code of Conduct adopted by Cheltenham 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.
- 1.2 One of the advantages of the current regime (compared to the pre-2012 position) is that there is discretion to resolve complaints informally. This has been beneficial in that less serious complaints can be resolved quickly without the bureaucracy that existed previously.

2. Codes of conduct

- 2.1 As stated above, the Cheltenham Borough Council 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, within a few days of election to office, comprehensive training on the Code of Conduct, 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. A similar 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 (where necessary / requested), for Parish Councils.

3. Investigations and decisions on allegations

- 3.1 Cheltenham Borough Council has made arrangements for allegations of misconduct to be fairly investigated and decided. 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, if so 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 an in-house lawyer) who undertakes the investigation independently and along the lines of the procedure used previously by Standards for England. It should 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.
- 3.2 The role of the Independent Person is critical to the objectivity and fairness of the process. At Cheltenham Borough Council, 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.

4.0 Sanctions

- 4.1 The sanctions available are broadly restricted to censure, apology, training or, where appropriate and with the support of the relevant Political Group Leader, removal from a Committee / External Body.
- 4.2 Sanctions such as apology and / or training are sufficient to remedy less serious breaches of the Code of Conduct. However, in respect of recurrent / repeat breaches, refusal to accept a sanction or serious breaches of the Code of Conduct, the current sanctions do not appear to be adequate. Whilst not a unanimous view of the Standards Committee, the view was expressed by a number of Members of the Committee that suspension of a Councillor in respect of more serious breaches of the Code may be considered to be a proportionate sanction.
- 4.3 Members of the public who have occasion to raise concerns / make complaints about Councillor conduct have been surprised at the limited sanctions available. It is understood that the current regime is prefaced by the right of the electorate to decide its representative and therefore sanctions cannot currently be imposed that interfere with that democratic choice. It is also essential that sanctions are proportionate to the breach which has occurred. 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 both reflect the seriousness of breaches and act as a deterrent, then it is suggested that 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.

5.0 Declaring interests and conflicts of interest

- 5.1 Concerns have been raised previously with the Government Information Commissioner about the registration and publication arrangements within the Localism Act 2011 for Disclosable Pecuniary Interests. The particular concern is about the potential conflict of the current DPI registration and publication requirements with Data Protection / Human Rights legislation, insofar as these requirements extend to publication of the information relating to third parties (spouses and partners etc.) who have not been elected to any office. This will be the matter of a separate submission by the Council's Monitoring Officer
- 5.2 The Borough Council interest registration and declaration requirements exceed the statutory minimum and require 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.
- 5.3 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.
- 5.4 The Council has also amended its Council Rules of Procedure to reflect the requirement to leave the meeting when Members are precluded from participation.
- 5.5 These arrangements have, the Standards Committee believes, proved satisfactory.

6.0 Whistleblowing

- 6.1 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.

7.0 Improving standards

- 7.1 Local Authorities should ensure that all Councillors (District and Parish) receive training on the Code of Conduct and also 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 Cheltenham Borough Council's case the Standards Committee) to identify any action which may be necessary e.g. training.

Yours faithfully

**Sara Freckleton
Borough Solicitor and Monitoring Officer**