

Non-Executive Report of the:  <b>Standards (Advisory) Committee</b>  25 April 2019	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Asmat Hussain, Corporate Director, Governance	<b>Classification:</b> Unrestricted
<b>Committee on Standards In Public Life – Report on Local Government Ethical Standards</b>	

<b>Originating Officer(s)</b>	Mark Norman – Legal Adviser & Deputy Monitoring Officer
<b>Wards affected</b>	All Wards

### Summary

The Committee on Standards in Public Life (CSPL) advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on issues relating to the standards of conduct of all public office holders. The CSPL is an advisory non-departmental public body, sponsored by the Cabinet Office. This report informs Members of the outcome of the review of local government ethical standards published by CSPL on 21 January 2019.

### Recommendations:

- (1) That the Advisory Committee consider and note the content of this report.

## **1. REASONS FOR THE DECISIONS**

1.1 This report does not require a decision.

## **2. ALTERNATIVE OPTIONS**

2.1 This report does not require a decision.

## **3. DETAILS OF REPORT**

3.1 The CSPL review of local government ethical standards considered all levels of local government in England and its terms of reference were to:

- examine the structures, processes and practices in local government in England for:
  - maintaining codes of conduct for local councillors
  - investigating alleged breaches fairly and with due process
  - enforcing codes and imposing sanctions for misconduct
  - declaring interests and managing conflicts of interest
  - whistleblowing
- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
- make any recommendations for how they can be improved
- note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation

3.2 The review included a public stakeholder consultation particularly aimed at local authorities and standards committees, local authority members and local authority officials, as well as local government think tanks, academics and representative bodies.

3.3 The consultation opened on 29 January 2018 and closed 18 May 2018. A copy of the response to the consultation submitted by the Advisory Committee is attached as Appendix 1.

3.4 A summary of the main recommendations of the CSPL review is set out below:

### **Code of Conduct**

- A national model Code that can be adapted by individual authorities is required.
- The Local Government Association should (in consultation with representative groups of councillors and officers) produce a new model

rules-based Code which councils should generally follow but with the option to add local variations if needed.

- The same Code should apply across a geographical area with parishes being required to adopt the same Code as the principal authority.
- There should be a presumption that councillor's behaviour in public is within the scope of the Code.
- The Code should also cover circumstances where a member claims to act or gives the impression they are acting as a member.

### **Interests**

- There should be a more comprehensive system for registering and declaring interests going beyond the current statutory minimum, including unpaid directorships; trusteeships, management roles in a charity or body of a public nature; and membership of any organisations that seek to influence opinion or public policy.
- A councillor should be prohibited from participating in a discussion or voting on a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".
- The criminal offence for non-registration/declaration of Disclosable Pecuniary Interests should be abolished.
- A register of gifts and hospitality should be mandatory, updated at least quarterly and include any gifts and hospitality over £50 or totalling £100 or over from a single source.

### **Sanctions**

- Councils should have the power to suspend members for up to six months without allowances provided the Independent Person agrees there has been a breach of the Code and that a period of suspension is reasonable and proportionate.
- A suspended member should have a right of appeal to the Local Government Ombudsman.
- The Government should clarify if councils may lawfully impose other sanctions.

### **The Independent Person (IP)**

- Councils should have access to at least two IP's.
- If the IP is involved in agreeing to suspend a member they should be given a legal indemnity by the Council.
- IPs should be appointed for a two-year term renewable once.
- Any views expressed by an IP should be included in a published decision notice.

## **Standards Committees**

- Councils should have a standards committee.
- Standards committees should be able to co-opt voting independent members (and parish representatives).

## **The Monitoring Officer**

- The statutory protection for Monitoring Officers should be extended to include any disciplinary action, not just dismissal.

## **Whistleblowing**

- Local authority whistleblowing policies should specify a named contact for the external auditor alongside their contact details, which should be available on the authority's website.
- Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

## **Political Groups**

- Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.

3.5 If the Government accepts the above proposals, it will need to amend primary legislation in order to implement the CSPL recommendations.

## **4. GOOD PRACTICE AND THE COUNCIL'S CURRENT ARRANGEMENTS**

4.1 In terms of the previous failings in ethical standards, the Council has specifically addressed organisational culture and leadership which has created a more balanced relationship between members and officers with a proper understanding and appreciation of governance processes and scrutiny.

4.2 In addition, the CSPL identified best practice recommendations directed to local authorities, which CSPL stated any local authority can and should implement, indicating that the CSPL intend to review the implementation of their best practice in 2020.

4.3 The CSPL best practice recommendations are set out below with an assessment of the extent to which the Council's current standards arrangements comply with best practice.

**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.

**Current arrangements:** The proposed revised Code of Conduct for Members contains a prohibition on bullying and this will be updated to include harassment before the revised Code is submitted to full Council for approval in May/July 2019 as part of the wider review of the Council's Constitution. A proposed definition and list of examples of these behaviours will be prepared for consideration by the Advisory Committee and incorporated into the Code when it is next reviewed.

