

# Audit and Standards Committee

---

**Thursday 13 June 2019 at 5.00 pm**

**To be held at the Town Hall, Pinstone  
Street, Sheffield, S1 2HH**

**The Press and Public are Welcome to Attend**

## **Membership**

---

Councillors Mark Jones (Chair), Simon Clement-Jones (Deputy Chair),  
Angela Argenzio, Adam Hurst, Francyne Johnson, Alan Law and  
Mohammed Mahroof.

## **Independent Co-opted Members**

Liz Stanley and Lynda Hinxman.

---

---

## **PUBLIC ACCESS TO THE MEETING**

---

The Audit and Standards Committee oversees and assesses the Council's risk management, control and corporate governance arrangements and advises the Council on the adequacy and effectiveness of these arrangements. The Committee has delegated powers to approve the Council's Statement of Accounts and consider the Annual Letter from the External Auditor.

The Committee is also responsible for promoting high standards of conduct by Councillors and co-opted members.

A copy of the agenda and reports is available on the Council's website at <http://democracy.sheffield.gov.uk>. You can also see the reports to be discussed at the meeting if you call at the First Point Reception, Town Hall, Pinstone Street entrance. The Reception is open between 9.00 am and 5.00 pm, Monday to Thursday and between 9.00 am and 4.45 pm. on Friday. You may not be allowed to see some reports because they contain confidential information.

Recording is allowed at meetings of the Committee under the direction of the Chair of the meeting. Please see the website or contact Democratic Services for details of the Council's protocol on audio/visual recording and photography at council meetings.

If you require any further information please contact Sarah Cottam in Democratic Services on 0114 273 5033 or email [sarah.cottam@sheffield.gov.uk](mailto:sarah.cottam@sheffield.gov.uk).

---

## **FACILITIES**

---

There are public toilets available, with wheelchair access, on the ground floor of the Town Hall. Induction loop facilities are available in meeting rooms.

Access for people with mobility difficulties can be obtained through the ramp on the side to the main Town Hall entrance.

---

**AUDIT AND STANDARDS COMMITTEE AGENDA  
13 JUNE 2019**

**Order of Business**

---

- 1. Welcome and Housekeeping Arrangements**
- 2. Apologies for Absence**
- 3. Exclusion of the Press and Public**  

To identify items where resolutions may be moved to exclude the press and public.
- 4. Declarations of Interest** (Pages 1 - 4)  

Members to declare any interests they have in the business to be considered at the meeting.
- 5. Minutes of Previous Meetings** (Pages 5 - 10)  

To approve the minutes of meetings of the Committee held on 18<sup>th</sup> April 2019 and 15<sup>th</sup> May 2019.
- 6. Annual Standards Report 2018-19** (Pages 11 - 132)  

Report of the Director of Legal and Governance
- 7. Treasury Management Overview** (Pages 133 - 144)  

Presentation by the Assistant Director of Finance
- 8. 2018-19 Summary of Statement of Accounts** (Pages 145 - 166)  

Report of the Executive Director – Resources
- 9. Internal Audit Annual Fraud Report 2018/19** (Pages 167 - 188)  

Report of the Senior Finance Manager, Internal Audit
- 10. Lender Option Borrower Option Objection Report** (Pages 189 - 208)  

Report of the Head of Strategic Finance
- 11. Work Programme** (Pages 209 - 212)  

Report of the Director of Legal and Governance.

## 12. Dates of Future Meetings

To note that meetings of the Committee will be held at 5.00 p.m. on:-

Thursday 25<sup>th</sup> July **at 4.30pm**  
Thursday 17<sup>th</sup> October 2019  
Thursday 19<sup>th</sup> December 2019  
Thursday 23<sup>rd</sup> January 2020  
Thursday 19<sup>th</sup> February 2020  
Thursday 20<sup>th</sup> March 2020  
Thursday 16<sup>th</sup> April 2020  
Thursday 11<sup>th</sup> June 2020  
Thursday 23<sup>rd</sup> July 2020

---

## ADVICE TO MEMBERS ON DECLARING INTERESTS AT MEETINGS

---

If you are present at a meeting of the Council, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the authority, and you have a **Disclosable Pecuniary Interest (DPI)** relating to any business that will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your Disclosable Pecuniary Interest during the meeting, participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

You **must**:

- leave the room (in accordance with the Members' Code of Conduct)
- make a verbal declaration of the existence and nature of any DPI at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.
- declare it to the meeting and notify the Council's Monitoring Officer within 28 days, if the DPI is not already registered.

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. You have a pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period\* in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

\*The relevant period is the 12 months ending on the day when you tell the Monitoring Officer about your disclosable pecuniary interests.

- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
  - under which goods or services are to be provided or works are to be executed; and
  - which has not been fully discharged.

- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- Any tenancy where (to your knowledge) –
  - the landlord is your council or authority; and
  - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.
- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -
  - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
  - (b) either -
    - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

If you attend a meeting at which any item of business is to be considered and you are aware that you have a **personal interest** in the matter which does not amount to a DPI, you must make verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. You should leave the room if your continued presence is incompatible with the 7 Principles of Public Life (selflessness; integrity; objectivity; accountability; openness; honesty; and leadership).

You have a personal interest where –

- a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing (including interests in land and easements over land) of you or a member of your family or a person or an organisation with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Authority's administrative area, or
- it relates to or is likely to affect any of the interests that are defined as DPIs but are in respect of a member of your family (other than a partner) or a person with whom you have a close association.

Guidance on declarations of interest, incorporating regulations published by the Government in relation to Disclosable Pecuniary Interests, has been circulated to you previously.

You should identify any potential interest you may have relating to business to be considered at the meeting. This will help you and anyone that you ask for advice to fully consider all the circumstances before deciding what action you should take.

In certain circumstances the Council may grant a **dispensation** to permit a Member to take part in the business of the Authority even if the member has a Disclosable Pecuniary Interest relating to that business.

To obtain a dispensation, you must write to the Monitoring Officer at least 48 hours before the meeting in question, explaining why a dispensation is sought and desirable, and specifying the period of time for which it is sought. The Monitoring Officer may consult with the Independent Person or the Council's Audit and Standards Committee in relation to a request for dispensation.

Further advice can be obtained from Gillian Duckworth, Director of Legal and Governance on 0114 2734018 or email [gillian.duckworth@sheffield.gov.uk](mailto:gillian.duckworth@sheffield.gov.uk).

This page is intentionally left blank



Audit and Standards Committee

Meeting held 18 April 2019

**PRESENT:** Councillors Josie Paszek (Chair), Dianne Hurst, Pat Midgley, Mohammed Mahroof and Martin Phipps

Co-Opted Member

Liz Stanley

Representing Ernst and Young

Stephen Clark

Hayley Clark

Council Officers

Gillian Duckworth, Director of Legal and Governance

Dave Phillips, Head of Strategic Finance

Kayleigh Inman, Senior Finance Manager, Internal Audit

Eugene Walker, Executive Director, Resources

Ryan Keyworth, Director of Finance and Commercial Services

**1. APOLOGIES FOR ABSENCE**

1.1 An apology for absence was received from Councillor Simon Clement-Jones.

**2. EXCLUSION OF THE PRESS AND PUBLIC**

2.1 No items were identified where it was proposed to exclude the public and press.

**3. DECLARATIONS OF INTEREST**

3.1 Councillor Pat Midgley declared a personal interest in any items relating to grants, as a member of the Manor and Castle Development Trust.

**4. MINUTES OF PREVIOUS MEETING**

4.1 The minutes of the previous meeting of the Committee held on 24 January 2019 were approved as a correct record.

**5. INTERNAL AUDIT TACTICAL PLAN 2019/20**

5.1 The Senior Finance Manager (Internal Audit) submitted a report presenting the Internal Audit planning methodology and programme of work for 2019/20.

5.2 In introducing the report, Kayleigh Inman, Senior Finance Manager (Internal Audit), commented that the plan was based on issues reported by Portfolios, the Corporate Risk Register and discussions with Executive Directors regarding emerging risk areas.

- 5.3 The first call list of priority issues was outlined at the end of the plan. These were of medium priority but there were also four high priority issues included. The first call list would be reviewed either mid-year or at the end of the year depending on need. If there were any significant changes to the plan a further report would be submitted to the Committee in November.
- 5.4 Councillor Dianne Hurst commented that she welcomed the principal of Business Partnering and believed this to be a proactive and ambitious way of dealing with resources.
- 5.5 In response to a question from the Committee regarding managing resources, Kayleigh Inman commented that resources were focused on increasing risks and this was looked at from both a reactive and proactive perspective.
- 5.6 In response to a question regarding project management reviews and grant certificate sign offs, Kayleigh Inman stated that the Audit team validated what grants had been spent on. Eugene Walker, Executive Director, Resources added that the Government had outlined which grants needed to be ratified by the Internal Audit team but he didn't believe this was a good use of the team's resources and would be better spent on more pro-active work.
- 5.7 In response to a question regarding risk management, Eugene Walker commented that it was important to ensure teams worked together which would make it easier for managers to comply.
- 5.8 Kayleigh Inman stated that risks were identified via a number of different means such as the Corporate Risk Register, the Annual Governance Statement and Cabinet reports identifying new projects and funding streams.
- 5.9 **RESOLVED:** That the Committee endorses the programme of work for 2019/20 as outlined in the report.

## **6. COMPLIANCE WITH INTERNATIONAL AUDITING STANDARDS**

- 6.1 The Head of Strategic Finance submitted a report enabling the Committee to demonstrate to the External Auditors and the wider audience that it had exercised the required oversight to meet the requirements of the International Standards on Auditing. The report drew together much of the work undertaken by the Committee in the past year.
- 6.2 Liz Stanley commented that she believed she was coming to the end of her term as an independent co-optee and did not believe the regulations allowed for this to be extended. Gill Duckworth, Director of Legal and Governance, confirmed that she would clarify this and report back to the Committee. Councillor Pat Midgley welcomed the role of independent co-optees on the Committee and commented that this demonstrated to the public the transparency of the Committee.
- 6.3 **RESOLVED:** That the Committee:-

- (a) confirms that the report gave an accurate reflection of the reports that they had received and considered throughout the year; and
- (b) confirms that they now had an overview of the Council's systems of internal control so that they were now assured that they were fulfilling the requirements of "those charged with governance" under the International Auditing Standards.

## **7. AUDIT PLANNING REVIEW**

- 7.1 The Committee considered a report of Ernst and Young attaching its Audit Plan which sets out how the Company intends to carry out its responsibilities as auditor.
- 7.2 Steve Clark, Ernst and Young, introduced the report. He commented that Michael Green had now left Ernst and Young and had been replaced by Hayley Clark who would attend future meetings of the Committee. One of the significant risks identified had been regarding valuation of properties and Ernst and Young were working to try and gain an understanding of valuations.
- 7.3 The Local Government Pension Scheme was a risk due to the high number of estimates which it entailed. In terms of value for money, there was one significant risk regarding securing financial resilience. Ernst and Young were undertaking work to understand how the Authority was mitigating against this risk.
- 7.4 Regarding the handover in external auditing from KPMG, it was hoped that matters would be concluded in the near future and Steve Clark did not think it would lead to any significant changes in accounting treatment.
- 7.5 Ernst and Young had already begun to consider risks arising from Lender Option Borrower Options (LOBO's). Following a previous objection in relation to this the external auditors had compiled a report which stated that the City Council had no issue in relation to this and this could be circulated to Members.
- 7.6 **RESOLVED:** That the Committee:-
  - (a) notes the report; and
  - (b) requests that an item on Treasury Management be included on the Work Programme for future meetings of the Committee.

## **8. WORK PROGRAMME**

- 8.1 The Director of Legal and Governance submitted a report providing details of an outline work programme for the Committee for the period April-July 2019.

**RESOLVED:** That:-

- (a) training for Members of the Committee be arranged for June and dates be circulated for this;

- (b) feedback on the national report regarding Standards in Public Life be included within the annual Standards report to be submitted to this Committee;
- (c) the start time of the July meeting of the Committee be moved to 4:30pm;
- (d) an item on Treasury Management (including LOBO's) be submitted to the June meeting of the Committee; and
- (e) clarification be sought on Liz Stanley's term of office as a co-opted Member of the Committee.

