



Joint Standards Complaints Committee 20 March 2019

Committee for Standards in Public Life Report on Local Government Ethical Standards

Purpose of report

This report provides a summary of the Committee for Standards in Public Life (CfSPL) report on Local Government Ethical Standards and proposes some actions that ENC could take now in relation to its recommendations, including a minor change to Part 9 of the Constitution (Code of Conduct Complaints Assessment Process).

Attachments

Appendix A – ENC Position Statement on the Recommendations and Best Practice suggestions from the CfSPL Review Report

1.0 Background

- 1.1 The Committee for Standards in Public Life (CfSPL) was established in 1994. The Committee previously fully reviewed ethical arrangements in local government in 1997 and has touched on them in several subsequent reports. The current review was led by Lord Evans of Weardale, Chair of Committee on Standards in Public Life and was announced in July 2017.
- 1.2 The terms of reference for the review were as follows:
1. *Examine the structures, processes and practices in local government in England for:*
 - a. *Maintaining codes of conduct for local councillors*
 - b. *Investigating alleged breaches fairly and with due process*
 - c. *Enforcing codes and imposing sanctions for misconduct*
 - d. *Declaring interests and managing conflicts of interest*
 - e. *Whistleblowing*
 2. *Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government*
 3. *Make any recommendations for how they can be improved*
 4. *Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation*

The ENC Monitoring Officer attended one of the two roundtable seminars held session as part of the Committee's evidence gathering process on behalf of the Northamptonshire Monitoring Officers Group.

2.0 The Report and its recommendations

- 2.1 The report was published at the end of January and can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

- 2.2 The report notes that, whilst most of those involved in local government want to maintain high standards of conduct, there are issues with the behaviour of a small number of councillors (at all levels) and with a few parish councils which give rise to a disproportionate number of complaints about poor behaviour. The CfSPL have also identified a few areas where the current arrangements are putting governance under strain. Their recommendations seek to maintain the current devolved arrangements but to strengthen them in places to address unacceptable behaviour by a minority.
- 2.3 The report makes both recommendations and best practice suggestions for councils (see Appendix A for a complete list). Recommendations from the report include introducing a power of suspension (linked to the ability to appeal to the Local Government Ombudsman (LGO)) and a model code of conduct which will enable councillors to be held to account for the most serious or repeated breaches. Implementing this and some of the other recommendations will require legislative change. However, it is intended that any authority can and should implement the 'best practice' suggestions for local authorities. Appendix A also highlights the current ENC position in relation to both the recommendations and the best practice suggestions and proposed action where appropriate.

3.0 Considerations

- 3.1 More detailed actions in relation to the recommendations and best practice suggestions would normally be appropriate in relation to the ENC Code and Procedure for Assessing Complaints (Part 9 of the Constitution). However, given that it is anticipated that a decision will shortly be made by the Secretary of State to create two new unitary councils for Northamptonshire with effect from 1st April 2020, it is instead proposed that the focus should generally be on ensuring that the Code and Process for the Shadow Unitary Authority, expected to come into being later in 2019, meet the recommendations and best practice as far as possible at this stage (without any changes to legislation).
- 3.2 The report recommends that a new model code is produced by the LGA. At the time of writing this report, no information is available as to when this work will commence or be completed, although the Lawyers in Local Government Group has offered assistance. The Government has also not issued its response to the CfSPL report yet.
- 3.3 It is therefore not recommended at this stage that significant changes are made to the ENC Code or promoted to town and parish councils. Instead it is proposed that town and parish councils should be encouraged to adopt the Code of the Shadow Authority as soon as it is available, if they wish to update their codes to comply with the best practice in the CfSPL report.

4.0 Equality and diversity issues

- 4.1 There are no known negative equality and diversity issues arising from this paper.

5.0 Privacy Impact Implications

- 5.1 There are no privacy implications arising from the recommendations in this report

6.0 Legal implications

- 6.1 This report outlines activities undertaken under local arrangements which reflect the Localism Act 2011 and related regulations.

7.0 Risk management

- 7.1 The preparation of this report highlights any areas where there is a risk of non-compliance with legislation.

8.0 Resource and Financial implications

8.1 There are no new financial or resource implications arising from this report.

9.0 Constitutional Implications

9.1 Recommendation R9 and best practice suggestion BP9 will require a change to Part 9 of the Constitution. If agreed by this Committee, changes will be recommended to the Governance and Audit Committee for consideration.