**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.

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code contain provisions designed to prohibit trivial or malicious allegations. The proposed revised Code will be updated to include a requirement to comply with any formal standards investigation before the revised Code is submitted to full Council for approval in May/July 2019 as part of the wider review of the Council's Constitution.

**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.

**Current arrangements:** The Code was most recently reviewed earlier this year and the Monitoring Officer will consider in consultation the communications team whether it is possible to seek views from the public and community organisations as part of future reviews.

**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.

**Current arrangements:** The Code is easily accessible on the Members hub and the Council's website, however the prominence of the Code on line and the availability in printed format will be reviewed by the Monitoring Officer in consultation the communications team.

**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.

**Current arrangements:** The gifts and hospitality register is published on line in an accessible format and is updated at least every six months. A requirement for quarterly updates will now be introduced.

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

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code contain criteria against which complaints are assessed. These criteria will be revised to take account of this best practice recommendation and proposals will be prepared for consideration by the Advisory Committee and incorporated into the Code when it is next reviewed

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

**Current arrangements:** The Council has appointed two 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.

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code require the Monitoring Officer to consult an Independent Person when deciding what action (if any) should be taken in respect of a complaint. This includes where complaints are referred for local resolution, formal investigation or closed without further action.

**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.

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code contain provision for the possible publication of decisions taken by the Hearings Sub-Committee following consideration of an investigation report. The arrangements will be updated and revised to include the other requirements of this best practice recommendation.

**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.

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code set out the process for handling complaints and contain estimated timescales for investigations and outcomes. The arrangements are easily accessible on the Council's website and the Council has successfully introduced an on line conduct complaint form.

**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.

**Current arrangements:** This recommendation does not apply to the Council as there are presently no parish councils in Tower Hamlets.

**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.

**Current arrangements:** This recommendation does not apply to the Council as there are presently no parish councils in Tower Hamlets.

**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.

**Current arrangements:** The Council's arrangements for dealing with complaints of breach of the Code do not contain a specific provision to address conflicts of interest and the arrangements will be revised to include the recommended provision.

**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.

**Current arrangements:** The Head of Democratic Services will identify if any amendments to existing practice are required to ensure the Council meets the requirements of this best practice recommendation and bring forward proposal as appropriate.

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

**Current arrangements:** The Council's statutory officers (Chief Executive, Corporate Director Governance and Corporate Director Resources) meet twice a month as an officer group and standards issues are raised as appropriate at these meetings. The Chief Executive and/or Corporate Director Resources meet as required with group leaders and/or whips to progress any general standards issues or discuss member conduct complaints.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 Ethical governance arrangements ensure proper decision making and contribute to the Council's compliance with equalities legislation.

## **6. OTHER STATUTORY IMPLICATIONS**

- 6.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
- 6.2 Robust ethical governance arrangements ensure the proper, efficient and effective discharge of the Council's functions and contribute to compliance with the requirement to achieve best value.

## **7. COMMENTS OF THE CHIEF FINANCE OFFICER**

7.1 There are no direct financial implications arising from this report.

## **8. LEGAL COMMENTS**

8.1 The principal statutory provisions relating to standards of conduct are contained in the Localism Act 2011. Section 27(1) of the 2011 Act provides that the Council must promote and maintain high standards of conduct by Members and Co-opted Members of the authority.

8.2 Sections 27 and 28 of the Localism Act require the Council to adopt a Code of Conduct consistent with the Nolan principles of good governance and to appoint at least one Independent Person whose views must be sought and taken into account before the Council makes any decision about an alleged breach of the Code that has been investigated.

8.3 If the Government decides to accept the CSPL's recommendations for changes to the standards regime, amendments will be required to the Localism Act 2011 and other primary legislation.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- Social Media Policy

### **Appendices**

- Appendix 1 – CSPL Stakeholder Consultation – Response submitted on behalf of the London borough of Tower Hamlets Standards (Advisory) Committee.

### **Local Government Act, 1972 Section 100D (As amended)**

#### **List of “Background Papers” used in the preparation of this report**

- NONE

#### **Officer contact details for documents:**

- N/A

## **Committee on Standards in Public Life Review of Local Government Ethical Standards: Stakeholder Consultation**

### **Response submitted on behalf of the London Borough of Tower Hamlets Standards (Advisory) Committee**

1. This submission is made on behalf of the Standards (Advisory) Committee of the London Borough of Tower Hamlets.

2. As part of its constitutional and governance arrangements the London Borough of Tower Hamlets has established the Standards (Advisory) Committee. The Committee is made up of members of the Council (not including the Mayor or more than one Cabinet member), appointed by the Council in accordance with the requirements of political proportionality; and up to seven persons who are not members or officers of the Council or any other local authority (i.e. co-opted independent members). The Committee is chaired by a co-opted member. There are currently two vacancies for independent co-opted members. The Council has also appointed two 'independent persons' under the Localism Act 2011, who are invited to attend meetings of the Committee as observers and contribute to discussions as appropriate.

