



Standards Bulletin

Introduction

The Committee on Standards in Public Life has now published its extensive report on Local Government Standards.

The Committee is considering the recommendations and best practice points raised and looks forward to the Government's response to the report.

Members will be kept informed of all ethical framework developments.

Should you wish to discuss any standards matter, please do not hesitate to contact the Monitoring Officer or any of his Team.

The Standards Committee

The Members of the Standards Committee:

- **County Councillor John Blackie**
- **County Councillor Andy Paraskos**
- **County Councillor Caroline Patmore**
- **County Councillor Peter Sowray**
- **County Councillor Cliff Trotter**

Also invited to meetings of the Committee are:

- **Mrs Hilary Gilbertson MBE**, Independent Person for Standards
- **Mrs Louise Holroyd**, Independent Person for Standards

Caroline Patmore Chair of the Standards Committee

If in doubt, please seek advice from the following:

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CSPL Review of Local Government Standards

The CSPL published its extensive Report running to over 100 pages, on 30 January 2019. The Report is also published online:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

The Report makes a number of recommendations to the Government regarding the ethical framework, which would require changes to legislation and the regulatory framework if accepted. It also makes various best practice recommendations which local authorities could choose to implement immediately should they so wish.

Key recommendations from the CSPL Report are set out below.

- a) The vast majority of those serving in public office maintain high standards of conduct. Where there is misconduct, most cases relate to bullying/ harassment/disruptive behaviour and there can be persistent or repeated misconduct.
- b) A revised national model code of conduct should be available to local authorities (to adopt on a voluntary basis) to increase consistency and quality of local authority codes and avoid the potential for confusion amongst multi-hatted councillors. Local authorities should be able to adapt the model code to suit their local circumstances.
- c) There should be a rebuttable presumption that a Member's public behaviour (including statements on publicly accessible social media) is made in their official capacity. Private behaviour in a personal capacity should remain outside the scope of the code.
- d) The model code should clarify that the code applies to a member when s/he claims to act or gives the impression they are acting, in their capacity as a member or as a representative of the authority.

e) There is a need for greater transparency regarding the registration and declaration of interests, gifts and hospitality, especially given the increasing complexities of local government governance and decision making.

- The purpose of the Register of Members' Interests is to set out those interests and relationships which would be most likely to lead to a potential conflict of interest. A distinction needs to be drawn between those which require registration and those which require management and declaration.
- Current categories of pecuniary interests required to be registered for councillors and their spouse/partner are appropriate, however they do not require the registration of important non-pecuniary interests such as:
 - unpaid directorships, trusteeships;
 - management roles in a charity or a body of a public nature;
 - membership of organisations which seek to influence opinion or policy; and
 - gifts and hospitality. The CSPL report recommends that the model code should provide that Members should register gifts/hospitality received over £50 or totalling £100 over a year from a single source in a Register of Members' Gifts and Hospitality.
- The rules on declaring and managing interests should be subject to a more demanding, objective test, separate to registration requirements, in line with the categories of personal and prejudicial interests under the previous regime under the Local Government Act 2000, so that a member with an interest would not need to withdraw unless the objective test is met.
- The current criminal offences in relation to disclosable pecuniary interests are disproportionate, ineffective and should be abolished.

- f) The CSPL does not consider that a re-introduction of a centralised body to regulate the standards regime is necessary.
- g) Local authorities should be given the discretionary power to establish a standards committee with voting independent members, alongside an Independent Person to provide advice on allegations.
- h) The role of the Independent Person is important and should be clarified and strengthened. The CSPL recommends that Independent Persons should be appointed for a fixed term of two years, renewable once.
- i) Current sanctions available to local authorities under the current regime are insufficient. They should be given the power to suspend councillors without allowances for up to six months, where the Independent Person agrees with the finding of a breach and that suspension is a proportionate sanction. The CSPL envisages the power of suspension being used rarely and only for the most serious breaches eg significant bullying/harassment, serious breaches of the rules on declaring financial interests, or repeated breaches or repeated non-compliance with lower level sanctions.
- j) There should also be a right of independent appeal against suspension to the Local Government and Social Care Ombudsman, whose decision would be binding.
- k) The CSPL recommends that the Government should clarify if authorities may lawfully bar councillors from council premises or withdraw facilities as sanctions.
- l) Regarding intimidation of councillors, the report welcomes the Government's commitment to introduce legislation to remove the requirement for candidates standing for local election to publish their home address on the ballot paper. The CSPL does not believe it is justifiable to *require* those in public office to make their home address public on the Register of Members' Interests also, and has made a recommendation that the law be amended in this respect.
- m) There should be leadership support for a high ethical culture from the standards committee, the Chief Executive, group leaders and the Chair of the Council. Political groups have an important role to play in promoting high ethical standards and should set clear expectations of behaviour, requiring their members to attend formal induction code of conduct training.
- n) High ethical standards should be embedded through induction and ongoing training. The tone of engagement between individuals should be civil and constructive.
- o) In terms of promoting openness and transparency, the CSPL recommends that authorities should publish decisions on formal investigations and publish annually the number of code complaints received, what they relate to (e.g. bullying; conflict of interest), the outcome and any sanctions applied
- p) The CSPL recommends that councillors should be listed as "prescribed persons" for the purposes of the Public Interest Disclosure Act 1998 to make it easier for individuals to make protected disclosures to a councillor.