10.0 Implications for our Customers

10.1 Some of the 'best practice' guidelines are intended to make the Complaints about Councillors more transparent and easier for customers to find and follow.

11.0 Corporate outcomes




11.1 The work reported here contributes to the Corporate Outcome of Effective Management.

12.0 Recommendation

12.1 The Committee is recommended to:

- a) note the contents of this report in terms of monitoring of complaint activity;
- b) agree to recommend to Governance and Audit Committee changes to Part 9 of the Constitution to meet the guidance in R9 and BP9 of Appendix A

[Reason: To meet the recommended best practice in relation to the assessment of complaints in relation to the Councillor Code of Conduct]

Legal	Power:	Localism Act 2011			
	Other considerations:				
Background Papers:		Committee for Standards in Public Life Review Report			
Person Report:	Originating	Sharn Matthews, Monitoring Officer, ☎ 01832 742108, ✉ smatthews@east-northamptonshire.gov.uk			
Date:					
CFO 06/03/19		MO 06/03/19		CX 06/03/19	

APPENDIX A

No	Recommendation	Responsible body	Comments	Action Required By ENC
R1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	LGA	Lawyers in Local Government (MO Body) have offered to help but no sign of progress at this stage.	Not at this stage
R2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home addresses. The Relevant Authorities (DPI) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interest	Government	Requires new legislation to implement. ENC have actively promoted ability to consider addresses as 'sensitive' and proactively approached councillors in some circumstances to remove from Council website (but not Register of Interests).	Not at this stage
R3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly –accessibly social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government	2018 ENC Code goes as far as it can towards this presumption until the primary legislation is changed.	Not at this stage
R4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as representative of the local authority.	Government	Current ENC Code goes as far as it can towards this presumption until the primary legislation is changed.	Not at this stage. However, when the LGA Code is available it is likely that the JSCC, if still in existence, will recommend to ENC and town and parish councils that this should be adopted with minimal changes. In the interim, if there is a need to adopt the Shadow Authority Code before the LGA Code is available, then that should incorporate the CfSPL recommendations

R5	The Relevant Authorities (DPI) Regulations 2012 should be amended to include; unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy	Government	ENC Code has category of 'other interests' which cover this area.	Yes – Include in T&PC Brief guidance on completion of Register of Interests to be updated and recirculated as part of annual Cllrs review and refresh of registers and then reference para in code on dealing with other interests that can create bias
R6	Local authorities should be required to establish a register of gifts or hospitality, with councillors required to record any gifts or hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct	Government	£50 is the amount noted in the ENC Code but the Code doesn't include £100 from a single source element. Declarations of gifts and hospitality rare by Cllrs.	No - Suggest that this amendment in draft Code for Shadow Unitary Council
R7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".	Government	Legislation required to change DPI rules but ENC Code can be updated to include within 'other interest' section	No – consider for Shadow Unitary Code and include in guidance as per R5
R8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government	No action required at this stage provided Secretary of State makes decision in favour of 2 Unitary Councils.	No – awaiting Government Response to decide if should be included for new Unitary Councils.
R9	The Local Government Transparency Code should be updated to provide that the view of the independent person in relation to a decision on which they are consulted should be formally recorded in any decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government	Currently often included in Initial Assessment but needs to be included in Part 9 process	Yes-Change to Part 9 required

R10	A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government	Requires new legislation to implement.	Not at this stage
R11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this though secondary legislation if needed.	Government/ LAs	Legal advice to be sought to see if this can be implemented without change of legislation	Yes – MO to seek advice
R12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegation and impose sanctions.	Government	Terms of JSCC could be changed to include voting powers for Independent Persons but legal advice needed to check that voting powers doesn't compromise Independent person status until the legislation changes. IP doesn't see need to change at this stage. T&PCs to be encouraged to delegate powers re sanctions to JSCC pending change in legalisation.	No – issue for Shadow to resolve Yes - Encourage T&PCs via bulletin to do so to ENC or any successor body
R13	Councillors should be given the right to appeal to the LGO if their local authority imposes a period of suspension for breaching the code of conduct.	Government	Requires new legislation to implement	Not at this stage
R14	The LGO should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor who has a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government	Requires new legislation to implement	Not at this stage
R15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanction applied.	Government	ENC has just adopted a process for reporting outcome of complaint. Suggest that summary is produced for annually in January and included on Complaint part of website	Yes – as described