## **9. DATES OF FUTURE MEETINGS**

9.1 It was noted that meetings of the Committee would be held on:-

- 13 June 2019 (5:00p.m.)
- 25 July 2019 (4:30p.m.)

**SHEFFIELD CITY COUNCIL**

**Audit and Standards Committee**

**Meeting held 15 May 2019**

**PRESENT:** Councillors Mark Jones (Chair), Simon Clement-Jones (Deputy Chair), Angela Argenzio, Adam Hurst, Francyne Johnson, Alan Law and Mohammed Mahroof

.....

**1. APOLOGIES FOR ABSENCE**

1.1 There were no apologies for absence.

**2. APPOINTMENT OF CHAIR AND DEPUTY CHAIR**

2.1 **RESOLVED:** That (a) Councillor Mark Jones be appointed as Chair of the Committee and (b) Councillor Simon Clement-Jones be appointed as Deputy Chair of the Committee, for the 2019/20 municipal year.

**3. DATES AND TIMES OF MEETINGS**

3.1 **RESOLVED:** That a meeting of the Committee be held on Thursday 13th June 2019 and thereafter on the following dates at 5.00pm (unless otherwise stated):

- 25<sup>th</sup> July 2019 (4.30pm)
- 17<sup>th</sup> October 2019
- 23<sup>rd</sup> January 2020
- 20<sup>th</sup> February 2020
- 19<sup>th</sup> March 2020
- 16<sup>th</sup> April 2020
- 11<sup>th</sup> June 2020
- 23<sup>rd</sup> July 2020

This page is intentionally left blank



## Audit and Standards Committee Report

---

**Report of:** Gillian Duckworth, Director Legal & Governance

---

**Date:** 13 June 2019

---

**Subject:** Standards Report 2018-19

---

**Author of Report:** Simon Hughes, Principal Committee Secretary

---

### Summary:

The report highlights the activities of the Committee and provides details of the outcome of the Standards complaints received from January 2018 – May 2019

---

### Recommendations:

That the Committee:-

- (a) Comments on the Annual Report; and
  - (b) Approves the report for submission to Full Council in July 2019.
- 

**Background Papers:** None

---

**Category of Report:** OPEN

---

## Statutory and Council Policy Checklist

<b>Financial Implications</b>
NO Cleared by:
<b>Legal Implications</b>
NO Cleared by:
<b>Equality of Opportunity Implications</b>
NO Cleared by:
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO:
<b>Environmental and Sustainability implications</b>
NO
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
NO
<b>Area(s) affected</b>
NONE
<b>Is the item a matter which is reserved for approval by the City Council?</b>
NO
<b>Press release</b>
NO



## **Standards Report 2015-2017**

### **1.0 INTRODUCTION**

- 1.1 This is the second Standards Annual Report of the merged Audit and Standards Committee and covers the period from January 2018 to May 2019.

### **2.0 BACKGROUND**

- 2.1 Changes to the Standards regime were introduced in July 2012 following the Localism Act 2011. Although it was no longer a statutory requirement to have a Standards Committee, Full Council approved the retention of a Committee to deal with complaints and adopted a new Members' Code of Conduct and a Procedure for Dealing with Standards Complaints.

### **3.0 MAIN BODY OF THE REPORT**

- 3.1 The Standards responsibilities of the merged Audit and Standards Committee include monitoring the Council's complaints process, training, learning and development, and advising the Council on the adoption and revision of relevant policies and Corporate issues.
- 3.2 As such, the attached report covers these areas in detail, summarising Standards activities from January 2018 to May 2019.

### **4.0 RECOMMENDATIONS**

- 4.1 That the Committee comments on the attached report; and approves the report for submission to Full Council in July 2019.

This page is intentionally left blank

# AUDIT AND STANDARDS COMMITTEE

## STANDARDS REPORT 2018 - 2019

To be considered at the Audit & Standards Committee on the 13 June  
2019 and the Council Meeting on 3 July 2019





# CONTENTS

	Page
1. Introduction	3
3. Standards-Specific Role of the Audit and Standards Committee	3
4. Membership of the Committee	4
5. Monitoring Officer/Support to the Committee	4
6. Complaints	5
7. Independent Persons	5
8. Parish and Town Councils	6
9. Policy and Corporate Issues	6
10. Training and Development	6
11. Other Areas of Work	6
12. The Year Ahead	7
13. Recommendation	7

## 1. **Introduction**

- 1.1 This is the second Standards Annual Report of the merged Audit and Standards Committee and covers the period from January 2018 to May 2019.
- 1.2 Changes to the Standards regime were introduced in July 2012 by the Localism Act 2011. Although it was no longer a statutory requirement to have a Standards Committee, Full Council approved the retention of a Committee to deal with complaints and adopted a new Members' Code of Conduct and a Procedure for Dealing with Standards Complaints. The three Parish and Town Councils adopted a Joint Members Code of Conduct and a Joint Procedure for Dealing with Standards Complaints.
- 1.3 Two Independent Persons were appointed jointly with Barnsley MBC to assist the Monitoring Officer in dealing with complaints.

## 2. **Standards-Specific Role of the Audit and Standards Committee**

- 2.1 The Standards responsibilities of the Committee, as set out in the Constitution, are:
- To promote and maintain high standards of conduct by Councillors, Co-opted Members and Representatives on Committees and Sub-Committees.
  - To assist Councillors, Co-opted Members and Representatives to observe the Members' Code of Conduct.
  - To advise the Council on the adoption or revision of the Members' Code of Conduct and Protocols relating to Councillor and Officer behaviour.
  - To monitor the operation of the Members' Code of Conduct.
  - To advise, train or arrange to train Councillors, Co-opted Members and Representatives on matters relating to the Members' Code of Conduct.
  - To monitor, review and make recommendations to the Council with regard to the Learning and Development policy for Councillors, Co-opted members and Representatives.
  - To discharge the functions of dealing with complaints against Councillors and Co-opted Members as set out in Procedure for Dealing with Complaints Regarding City, Parish and Town Councillors and Co-opted Members.
  - To advise the Council on the adoption and revision of its Whistleblowing Policy and monitoring the operation of that Policy.
  - To monitor and review procedures relating to gifts, hospitality and personal interests, for Councillors and officers.

- To monitor the Council's complaints process and the Council's response to complaints to the Ombudsman.

### 3. **Membership of the Committee**

- 3.1 The Audit and Standards Committee has 7 (non-executive) Members with proportionality applied and a maximum of 3 non-voting co-opted members. (Where standards related matters are to be considered by the Committee, the three Parish/Town Councils would be invited to jointly send one representative to attend the meeting for those items as an observer).

### 4. **Monitoring Officer/Support to the Committee**

- 4.1 Gillian Duckworth is the Council's Monitoring Officer and Director of Legal and Governance. The Monitoring Officer is a statutory role that:-

- Supports the Standards Committee and the Independent Persons;
- Contributes to the promotion and maintenance of high standards of conduct within the Council;
- Maintains systems and processes for dealing with allegations of breaches of the Code of Conduct for Members;
- Investigates and reports to the Standards Committee on allegations of breaches of the Code of Conduct for Members;
- Has rights of access to any information from Members and/or officers in connection with a standards complaint;
- Establishes and maintains registers of members' interests, gifts and hospitality;
- Acts as a point of contact for advice and/or queries by elected members
- Maintains and updates the Constitution;
- Advises on various issues, poor administration and impropriety;
- Attends all meetings of the Cabinet whether public or private.

- 4.2 Further support to the Committee was provided by Simon Hughes, Paul Robinson and Abby Brownsword, Principal Committee Secretaries.

- 4.3 The Council is required by the Local Government and Housing Act 1989 Act to provide the Monitoring Officer with "such staff, accommodation and other resources as are, in their opinion, sufficient to allow those duties to be performed". The Monitoring Officer has confirmed that she has the necessary resources to meet the requirements of her role.

## 5. **Complaints**

- 5.1 The number of complaints made per year and a breakdown by the findings is set out below:-

<b>Complainant</b>	<b>2018 (Jan-Dec)</b>	<b>2019 (Jan-May)</b>
Take No Action (no breach)	6	4
Withdrawn or Invalid	1	0
Informal Resolution	4	1
Refer to Consideration Sub-Committee with an Investigation	0	0
Refer to Consideration Sub-Committee without an Investigation	0	0
<b>Total</b>	<b>11</b>	<b>5</b>

## 6. **Independent Persons**

- 6.1 The Council must appoint at least one Independent Person. Their role is advisory and they do not have a vote on any Council committee. An Independent Person can be consulted by the Monitoring Officer, the Member who is subject to a complaint and the Audit and Standards Committee.
- 6.2 The two Independent Persons, David Waxman and Jo Cairns, provide invaluable assistance to the Monitoring Officer in dealing with Standards complaints.
- 6.3 An Independent Person is involved in each complaint and consulted at each stage of the process.

## 7. **Parish and Town Councils**

- 7.1 The Monitoring Officer provides advice and support to the three Parish and Town Councils and these are reflected in the numbers of reported Standards complaints dealt with in 2018 and 2019.

## 8. **Training and Development**

- 8.1 As part of the induction for new Councillors, information was provided on the Members' Code of Conduct, the Standards regime, the Register of Interests, the key principles of good governance, the Member/Officer Relations Protocol and how the Council and decision making works. The induction also included a practical exercise, using case studies to help Members' understanding of the Members' Code of Conduct and Members' interests.



8.2 In addition specific training took place for Members of the Planning and Highways and Licensing Committees which covered the related legal framework and decision making and particular requirements relating to Member's interests and bias.

## 9. **Policy and Corporate issues**

The Committee has provided oversight and responded to the following policies, protocol, reports and consultations:

- 9.1
- Whistleblowing Policy 12 April 2018
  - Annual Governance Statement 26 July 2018
  - Annual Review of the Complaints Procedure 20 September 2018

## 10. **Other Areas of Work**

10.1 The Monitoring Officer has ensured that all new Councillors had submitted their Register of Interests form relating to Disclosable Pecuniary Interests and Other Interests and that existing Councillors had reviewed and updated their interests.

10.2 The Monitoring Officer maintains a regular dialogue with the Council's other Statutory officers to consider and review governance arrangements. The Monitoring Officer also maintains a dialogue around governance with the Leaders and/or Whips of the political groups represented on the Council.

## 11. **The Year Ahead**

11.1 2019 will see the roll out of code of conduct refresh training for all Members. This will include training on the ethical framework, decision making, member/officer protocols and the use of social media. The Monitoring Officer will be requesting the assistance of the Whips to ensure attendance by Members.

The Committee on Standards in Public Life produced a report reviewing Local Government Ethical Standards in January 2019. The report is attached for reference at Appendix 1 to this report and includes a list of 26 recommendations for the Government to action. The committee also included a list of best practice recommendations that they are suggesting can be implemented by Local Government without the need for primary legislation.

The Monitoring Officer has considered the list, noting some best practice is currently part of our existing processes and protocols and has recommended the following actions:

- Review the code of conduct to enhance the current provisions e.g. with regards to Bullying & Harassment
- Consider how updates to the Code might be enhanced by some form of public and stakeholder engagement
- Review accessibility of the complaints process and the gifts & hospitality register to aid transparency

- Introduce a clear and straightforward public interest test to filter complaints
- Review the Council's appointments to outside bodies and consider inclusion in future Annual governance statements

The work programme continues to ensure the Audit and Standards Committee receives updates on Standards related issues including an Annual Report throughout the year and will also include consideration of Ombudsman and Whistleblowing reviews of procedures.

Meetings of the Consideration and Hearing Sub-Committees are arranged as and when required to deal with complaints. The Consideration Sub-Committee has not met during the period covered in this report.

