

Division(s):

AUDIT AND GOVERNANCE COMMITTEE – 6 MARCH 2019

REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS: OVERVIEW OF THE REPORT ISSUED ON 30 JANUARY 2019

Report by Director for Law & Governance

RECOMMENDATION

1. **The Committee is RECOMMENDED to:**
 - (a) **note this Report and the conclusions raised by The Committee on Standards in Public Life's report "A Review of Local Government Ethical Standards"; and**
 - (b) **ask the Monitoring Officer to discuss the Review's recommendations with the Oxfordshire Monitoring Officers' Group and report back to a further meeting of this Committee on actions that Oxfordshire's Councils can take jointly, and that this Council can individually, to create an improved ethical standards framework.**

Executive Summary

2. This Report details the proposed changes with regards to Members and their roles in public life.
3. The main changes considered by the Committee on Standards in Public Life: *A Review of Local Government Ethical Standards* ('the Review') are outlined below and relate to:
 - (a) Creation of a Model Code of Conduct;
 - (b) Reintroduction of sanctions;
 - (c) Creation of Standards Committees;
 - (d) Widening the requirement to register pecuniary interests;
 - (e) Training of Members;
 - (f) Strengthening the protection for the Monitoring Officer.

Introduction

4. The Committee on Standards in Public Life undertook a Review of Local Government Ethical Standards and it consulted with stakeholders.

5. The Consultation opened on 29 January 2018 and closed on 18 May 2018. The Consultation asked a number of questions in relation to Ethical Governance and anyone with an interest was asked to make a submission.
6. The Council responded to the Consultation with the submissions attached at Annex 1.
7. On 30 January 2019, The Committee on Standards in Public Life issued their *Review on Local Government Ethical Standards* which took account of the submissions made with respect to the Consultation.
8. This Report sets out some of the main points that the Review raised, some of which relate to best practice and some which would require statutory change.
9. An Executive Summary of the Review can be found at Annex 2.

Summary of the Report.

Model Code of Conduct:

10. The Review considers that a Model Code of Conduct should be established and the Local Government Association should be tasked with drafting it. The Review criticises the current regime because Local Authorities operate under different codes of conduct and as a such, it is considered by the Committee that a much clearer and consistent Code.
11. The Committee didn't consider it necessary for this to be a mandatory national code but rather that there should be a model core to which authorities can add locally agreed aspects. The aim is to avoid confusion – particularly if a Member sits in different tiers of Local Authorities (a 'dual or triple hatter') – and to provide the public and councillors with a clear expectation as to the standards that should be followed.
12. Oxfordshire authorities have been somewhat ahead of this curve by working together successfully over the past several years to adopt a cross-Oxfordshire Code, which is also applicable to parish councils. This collaborative approach puts Oxfordshire authorities in a good position to adopt a revised Code when appropriate.
11. The Review highlighted that current standards regimes only apply when an individual is acting in their role as a member of the Council. The Review considers this doesn't go far enough and that ethical standards do not 'stop at Council door'. The Review considers that comments made by individuals in *other situations* should also be considered under Code of Conduct. This includes comments made on social media. As such, the Code of Conduct should also apply to members 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.

Sanctions

12. The Review considers that current sanctions are insufficient. It felt that whilst party discipline has an important role to play in maintaining high standards, it lacks the necessary independence and transparency to play a central role in a standards system. The Review considers that the current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.
13. The Review recommends the introduction of suspension for Members for up to 6 months without allowances if they are found to be in breach of the Code of Conduct. The Review did not consider there was a case for disqualification on the basis that only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.
15. The Review considers that any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially. It is considered that the Independent Person is an important safeguard in the current system. The Review recommends that this safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.
16. Any Member, on being suspended, will have a right to appeal to Local Government Ombudsman.

Standards Committee

17. The Review considered that Local Authorities should maintain a standards committee. Such a committee would advise on standards issues and decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Pecuniary interests

18. The Committee considered that the current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with “an objective test”, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland. Effectively the objective test is:

“Whether 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 discussion or decision making in your role as a councillor.”

19. The Review recommends that the current criminal offence (failure to declare a disclosable pecuniary interest) as imposed by the Localism Act 2011 should be abolished.

Training of Members

20. The Review reflects the Committee on Standards in Public Life’s view that ethical standards training, even where offered, may not always be taken up by councillors and co-opted members. The Review suggests that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

Strengthening the Role of the Monitoring Officer.

21. The review considers that the Monitoring Officer is the lynchpin of the current standards arrangements. The Review concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. The Review considers that employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

22. The Oxfordshire submission and the Review

23. The Council’s submission to the review expressed several views. These are at Annex 1 but are summarised below alongside the Review’s position (where relevant).

Council’s submission	Review’s position
Sanctions are insufficient	Sanctions should be strengthened buttressed by a Standards Committee and Independent Person roles
Model Code of Conduct should be created with references to bullying, abuse, sexual harassment and discrimination	Model Code should be created with potential for local addition. Ethical standards around social media should be clearly expressed.
Independence should be more rigorously embedded into the investigation of complaints	Revised approach to complaints maintaining the pivotal roles of Monitoring Officer and the Independent Person and introducing a potential role for Standards Committees with sanctions.
Should be right of appeal to the	Review agrees and recommends that a councillor facing sanction can appeal to the Local

Ombudsman	Government and Social Care Ombudsman.
Should be a read-over of councillor behaviour from one council to another	Not specifically covered but a definite emphasis that a councillor/co-opted member's behaviour in one context should read-over, with an 'objective test' (as above).
Declarations of interest spouses should not have to be listed separately	Review agrees.
Whistleblowing contacts should be publicised	Review agrees and recommends this (Oxfordshire CC already compliant)
Authorities should be encouraged to pilot best practice	Not specifically mentioned but emphasis on standards committees' and authorities having greater responsibility for promoting ethical standards
Intimidation - councillors' addresses should not necessarily be routinely published	Review agrees and recommends that home addresses do not have to be routinely published by councils either as part of a public register of interests or on websites

Conclusion

24. Many of the Review's recommendations will require primary legislation which will be subject to Parliamentary timetabling. However, any other recommendations could be implemented relatively quickly by authorities themselves. The Committee for Standards in Public Life now await the Government's response to the Review which is anticipated to be within 3 months.
25. In the meantime, this Committee might wish to recommend the Monitoring Officer to work with colleagues across Oxfordshire to consider the recommendations and identify any actions that Oxfordshire authorities could take now, and to identify any preparations that could usefully be made now in advance of any statutory changes. Such that a report back to this Committee could then be made.

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Background papers:

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