

Name of meeting: Standards Committee

Date: 5<sup>th</sup> September 2018

Title of report: Update on Standards issues

Purpose of report

To brief the standards committee on any relevant developments and news items.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <a href="#">Strategic Director</a> & name	
Is it also signed off by the Service Director for Finance IT and Transactional Services?	
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes
Cabinet member <a href="#">portfolio</a>	

Electoral wards affected: All

Ward councillors consulted: None

Public or private: Public

## **1. Summary**

- 1.1 This report is intended to provide a brief update on any developments that are of relevance to the Standards Committee and standard and ethics in general.
- 1.2 This may include relevant statute, case law, government issued guidance and any relevant consultation exercises, as well as any news items

## **2. Information required to take a decision**

### **2.1 Ledbury case**

This was a case that made the news earlier this year. It involved a judicial review of the actions of a Town Council in imposing sanctions on a Councillor, following the lodging of a grievance relating to bullying by members of the Town Council's staff.

In short, the Court held that the Town Council had no power to investigate the complaint and to impose sanctions on the Councillor. The Localism Act makes it clear that Town and Parish Councils have to follow the same statutory process as the principal Council, i.e. complaints have to be dealt with by the Monitoring Officer and the Independent Person.

The reported case doesn't change the law in any way, but is a timely and concise reminder of the status of the statutory complaints procedure and why it is important that it is followed.

Appendix 1 is a copy of the case summary from Westlaw.

### **2.2 Dr Jane Martin and the Committee on Standards in Public Life (CSPL)**

The CSPL have been engaging in a consultation exercise on ethical standards in local government.

The current status of the consultation is that the responses are now being considered and the aim is for the Committee to report by the end of 2018.

In the interim, Dr Jane Martin addressed the Lawyers in Local Government's Monitoring Officers Conference. In that speech, she outlined the history and the work of the Committee, as well as the preliminary views expressed in the consultation responses.

Some of the key points that are emerging from the consultation include the following:

- There is little support for a return to a centralised standards regime

- There is support for there being more power to impose sanctions on councillors
- The issue of town and parish councils in the context of standards has arisen and the CSPL are considering best practice advice and guidance
- The process of declaring interests is likely to be examined, with a view to tightening the process and making it clearer
- The role of the Independent Person will also be looked at, possibly with a view to strengthening it

Appendix 2 contains a copy of Kirklees Council's response to the consultation and a copy of Dr Martin's speech.

### **2.3 NALC survey on Parish and Town council Code of Conduct**

NALC undertook a survey of Town and Parish Councils, as part of its involvement in the CSPL consultation on standards in local government.

It asked for views on the standardisation of the Code of Conduct, specifically whether local Councils would support a single mandatory code.

Overwhelmingly, the views expressed were that it would be supported and the suggestions that a mandatory single Code of Conduct could be used across Town and Parish Councils was supported by over 90% of respondents.

Other findings from the survey were that training on standards and ethics issues was inadequate, with nearly 40% of responding Councils stating that their members had received no training. NALC report that they are asking for the government to provide additional funding for Councillor training.

Appendix 3 is a copy of the news report from the NALC website.

### **2.4 Consultation exercise on intimidation of Parliamentary candidates**

There is an ongoing consultation exercise launched by the Government that seeks views on a proposal to create a new offence based on intimidation of Parliamentary candidates. It follows on from a report 'Intimidation in Public Life' authored by the CSPL, which made various recommendations to address the issue of intimidation. Among other things it reported on the rise in social media intimidation.

One of the key proposals was to create a new offence, under electoral law. It does note the existence of criminal sanctions, but seeks views on whether additional sanctions need to be considered. There is a proposal that penalties may extend to disqualifying candidates from standing for election, over and above any current penalties under existing criminal law.

Whilst the proposal for a new offence is related to Parliamentary elections, the consultation questions are wider and would not preclude responses from local authorities. Clearly, the same possibilities for election intimidation are going to exist at times other than Parliamentary elections.

The report is some 86 pages long and the consultation paper 54 pages long, so neither are attached, but members should consider reviewing the full report and paper. The documents attached to this report are extracts from the report and consultation paper.

Appendix 4 is a summary of the CPSL's proposals extracted from the report and the consultation questions extracted from the consultation paper.

### **3. Implications for the Council**

#### **3.1 Early Intervention and Prevention (EIP)**

N/A

#### **3.2 Economic Resilience (ER)**

N/A

#### **3.3 Improving Outcomes for Children**

N/A

#### **3.4 Reducing demand of services**

N/A

#### **3.5 Other (eg Legal/Financial or Human Resources)**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have reputational implications.

### **4. Consultees and their opinions**

N/A

### **5. Next steps**

5.1 The Monitoring Officer will continue to review all legal developments and news items that may be of relevance to the work of the Standards Committee and will report on these.

**6. Officer recommendations and reasons**

6.1 It is recommended that the report is noted.

**7. Cabinet portfolio holder's recommendations**

N/A

**8. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

**9. Background Papers and History of Decisions**

9.1 N/A

**10. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## **Appendix 1**

### **Case report from Westlaw**

#### **R. (on the application of Harvey) v Ledbury Town Council**

Queen's Bench Division (Administrative Court)

15 May 2018

#### **Case Analysis**

**Summary:** A grievance process could not be run in tandem with, or as an alternative to, the Code of Conduct for Councillors established by the Localism Act 2011. A town council's decision to impose sanctions on a councillor after finding her guilty of bullying and harassment was therefore ultra vires, as the formal process under the Code, including the involvement of an independent person, should have been instigated instead.