## 12. **Recommendation**

- 12.1 (a) That Council receives and notes this report acknowledging the work of the Audit and Standards Committee in 2018 – 2019; and
- (b) agrees the actions set out in paragraph 11 for the Monitoring Officer to report back progress to a future committee.

# **Local Government Ethical Standards**

**A Review by the  
Committee on  
Standards in Public Life**

**Committee on  
Standards in  
Public Life**







# Local Government Ethical Standards

Committee on Standards in Public Life

*Chair: Lord Evans of Weardale KCB DL*

January 2019





# The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

## **Selflessness**

Holders of public office should act solely in terms of the public interest.

## **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

## **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

## **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

## **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of





appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

**Lord Evans of Weardale**  
**Chair, Committee on Standards in Public Life**





# Contents

Executive summary	10
List of recommendations	14
List of best practice	18
Introduction	20
Chapter 1: Overview of standards	22
Chapter 2: Codes of conduct and interests	30
Chapter 3: Investigations and safeguards	52
Chapter 4: Sanctions	65
Chapter 5: Town and parish councils	75
Chapter 6: Supporting officers	81
Chapter 7: Councils' corporate arrangements	86
Chapter 8: Leadership and culture	95
Conclusion	102
Appendix 1: About the Committee on Standards in Public Life	103
Appendix 2: Methodology	104



# Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

## Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

### **Declaring and managing interests**

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

### **Investigations and safeguards**

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

### **Sanctions**

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



## **Town and parish councils**

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

## **Supporting officers**

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

## **Councils' corporate arrangements**

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

## **Leadership and culture**

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



# List of recommendations

<b>Number</b>	<b>Recommendation</b>	<b>Responsible body</b>
<b>1</b>	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
<b>2</b>	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
<b>3</b>	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
<b>4</b>	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
<b>5</b>	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
<b>6</b>	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government





Number	Recommendation	Responsible body
7	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
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government



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



Number	Recommendation	Responsible body
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association



# List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

**Best practice 1:** 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.

**Best practice 2:** 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.

**Best practice 3:** 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.

**Best practice 4:** 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.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** 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.



**Best practice 9:** 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.

**Best practice 10:** 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.

**Best practice 11:** 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.

**Best practice 12:** 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.

**Best practice 13:** 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.

**Best practice 14:** 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.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.



# Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.<sup>1</sup>

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were to:

**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**

<sup>1</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Goolden of Wilkin Chapman LLP for his support and advice throughout.



# Chapter 1: Overview of standards

## Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as ‘parish councils’ for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.<sup>2</sup>

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

<sup>2</sup> Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales





care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

### **The current system**

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.



# Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

**1997** The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

**1998** The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.<sup>3</sup> The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

<sup>3</sup> Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



**2005** In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

**2007** Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



**2010** In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.<sup>4</sup> The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”<sup>5</sup>

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5657/2169997.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf)

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



## Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



# Chapter 2:

## Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.<sup>6</sup>

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

### **Variation, consistency, and clarity**

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

<sup>6</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4





The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.<sup>7</sup>

**Monitoring Officer, North Hertfordshire District Council**

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.<sup>10</sup>

**Ashford Borough Council**

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

### **Model code of conduct**

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.<sup>8</sup>

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.<sup>9</sup>

**Worcestershire County Council**

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.<sup>11</sup>

**INLOGOV, University of Birmingham**

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.<sup>12</sup> A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.<sup>13</sup> We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

**Recommendation 1: The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.**

### **Bullying and harassment**

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

<sup>12</sup> Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

<sup>13</sup> Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10



which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

### Example of a bullying provision

Extract from Newcastle City Council code of conduct<sup>14</sup>

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

### Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated “[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance”.<sup>15</sup>

<sup>14</sup> Newcastle City Council Code of Conduct. Available at: [https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part\\_5\\_2a\\_-\\_members\\_code\\_of\\_conduct.pdf](https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf)  
<sup>15</sup> Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: [http://www.sandwell.gov.uk/downloads/file/24029/gowling\\_wlg\\_report](http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report)



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient” .<sup>16</sup>

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities<sup>17</sup>

<sup>16</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

<sup>17</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.<sup>18</sup>

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

**Best practice 1: 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.**

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

### **Intimidation of councillors**

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.<sup>19</sup>

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.<sup>20</sup>

### **Local Government Association**

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

18 Equality Act 2010, section 26

19 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

20 Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.<sup>21</sup>

### **Association of Police and Crime Commissioners**

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.<sup>22</sup> We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



### Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.<sup>23</sup>

**City of Westminster, *Guidance note to members on Register of Interests.***

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

**Recommendation 2: The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.**

### Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.<sup>24</sup> This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.<sup>25</sup>

### Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

<sup>23</sup> City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

<sup>24</sup> Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

<sup>25</sup> Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.<sup>26</sup>

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".<sup>27</sup> This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

### Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."<sup>28</sup>

26 Ministerial Code, paras 7.13, 7.18

27 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

28 Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>





The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in a official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



### Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.<sup>29</sup>

The *High Court, in Heesom v Public Service Ombudsman for Wales*,<sup>30</sup> considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

**Recommendation 3: Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.**

### Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.<sup>31</sup> The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.<sup>32</sup>

#### **Hoey Ainscough Associates**

*MC v Standards Committee of LB Richmond*<sup>33</sup> drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

**Recommendation 4: Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

### **Compliance with standards processes**

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

**Best practice 2: 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.**

### **Writing codes of conduct**

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

<sup>32</sup> Written evidence 212 (Hoey Ainscough Associates)

<sup>33</sup> *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively<sup>34</sup>

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.<sup>35</sup> The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.<sup>36</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.<sup>37</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

**Best practice 3: 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.**

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.<sup>37</sup>

<sup>34</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

<sup>35</sup> DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

<sup>36</sup> Jonathan Goolden, Roundtable, 18 April 2018

<sup>37</sup> Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

### Example of a clear code of conduct

Extract from Plymouth City Council code of conduct<sup>38</sup>

#### *Disrepute*

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

#### *Misuse of position*

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

#### *Use of council resources*

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

#### *Advice of Monitoring Officer and Responsible Finance Officer*

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

#### *Giving reasons for decisions*

Councillors must give reasons when required to by the law or by any council procedures.

**Best practice 4: 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.**

### Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

**Integrity:** Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

### **The Disclosable Pecuniary Interests (DPI) arrangements**

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



## Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.<sup>39</sup>

### Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

## Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

## Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.<sup>40</sup>

#### **Mid Sussex District Council**

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPis.<sup>41</sup>

#### **London Borough of Croydon**

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.<sup>42</sup>

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)





**Recommendation 5: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**

### Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.<sup>43</sup>

### Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.<sup>44</sup>

**Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**

<sup>43</sup> Written evidence 315 (Transparency International UK)

<sup>44</sup> Available online at: [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0005/141773/ca-part-3-locals-ew.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf), 20



**Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.**

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

**Cabinet Office principles for accepting gifts or hospitality**

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider’s relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.<sup>45</sup>

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.<sup>46</sup>

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



## Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: “[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.”<sup>47</sup>

## Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have “[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”. The test of having a ‘disclosable

pecuniary interest *in* any matter’ is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest ‘in’ that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.<sup>48</sup>

**North Hertfordshire District Council**

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.<sup>49</sup>

**Ashford Borough Council**

<sup>47</sup> Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

<sup>48</sup> Written evidence 22 (North Hertfordshire District Council)

<sup>49</sup> Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an 'objective test' for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

### Tests for actively managing interests in the devolved codes

#### Scotland

"Whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor."<sup>50</sup>

#### Wales

"[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest."<sup>51</sup>

#### Northern Ireland

"An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents."<sup>52</sup>

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

**Recommendation 7: 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 discussion or decision-making in relation to that matter”.**

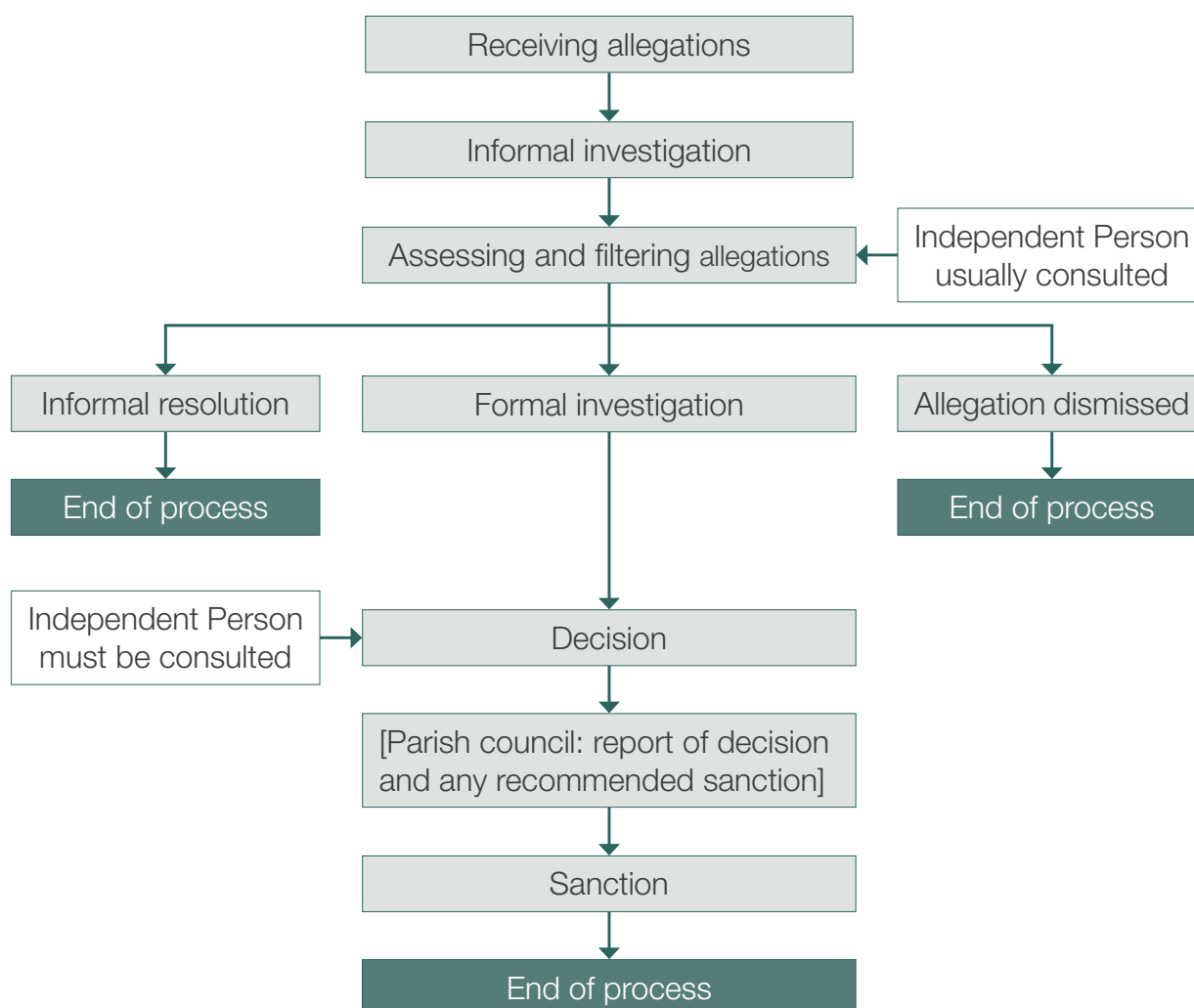


# Chapter 3: Investigations and safeguards

## Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

### The current investigation process





Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

### Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

### Northern Ireland Local Government Commissioner for Standards public interest test

#### 1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

#### 2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?<sup>53</sup>

**Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.**

### Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

53 Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.<sup>54</sup>  
**Cllr Dan Cohen, Leeds City Council**

### Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for 'independence' specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be 'taken into account', they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title 'Independent Person' creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...]<sup>55</sup>  
**Richard Stow, Independent Person**

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority's code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)





We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.<sup>56</sup>

### **London Borough of Sutton**

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

### **Best practice 7: Local authorities should have access to at least two Independent Persons.**

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

56 Written evidence 311 (London Borough of Sutton)



**Best practice 8: 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 role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.<sup>57</sup>

**Dr Peter Bebbington,  
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

**Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.**

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.<sup>58</sup>

**Hoey Ainscough Associates**

**Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.**

<sup>57</sup> Dr Peter Bebbington, Roundtable, 18 April 2018

<sup>58</sup> Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

**Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.**

We have noted recent First Tier Tribunal cases<sup>59</sup> which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

**Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.**

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017\_0220 (GRC)



## Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

### Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.<sup>60</sup>

<sup>60</sup> Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.<sup>61</sup>

#### **Wychavon Borough Council**

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

**Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.**

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

#### **Appeals and escalation**

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

61 Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.<sup>62</sup>

### Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.<sup>63</sup>

### London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.<sup>64</sup> This is an under-appreciated safeguard within the current system.

