

# STANDARDS BULLETIN

## INTRODUCTION

### THE STANDARDS SUB-COMMITTEE

The Members of the Standards Sub-Committee are:

- **County Councillor Andrew Backhouse (Chairman)**
- **County Councillor Margaret-Ann de Courcey-Bayley**
- **City Councillor Danny Myers**
- **City Councillor Tony Richardson (Vice-Chairman)**

Also invited to meetings of the Sub-Committee are:

- **Mr Phil Beavers**, Independent Person for Standards
- **Mrs Shirley Chapman**, Independent Person for Standards
- **Mr Ronald Humphrys**, substitute Independent Person for Standards (in the absence of Mr Beavers and Mrs Chapman)

If in doubt, please seek advice from the **Monitoring Officer Team**:

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The Committee on Standards in Public Life is continuing to maintain 'a watching brief' of the standards regimes in local government and the changes resulting from The Localism Act 2011. The Sub-Committee has published further information on key issues, details of which are set out in the Bulletin.

Members will be kept informed of developments.

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

County Councillor Andrew Backhouse  
**Chair of the Standards Sub-Committee**

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## **House of Commons Briefing Paper - Local Government Standards In England**

The House of Commons Library has published a Briefing Paper, Number 05707, 27 June 2016, on Local Government Standards in England:

<http://researchbriefings.files.parliament.uk/documents/SN05707/SN05707.pdf>

The Paper looks at the following areas:

1. Councillors' conduct and interests
2. Codes of conduct
3. Complaints about breaches of codes of conduct
4. The standards regimes in devolved areas

and is a brief summary of the current ethical framework. It recognises that whilst, in the past, it was anticipated, there is no statutory model code of conduct for local government officers and it is for local authorities to decide on these issues.

### **Disqualification of Councillors**

In response to written question 28793 on the Parliament website (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-29/28793/>), the Government has indicated its intention to review the legislation surrounding the disqualification of Members and will also consider this in the context of the Localism Act 2011 (which sets out the ethical framework). Members will be kept updated as to developments.

Members will be kept informed of developments.

### **LGO – Review of Local Government Complaints 2015-16**

The Local Government Ombudsman (LGO) has published a report re its review of Local Government Complaints for 2015-16. Key findings from the report are:

- 1) 19,702 complaints and enquiries received
- 2) 51% investigations upheld
- 3) 3,529 recommendations to put things right and remedy injustice
- 4) the area most complained about is education and children's services
- 5) Significant changes on previous year (complaints and enquiries received):
  - up 13% for education and children's services
  - down 7% for housing
- 6) 99.9% of LGO recommendations were complied with across all local authorities

The full report is available from the LGO website at <http://www.lgo.org.uk/information-centre/news/2016/jul/ombudsman-upholding-more-complaints-about-local-government>

### **Committee on Standards in Public Life (CSPL)**

The Committee on Standards in Public Life ("CSPL") is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. It advises the Prime Minister on national ethical standards issues regarding standards of conduct of public office holders.

The Prime Minister has recently made two new appointments to the CSPL, Jane Ramsey and Dr Jane Martin, following an open competition. Full details are published on the CSPL website at <https://www.gov.uk/government/news/new-members-appointed-to-committee>

### **CSPL Review of Ethics for Regulators**

The CSPL announced that it had finished its review of ethics for regulators (looking at how UK regulatory bodies uphold the Seven Principles of Public Life) and in September published its report "Striking the Balance - Upholding the Seven Principles of Public Life in Regulation":

<https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation>

The CSPL states that it is reassured that, generally, regulators are committed to upholding the Principles however there are instances where this is not the case and retrospective action is being taken to deal with issues as they emerge. The CSPL welcomes good practice but in the report warns against complacency. In particular, the CSPL felt more could be done to maintain integrity through strengthening the appearance of independence and avoiding conflicts of interest.

The report makes a series of best practice recommendations to ensure fairness and integrity in processes and also recommendations to Government, all to increase public trust in UK regulation.

Key highlights from the report are as follows:

- a) *...regulation plays a key role in public life ... a regulatory body should conduct itself in ways which are – and are seen to be – ethically acceptable. This is an important aspect of its overall effectiveness.*
- b) *The commonality shared by all regulators is the need to maintain their integrity through independence – both from government and those they regulate – avoiding undue influence and ensuring the decisions they make are fair, well-reasoned and evidence-based. It is a complex space to negotiate and a difficult path to tread.*
- c) *In light of the result of the June 2016 referendum in which the British people voted to leave the European Union (EU), the UK's regulatory landscape is likely to be substantially restructured in the coming years. ... domestic regulatory bodies are likely to become all the more important as the UK withdraws from the EU's legal framework. In this context, the Committee believes that maintaining the highest ethical standards within regulatory bodies continues to be of the utmost importance.*
- d) *During the course of the review, however, we came across variances in ethical standards which cause us some concern. Recognising the breadth and range of regulatory bodies, we do not*