**Abstract:** A town councillor applied for judicial review of the defendant council's decision to impose and continue restrictions on her participation in council matters.

The council had received complaints from staff that the claimant was guilty of bullying and harassment. The complaints were in general terms and no specific examples of bullying were given. The claimant referred the matter to the local authority's monitoring officer who advised that an external investigation was necessary under the terms of the Code of Conduct for Councillors, established by the Localism Act 2011, and adopted by the council's standing orders.

However, the council decided to deal with the matter under the grievance procedure. A hearing took place in the claimant's absence and the complaints were upheld, but no reasons were provided for the decision, and the claimant's appeal was rejected.

The council imposed restrictions for a year preventing the claimant from serving on any of the council's committees, sub-committees, panels or working groups, or representing the council on any outside body.

The restrictions were reviewed after a year. The review took place in the claimant's absence and relied on evidence not provided to her. It concluded that the restrictions should continue, and should be expanded to prevent her from communicating with all office staff.

A later investigation by external advisors, instigated by the monitoring officer, found that the claimant had not breached the Code of Conduct.

The councillor submitted that the decision was ultra vires as the matter should have been dealt with under the Code; it was also procedurally and substantively unfair.

**Held:** Application granted.

## **Was the council's decision ultra vires?**

Contrary to the council's submissions, there was no general power to run a grievance procedure in tandem with, or as an alternative to, the Code of Conduct process envisaged by the 2011 Act, as to do so would be contrary to Parliament's intention, *R. (on the application of Lashley) v Broadland DC [2001] EWCA Civ 179, (2001) 3 L.G.L.R. 25* considered.

Lashley had been decided in the context of a different statutory world. In introducing the 2011 Act, a change was intended. Sections 27 and 28 were carefully structured and introduced arrangements for operations under a mandatory code. In particular: (a) s.27(3) made it clear that a parish council's systems were to be the same as those of a superior authority. There was no "two-track" system for smaller authorities, *R. (on the application of Taylor) v Honiton Town Council [2016] EWHC 3307 (Admin), [2017] P.T.S.R. 271* applied.

The defendant council was a parish council for the purposes of s.27(3); (b) s.28(6) made the provision of two sets of arrangements mandatory: arrangements as to investigations of Code of Conduct breaches, and arrangements as to making decisions on allegations which had been made; (c) under s.28(7) the latter, but not the former, had to include at least one independent person whose role was to provide views to the authority before it took any decision on an allegation; (d) the authority could also consult the independent person generally in relation to an allegation; (e) under s.28(4) all allegations of established breaches should be referred under the Code of Conduct process.

A council could not deal with an established breach, for example a conflict of interest, simply by striking down the decision affected by it; (f) s.28(11) made it clear that some action could be taken in relation to established breaches; (g) that section also indicated that action could be taken in respect of a finding where the investigation was made under different arrangements to the Code. A pre-investigation before considering whether to institute the Code of Conduct proceedings was permissible, but it did not follow that a formal investigation and sanctions outside the Code were permissible, *Hussain v Sandwell Metropolitan BC [2017] EWHC 1641 (Admin), [2018] P.T.S.R. 142* applied. The statutory Code was clear: action taken after investigation (including sanctions) had to involve the independent party. The sanctions element of the council's decision was therefore ultra vires, and was likely to have been so even on the pre-2011 Act basis. It was therefore quashed (see paras 10, 103-105, 110, 115-118, 122, 183 of judgment).

## **Should any qualifying allegation be formally investigated under the Code, or did the council have a residual power to investigate or deal with it informally?**

Section 28 contemplated a potentially four-stage process: (a) the making of an allegation; (b) optionally, a non-formal investigatory or mediation stage, or a pause pending other relevant steps being taken; (c) a formal stage, involving an independent person, leading to a decision on breach; (d) if breach was found, a formal stage, involving the independent person, dealing with action. The independent person had to be involved and consulted at the decision-making stage and at the sanction stage. That ensured safeguards at the key decision-making stages while leaving the possibility of more flexible approaches in

appropriate cases. Accordingly, the council's decision was also ultra vires at the investigation stage (paras 125-132).

**Was the decision procedurally and substantively unfair?** This ground only arose if the council had the power to make the decision, contrary to the findings above. The process was flawed, both procedurally and substantively. The precise allegations were not identified. The review a year later was inadequate. The process for permitting the claimant's participation was also defective. Even if the complaints had been established, the sanctions were unreasonable and disproportionate, *Bank Mellat v HM Treasury* [2013] UKSC 38, [2014] A.C. 700 considered (paras 133, 163, 167, 172-183).

**Judge:** Cockerill J



## **Appendix 2**

### **Transcript of the speech given by Dr Jane Martin to the Lawyers in Local Government Annual Monitoring Officers' conference on 25<sup>th</sup> June 2018 and copy of Kirklees Council's consultation response.**

Thank you very much for inviting me to address your Annual Monitoring Officers' Conference.