The above recommendations from the CSPL are not legally binding and the Government's response is awaited.

The report also makes a number of Best Practice recommendations to local authorities with the aim of improving local government standards. The CSPL considers that the best practice recommendations "...should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement."

The Best Practice recommendations include:

- Codes should include specific prohibitions on bullying and harassment, along with definitions and examples of such behaviour.

- Codes should include specific provision requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.
- Authorities should review their code each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.
- The 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.
- Authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.
- Councils should publish a clear and straightforward public interest test against which allegations are filtered.
- Authorities should have access to at least two Independent Persons
- 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.
- 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.
- 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.
- 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.
- 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.
- Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

Whilst the Council has already implemented many practices which comply with the above Best Practice recommendations, the Standards Committee is considering the report to determine whether there are any steps it would wish to take or recommend to the Council in terms of the Council's standards regime at this stage.

The CSPL intends to review the implementation of its Best Practice recommendations in 2020.

Members will be kept informed of developments.

Standards training

Refresher training for Members on the Members' Code of Conduct and supporting standards regime is being arranged for a future Members' seminar.

District/borough elections – pre-election period

All district councils except Harrogate Borough Council are holding elections on Thursday 2 May 2019. Purdah will commence as of 26 March 2019. Whilst there are no County Council elections, all Members need to be

aware of the elections that are underway in the county and so keep within the purdah guidelines. For the County Council, this will mean business as usual but we need to be aware of not using the County Council resources to create a platform for District/Borough candidates.

Purdah is designed to ensure that people who are standing for election are not given an unfair advantage through the actions of Council Members or officers.

Further information is available via the following link - <https://www.local.gov.uk/our-support/purdah>

If you have any queries, then please contact the Monitoring Officer or any of his team.

Members' Expenses

Members are reminded to include sufficient details in their expense claims and to submit them in a timely manner to avoid submitting multiple claims at the same time where possible.

Interests' Regime

Members must register and disclose '**disclosable pecuniary interests**' as set out in regulations and detailed in the Members' Code of Conduct, and **membership of any trade unions or professional associations** (as 'interests other than a disclosable pecuniary interests'), but generally no wider, non-pecuniary, interests (eg membership of public and charitable bodies) unless a Member holds a position/office within the body for profit or gain.

A pecuniary interest is a disclosable pecuniary interest ("DPI") if it is of a description specified in regulations ie

- **Employment, office, trade, profession or vacation (for profit or gain)**
- **Sponsorship**
- **Contracts**
- **Land**
- **Licenses**
- **Corporate tenancies**
- **Securities**

(please see the Code for the detailed descriptions

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<http://www.northyorks.gov.uk/article/23630/Councillors-code-of-conduct>)

And either:

(a) it is the Member's interest or

(b) an interest of—

- the Member's spouse or civil partner
- a person with whom the Member is living as husband and wife, or
- a person with whom the Member is living as if they were civil partners

And the Member is aware of the interest.

A Member with a DPI may not participate in the discussion of, or vote on, Council business (unless a dispensation is granted) and must withdraw from the meeting room.

If a **dispensation** is granted to a Member with a DPI, the Member must still **declare** the interest and the fact they are relying on the dispensation to the meeting.

The Register of Members' Interests is maintained by the Monitoring Officer and is available for public inspection in Rm 11, County Hall. Electronic copies of Members' interests forms (redacted to remove signatures) are also published on the Council's website (as required by the Localism Act 2011) at:

<http://democracy.northyorks.gov.uk/Committees.aspx?councillors=1>

Members must, within 28 days of becoming aware of a new interest or a change to an existing interest, register the necessary details by providing written notification to the Monitoring Officer.