*envisage a 'one size fits all' approach. But across all regulators, we believe strongly that the adoption of good practice identified by the Committee would enhance ethical standards of regulators which, in turn, would have a significant impact on regulatory effectiveness*

- e) *The Committee has grouped this best practice into six key areas, so that all regulatory bodies can check the approach of their own organisation to the ethical standards they should be upholding*

The best practice recommendations made in the report relate to the following areas and examples are set out below:

#### Governance

- The regulatory board is responsible for providing leadership and setting standards on ethical behaviour within the organisation. The board should seek regular evidence-based assurance that the highest ethical standards are being upheld.
- Non-executive and lay members of boards have an important role to play in ensuring that the regulatory body is beyond reproach in following the Principles of Public Life. All board members have a responsibility to ensure that adequate discussion of issues occurs before decisions are made.
- Corporate governance arrangements should have proactive governance arrangements to minimise the risk of conflicts of interest and individuals acting for private gain.
- Compliance with standards of conduct should be confirmed in the published annual certification by accounting officers. Regular, published information should include up-to-date registers of meetings, conflicts of interest and gifts and hospitality. These should be publicly accessible.

#### Code of Conduct

- At least one code of conduct should cover all personnel, including board members, employees, secondees, consultants, and contractors.

- The code should reflect the ethical risks faced by the body.
- The standards established in the code of conduct should be evident in the recruitment and appraisal processes and in their induction and regular training.

#### Revolving door

- Policies and procedures should be in place to manage 'revolving door' situations at all levels of the organisation where individuals come from, or go to, the regulated sector.
- At every board meeting, members should be asked to declare any actual or potential conflict of interest and these should be publicly recorded. Where the board agrees that a conflict is inappropriate, the member should be recused from both the discussion and decision making.
- Particular care should be taken where non-executive board members have a live, concurrent post which could give rise to conflicts of interest. Any conflict of interest for non-executives should be established at the start of the selection process and actively managed to ensure there are no material factors impeding independence of judgement.

#### Independence

- The operational independence of regulators must be upheld. Ministerial guidance on operational aspects may be transparently considered, but should not be treated as binding, unless there are statutory provisions for such guidance.
- Ministerial appointments to regulatory bodies must be timely, transparent, on merit, without patronage and with proper regard to the needs of the organisation.
- Regulators should ensure that staff at all levels are clearly aware of conflicts of interest and are explicitly advised about the risks of bias in decision-making.
- Regulatory bodies should demonstrate that funding mechanisms do not have an impact on their independence and integrity

#### Transparency

- Regulators should publish and update their corporate governance documents.

These should include minutes of meetings, registers of interests, annual reports, their rules and guidance and their decision making processes.

- Any body with regulatory functions not designated a 'public authority' under the Freedom of Information Act 2000, should have a publication scheme in line with the best practice established by the Information Commissioner's Office.

#### External leadership

- Regulators should actively engage with those they regulate and take a leadership role by encouraging positive attitudes towards compliance.
- Such promotion of an ethical approach to compliance would be supported by a suitable amendment to the Regulators' Code.

The Standards Sub-Committee has considered the approach of the Authority to the ethical standards it should be upholding. It believes that the Authority maintains a strong ethical framework, shaped by its Code of Conduct and accompanying standards documents, underpinned by support from the Authority's leadership.

### **Law Commission Consultation on Misfeasance in Public Office**

In the last Bulletin, Members were briefed about the Law Commission consultation on the law of misconduct in public office.

The Commission has very recently published its second, detailed consultation document (over 200 pages) on options for law reform in this area. The full document is available on the Law Commission website (<http://www.lawcom.gov.uk/project/misconduct-in-public-office/>).

The website states that the reform objectives are "to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended and to pursue whatever scheme of reform is decided upon."

In terms of law reform options, the Law Commission states on its website:

The problems identified in the existing law clearly show that it would be undesirable either to retain the existing offence or to attempt to codify it in statute. All the options in the Consultation Paper therefore assume that the common law offence of misconduct in public office is to be abolished.

The underlying issue tying together the problems with the current offence is that it is not clear what mischief the current offence targets and therefore what form the offence should take.

In our consultation paper we conclude that a reformed offence, or offences, could address one or both of the following wrongs: breach of duty leading to a risk of serious harm; and corrupt behaviour – the abuse of a position for personal advantage or to cause harm to another.