R16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government	Requires new legislation to implement	Not at this stage
R17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government	Required government action	Not at this stage
R18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government	Requires new legislation to implement	Not at this stage
R19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish Council	Not for ENC to implement	Not at this stage
R20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority with the necessary amendments, or the new model code.	Government	Requires new legislation to implement	Not at this stage
R21	Section 28 (11) of the Localism Act should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principle authority.	Government	Requires new legislation to implement	Not at this stage
R22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government	Requires new legislation to implement	Not at this stage
R23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website	Government	Needs updating anyway for latest change in External Auditor and add named contact details	Yes – as noted
R24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998	Government	Requires new legislation to implement	Not at this stage

R25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political Groups National political parties	Requires action by others	Not at this stage
R26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	LGA	Requires action by others	Not at this stage

	Best Practice Recommendations	Comments	Action Required By ENC
BP1	Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition	The ENC Code references the need to strive to establish respectful and courteous relationships with everyone you come into contact with as Councillors (3a) but doesn't specifically reference bullying and harassment or include a list of examples.	Not at this stage – focus should be on ensuring that the Code of Conduct for Councillors for new Shadow Unitary Council includes this.
BP2.	Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.	The ENC Code doesn't include compliance with Standards investigations. However Appendix 1 to Part 9 of the Constitution (Procedure for Assessment, Investigation Determination and Appeal of Complaints against Councillors and Dispensations) does include guidance on the treatment of trivial or malicious allegations as follows: "Does the complaint appear to be simply malicious, politically motivated, vexatious, or tit-for-tat? If the answer is Yes, the Monitoring Officer is likely to decide that further action is not warranted"	
BP3.	Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.	The ENC Code has been reviewed three times since its creation in 2012 in response to learning from complaints.	Not at this stage.
BP4.	An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises	The ENC Code is included on its website under the Constitution. It is also sign-posted from the Complaints against Councillors web-page. It is unlikely that higher prominence would be seen as important for a website that has a transactional focus.	Include Councillors Code of Conduct in A-Z list on ENC Website

BP5.	Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.	Notifications of Gifts and Hospitality by Cllrs are included in the relevant Register of Interest when notified to the Monitoring Officer	No
BP6.	Councils should publish a clear and straightforward public interest test against which allegations are filtered.	Appendix 1 to Part 9 does give some guidance but does not include a clear and straightforward test of the type highlighted in the report. This would require a significant review of Part 9	Not at this stage
BP7.	Local authorities should have access to at least two Independent Persons.	ENC has access to an Independent Person and a Reserve IP	No
BP8.	An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	The ENC Procedure includes consultation with the IP at Initial Assessment stage	
BP9.	Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.	ENC have recently agreed publication of anonymised complaint summaries on its website. The view of the Independent Person will be explicitly included in future.	Yes – recommended to the Governance and Audit Committee that the description of the anonymised complaint summary include the view of the IP.
BP10.	A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.	Part 9 includes estimated timescales for each stage of the process and average times taken have been reported periodically to JSCC.. There is a dedicated web-page on the ENC website https://www.east-northamptonshire.gov.uk/site/scripts/documents_info.php?documentID=1395&pageNumber=1 which outlines how to make a complaint. This is reiterated by the Monitoring Officer when a possible complaint	No

BP11.	Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.	Not for ENC to directly action but will be included in future training as part of the updates following the Ledbury case	No
BP12.	Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.	The Monitoring Officer has always taken a proactive and supportive stance in relations to governance and standards issues at town and parish councils. She is looking to see this replicated in the new Unitary Councils going forward, possibly via the creation of a specific Deputy Monitoring Officer role for Town and Parish Councils	Yes as described
BP13.	A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.	ENC has generally has at least one internal Deputy Monitoring Officer available to assist where there is a conflict of interest and has appointed external DMOs when necessary. ENC has always used external Investigating Officers which avoids any conflict of interest.	No
BP14.	Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place	ENC doesn't have any separate bodies that it owns.	No
BP15.	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	No formal arrangement exists at ENC but the Monitoring Officer has regular dialogue with the Leader on standards issues and will discuss matters with the other Group leaders as circumstances arise.	No