I'm here to speak mainly about the Committee's current review of local government ethical standards, which I'm sure many of you will be aware of.

But I think it would be helpful to begin by introducing the Committee on Standards in Public Life and its work to help set the context in which we work.

The Committee was established in 1994 by the then Prime Minister, John Major, to address concerns about declining standards in public life. This was at the time of cash for questions, and worries about the politicisation of public appointments and relationships between politicians and businesses.

The first Committee, chaired by Lord Nolan, was asked to: "Examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."

The Committee's First Report set out Seven Principles, often now called the Nolan Principles: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

These have been accepted by the public and those in public life as the baseline standard for conduct in public life, and remain the cornerstone of the UK's ethical landscape.

The Committee is independent, non-partisan and non-statutory. The Committee looks across public life at emerging or potential standards issues, and reports directly to the Prime Minister.

We don't have any formal powers or sanctions, and we don't investigate individual cases. Our influence and credibility is founded on rigorous reports based on the best available evidence, that make clear, well-argued recommendations.

### **History of the Committee's work**

So, our work on local government. I'd like to spend a couple of minutes reviewing our past work and then consider some key themes that have emerged from our public consultation

around the current system; the roles of Monitoring Officers and political parties; culture; and councillors' behaviour in all this.

It's fair to say that the Committee on Standards in Public Life has 'form' when it comes to local government standards.

The Committee's Third Report, *Standards of Conduct in Local Government in England, Scotland and Wales* was published in 1997, and made a range of recommendations to improve ethical standards in local government.

These included introducing codes of conduct, public registers of interests, and rules on declaring interests. The Committee proposed that codes of conduct would be enforced by local standards committees with powers to suspend councillors, with national tribunals to hear appeals.

The government responded to the Committee's report in 1998. Whilst the government agreed with a number of the Committee's recommendations, they did not agree that local standards committees should have the primary responsibility for enforcing standards.

The government created the Standards Board for England, and the government issued a model code of conduct, which the Standards Board advised councils at the time not to supplement.

The Committee considered all these reforms in 2005. Its report criticised the centralised method for handling complaints and argued for substantial reform of the Standards Board. The government agreed, renaming the Standards Board, 'Standards for England' and changing its role and remit.

Our current inquiry is the first full review of local government that the Committee has undertaken since then. The time feels right for us to look again and particularly in an environment where so much has changed.

## **A new context**

Local government has always had responsibility for delivering significant public services, that citizens rely on day-in, day-out.

But it's undeniable that councils are now involved in more outsourcing and commercial decision-making. They are also involved in more partnership working, for example, as part of Local Enterprise Partnerships.

This new environment creates new opportunities. But there are also potential risks: where lines of accountability are unclear, and where the best way of scrutinising complex arrangements hasn't necessarily been established.

Those potential risks are heightened in an environment where there is diminished regulatory oversight of the sector, and where officers feel less able to challenge elected members. I'll come back to that.

When it comes to the standards system, of course the Standards Board has been abolished, and responsibility for local standards has been given to local authorities.

I want to be clear that no-one during the course of our review has made a serious case for turning the clock back and returning to a centralised system.

Councils have told us that they value the flexibility of the current system, and the discretion to be able to resolve issues informally.

What we are hearing from councils is that they want to be given the framework, tools and guidance to be able to maintain high standards in their own authority.

## **The standards framework**

I want to spend some time now reflecting back some of the different views we've heard on the nuts and bolts of the current system.

Let me put some of you out of your misery and start with sanctions. We've heard loud and clear, in meetings, roundtables, and through our consultation: the current sanctions are not enough.

Monitoring Officers will know better than anyone else that without robust sanctions, councils can't deal effectively with serious and persistent misconduct. This is the major gap in the current system.

As a Committee we're going to be looking carefully at the evidence we've received, and the wider legal issues involved, as we consider what sanctions it would be appropriate for councils to have available.

When it comes to codes of conduct, we've been hearing that the variation in codes can be a problem for two groups in particular. First, dual- or triple-hatted councillors, who might have different requirements for registering or declaring interests, for example. And second, for principal authorities investigating breaches of parish codes.

Of course, some unitary authorities can have responsibility for 150 or 200 parishes, all of which - in principle - could have unique codes of conduct. But we've also seen that in some of these cases, town and parish councils have agreed a single, standard code.

Codes of conduct also vary in quality - with some codes relying on very broad provisions, which are difficult to adjudicate on and which can easily generate disputes over interpretation.

We're going to be looking at best practice in this area and any guidance that could be given to councils when drawing up a code of conducts.

When it comes to declaring interests, we've heard that the current requirements don't match the public's expectations and don't work for councillors either. Any system of declaring interests needs to have clarity for those who have to use it - so that you can know

if you are keeping within the rules - and also needs to show that it's protecting the public interest by preventing undue influence.

The Nolan Principle of integrity is clear, public office holders must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work, and need to declare and resolve any interests or relationships. The evidence we've received is that the current system could be tightened up and, at the same time, made clearer for councillors and officers.

