

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**JOINT STANDARDS COMMITTEE**

**08 June 2022**

**Report of the Monitoring Officer**

**Part 1- Public**

**Matters for Information**

**COMMITTEE ON STANDARDS IN PUBLIC LIFE – REVIEW OF LOCAL GOVERNMENT STANDARDS**

**Summary: This report updates Members on the response of the Government to the recommendations set out in the report of the Committee on Standards in Public Life following its review of local government standards**

**1.1 Introduction**

- 1.1.1 Members of the Joint Committee may recall that I previously reported to this Committee on a consultation paper published by the Committee on Standards in Public Life (CSPL) calling for evidence about how local councils are supporting good ethical standards in local government in light of changes over the past ten years.
- 1.1.2 The consultation paper was reported to this Committee on 18 March 2018, together with a proposed response to be made by the Monitoring Officer on behalf of the Joint Committee. The Committee considered that the lack of effective sanctions, such as the ability to suspend a member of the Council, should be identified as a fundamental weakness and should be reinstated. The Committee also felt that the costs burden on the Council of dealing with standards complaints should be set out in the response.
- 1.1.3 Early in 2019 the CSPL published its report, which was considered by this Committee in July 2019.
- 1.1.4 In a letter dated 18 March 2022 Kemi Badenoch MP, the Minister of State for Equalities and Levelling Up Communities responded on behalf of the Government to the recommendations of the CSPL. This report sets out the response.

**1.2 The CSPL Review - recommendations**

- 1.2.1 The report, which ran to over 100 pages, made 26 recommendations. The recommendations are set out below.

No.	Recommendations	Responsible Body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government

7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councillors include in their code of conduct that a councillor must not participate in a discussion or vote in 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".	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government/All local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government

15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish Councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government

24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	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.	Political Groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association

### 1.3 Response of the Government

- 1.3.1 On 18 March 2022, in a letter from Kemi Badenoch MP, Minister for Equalities and Levelling Up Communities, the government issued its response to the CSPL report. Key aspects of the response are set out below.
- 1.3.2 On the issue of 'official capacity', the Government considers that local authorities should not apply an automatic presumption that any comment made by a councillor is, regardless of the context and circumstances, subject to the code of conduct. The Government believes that the boundary between an elected representative's private and public life should be acknowledged. The government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.
- 1.3.3 Members will note that the CSPL made a number of suggestions to amend legislation. However, the government response states that the government considers many of these do not require a legislative response and can instead be taken forward by local authorities as best practice. For example, rather than amending the Localism Act 2011 to address recommendations relating to the Code of Conduct, the Government considers it is up to local authorities to review their own codes of conduct to ensure, for example that the code applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.
- 1.3.4 The government rejects the recommendation that local authorities should be given the power to suspend councillors, without allowances, for up to six months in conduct cases. The government notes that there is no provision in current legislation to do this, and this was a deliberate choice taken to differentiate from the previous Standards Board regime. Further the Government considers it would be undesirable to create a government or local authority body to police political comments made by councillors.

- 1.3.5 The Government comments that on the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box. The government has however indicated that it will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.
- 1.3.6 The response also confirms that the government does not intend to update the Local Government Transparency Code to require councils to annually publish information on code of conduct complaints, as it considers that this would be better addressed by the sector itself and regular reporting. However, it does intend to develop a set of specific actions to advance transparency in the sector to improve transparency policies and processes and encourage the proactive publication of open data.
- 1.3.7 In relation to disclosable pecuniary interests, there are no plans to add to the list of DPIs or to abolish the criminal offences relating to DPIs.
- 1.3.8 The Government rejects the recommendation to amend the LA 2011 to require that Independent Persons are appointed for a fixed term of two years, renewable once. The government considers this to be unworkable given the small pool of individuals who are capable and willing to undertake the role. However, it agrees in principle, with the recommendation that Independent Persons be provided with legal indemnity; however, it considers that it is not necessary to introduce this through secondary legislation.
- 1.3.9 The full response of the Minister of State for Equalities and Levelling Up Communities may be viewed via the following link;-

[Government response to the Committee on Standards in Public Life review of local government ethical standards - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/government-response-to-the-committee-on-standards-in-public-life-review-of-local-government-ethical-standards)

## **1.4 Equality Impact Assessment**

- 1.4.1 The issues detailed in this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.5 Legal Implications**

- 1.5.1 As set out above.

## **1.6 Financial and Value for Money Implications**

1.6.1 None arising from this report.

contact: Adrian Stanfield

Adrian Stanfield  
Monitoring Officer