### Common issues with local authority standards processes considered by the Local Government Ombudsman<sup>65</sup>

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.<sup>66</sup>

### **Local Government Ombudsman**

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

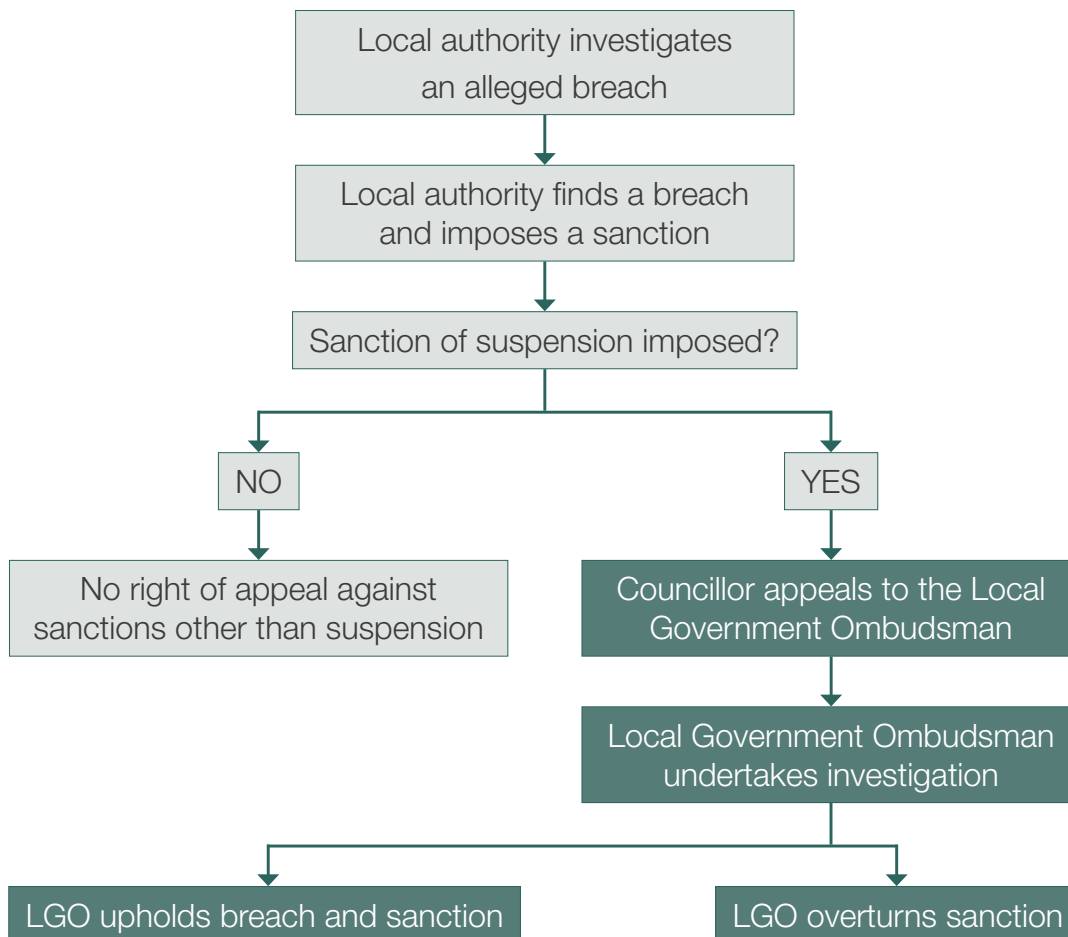
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



## Proposed appeals process







**Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.**

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

**Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

### Promoting openness and transparency

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

**Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.**



**Best practice 9: 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.**

**Best practice 10: 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.**

### **Avoiding legalisation**

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



# Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”<sup>67</sup>

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”<sup>68</sup>

## The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.<sup>69</sup> In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

67 Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

68 Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

69 Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

### **The current sanctions arrangements**

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.<sup>70</sup>

### **Tonbridge and Malling Borough Council**

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.<sup>71</sup>

### **Taunton Deane Borough Council**

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.<sup>72</sup>

### **Hoey Ainscough Associates**

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.<sup>73</sup>

### **David Prince CBE**

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

### **Party group discipline**

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.<sup>74</sup>

**Hoey Ainscough Associates**

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.<sup>75</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

### **Examples of political party disciplinary process used as an alternative to the formal standards process**

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.<sup>76</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors' Association**

76 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.<sup>77</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.<sup>78</sup>

**Cllr Simon Henig CBE, Chair,  
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

### **The sanction of the ‘ballot box’**

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.<sup>79</sup>

**Sandwell Metropolitan Borough  
Council**

<sup>77</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

<sup>78</sup> Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

<sup>79</sup> Written evidence 239 (Sandwell Metropolitan Borough Council)





In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.<sup>80</sup>

**Wycombe District Council**

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”<sup>81</sup> Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].<sup>82</sup>

**Cllr David Gaye**

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.<sup>83</sup>

**Cornwall Council**

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

### Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).<sup>84</sup>

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.<sup>85</sup>

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.<sup>86</sup> However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

### Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

84 Written evidence 106 (Standards Commission for Scotland)

85 Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

86 Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



**Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.**

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

### **Giving legal certainty to councils**

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

**Recommendation 17: The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.**

### **Criminal offences in the Localism Act 2011**

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.<sup>87</sup>

**Taunton Deane Borough Council**

87 Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

**Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.**

### **Disqualification of councillors**

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

### **Current law on the disqualification of councillors**

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



# Chapter 5:

## Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.<sup>88</sup>

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create an increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

### Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

<sup>88</sup> Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.<sup>89</sup>

### **Cornwall Association of Local Councils**

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

89 Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.<sup>90</sup>

**Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.**

### Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.<sup>91</sup>

**Hoey Ainscough Associates**

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.<sup>92</sup>

**Society of Local Council Clerks**

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

90 The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

**Best practice 11: 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.**

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.<sup>93</sup>

**Society of Local Council Clerks**

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

**Best practice 12: 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.**

### **Investigations and sanctions in town and parish councils**

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)





individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.<sup>94</sup>

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.<sup>95</sup>

#### **Cornwall Council**

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

**Recommendation 20: Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.**

Following *Taylor v Honiton Town Council*,<sup>96</sup> a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.<sup>97</sup>

#### **Wychavon Borough Council**

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

**Recommendation 21: Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.**

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,<sup>98</sup> which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.<sup>99</sup> The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.<sup>100</sup> We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313\_99\_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



# Chapter 6: Supporting officers

## Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.<sup>101</sup>

**Max Caller CBE**

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.<sup>102</sup> Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.<sup>103</sup>

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.<sup>104</sup>

101 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

102 For example, in sections 59, 60, 66 of the Local Government Act 2000

103 Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

104 Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.<sup>105</sup>

### **Lawyers in Local Government**

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

**Best practice 13: 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.**

<sup>105</sup> Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

### **Standing of statutory officers**

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.<sup>106</sup> The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.<sup>107</sup>

### **Lawyers in Local Government**

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

**Recommendation 22: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.**

<sup>106</sup> Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

<sup>107</sup> Written evidence 228 (Lawyers in Local Government)



## Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.<sup>108</sup>

**Max Caller CBE**

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.<sup>109</sup>

**Dame Stella Manzie DBE**

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

## Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.<sup>110</sup>

**Protect**

108 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

109 Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

110 Written evidence 305 (Protect)



**Recommendation 23: The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.**

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

**Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.**

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.<sup>111</sup>

### **Protect**

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

111 Written evidence 305 (Protect)



# Chapter 7:

## Councils' corporate arrangements

### A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.<sup>112</sup> The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

---

<sup>112</sup> National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>





## Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.<sup>113</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that “[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability.”<sup>114</sup>

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

## Responding to the new governance challenges

### Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance ‘illusion’, that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.<sup>115</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

113 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

114 “What next for care and health?”, *Municipal Journal*, 22 February 2018, 16

115 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.<sup>116</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)***

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

### **Potential advantages of council nominees as board directors or trustees**

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

<sup>116</sup> Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

### Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected<sup>117</sup>

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.<sup>118</sup>

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.<sup>119</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations***

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".<sup>120</sup> However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny\\_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

**Best practice 14: 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.**

### Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.<sup>121</sup>

**Nicola Greenan, Director, East Street Arts, and LEP board member**

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, “[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation”.<sup>122</sup>

The report also identified a need to consider “[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications”.<sup>123</sup> Ney recommended that “[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

121 Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

122 Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

123 Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".<sup>124</sup>

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.<sup>125</sup>

### **Ethical standards and corporate failure**

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

### **Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)<sup>126</sup>**

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

<sup>124</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

<sup>125</sup> Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

<sup>126</sup> PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



### **Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)<sup>127</sup>**

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".<sup>128</sup> The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

<sup>127</sup> Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

<sup>128</sup> Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



**Northamptonshire County Council (events taking place between 2015-17; report by Max Caller CBE, Best Value Inspector, 2018)<sup>129</sup>**

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.<sup>130</sup>

**Dame Stella Manzie DBE**

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

<sup>129</sup> Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690731/Best\\_Value\\_Inspection\\_NCC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf)

<sup>130</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.<sup>131</sup>

**Max Caller CBE**

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

---

131 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018





# Chapter 8: Leadership and culture

## Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.<sup>132</sup>

**Dame Stella Manzie DBE**

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

<sup>132</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



## Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.<sup>133</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.<sup>134</sup>

**Dawn French, Chief Executive,  
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.<sup>135</sup>

**Dame Stella Manzie DBE**

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

<sup>133</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>134</sup> Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

<sup>135</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.<sup>136</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

### The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.<sup>137</sup>

**Dame Stella Manzie DBE**

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

<sup>136</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>137</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.<sup>138</sup>

**Cllr Rory Love, Chairman,  
Conservative Councillors' Association**

**Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.**

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

### **Building an ethical culture**

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

<sup>138</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

**Recommendation 25: Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.**

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.<sup>139</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.<sup>140</sup>

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.<sup>141</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.<sup>142</sup>

**Darryl Chamberlain, editor, 853 blog**

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

<sup>140</sup> House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

<sup>141</sup> Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

<sup>142</sup> Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.<sup>143</sup>

**Barry Quirk CBE, Chief Executive,  
Royal Borough of Kensington &  
Chelsea**

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says ‘these people are elected and have entitlement to know and there are some rules about confidentiality’. They can’t pursue cases where they have individual reasons for not being involved.<sup>144</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

**Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority’s processes for maintaining ethical standards.**

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

143 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

144 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



# Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.





# Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“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 remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

## **Membership of the Committee, as of January 2019**

Lord (Jonathan) Evans of Weardale KCB DL,  
Chair

The Rt Hon Dame Margaret Beckett DBE MP  
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah

(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

## **Secretariat**

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



## Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
  - research on the legal framework for local government standards
  - analysis of a sample of 20 principal authority codes of conduct
  - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

### Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

\* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



## Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

### Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



## Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



## Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

\*Follow-up telephone conversation



**Committee on Standards in Public Life**

Room GC.07, 1 Horse Guards Road, London SW1A 2HQ

Tel: 020 7271 2948

Email: [public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

January 2019



# Audit & Standards Committee: Treasury Management Overview

Page 133

Stephen Bottomley  
Treasury Manager

13<sup>th</sup> June 2019



Agenda Item 7



Sheffield City Council



# Overview Agenda:



What is Treasury Management



Regulatory Environment



Borrowing and Debt



Investing

# Treasury Management (TM)

CIPFA Treasury Management Code defined TM as

Cash flows

Banking

Money market and capital market transactions

The effective control of the risks associated with those activities

And the pursuit of optimum performance consistent with those risks

# Regulatory Environment



- **Regulation affecting Treasury Management is a mix of the Law, Codes & Accounting Standards**

Page 136

- Statute – primarily the Local Government Act 2003
- The Prudential Code
- The CIPFA Treasury Management Code
- Other guidance – MRP/Investments



# Key Reports

1

- **Treasury Management Strategy Statement (TMSS)**
- Overall strategy for borrowing and investing for the year ahead

2

- **Annual Minimum Revenue Provision Statement**
- How we will provide money for repaying debt

3

- **Annual Investment Strategy**
- Determination of where we can invest safely and for how long

4

- **Annual Outturn Report**
- Review of the outturn for previous financial year

# Debt Composition - 1

- As at 31<sup>st</sup> March 2019, the Council's debt position is

	Principal £m	Average Life (Yrs)
<b>Fixed rate funding:</b>		
- PWLB	472	22
- Market	188	45
- Local Authorities	33	1
<b>Variable rate funding:</b>		
- PWLB	0	-
- Market	110	45
<b>Credit Liabilities:</b>		
- PFI Liabilities	401	19
<b>Total debt</b>	<b>1,204</b>	<b>26</b>
Total investments	114	<1
<b>Net debt</b>	<b>1,090</b>	

Page 138

- Total Debt of 1.2bn compares to c£3bn worth of Non-Current Asset (with some assets valued at historic cost)

# LOBOs

- **Lender Option Borrower Option Loans**

- Where the lender has the *option* to change the interest rate on the loan at certain intervals
- When the lender exercises this option, the borrower then has the option to repay the loan with no penalty

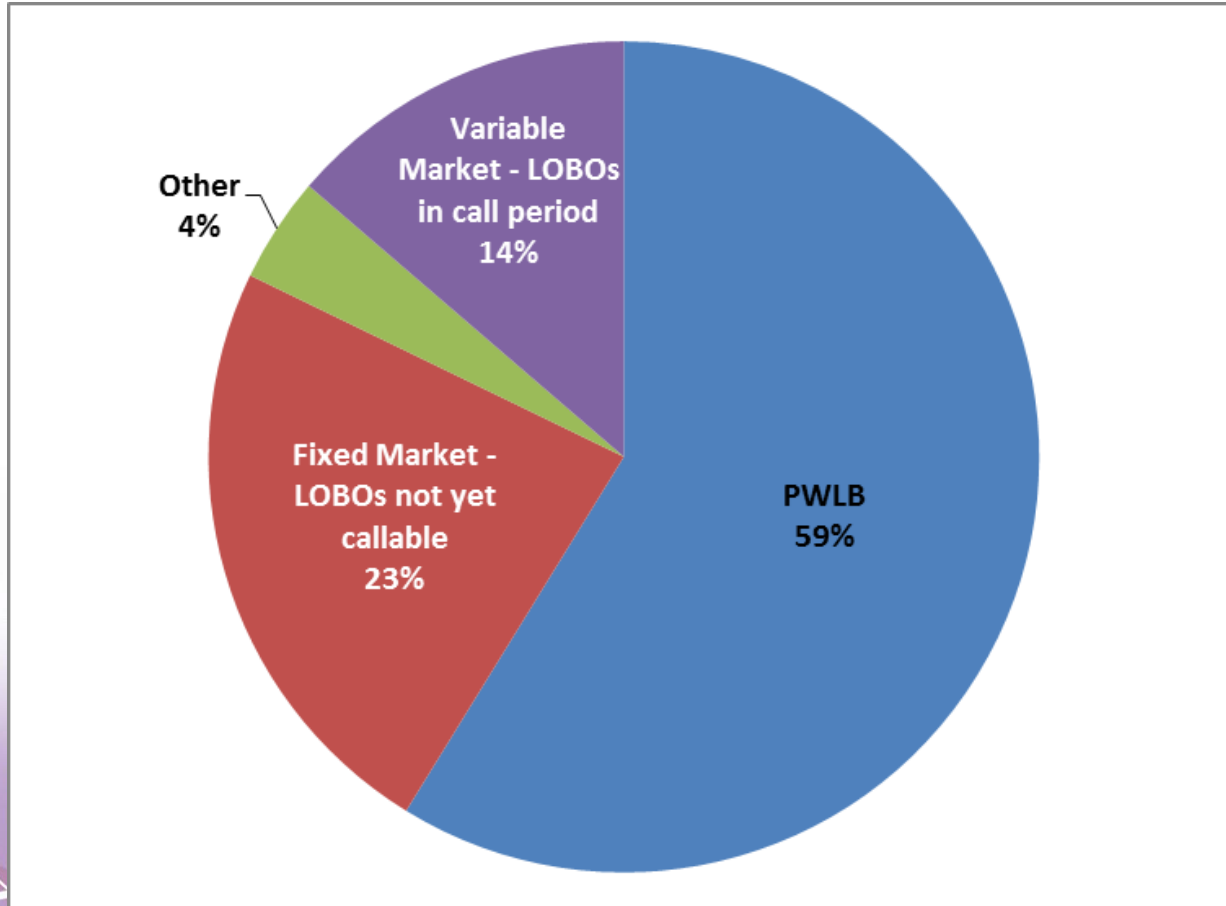
• No lenders have exercised this option to date.

When LOBOs were taken out the rates on offer were attractive and were good value for money compared to alternatives like PWLB.

- Like all fixed rate borrowing taken in that period, the rates are above current market rates but not overly so
- LOBO objection received relating to the 2016/17 Statement of Accounts – KPMG gave us a clean bill of health

# Our Debt Composition - 2

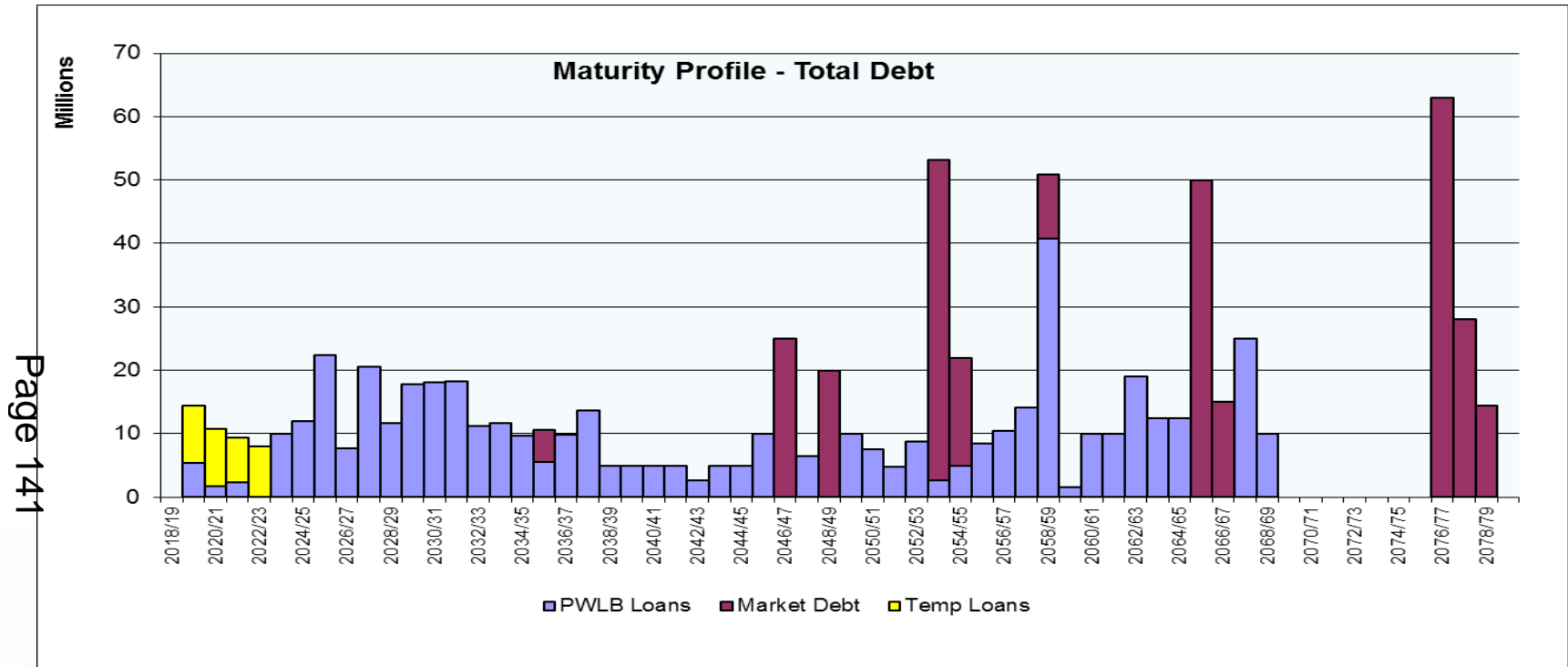
Composition of Councils debt (excluding PFI liabilities) as at 31 March 2019



Page 140



# Our Maturity Profile (Both GF & HRA)



Relatively smooth repayment profile but characterised by long term bank loans (taken when government borrowing was more restrictive) that distort the overall profile

# Repaying Debt: MRP

- **Under statute we are required to make a Minimum Revenue Provision (MRP) each year.**
- MRP is a mandatory charge to Council Tax to set aside funds to repay our loans. We have some flexibility over its calculation.

Page 142

## MRP Methodology

- Supported Borrowing = 2% straight line repaying outstanding amount over 50 years
- Prudential Borrowing = Asset life methodology (straight line repaying outstanding amount over the expected useful economic life of the asset)

# Investing - Key Considerations

- **Security**

- Do the counterparties meet our investment criteria?
- Are we overly exposed to any one counterparty or investment type? (diversification)

- **Liquidity**

- Does the investment period meet our cash management requirements?
- Also consider where we see rates moving?



- **Yield**

- Finally - what level of return do we receive

# Any Questions?





## Audit and Standards Committee Report

---

**Report of:** Eugene Walker

---

**Date:** 13 June 2019

---

**Subject:** 2018/19 Statement of Accounts

---

**Author of Report:** David Phillips

---

**Summary:** The purpose of this report is to provide Members of the Audit and Standards Committee with a summary of the 2018/19 Statement of Accounts and explain the core statements and a number of the key notes to the accounts.

---

**Recommendations:** The Audit and Standards Committee is asked to note the core statements and the key notes to the Statement of Accounts for 2018/19.

---

**Background Papers:** None

---

**Category of Report:** OPEN

---

## Statutory and Council Policy Checklist

<b>Financial Implications</b>
NO
<b>Legal Implications</b>
NO
<b>Equality of Opportunity Implications</b>
NO
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO
<b>Environmental and Sustainability implications</b>
NO
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
NO
<b>Area(s) affected</b>
None
<b>Relevant Cabinet Portfolio Leader</b>
Olivia Blake
<b>Relevant Scrutiny Committee if decision called in</b>
Not applicable
<b>Is the item a matter which is reserved for approval by the City Council?</b>
NO
<b>Press release</b>
NO

# AUDIT AND STANDARDS COMMITTEE – 13 JUNE 2019

## STATEMENT OF ACCOUNTS 2018/19

### Purpose of the Report

1. The purpose of this report is to provide Members of the Audit and Standards Committee with a summary of the 2018/19 Statement of Accounts and explain the core statements and a number of the key notes to the accounts. A full set of the unaudited accounts is now available on the Council's website [Statement of Accounts 2018/19](#). A full set of the final audited accounts will be presented to the Audit and Standards Committee on 25 July 2019.
2. This report also outlines the approval process for the Statement of Accounts and the Audit and Standards Committee's role in this process.