Independent oversight is crucial to upholding the Nolan Principle of objectivity, the principle that decisions need to be taken impartially, fairly and on merit. Independent checks on the process make sure that those decisions are taken impartially and fairly - which is just as important for councillors as it is for complainants. We've heard a range of views on the role of standards committees and we'll be looking carefully at that issue.

It's also clear to us that the Independent Person plays a valuable role. At the moment, as you will know, it's an entirely advisory role with no formal power. We've heard some encouraging cases of good practice in how local authorities use their Independent Person and the insight they can bring, and we'll be carefully considering the case for strengthening that role and putting it on a more formal footing.

## **The role of the Monitoring Officer**

Let me turn now to your role: Monitoring Officers.

Monitoring Officers really are the linchpin of the current system. As the Monitoring Officer, you have the overall responsibility for standards in a local authority.

But we know that Monitoring Officers need the support of the other senior and statutory officers in order to maintain ethical standards, and that those other senior officers need to recognise a joint and corporate responsibility for maintaining high standards in an authority.

We've been hearing about cases where Monitoring Officers face undue pressure in their role, or don't feel able to challenge elected members.

In senior officer roles, there are undoubtedly going to be cross-pressures and potential conflicts of interest.

But we've heard that senior officers feel less secure than they have previously, and as a result, less empowered to speak out when they need to.

Local government has a tradition of propriety and carefully managing competing pressures. That tradition is extremely valuable and needs to be protected.

So we're going to be looking at how Monitoring Officers can be protected from undue pressure, as well as the broader role of senior officers in maintaining the integrity of the standards system.

Monitoring Officers also play an important role in the interface between Principal Authorities and town and parish councils when it comes to standards, particularly investigating complaints about parish councillors.

That relationship can be a difficult one, or a very positive one. We've heard examples of good practice, and examples of when that relationship has not been as effective as it could be. We will be considering carefully all the evidence we've received on this issue, and if there are any recommendations that can be made.

## **Political groups**

Whilst Monitoring Officers and Standards Committees might be the visible face of the standards system, it's become clear to us that political groups are an unseen but important influence on standards in local authorities.

After all, it is political groups that hold some of the most effective sanctions under the current regime, like removal from committees or the threat of having the whip withdrawn.

Of course, how political groups operate varies from council to council. Some councils will have a heavily partisan culture. Other councils will see political groups cooperating on a range of issues - including on ethical and conduct issues.

We're gathering evidence at the moment on the workings of political groups, and the relationship between national parties and local parties, and we'll be thinking carefully about their role in the standards framework.

## **Culture**

As Monitoring Officers, you will know that whatever codes of conduct or values statements say - important as they are - it's ultimately the culture of an authority that determines how people will behave.

It might be a culture of secrecy, that resists being open to scrutiny and engaging with the public.

Or a culture that accepts bullying, where over time officers are expected just to be able to 'cope with it'.

Or a highly charged partisan culture that sees everything through a political lense.

Or - perhaps - a culture focussed on the public interest, that is open and transparent, values evidence in decision-making, recognises and manages conflicts of interest, and challenges poor behaviour when it occurs.

People quickly learn 'how things are done around here' - and will usually fit in accordingly. It is hard to swim against the tide of a prevailing culture, for good or for ill.

So a driving question for us throughout our review has been ‘what shapes an ethical culture in local government’?

In many ways, it’s not a new question for us as a Committee.

The original Nolan Committee, besides framing the Seven Principles of Public Life, argued that there were three ‘common threads’ in inculcating the Seven Principles in organisations: Codes of Conduct; Independent Scrutiny; and Guidance and Education.

And in our report Ethics in Practice in 2014, the Committee looked at this issue head-on: how do you raise awareness and understanding of ethical issues? And how do you embed ethical standards in an organisation’s culture?

That report, as well as the Committee’s research since then, identified induction and training as the crucial elements, alongside leadership, in creating and sustaining an ethical culture.

Organisations need to learn from good practice, and consider ethical issues right from recruitment through to ongoing training, and see it as a fundamental aspect of leadership in the top levels of an organisation.

That might answer the question of culture in principle. But looking at local government, we’re going to be asking: who needs to be showing leadership? Which roles are the ones that shape the culture most decisively? And what sort of induction and training is most effective?

They are important questions, because whatever framework is put in place - robust codes, genuine independent oversight - can only be sustained and made effective if it is part of a culture where ethical issues are a normal part of thinking and decision-making at every level.

## **Councillors**

There’s one group I haven’t talked about yet: councillors.

It’s ultimately the behaviour of councillors that we are interested in. Their conduct and probity in council business, their professional relations with officers and the public, and their decision-making when they have executive responsibilities or are serving on a committee.

Councillors play a hugely important role in local communities, one that can often be under-appreciated. They need guidance, training, and support to carry out that role.

Lots of those we’ve spoken to have been clear that the vast majority of councillors stand for election because they want to serve their local communities, and they want to do so by observing the highest standards of conduct.

We want to celebrate the good work that goes on in councils up and down the country. Maintaining high standards are vital to ensuring that good work isn't undermined or put at risk.

We want to hear directly from councillors themselves to get their view on the current system, and to get their perspective on what a standards regime needs to achieve. So we'll be conducting site visits to a number of local authorities across England over the coming months.