For the purpose of devising any offence or offences to replace misconduct in public office, we need to devise a more rigorous definition of public office. The current, vague definition is a major problem with the present offence. We discuss in the Consultation Paper four possible methods of defining public office. Any new offence will need to be underpinned by the concept of public office. However depending on the particular model of offence, not every form of the replacement offence needs to apply to all public office holders. It may be that certain types of new offence need only apply to a subset of public office holders.

We consider two possible new offences to replace the current offence of misconduct in public office. Option 1 involves a new offence addressing breaches of duty that risk causing serious harm, when committed by particular public office holders (those with duties concerned with the prevention of harm). Option 2 involves a new offence addressing corrupt behaviour on the part of all public office holders. Options 1 and 2 are separate but compatible. That is, it would be possible to implement Option 1 on its own, Option 2 on its own or both together.

Law reform Option 3 involves abolition of the current law without replacement. At this stage, it is our view that reform of this nature would be likely to leave unacceptable gaps in the law.

At the end of the Consultation Paper we discuss two other possible legal reforms which had been raised by consultees during the first phase of consultation. These additional legal reforms could complement any of our Options 1, 2 or 3. The first involves reform of the sexual offences regime. The second involves treating the fact that a defendant is a public official as an aggravating factor for the purposes of sentencing his or her criminal conduct.

Regarding Option 1 (breach of duty model), this is likely to cover those public office holders with duties relating to the prevention of harm, including:

- where they have powers of physical coercion, including arrest, detention and imprisonment;
- where their role involves the protection of vulnerable individuals from harm.

It is suggested that the type of harm should be restricted to:

- death;
- serious physical or psychiatric injury;
- false imprisonment;
- serious harm to public order and safety; and
- serious harm to the administration of justice.

The fault element of this new offence would be:

- (1) knowledge or awareness of:
  - (a) the circumstances that would mean that the person held a public office; and
  - (b) the circumstances relevant to the content of any particular duties of that office concerned with the prevention of harm; and
- (2) subjective recklessness as to the risk the conduct might cause one of the types of harm specified.

For Option 2, the consultation proposes the creation of a new offence that takes some aspects from the existing offence of police corruption, but applies it to all public office holders and improves the offence definition.

The offence under Option 2 would be committed when a public office holder (as

defined in statute) abuses his/her position/power/authority with the purpose of achieving an advantage for the office holder/another or causing detriment to another; and the exercise of that position for that purpose is seriously improper.

The consultation was due to close on 28 November 2016 but has now been extended to 3 January 2017.

The final report will be published in 2017. Members will be kept informed of developments.

### **CSPL Annual Report 2015-2016 and Forward Plan 2016-2017**

The Committee on Standards in Public Life has published its Annual Report 2015-2016 and Forward Plan 2016-2017.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/543819/CSPL\\_Annual\\_Report\\_2015-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543819/CSPL_Annual_Report_2015-2015.pdf)

The report provides an overview of the CSPL's activities over the year in question and sets out its forward work programme for the coming year.

In terms of monitoring standards issues, the CSPL intends to:

- *Maintain a watching brief to identify emerging or persistent standards issues and respond promptly to them.*
- *Undertake independent quantitative and qualitative research into public perceptions of ethical standards.*
- *Respond to consultations and key policy announcements and legislation where these impact on ethical standards and we have an informed contribution to make.*

and, in addition to monitoring standards issues, the CSPL will "take steps to ensure our voice is heard promoting high ethical standards".

The Report also sets out the CSPL's views on the Law Commission consultation on Misfeasance in Public Office, referred to earlier in this report.

Paragraphs 78 to 82 of the Report set out the CSPL's commitment to maintaining a watching brief over the standards regime. The CSPL notes that the role of the independent person is "generally well received" and that vexatious complaints are falling; however, the effectiveness of the sanctions regime is still a concern.

The CSPL invites councils to consider whether their own local standards frameworks are sufficient to address standards breaches and build public trust and these are issues which the Standards Sub-Committee considers on behalf of the Authority.

### **Councillor Commission Report**

The Councillor Commission, run by De Montfort University's Local Government Research Unit, in partnership with The Municipal Journal, is undertaking an independent review of the role and work of councillors through discussions and interviews with, and submissions from, councillors throughout the country.

In October, the Commission published an Interim report:

<http://www.dmu.ac.uk/documents/business-and-law-documents/cc-interim-report-oct-16-final-3.pdf>

Some of the results referred to in the report are:

- the increasing workload and time commitments that their duties demand. It is difficult for councillors to sustain their roles in conjunction with working full time and this could be a deterrent to younger people to stand for election.
- Non-executive councillors feel distanced from policy making.
- There are also frustrations over councillor access to information.
- Councillors experience frustration by expectations of constituents and the media and the lack of understanding of what councillors can actually achieve in their role.