### Introduction

3. The Statement of Accounts has been prepared in accordance with the IFRS-based (International Financial Reporting Standards) Code of Practice on Local Authority Accounting in the United Kingdom and the statutory Accounts and Audit Regulations. This ensures that local authorities produce their Accounts in a standard way, which facilitates comparisons.
4. The Accounts and Audit Regulations 2015 sets out the procedures for certification, approval and publication of the Statement of Accounts. The approval process is as follows:
  - 31 May 2019 – Unaudited accounts to be certified by the Executive Director of Resources.
  - June / July 2019 – The Statement of Accounts is subject to audit by the Authority's auditors, EY, and their findings will be reported to the Audit and Standards Committee in July. During this time there is a period where the public can inspect the accounts and related documents (Monday 3 June 2019 to Friday 12 July 2019).
  - No later than 31 July 2019 – Accounts to be re-certified by the Executive Director of Resources.
  - No later than 31 July 2019 – Audit and Standards Committee considers and approves the Statement of Accounts. Following approval, the Chair of the Audit and Standards Committee signs and dates the Statement of

## Accounts.

- No later than 31 July 2019 – Publish, on the Council’s website, the audited Statement of Accounts together with any certificate, opinion or report issued by the auditor.
5. It is worth noting that the timings of the process above can be affected if members of the public object to the accounts, and, by 31<sup>st</sup> July, the auditors have not determined whether these objections could have a material impact on the Council’s accounts.

## Local authority accounting

6. The presentation of local authority accounts differs greatly to that of the private sector. Many of these differences occur due to legislative requirements for local government accounts and the recognition of costs for the purposes of budgeting and calculating the Council Tax. These differences mainly relate to the way the Council is required to account (or budget) for capital and pension costs.
7. Local authorities account for the revenue impact of capital in line with IFRS on the face of the Comprehensive Income and Expenditure Statement (CIES). This means including figures relating to movements in the value/cost of assets, including depreciation, revaluation, disposal and impairment. These entries are reversed out and replaced with an allowance for the consumption of capital (Minimum Revenue Provision). These “adjustments between accounting basis and funding basis under regulation” are shown in Note 8 to the unaudited accounts.
8. In terms of pension costs, local authorities are required to comply with an International Accounting Standard called IAS 19 (*Employee Benefits*), which means accounting for pension liabilities when local authorities are committed to them, not when they are actually paid out. This includes showing movements in the value of pension scheme assets and liabilities.
9. The Council complies with IAS 19 and recognises the Council’s share of the net liability of the South Yorkshire Pension Scheme in the balance sheet. Within the CI&ES the ‘Cost of Service’ figures have been adjusted so they represent the true costs of pensions earned. As stated above, IAS 19 does not have any effect on the calculation of the Council Tax Requirement as the entries are reversed out, and replaced by the cash contributions to the Pension Scheme, in an adjustment between accounting basis and funding basis under regulation.



10. The report on the Council's Revenue Outturn position at the end of the 2018/19 financial year is due to be approved by Cabinet on 19 June 2019. It will be reported that there was an overall deficit on the General Fund of £4.6m, before carry forward requests and movements on reserves.
11. In contrast to this deficit, the CIES reports a surplus of £13.4m. The inclusion of items relating to capital and pensions is the major reason for this difference. The table below shows the reconciliation from the outturn position to the eventual CI&ES surplus:

	<b>£000</b>
<b>Deficit on General Fund Revenue Account (per outturn report)</b>	<b>4,641</b>
Net contributions to revenue reserves	(46,720)
Deficit on Schools' Accounts	330
<b>Total Contribution to Reserves</b>	<b>(46,390)</b>
Removal of debt charges	(41,934)
Removal of pension contributions	(38,333)
<i>Items that do not affect Council Tax:</i>	
Inclusion of accounting charges for depreciation, impairment, holiday pay, PFI, etc.	108,577
Gains and losses on Revaluation of Non-Current Assets, Pension Assets and other items	62
<b>(Surplus) on Income &amp; Expenditure Statement</b>	<b>(13,377)</b>

12. The Statement of Accounts comprise several key statements:
- Comprehensive Income and Expenditure Statement – **Appendix 1**
  - Movement in Reserves Statement – **Appendix 2**
  - Balance Sheet – **Appendix 3**
  - Cash Flow Statement – **Appendix 4**
  - Expenditure and Funding Analysis Statement – **Appendix 5**
  - Key Notes to the Core Financial Statements – **Appendix 6**
  - Housing Revenue Account Income and Expenditure Account – **Appendix 7**
  - Collection Fund – **Appendix 8**

### Comprehensive Income and Expenditure Statement – Appendix 1

13. This Statement shows the accounting cost in the year of providing services in accordance with generally accepted accounting practices, rather than the amount to be funded from taxation (Council Tax). Councils raise taxation to cover expenditure in accordance with regulations and this may be different from the accounting cost. The taxation position is shown in both the Expenditure and Funding Analysis and the Movement in Reserves Statement.

### Movement in Reserves Statement – Appendix 2

14. This Statement shows the movement in the year on the different reserves held by the authority, analysed into 'usable reserves' (i.e. those that can be applied to fund expenditure or reduce local taxation) and other unusable reserves.
15. The Surplus (or Deficit) on the provision of services line shows the true economic cost of providing the authority's services, more details of which are shown in the CIES. These are different from the statutory amounts required to be charged to the General Fund Balance and Housing Revenue Account for Council Tax setting and dwellings rent setting purposes, therefore an adjustment is made to the movement in reserves statement for adjustments between accounting basis and funding basis under regulation.
16. The "Net (increase) / decrease before transfers to earmarked reserves" line shows the statutory General Fund Balance and Housing Revenue Account Balance before any discretionary transfers to or from earmarked reserves undertaken by the Council.

### Balance Sheet – Appendix 3

17. The Balance Sheet shows the value as at the Balance Sheet date of the assets and liabilities recognised by the authority. The net assets of the authority (assets less liabilities) are matched by the reserves held by the authority.
18. Reserves are reported in two categories:
  - Usable reserves - those reserves that the authority may use to provide services, subject to the need to maintain a prudent level of reserves and any statutory limitations on their use;
  - Unusable reserves - those that cannot be used to provide services. This category includes reserves that hold timing differences shown in the

Movement in Reserves Statement line “Adjustments between accounting basis and funding basis under regulations”.

#### Cash Flow Statement – **Appendix 4**

19. The Cash Flow statement shows the changes in cash and cash equivalents of the authority during the reporting period. The statement shows how the authority generates and uses cash and cash equivalents.
20. The amount of net cash flows arising from operating activities is a key indicator of the extent to which the operations of the authority are funded by way of taxation and grant income or from the recipients of services provided by the authority.

#### Expenditure and Funding Analysis Statement – **Appendix 5**

21. The Expenditure and Funding Analysis (EFA) shows how annual expenditure is used and funded from resources (Government grants, rents, Council Tax and business rates) by local authorities in comparison with those resources consumed or earned by authorities in accordance with generally accepted accounting practices. It also shows how this expenditure is allocated for decision making purposes between the Council's portfolios / services.
22. Income and expenditure accounted for under generally accepted accounting practices is presented more fully in the Comprehensive Income and Expenditure Statement (CIES).

#### Key Notes to the Accounts – **Appendix 6**

23. The notes to the accounts contain information in addition to that presented in the main statements. They provide narrative descriptions, disaggregation of items presented in the statements and further information about items in the statements.
24. Attached at Appendix 6 are some of the key notes to the accounts, including the note on Officers' Remuneration (note 44). Full details are required for senior employees, who form part of the Executive Management Team, whose salary is above £50,000 per annum, and an additional summary disclosure is required of the numbers of other staff whose total remuneration (i.e. salary plus overtime and allowances etc.) is above £50,000.
25. The Council's outturn position for 2018/19 reported a net deficit of £4.6m

overall for the general fund revenue account. The Statement of Accounts is in line with the outturn report, but sets out the more detailed financial position for the Council in a format required by legislation. As well as the Expenditure and Funding Analysis Statement referred to earlier, the following note also shows the reconciliation between the outturn position and the Statement of Accounts CIES:

- *Adjustments between accounting basis and funding basis under regulations (Note 8)* – this note details how the CIES has been adjusted in accordance with accounting practice, and the resources that are specified by statutory provision as being available.

### Housing Revenue Account (HRA) – **Appendix 7**

26. The HRA Income and Expenditure Statement is ring fenced from the rest of the General Fund and shows the economic cost in year of providing housing services in accordance with generally accepted accounting practices, rather than the amount to be funded from rents and government grants.
27. Authorities charge rents to cover expenditure in accordance with regulations, which may be different from the accounting cost.

### Collection Fund – **Appendix 8**

28. The Collection Fund is a statement that reflects the statutory obligation for billing authorities to maintain a separate Collection Fund. The statement shows the transactions of the billing authority in relation to the collection from taxpayers and distribution to local authorities and Central Government of council tax and business rates.

## **Key Issues for 2018/19**

### *Net worth*

29. The Council's net worth, as shown on the Balance Sheet (**Appendix 3**), has increased by the surplus from the CIES £13.4m (or 1%) in 2018/19; the major factors being:
  - a net increase in the Council's fixed assets (£106.8m), and
  - an increase in the Council's cash & cash equivalents (£71.0m), offset by;
  - an increase in the Council's pensions' liability (£127.7m) due to the annual review by the actuary, and
  - a decrease in the Council's short term investments (£34.5m).

### *Usable Reserves*

30. As shown in the Movement in Reserves Statement (**Appendix 2**), during the year, total usable reserves increased by £46.1m. The key reasons for the movement in this category of reserves are as follows:
- Earmarked General Fund Reserves increased by £46.7m during the year, predominantly the result of a repayment to earmarked revenue reserves for funds borrowed on a temporary basis to support the early payment of the pension deficit, thus enabling the delivery of £5m of savings over the period 2017/18 to 2019/20. Schools Reserves have also increased by £7m. Other reserve movements include the Council carrying forward £3m to support future social care spending, and a £5m increase in the balance of unspent New Homes Bonus funding, which is earmarked to support economic development.
  - Reserves used to fund capital expenditure on assets increased by £3.1m.
  - The Council's usable reserves also includes £8.1m of Unallocated Reserves or General Fund Balances, which decreased by £2.5m in 2018/19.
  - HRA reserves decreased by £1.2m during the year.

### **Financial Implications**

31. There are no direct financial implications arising from the recommendations in this report.

### **Equal Opportunities Implications**

32. There are no specific equal opportunities implications arising from the recommendations in this report.

### **Property Implications**

33. There are no property implications arising from the recommendations in this report.

### **Recommendations**

34. The Audit and Standards Committee is asked to note the core statements and the key notes to the Statement of Accounts for 2018/19.