## **Conclusion**

As I close, I want to offer some final reflections on the importance of ethical standards in local government.

Ethical standards are partly about protection. As Monitoring Officers, you are at the frontline protecting your local authorities - protecting their hard-won achievements from legal or governance risks, protecting their reputation, and, ultimately, playing a key part in protecting their future.

Getting standards right is vital to protecting an organisation and the individuals within it from conflicts of interest, reputational risks, or legal challenge.

Ethical standards are also about the ordinary, day-to-day interactions. Maintaining professional conduct and respect for others, and standing up against bullying and harassment, may seem so obvious that it does not need spelling out.

But an organisation that doesn't have this embedded in its culture, at every level, can become toxic, and, in time, won't retain good people and will struggle to carry out its core functions effectively.

And lastly, ethical standards are outward-looking. Having a culture of openness, scrutiny, and objective decision-making enables an organisation to take advantage of new opportunities, and to take effective decisions for the future that will have an impact on local communities.

So ethical standards are not just about avoiding scandal, or narrow compliance, but about having the public interest at the centre of everything that a local authority does and what it values. That's what underpins the Nolan Principles. Out of that comes everything else - selflessness, integrity, honesty, openness, accountability, objectivity, leadership.

As a Committee, we hope that our review will play a part in helping local authorities to build that culture and maintain the highest standards of conduct.

We've been listening to Monitoring Officers throughout our review - at roundtables, through our public consultation - and we want to continue to listen to you as we draw our conclusions and form our recommendations to the Prime Minister.

Because ultimately it's not about us - the Committee on Standards in Public Life - but about you, and the work that councillors and officers do every day for the benefit of local communities.

Thank you.



## Response of Kirklees Council to the Consultation:

### Consultation Details:

Title:	Local Government Ethical Standards Consultation
Source of Consultation:	Committee on Standards in Public Life
Published Date:	January 2018
Submitted Date:	May 2018

### For more information, please contact:

Julie Muscroft Service Director – Legal, Governance and Commissioning (Monitoring Officer)	
Address:	Kirklees Council Civic Centre III 2 <sup>nd</sup> Floor, Executive Suite Huddersfield HD1
Telephone:	01484 221 000
Email:	<a href="mailto:julie.muscroft@kirklees.gov.uk">julie.muscroft@kirklees.gov.uk</a>

- 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.**

This response is by the monitoring officer of Kirklees. A report was considered at the Councils Standards Committee shortly after the consultation was circulated and views were invited from Kirklees Councillors which were taken into account by the Monitoring Officer in completing the response.

Kirklees is a local authority in West Yorkshire and is the third largest district in the country. The largest town is Huddersfield but it also includes Batley, Birstall, Dewsbury, Holmfirth and Denby Dale. The Council has 69 Councillors, three for each of the 23 wards. Kirklees Council has five Parish and Town Councils.

In answer to the question specifically - Yes, to some extent but the local approach has limitations specifically in relation to the availability of sanctions and enforcement in both the principal as well as Town and Parish Councils.

**b. What, if any, are the most significant gaps in the current ethical standards regime for local government?**

Lack of enforceable sanctions.

The Localism Act 2011 has made no provision for sanctions against members who are found to have breached the codes of conduct of their authorities. Under the new provisions there are no powers to disqualify or suspend a local councillor for breach of an authority's code.

Kirklees is able to censure members, to publicise breaches of their codes of conduct, to report to their councils and to recommend that members are removed from positions on committees and outside bodies and offer training.

These are practical and useful measures to use to improve the conduct of their members. However, if the members concerned decide not to take up these recommendations, and political groups do not or are not able to enforce them the authorities do not have power to ensure they comply or impose a sanction on them.

#### ***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?**

In theory, yes but they need to regularly updated and reviewed. The increased role of social media has led to some issues and complaints arising from this area.

The Kirklees Code includes the seven principles of public life, but also includes a number of general obligations and principles. Examples of these include that members must treat others with respect and must not bully or intimidate any person, or attempt to bully or intimidate them.

Members must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of behaviour.

Members must not do anything which may cause the Council to breach any of the equality duties. This includes refraining from behaviour or comments which might reasonably be regarded as being racist, sexist or otherwise discriminatory towards other people.

Members must not conduct themselves in a manner which would reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.

A link to the Code is attached for information. It is similar to a number of others:

<http://www.kirklees.gov.uk/beta/your-council/pdf/constitution-part-51.pdf>

- 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.**

Yes, to some extent they are appropriate but the contents of codes vary. The definitions of pecuniary interests could be better defined and/or explained.

***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?**

Yes, in principle and the concept of a local code which is flexible enough to deal with issues quickly where needed is helpful. Approaches will vary but from discussion / knowledge Local Authorities will have in place an appropriate process to investigate fairly whether that be a minor matter or something more serious.

It is always good to keep under review however and look at adding additional safeguards where needed. The role of the Independent Person is key.

Webcasting of some of our meetings has helped in some cases where there have been complaints about behaviour in meetings so it enables us to look at and listen to what a councillor may have done and/ or said.