Please note:

A Member commits a **criminal offence** if, without reasonable excuse, s/he —

➤ fails to:

- ❖ register disclosable pecuniary interests
 - ❖ disclose an interest to a meeting where required
 - ❖ notify the Monitoring Officer of an interest disclosed to a meeting
- participates in any discussion or vote where prohibited
 - an individual Member decision taker takes any steps in relation to a matter where prohibited

A Member also commits a **criminal offence** if, in relation to the registration/disclosure of interests, s/he provides information that is false or misleading and —

- knows that the information is false or misleading, or
- is reckless as to whether the information is true and not misleading.

A court may also disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.

Please therefore keep your interests form under review to ensure it is up to date. Should you wish to amend your interests form, please contact Julie Robinson on ext 2953 to make the necessary arrangements or call in to Room 11 in County Hall, Northallerton.

Interests' issues are ultimately Members' responsibility.

If you are in any doubt as to your position, please contact the Monitoring Officer or any of his team.

Sensitive Interests

You do not need to register or declare the details of an interest which you and the Monitoring Officer have agreed is sensitive.

A “sensitive interest” is any interest (whether or not a disclosable pecuniary interest) where **disclosure of the details could lead to you, or a person connected with you, being subject to violence or intimidation.**

The existence of an interest must still be registered/declared but not any detail in relation to it.

Should you feel that any of your interests are sensitive given any prevailing circumstances, please contact the Monitoring Officer immediately to discuss.

Bias, Predetermination, Predisposition

Members involved in making a decision on particular business must always bear in mind the rules relating to **bias and predetermination** and must not participate in, or seek to influence, Council business where their interests may prejudice, or appear to prejudice, their views.

Predetermination occurs *where a fair minded and well informed observer, looking objectively at all the circumstances, considers there is a real risk that a decision maker has refused to consider a relevant argument or would refuse.*

Possible examples of bias or predetermination are:

- connection with someone affected by a decision;
- improper involvement of someone with an interest in the outcome;
- prior involvement in a matter;
- commenting before a decision is made.

However, the Localism Act 2011 makes it clear that a Member is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because they had previously done anything that directly or indirectly indicated what view they took, or would or might take, in relation to a matter; this would amount to **predisposition** to a view and is acceptable. This ensures that Members can freely discuss issues, including expressing a view and/or campaigning on an issue, and then later speak or vote on those issues.

Unless there is positive evidence of a closed mind, prior observations or apparent favouring of a particular decision is unlikely to suffice as predetermination

Members are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

Members' Gifts and Hospitality

Although gifts and hospitality offered and declined or received are no longer required to be registered in the Register of Members' Interests, Members do **still need to register** them with the Monitoring Officer, for filing in the Register of Gifts and Hospitality, by completing the appropriate form and returning it to the Monitoring Officer.

The current ethical framework does not stipulate a financial threshold over which gifts and hospitality should be registered (previously, under the old regime, the threshold was £25). The Standards Committee is currently considering guidance to Members in this respect.

Should you have any queries in relation to the registration of any gifts or hospitality received/offered, then please feel free to contact the Monitoring Officer or any of his team.

Complaint Statistics

For the year 1 April 2018 to date, the Council has received four complaints that a Member may have breached the Members' Code of Conduct.

Of those four complaints, in three cases no action was required to be taken. The other case was dealt with under informal resolution whereby the Member further apologised and undertook diversity training.

Members will be kept informed of statistical information in relation to standards complaints received by the Authority.

Cases

Westminster City Council

The former chair of the planning sub-committee resigned as a councillor after accepting extensive gifts and hospitality. His acceptance of the gifts and hospitality was not unlawful but "it also does not rule out a conclusion that he has placed himself in a position where people might seek to influence him in the performance of his duties".

By accepting the large scale of gifts and hospitality (530 instances since 2015) the councillor had not promoted high standards of conduct through leadership.

In 41 cases where the sub-committee went against officers' advice and approved applications, six of the applicants involved had provided the councillor with gifts or hospitality (before or shortly after the sub-committee granted consent).

Contributors:

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Resources

Localism Act 2011 and subordinate legislation.

www.gov.uk/government/organisations/the-committee-on-standards-in-public-life

Information published on www.gov.uk

Local Government Lawyer case reports