This page is intentionally left blank

## APPENDIX 1 – COMPREHENSIVE INCOME AND EXPENDITURE STATEMENT

2017/18			2018/19			
Gross Expenditure £000	Gross Income £000	Net Expenditure £000		Gross Expenditure £000	Gross Income £000	Net Expenditure £000
			<b>Continuing Operations:</b>			
483,806	(231,438)	252,368	People	519,755	(245,775)	273,980
189,506	(184,870)	4,636	Schools	177,994	(177,664)	330
238,962	(71,072)	167,890	Place (excluding HRA)	263,448	(78,118)	185,330
7,208	(2,911)	4,297	Policy, Performance & Communications	6,860	(2,699)	4,161
199,384	(194,883)	4,501	Resources	175,840	(187,431)	(11,591)
(93)	(16)	(109)	Corporate	(16)	(940)	(956)
<b>1,118,773</b>	<b>(685,190)</b>	<b>433,583</b>		<b>1,143,881</b>	<b>(692,627)</b>	<b>451,254</b>
107,553	(155,054)	(47,501)	Housing Revenue Account (HRA)	41,551	(151,969)	(110,418)
<b>1,226,326</b>	<b>(840,244)</b>	<b>386,082</b>	<b>(Surplus) / Deficit on Continuing Operations</b>	<b>1,185,432</b>	<b>(844,596)</b>	<b>340,836</b>
		52,890	Other Operating Expenditure			45,335
		102,417	Financing and Investment Income and Expenditure	9		128,105
		(547,102)	Taxation and Non-Specific Grant Income	10		(562,973)
		<b>(5,713)</b>	<b>(Surplus) / Deficit on Provision of Services</b>	11		<b>(48,697)</b>
		(22,146)	(Surplus) / deficit on revaluation of non-current assets			(48,165)
		(165,667)	Re-measurements of the pension net defined benefit liability			83,423
		63	Other (gains) / losses			62
		<b>(187,750)</b>	<b>Other Comprehensive (Income) and Expenditure</b>			<b>35,320</b>
		<b>(193,463)</b>	<b>Total Comprehensive (Income) and Expenditure</b>			<b>(13,377)</b>

## APPENDIX 2 – MOVEMENT IN RESERVES STATEMENT

2018/19		General Fund Balance £000	Earmarked General Fund Reserves £000	Housing Revenue Account Balance £000	Earmarked Housing Revenue Account Reserve £000	HRA Major Repairs Reserve £000	Capital Receipts Reserve £000	Capital Grants Unapplied £000	Total Usable Reserves £000	Unusable Reserves £000	Total Council Reserves £000
	Note	34	34	34	34	34	34	34	34	35	
<b>Balance at 31 March 2018</b>		<b>(10,631)</b>	<b>(180,088)</b>	<b>(9,267)</b>	<b>(4,107)</b>	<b>(70,661)</b>	<b>(58,306)</b>	<b>(30,147)</b>	<b>(363,207)</b>	<b>(726,382)</b>	<b>(1,089,589)</b>
<b>Movement in reserves during 2018/19:</b>											
		53,294	0	(101,991)	0	0	62	0	(48,635)	35,258	(13,377)
	8	(97,509)	0	79,732	0	23,455	(4,889)	1,715	2,504	(2,504)	0
<b>Net (increase) / decrease before transfers to earmarked reserves</b>		<b>(44,215)</b>	<b>0</b>	<b>(22,259)</b>	<b>0</b>	<b>23,455</b>	<b>(4,827)</b>	<b>1,715</b>	<b>(46,131)</b>	<b>32,754</b>	<b>(13,377)</b>
	33	46,720	(46,720)	23,199	285	(23,484)	0	0	0	0	0
<b>(Increase) / decrease in year</b>		<b>2,505</b>	<b>(46,720)</b>	<b>940</b>	<b>285</b>	<b>(29)</b>	<b>(4,827)</b>	<b>1,715</b>	<b>(46,131)</b>	<b>32,754</b>	<b>(13,377)</b>
<b>Balance at 31 March 2019</b>		<b>(8,126)</b>	<b>(226,808)</b>	<b>(8,327)</b>	<b>(3,822)</b>	<b>(70,690)</b>	<b>(63,133)</b>	<b>(28,432)</b>	<b>(409,338)</b>	<b>(693,628)</b>	<b>(1,102,966)</b>



## APPENDIX 3 – BALANCE SHEET

As at 31 March 2018		Notes	As at 31 March 2019
£000			£000
905	Intangible Assets	27	2,452
2,924,085	Property, Plant and Equipment	23	3,030,857
60,368	Heritage Assets	25	54,750
26,800	Investment Properties	26	28,190
154,522	Long term Debtors	16	144,280
<b>3,166,680</b>	<b>Long Term Assets</b>		<b>3,260,529</b>
35,000	Short Term Investments	14	500
1,435	Inventories		1,529
132,799	Short Term Debtors	17	102,769
56,776	Cash and Cash Equivalents	14 / 18	126,128
21,247	Assets Held for Sale	28	33,448
<b>247,257</b>	<b>Current Assets</b>		<b>264,374</b>
(29,665)	Short Term Borrowing	14	(22,219)
(157,777)	Short Term Creditors	19	(155,315)
(15,325)	Short Term Provisions	20	(12,583)
(8,792)	PFI / PPP Finance Lease Liability	14 / 24	(10,127)
(29,975)	Capital Grants Receipts in Advance	12	(18,722)
<b>(241,534)</b>	<b>Current Liabilities</b>		<b>(218,966)</b>
(785,282)	Long Term Borrowing	14	(795,762)
(19,204)	Long Term Provisions	20	(17,833)
(400,847)	PFI / PPP Finance Lease Liability	14 / 24	(390,039)
(776,574)	Net Pension Liability	46	(904,262)
(86,670)	Other Long Term Liabilities	21	(68,843)
(14,237)	Capital Grants Receipts in Advance	12	(26,232)
<b>(2,082,814)</b>	<b>Long Term Liabilities</b>		<b>(2,202,971)</b>
<b>1,089,589</b>	<b>Net Assets</b>		<b>1,102,966</b>
(363,207)	Usable Reserves	34	(409,338)
(726,382)	Unusable Reserves	35	(693,628)
<b>(1,089,589)</b>	<b>Total Reserves</b>		<b>(1,102,966)</b>

## APPENDIX 4 – CASH FLOW STATEMENT

2017/18		Notes	2018/19
£000			£000
5,713	Net surplus or (deficit) on the provision of services		48,697
180,909	- Adjustment to surplus or (deficit) on the provision of services for non-cash movements	36	192,874
(88,872)	- Adjustment for items included in the net surplus or (deficit) on the provision of services that are investing and financing activities	36	(92,224)
<b>97,750</b>	<b>Net cash flow from operating activities</b>		<b>149,347</b>
(131,652)	Investing activities	37	(46,179)
5,564	Financing activities	38	(33,816)
<b>(28,338)</b>	<b>Net increase / (decrease) in cash and cash equivalents</b>		<b>69,352</b>
85,114	Cash and cash equivalents at 1 April	18	56,776
<b>56,776</b>	<b>Cash and cash equivalents at 31 March</b>	18	<b>126,128</b>

## APPENDIX 5 – EXPENDITURE AND FUNDING ANALYSIS STATEMENT

2018/19	Notes	Outturn Position Reported to Internal Management	Adjustments for Items Not Reported to Internal Management	Net Expenditure Chargeable to the General Fund and HRA Balances Under Statutory Funding Provisions	Adjustments between the Funding and Accounting Basis	Other Adjustments	Net Expenditure in the CI&ES
Note		£000	£000	£000	£000	£000	£000
					5		
People		250,573	72	250,645	23,335	0	273,980
Schools		0	(3,620)	(3,620)	3,950	0	330
Place (excluding HRA)		196,584	237	196,821	13,601	(25,092)	185,330
Policy, Performance & Communications		3,230	0	3,230	931	0	4,161
Resources		5,168	50	5,218	(16,809)	0	(11,591)
Corporate		(450,914)	(45,595)	(496,509)	72,501	423,052	(956)
Total General Fund (GF)		4,641	(48,856)	(44,215)	97,509	397,960	451,254
Housing Revenue Account (HRA)		0	(22,259)	(22,259)	(79,732)	(8,427)	(110,418)
<b>Net Cost of Services</b>	5	<b>4,641</b>	<b>(71,115)</b>	<b>(66,474)</b>	<b>17,777</b>	<b>389,533</b>	<b>340,836</b>
Other Income & Expenditure GF		0	0	0	0	(397,960)	(397,960)
Other Income & Expenditure HRA		0	0	0	0	8,427	8,427
<b>Other Income &amp; Expenditure</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(389,533)</b>	<b>(389,533)</b>
<b>Difference between General Fund (Surplus) / Deficit and CI&amp;ES (Surplus) / Deficit</b>	5	<b>4,641</b>	<b>(71,115)</b>	<b>(66,474)</b>	<b>17,777</b>	<b>0</b>	<b>(48,697)</b>
Opening General Fund and HRA Balance at 1 April		(204,093)					
(Surplus) / Deficit on General Fund and HRA Balance at 31 March		(66,474)					
Other Movements		23,484					
<b>Closing General Fund and HRA Balance at 31 March*</b>		<b>(247,083)</b>					

\* For a split of this balance between the General Fund and the HRA – see the Movement in Reserves Statement

## APPENDIX 6 – KEY NOTES TO THE CORE FINANCIAL STATEMENTS

### Note 44 – Officers’ Remuneration

Under the Accounts and Audit Regulations 2015, Local Authorities are required to disclose information on their employees’ remuneration in two sections.

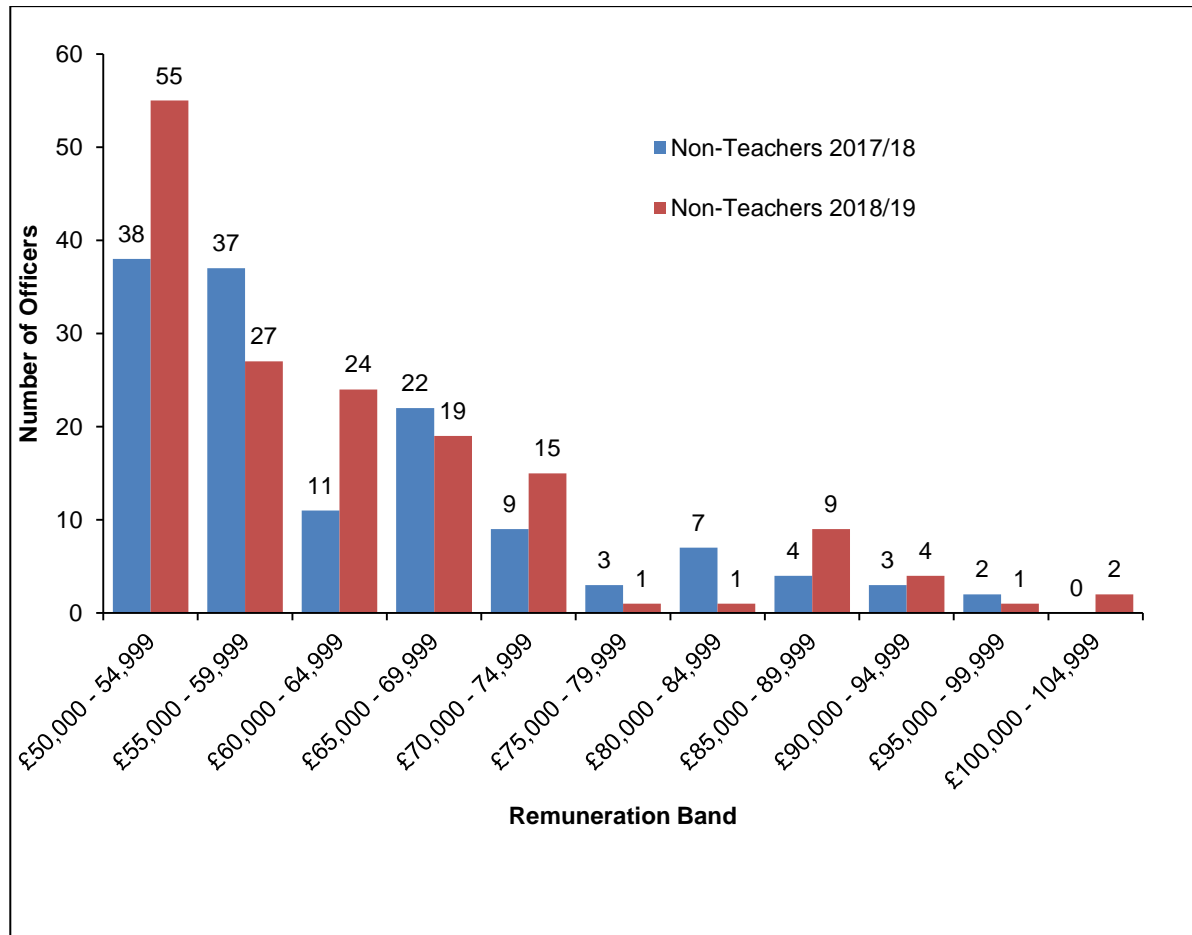
The first section must contain the details of those officers defined in the Regulations as senior employees whose salary is above £50,000 per annum. Senior employees are typically categorised as statutory chief officers (i.e. Chief Executive also known as the head of paid service, Director of Children’s Services, Director of Adult Social Services, Section 151 Officer, etc.) or non-statutory chief officers. The latter category typically includes those officers who report directly to the Chief Executive (excluding those whose duties are solely secretarial). In addition, those senior officers whose salary is above £150,000 are required to be named in this section.