- 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**

<b>process? Should this requirement be strengthened? If so, how?</b>
The role of the IP is very important and helpful and provides a third party view. There is an argument that the role could be increased.
<b>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?</b>
Yes they could. Most monitoring officers see and understand that and would seek to ensure that there were appropriate steps in place to make sure this wasn't the case. We made a recent change to the Kirklees process where the decision maker in relation to complaints is no longer the monitoring officer alone, but the monitoring officer, independent person and chair of standards together has helped that to some extent.
<i>Sanctions</i>
<ul style="list-style-type: none"> <li>f. Are existing sanctions for councillor misconduct sufficient?</li> <li>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?</li> </ul>
As described in paragraph b, generally the lack of enforceable sanctions. At Kirklees we use training, apology, removal of resources, group sanctions, ultimately a report to Council in serious cases but there are difficulties with enforcement and the monitoring officer does not have any power if the councillor does not comply with the sanction imposed.
ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?
Yes. One suggestion would be to revert back to those in place when there was a national code or potential financial sanctions (with some enforcement ability). In serious cases there could be removal from Council membership.
<i>Declaring interests and conflicts of interest</i>
g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

- i. 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.

Yes, although the requirements in the Localism Act may muddy the water as it is left to local codes to specify whether their interests are declared. There is a lack of understanding about the criminal aspect of the code and it is unclear the extent to which the Police would act in some cases.

At Kirklees interests that are not disclosable pecuniary interests are required to be verbally declared, including the nature of the interest.

*Whistleblowing*

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

There should be a closer look at how whistleblowing works and what it means.

Kirklees has a policy and process in place which is reviewed annually and a report considered by the Council's Corporate Governance and Audit Committee. It is for internal whistleblowers. In theory it is satisfactory but it isn't possible of course to "know what you don't know" and measure how effective or satisfactory it is.

*Improving standards*

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

Local authorities could raise awareness of expectations and use different learning approaches.

Consider mentoring / coaching techniques between members or cross authorities. Using clear job roles for Councillors, chairs, members of different committees , Cabinet etc.

Kirklees has established the 'Democracy Commission' which is a cross party group of Kirklees councillors brought together by Kirklees Council to gather evidence on the local democracy and make recommendations based on what they find out about how we might need to change to engage better with Citizens . It has

an independent chair from the University of Huddersfield and their work is supported by several other organisations. Their mission is to ensure 'By 2020 Kirklees is an informed citizen-led democracy with accountable elected representatives who enable communities to influence and affect decisions governing their lives.'

Whilst improving ethical standards is not the prime purpose of the Commission – behaviours and the changing role of members and the way they engage with the public are and therefore may have a role in making improvements

The link to the website is attached:

<http://www.democracycommission.org.uk/>

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

Our suggestion is to issue some guidance. Improve sanctions and enforceability when they are not complied with. Consider job descriptions and/or roles and expectations of councillors. Although not strictly central government – encourage political parties to make sure that those standing as candidates are suitably informed of expectations/ behaviours and are provided with support to maintain them.

*Intimidation of local councillors*

k. What is the nature, scale, and extent of intimidation towards local councillors?  
i. What measures could be put in place to prevent and address this intimidation?

Kirklees members of the Standards committee did wish the monitoring officer to convey that intimidation was higher than it has ever been in relation to attitudes to councillors from the members of the public. In some part it is believed this is due to the rise in the use of social media.

In terms of measures, more information and or/guidance could be provided to the public about the role of councillors and what they do to help manage expectations.

Provide safety support guidance – not visiting places alone etc.

We should consider carefully the obligation to provide addresses on DPIs on the public website (even if there is no Sensitive interest) and/ or consider widening the definition of sensitive interest.

## **Appendix 3**

### **Local councils in favour of single, mandatory code of conduct**

Friday, 03 August 2018

Local (parish and town) councils would support a single code of conduct that could be used by all local authorities, according to research conducted by the National Association of Local Councils (NALC).

Currently, different codes of conduct are in use across local government, but 90% of those local councils questioned would fully support a code of conduct that is the same and mandatory for all local authorities.

The survey of England's local councils – undertaken by NALC to inform its submission to a parliamentary review on standards – also found that nearly 70% of local councils would like new powers to impose additional sanctions. At the moment sanctions used by local councils include apologies and training. However, around 60% of local councils believe these are neither sufficient to punish breaches of the code of conduct or deter future breaches.

Additionally, when it came to training on codes of conduct, the survey uncovered gaps with almost 40% of local councils stating that their members hadn't received any training and 20% reported that most members did not understand the rules around declaring interests.

Cllr Sue Baxter, chairman of NALC, said: "NALC does not believe the current ethical standards arrangements are working as well as they could and a review of the regime is something we have long called for. We would like to see stronger sanctions available to local councils, including the power of suspension and disqualification.

"In light of our research, we are also asking the government to invest £2m towards a national training programme that would see all new councillors undertake training on ethical standards and the code of conduct as part of their induction."

The Committee on Standards in Public Life is currently undertaking a review into local government ethical standards which is expected to report to the prime minister by the end of the year.