- A new and developing feature of the role of the councillor is the increasing need with which they are required to interact in complex networks of organisations beyond the council as well as the changing face of service delivery at the local level.
- Councillors make considerable personal sacrifices in serving local people.

The Commission's final report will be presented to Government.

More information is available on the Unit's website:

<http://www.dmu.ac.uk/research/research-news/2016/january/overworked-underpaid-and-unpopular-%E2%80%93-why-would-anyone-be-a-councillor-most-comprehensive-ever-review-aims-to-find-out.aspx>

Members will be kept informed of developments.

### Interests Regime

Under the ethical framework, Members must register the statutorily prescribed **disclosable pecuniary interests** and also register any **trade union/professional association membership** (as an 'interest other than a disclosable pecuniary interest'), as required under revised DCLG guidance.

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

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

(please see the Code of Conduct for Members) for the detailed descriptions)

**AND** either:

- it is the Member's interest or
- an interest of—

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

**AND** the Member is aware of the interest.

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

The Register of Members' Interests is maintained by the Monitoring Officer and is available for public inspection in Rm 11, County Hall.

Electronic copies of Members' interests forms (redacted to remove signatures) are also published on the North Yorkshire Fire and Rescue Service's website at:

<http://www.northyorksfire.gov.uk/about-us/key-documents/links-registers/register/>

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

**PLEASE NOTE:** a Member commits a **criminal offence** if, without reasonable excuse, s/he —

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

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

- knows that the information is false or misleading, or

- is reckless as to whether the information is true and not misleading.

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

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

Please do not hesitate to contact the Monitoring Officer or any of his team should you have any queries.

### Members' Gifts and Hospitality

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

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

### CASES

1. A former councillor was convicted of housing fraud (failure to disclose information and notify a change in circumstances) and received a 22 week custodial sentence. He was disqualified from being a councillor under the provisions of the Local Government Act 1972.

2. A councillor was found to have breached a Town Council's Code of Conduct requirements to treat others with courtesy and respect and sanctions were imposed. The councillor has taken judicial review proceedings against the council despite the sanctions subsequently being removed. Members will be kept informed of developments in this case.

The Local Government Lawyer publication recently published a report on the following case:

A town councillor (X) made a standards complaint against another councillor, in respect of which it was resolved that no action should be taken.

X then requested a copy of the subject member's response to his complaint and later also requested copies of the evidence supplied by the subject member.

The authority refused to disclose the information, relying on the exemption provided under section 41 of the Freedom of Information Act (information provided in confidence).

X appealed to the Information Commissioner (ICO). The authority also then sought to rely on the exemptions provided in FOIA section 21 (information accessible by other means) and section 40(2) (personal information).

The Information Commissioner concluded that the authority had correctly relied on sections 21 and 40(2) as disclosure of the information would be unfair and therefore in breach of the first Data Protection Principle:

- there was a general expectation of privacy for conduct investigations;
- there was a legitimate expectation of privacy;
- disclosure would cause unwarranted damage or distress to the councillor; and
- it was not within the remit of the ICO to consider the merits of the complaint.

X unsuccessfully appealed to the First Tier Tribunal. The FTT agreed that section 40(2) was appropriately engaged and relied on to refuse disclosure of the information:

- The requested information was clearly personal data.
- Even though the material related to the individual's work rather than personal activities, it related to a complaint made against the councillor's behaviour and the council considered whether the behaviour contravened its code of conduct. As such, the information was clearly personal in nature, "in the same way that an

individual's annual appraisal report can be considered to be personal data".

- Disclosure was unwarranted. "Notwithstanding that the councillor held a public office and the withheld information related to the councillor's public function rather than private life, we accept that information relating to complaints against individuals carries a very strong general expectation of privacy. This is due to the likelihood that disclosure could cause the individual distress and potential damage to future prospects and general reputation."
- The FTT accepted that the councillor would have had a legitimate expectation of privacy based on the Tribunal's finding that material provided in relation to an investigation into conduct is "inherently highly personal in nature and the councillor's rights and interests in the privacy of his data need to be respected".
- It was not relevant that neither the requester nor the councillor were no longer in office, "since they might seek to be in future".
- The councillor had a legitimate interest and right to have his personal data withheld from the public because the subject matters attracted a right to privacy.
- The collective weight of interest in disclosure was "vastly outweighed by the councillor's rights and freedoms or legitimate interest in...not disclosing to the world at large material related to a complaint about his conduct where the council did not find the complaint to be merited".

**Contributors:**

**MOIRA BEIGHTON**

North Yorkshire Legal & Democratic Services

**Resources**

Localism Act 2011 and subordinate legislation.

[www.gov.uk/government/organisations/the-committee-on-standards-in-public-life](http://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life)

Information published on [www.gov.uk](http://www.gov.uk)

Local Government Lawyer case reports