3. The Standards (Advisory) Committee welcomes the opportunity to respond to the stakeholder consultation. This response has been agreed with the Council's appointed independent persons, Elizabeth Hall and Rachel Tiffen.

#### **Questions a and b:**

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?

4. Since the statutory requirement to establish a standards committee was removed the profile of ethical standards has become less prominent. In order to address this it would be worth considering a new statutory requirement that does not reintroduce a stand-alone statutory committee, but which requires authorities to include responsibility for standards and ethics in the terms of reference of a non-executive committee; this could be an existing committee for example Audit, General Purposes, Governance or Risk committees, which are established by some authorities.

5. The disqualification provisions contained in section 80 (1) (d) of the Local Government Act 1972 relating to criminal convictions of imprisonment for 3 months

- or longer (whether suspended or not) are insufficient and should be updated to include less serious and other types of convictions.

6. There is a potential gap in the investigation and management of alleged breaches of the Code of Conduct. Is the purpose to ensure remediation or to apply sanctions? In most cases, the process should be about remediation. However, where a breach of the code of conduct has occurred there will be circumstances where an element of sanction is necessary to reflect the seriousness of the breach and to deter others from similar conduct. The processes and range of sanctions should fully reflect these dual purposes.

**Questions c and d - 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?

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.

7. The Council has adopted mandatory ethics and probity training for all members and co-opted members of the authority. Flexibility to adopt additional Code provisions inevitably results in differential requirements in authorities across England, which can lead to inconsistencies and potential confusion for members of the public. In addition an issue arises as to how to deal with politically significant incidents where a member or co-opted member is potentially in breach of the Code of Conduct, but no complaint is made to trigger consideration or investigation of the matter.

**Question e - 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?

8. The investigatory and decision making roles of the Monitoring Officer should be separated. Complaints should be referred to and monitored by a constituted forum (i.e. a committee or sub-committee) and decision makers should be drawn from a big enough pool to ensure a balanced decision (for example co-opted members and independent persons working across authorities). The Monitoring Officer is generally able to manage minor conflicts that arise using existing arrangements by separating advice roles, delegating decisions/investigations, where appropriate by using independent investigators and by appointing a deputy or second independent person.

**Question f - 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?

9. With the exception of criminal sanctions for failure to register/declare a disclosable pecuniary interest, existing sanctions are weak and inconsistently applied. Most frequently a member or co-opted member is reprimanded or required to apologise or agree to training where there is a minor or technical breach of the Code. In more serious cases access to Council facilities may be withdrawn and ultimately the Council has inherent power to remove a member/co-opted member from a committee/sub-committee or outside body. The use of these existing sanctions can be seen as a reward/punishment arrangement and can lead to unintended consequences (for example impeding a councillor from carrying out their democratic role without achieving the desired outcome of improving behaviour). An additional power of suspension or partial suspension would assist in deterring breaches and enforcing compliance with the Code. One of the Council's appointed independent persons has suggested that sanctions issues should be decided by a committee formed only of independent co-optees which could ensure that an appropriate balance and proportionality is brought into decision making taking into account the views of councillors, complainants and the members of the public.

**Question g - 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.

- 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.

10. The statutory definition of a disclosable pecuniary interest and the requirements for declaration require clarification and have been open to varying interpretations. The local flexibility to adopt additional code provisions inevitably results in differential requirements in authorities across England which can lead to inconsistencies and potential confusion for members of the public.

**Question h - Whistleblowing:**

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

11. The public interest disclosure protections contained in the Employment Act 1996 apply to employees and in specified circumstances former employees but not to councillors, members of the public or other officials. The Council's Whistleblowing Policy requires all concerns to be reported to the Monitoring Officer who will determine if a complaint is within the scope of the policy. The policy does not apply to the general public or councillors but they are able to complain as individuals using the Council's Corporate Complaints Procedure. Also the Monitoring Officer will consider and take action on a complaint made by a member of the public or a councillor in appropriate circumstances, for example in respect of allegations of financial impropriety, even if the matter has not been raised as a corporate complaint or whistle blow.

**Questions I and j - Improving standards:**

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

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

12. Self-regulation by local authorities has resulted in inconsistencies and fragmentation. Central government should consider appropriate amendments to the Localism Act 2011 to ensure that complaints are referred to and monitored by a constituted forum (i.e. a committee or sub-committee) and that decision makers are drawn from a big enough pool to ensure a balanced decision (for example co-opted

- members and independent persons working across authorities). Sanctions should be used to achieve outcomes and be applied proportionately and consistently.

13. Sharing good practice to support the embedding of ethical standards across local authorities may be beneficial. For example, Tower Hamlets has begun to implement a detailed programme of induction, training and ongoing awareness raising and monitoring to support the effective embedding of standards, conduct and behaviour. Perhaps central government could play a role in identifying and sharing case studies and examples of good practice that could be disseminated locally perhaps as part of a thematic review – identifying what good looks like in this area that all could learn from.

**Question k - Intimidation of local councillors:**

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

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

14. Incidences are rare but when they do arise give serious cause for concern. The Council has recently agreed an up dated Personal Safety Protocol for members.

END