## **Appendix 4**

**Summary of CSPL proposals from report 'Intimidation in Public Life' and copy questions from consultation paper 'Protecting the Debate'**





## Summary table of recommendations and timeframes

Recommendation	Responsibility	Timeframe
Government should bring forward legislation to shift the liability of illegal content online towards social media companies.	Government	On exiting the EU
Social media companies must develop and implement automated techniques to identify intimidatory content posted on their platforms. They should use this technology to ensure intimidatory content is taken down as soon as possible.	Social media companies	Immediately
Social media companies must do more to prevent users being inundated with hostile messages on their platforms, and to support users who become victims of this behaviour.	Social media companies	Immediately
Social media companies must implement tools to enhance the ability of users to tackle online intimidation through user options.	Social media companies	Immediately
All social media companies must ensure they are able to make decisions quickly and consistently on the takedown of intimidatory content online.	Social media companies	Immediately
Twitter, Facebook and Google must publish UK-level performance data on the number of reports they receive, the percentage of reported content that is taken down, and the time it takes to take down that content, on at least a quarterly basis.	Social media companies	At least every quarter, beginning in the first quarter of 2018
Social media companies must urgently revise their tools for users to escalate any reports of potential illegal online activity to the police.	Social media companies	Immediately
The social media companies should work with the government to establish a 'pop-up' social media reporting team for election campaigns.	Social media companies	Before the next general election
Social media companies should actively provide advice, guidance and support to Parliamentary candidates on steps they can take to remain safe and secure while using their sites.	Social media companies	Before the next general election
Those in positions of leadership within political parties must set an appropriate tone during election campaigns, and make clear that any intimidatory behaviour is unacceptable. They should challenge poor behaviour wherever it occurs.	Those in positions of leadership within political parties	Immediately
Political parties must proactively work together to tackle the issue of intimidation in public life.	Political parties	Immediately



Recommendation	Responsibility	Timeframe
<p>Political parties should set clear expectations about the behaviour expected of their members, both offline and online through a code of conduct for members which specifically prohibits any intimidatory behaviour. Parties should ensure that members are familiar with the code. The consequences of any breach of the code should be clear and unambiguous.</p>	<p>Political parties</p>	<p>Within one year</p>
<p>Political parties must ensure that party members who breach the party's code of conduct by engaging in intimidation are consistently and appropriately disciplined in a timely manner.</p>	<p>Political parties</p>	<p>Immediately</p>
<p>Political parties must collect data on the number of complaints against members for engaging in intimidatory behaviour, and the outcome of any disciplinary processes which result from these complaints.</p>	<p>Political parties</p>	<p>Within one year</p>
<p>Leaders of political parties should always call out intimidatory behaviour, even when it is perpetrated by those in the party's fringes. Fringe group leaders and spokespeople should immediately denounce any intimidatory behaviour on the part of their members or supporters.</p>	<p>Political parties</p>	<p>Immediately</p>
<p>The political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns by December 2018. The code should be jointly enforced by the political parties.</p>	<p>Political parties</p>	<p>Joint code should be drawn up within one year – it should be enforced beginning at the next general election</p>
<p>Political parties must take steps to provide support for all candidates, including through networks, training, and support and resources. In particular, the parties should develop these support mechanisms for female, BAME, and LGBT candidates who are more likely to be targeted as subjects of intimidation.</p>	<p>Political parties</p>	<p>Before the next general election</p>
<p>Political parties must offer more support and training to candidates on their use of social media. This training should include: managing social media profiles, block and mute features, reporting content, and recognising when behaviour should be reported directly to the police.</p>	<p>Political parties</p>	<p>At the next general election</p>



Recommendation	Responsibility	Timeframe
The government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners.	Government	Within one year
The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending an election count.	Government	Immediately
Local Authority Monitoring Officers should ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011.	Local Authority Monitoring Officers	Immediately
MPs should actively co-operate with the police and other security services working to address the security threats facing Parliamentarians and Parliamentary candidates.	MPs	Immediately
The National Police Chiefs Council should ensure that local police forces have sufficient training to enable them to effectively investigate offences committed through social media. Local police forces should be able to access advice and guidance on the context in which MPs and Parliamentary candidates work.	National Police Chiefs Council	Within one year
The College of Policing Authorised Professional Practice for elections should be updated to include offences relating to intimidation, including offences committed through social media.	College of Policing	Before the next general election
The Home Office and the Department for Digital, Culture, Media and Sport should develop a strategy for engaging with international partners to promote international consensus on what constitutes hate crime and intimidation online.	Home Office and the Department for Digital, Culture, Media and Sport	Immediately
The National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing, should produce accessible guidance for Parliamentary candidates giving clear advice on behaviour they may experience during a campaign which is likely to constitute a criminal offence.	National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing	Before the next general election
Nobody in public life should engage in intimidatory behaviour, nor condone or tolerate it. All those in public life have a responsibility to challenge and report it wherever it occurs.	All those in public life	Immediately



Recommendation	Responsibility	Timeframe
Those in public life should seek to uphold high standards of conduct, adhering to the Seven Principles of Public Life, and help prevent a decline in public trust in political institutions through their own conduct.	All those in public life	Immediately
Those in public life must set and protect a tone in public discourse which is not dehumanising or derogatory, and which recognises the rights of others to participate in public life.	All those in public life	Immediately
Those in public life have a responsibility not to use language which engenders hatred or hostility towards individuals because of their personal characteristics.	All those in public life	Immediately
Press regulation bodies should extend their codes of conduct to prohibit unacceptable language that incites intimidation.	Press regulation bodies (IPSO and Impress)	By December 2018
News organisations should only consider stories from freelance journalists that meet the standards of IPSO's Editors Code, or the Editorial Guidelines of Impress, as appropriate, and ensure that freelance journalists are aware of this policy.	News organisations	Immediately
Those in public life should not engage in highly personalised attacks, nor portray policy disagreements or questions of professional competence as breaches of ethical standards.	All those in public life	Immediately

## List of Consultation Questions

We would welcome responses to the following questions set out in this Consultation Paper.

**Question:** In what capacity are you giving the information? Eg: as a voter, an elected representative, an organisation.

### Section 1: A New Electoral Offence

**Question 1:** Do you agree that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour, such as those identified by the CSPL, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?

**Question 2:** We propose that the new electoral offence will attract the sanction of being barred from standing for elected office for 5 years. Do you agree?

**Question 3:** We do not propose that the new electoral offence should remove an offender's right to vote. Do you agree?

**Question 4:** We think that offences committed against candidates and campaigners during all types of polls should attract the additional electoral sanctions. Do you agree? If not, please explain.

**Question 5:** We propose that offences against campaigners during a referendum campaign should attract the additional electoral sanctions. Do you agree? If not, please explain.

**Question 6:** We propose that the existing definition of when someone becomes a 'candidate', with reference to any election campaign, would be clear and workable for the new electoral offence. Do you agree? If not, please explain.

**Question 7a:** Do you think the new electoral offence should extend to campaigners? If so, please explain which campaigners you think should fall within the scope of the new electoral offence, given the above considerations. If not, please explain.

**Question 7b:** If you think that campaigners should be included, do you have a suggestion as to how this could be done for use in the relevant legislation?

**Question 8:** Do you agree that protection should start from the period of notice of elections? If not, please explain.

**Question 9:** Should there be a period before notice of election for a scheduled poll during which this offence applies? If so, what would be a suitable time period of protection? If not, please explain.

**Question 10a:** Do you agree that protection, under the new electoral offence, should end seven calendar days after the close of poll?

**Question 10b:** If not, when do you think protection under the new electoral offence should end?

**Question 11:** Do you agree that protection, under the new electoral offence, should apply during the referendum period, as determined by the relevant referendum legislation? If not, please explain.

**Question 12:** Do you agree that a new electoral offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner?

## **Section 2: Intimidation of Voters - Undue Influence**

**Question 13:** Do you agree that the law of undue influence requires greater clarity in its application? If not, please explain.

**Question 14:** If it is decided to simplify the existing offence of undue influence, we do not propose to materially change the element of the offence relating to physical acts of violence or threat of violence. Do you agree? If not, please explain.

**Question 15:** Any act, whether lawful or unlawful, which is intended to cause harm to the individual and is carried out with the intention to make a person vote, vote in a particular way, or deter them from voting and should be captured within this offence. Do you agree? If not, please explain.

**Question 16:** We propose to retain reference to 'direct and indirect' acts which cause the elector harm. Do you agree? If not, please explain.

**Question 17:** We propose that the redefined offence retains reference to offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm. Do you agree? If not, please explain.

**Question 18:** We propose that the scope of section 115(2)(a) continues to include those acts which are carried out before and after the election. Do you agree? If not, please explain.

**Question 19:** Do you agree that the offence should continue to cover actions of duress? If not please explain

**Question 20:** Any redefined offence would still look to cover actions of trickery. Do you agree? If not, please explain.

**Question 21:** Do you agree that the scope of the offence should remain the same, subject to including a specific reference to intimidation at polling stations? If not, please explain.

**Question 22a:** Do you agree that the offence should specifically capture intimidatory behaviour carried out inside or outside of the polling station? If not, please explain.

**Question 22b:** If so, do you agree that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint?

### **Section 3: Increasing Transparency in Digital Election Campaigning**

**Question 23:** Do you as a voter believe that the current system as applied to printed election material promotes transparency and gives confidence in our systems?

**Question 24:** Should the imprint rules in PPERA be commenced for Northern Ireland?

**Question 25:** Should the imprint rules for Northern Ireland elections be the same as for the rest of the United Kingdom?

**Question 26:** What are your views on whether imprints should be required on all digital electoral material or only where spending on such material has been over a certain threshold?

**Question 27:** Should any new rules on digital material only apply to what we would already consider to be "electoral material" or should broader categories be considered?

**Question 28:** Do you agree that the requirement for imprints on election material can arise all year round, not just during election periods?

**Question 29:** Should we prioritise regulating certain forms of digital communications over others? If so, please give reasons.

**Question 30:** What sort of mechanisms for including an imprint should be acceptable? Are there any technical difficulties that would need to be overcome to include text which is not accessible without a further step?

**Question 31:** Would you find an imprint in an overarching space such as a 'bio' on Twitter sufficiently visible?

**Question 32:** How can these mechanisms be future-proofed in expectation of developments in media and technology?

**Question 33:** Should those who subsequently share digital electoral material also be required to include an imprint and, if so, whose details should be on it - theirs or the original publisher?

**Question 34:** Do you think the responsible bodies have sufficient enforcement powers?