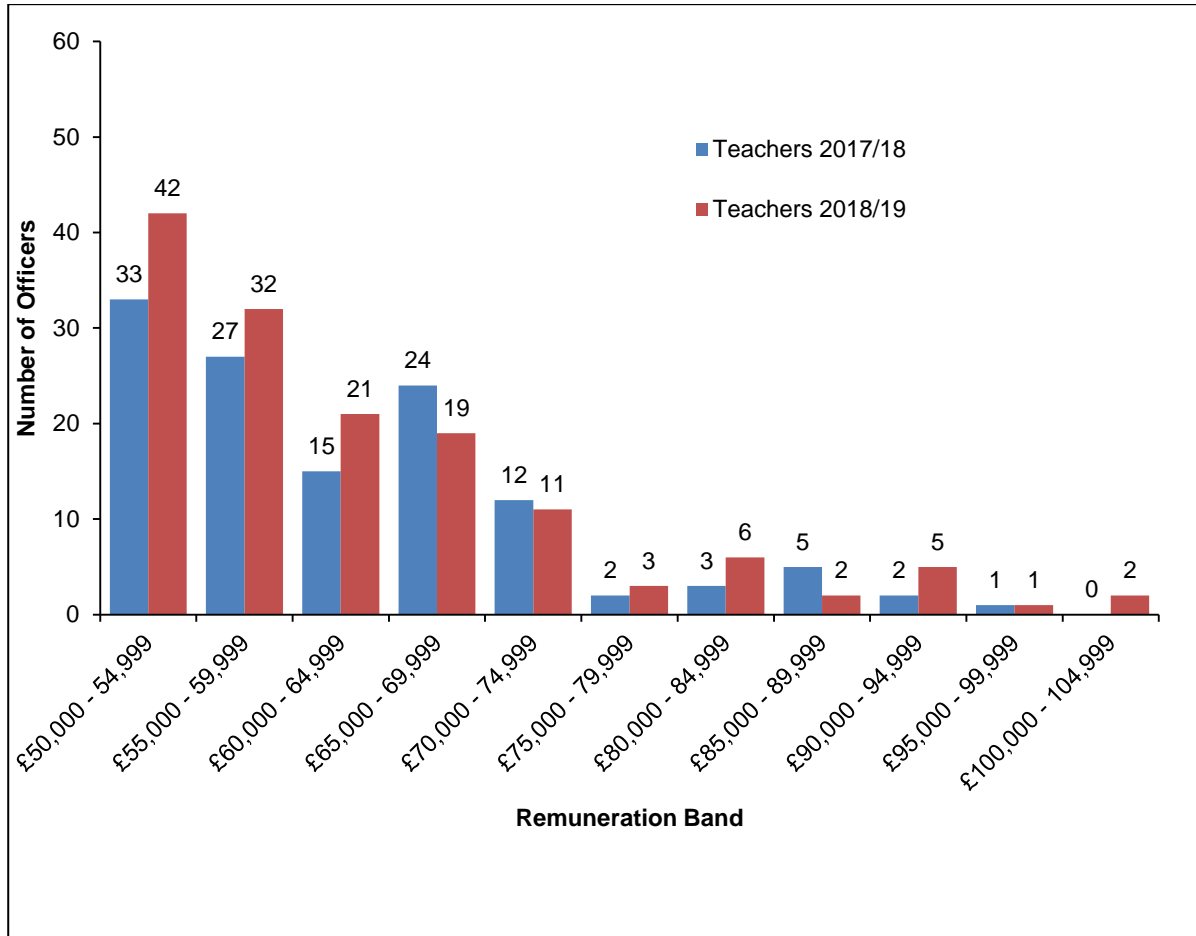
The second section must include a disclosure of the numbers of other staff whose total remuneration (i.e. salary plus overtime and allowances, etc.) is above £50,000.

The remuneration paid to the Council’s senior employees is shown in the table below:

2018/19						
Post Holder Information	Note	Salary – including Fees and Allowances £	Expenses Allowances £	Total Remuneration exc Pension Contributions £	Pension Contributions £	Total Remuneration inc Pension Contributions £
Chief Executive – John Mothersole		192,064	0	192,064	29,194	221,258
Executive Director – People		135,533	0	135,533	20,601	156,134
Executive Director – Place		138,752	0	138,752	21,090	159,842
Executive Director – Resources		132,760	0	132,760	20,179	152,939
Director of Public Health		114,497	102	114,599	16,570	131,169
Director of Policy and Performance		83,830	0	83,830	12,742	96,572
<b>Total</b>		<b>797,436</b>	<b>102</b>	<b>797,538</b>	<b>120,376</b>	<b>917,914</b>

The Council's other employees receiving more than £50,000 remuneration for the year (excluding employer's pension contributions) were paid the following amounts:





## Note 8 – Adjustments Between Accounting Basis and Funding Basis Under Regulations

2018/19	General Fund Balance £000	Housing Revenue Account £000	Major Repairs Reserve £000	Capital Receipts Reserve £000	Capital Grants Unapplied £000	Total Usable Reserves £000	Unusable Reserves £000	Total Council Reserves £000
Notes						34	35	
<b>Reversal of items debited or credited to the CI&amp;ES:</b>								
Depreciation of Non-current assets	(50,682)	0	(23,310)	0	0	(73,992)	73,992	0
Impairment losses charged to the CI&ES	0	0	0	0	0	0	0	0
Revaluation losses charged to the CI&ES	(45,209)	74,328	0	0	0	29,119	(29,119)	0
Movements in fair value of Investment Properties	1,390	0	0	0	0	1,390	(1,390)	0
Capital grants and contributions credited to the CI&ES	67,961	0	0	0	(8,021)	59,940	(59,940)	0
Application of grants and contributions to capital financing from the Capital Grants Unapplied Reserve	0	0	0	0	9,737	9,737	(9,737)	0
Revenue expenditure funded from capital under statute	(18,838)	0	0	0	0	(18,838)	18,838	0
Costs of disposal funded from capital receipts	(281)	0	0	281	0	0	0	0
Net gain / (loss) on sale of non-current assets	(45,057)	4,390	0	(24,263)	0	(64,930)	64,930	0
Amount by which finance costs calculated in accordance with the code are different from the amount of finance costs calculated in accordance statutory requirements	(12,291)	987	0	0	0	(11,304)	11,304	0
Reversal of items relating to retirement benefits debited or credited to the CI&ES	(82,598)	0	0	0	0	(82,598)	82,598	0
Amount by which Council Tax and non-domestic rates income adjustment included in the CI&ES is different from the amount taken to the General Fund in accordance with regulation	11,853	0	0	0	0	11,853	(11,853)	0
Amount by which officer remunerations costs calculated in accordance with the code are different from the amount of costs calculated in accordance with statutory requirements	(524)	0	0	0	0	(524)	524	0
<b>Insertion of items not debited or credited to the CI&amp;ES:</b>								
Statutory provision for repayment of debt (MRP)	41,907	0	0	0	0	41,907	(41,907)	0
Voluntary provision for repayment of debt (VMRP)	0	27	0	0	0	27	(27)	0
Revenue Contribution to Major Repairs Reserve	0	0	0	0	0	0	0	0
Transfer of Capital Receipts (<£10k) to the General Fund and HRA	(132)	0	0	132	0	0	0	0
Transfer from Capital Receipts Reserve equal to the amount payable into the Housing Capital Receipts Pool	(3,340)	0	0	3,340	0	0	0	0
Employer's contribution to pension scheme	38,333	0	0	0	0	38,333	(38,333)	0
<b>Capital Financing:</b>								
Use of Capital Receipts Reserve to finance new capital expenditure	0	0	0	15,619	0	15,619	(15,619)	0
Use of Major Repairs Reserve to finance new capital expenditure	0	0	46,765	0	0	46,765	(46,765)	0
<b>Total</b>	<b>(97,509)</b>	<b>79,732</b>	<b>23,455</b>	<b>(4,889)</b>	<b>1,715</b>	<b>2,504</b>	<b>(2,504)</b>	<b>0</b>

## APPENDIX 7 – HOUSING REVENUE ACCOUNT

<b>Housing Revenue Account Income and Expenditure Statement</b>			
<b>2017/18</b>		<b>Note</b>	<b>2018/19</b>
<b>£000</b>			<b>£000</b>
	<b>Expenditure:</b>		
34,615	Repairs and maintenance		37,027
48,539	Supervision and management		51,013
1,246	Rents, rates, taxes and other charges		1,255
20,136	Depreciation and impairment / losses of non-current assets	8 / 9	(51,018)
206	Debt management costs		193
2,163	Movement in the allowance for Bad or Doubtful Debts		2,288
<b>106,905</b>	<b>Total Expenditure</b>		<b>40,758</b>
	<b>Income:</b>		
(146,506)	Dwelling rents	11	(143,931)
(1,471)	Non-dwelling rents - garages, garage sites, shops	11	(1,350)
(6,161)	Charges for services and facilities		(6,166)
(917)	Contributions towards expenditure		(522)
<b>(155,055)</b>	<b>Total Income</b>		<b>(151,969)</b>
<b>(48,150)</b>	Net Income / Cost of HRA Services as included in the whole Council's Comprehensive Income and Expenditure Statement		<b>0</b>
649	HRA share of Corporate and Democratic Core		793
<b>(47,501)</b>	<b>Net Income / Cost of HRA Services</b>		<b>(110,418)</b>
	<b>HRA share of operating income and expenditure included in the Comprehensive Income and Expenditure Account:</b>		
(2,441)	(Gain) or loss on sale of HRA non-current assets		(4,390)
13,194	Interest payable and similar charges		13,110
(268)	Interest and investment income		(293)
<b>(37,016)</b>	<b>(Surplus) / Deficit for the year on HRA services</b>		<b>(101,991)</b>



## Movement on the Housing Revenue Account Statement

2017/18 £000		Note	2018/19 £000
<b>(9,199)</b>	<b>Balance as at 1 April</b>		<b>(9,267)</b>
(37,016)	(Surplus) / Deficit on the HRA Income and Expenditure Statement		(101,991)
0	Other Comprehensive Income and Expenditure	1	0
6,973	Adjustments between accounting basis and funding basis under regulation	2	79,732
<b>(30,043)</b>	<b>Net (increase) / decrease before transfers to reserves</b>		<b>(22,259)</b>
29,975	Transfer to / from reserves	3	23,199
<b>(68)</b>	<b>(Increase) / decrease in year on the HRA</b>		<b>940</b>
<b>(9,267)</b>	<b>Balance as at 31 March</b>		<b>(8,327)</b>





## Audit and Standards Committee Report

---

**Report of:** Senior Finance Manager, Internal Audit

---

**Date:** 13<sup>th</sup> June 2019

---

**Subject:** Internal Audit Annual Fraud Report 2018/19

---

**Author of Report:** Stephen Bower, Finance Manager, Internal Audit

---

**Summary:** The purpose of this report is to inform the Audit and Standards Committee of the outcomes of the work undertaken by Internal Audit on fraud and corruption during 2018/19 and the proposed work for 2019/20.

All of the Council policies related to fraud and corruption were completely revised and agreed by the Audit and Standards Committee in June 2018. These have been reviewed and no changes are proposed.

---

**Recommendations:**

Members are asked to:

1. That the Audit and Standards Committee notes the content of this report.
  2. That the Audit and Standards Committee notes the completed checklist for those responsible for governance (Appendix A).
- 

**Background Papers:**

---

**Category of Report:** Open

\* Delete as appropriate

If Closed, the report/appendix is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).'

---

## Statutory and Council Policy Checklist

<b>Financial implications</b>
<del>YES</del> /NO      Cleared by: K Inman
<b>Legal implications</b>
<del>Yes</del> /NO      Cleared by:
<b>Equality of Opportunity implications</b>
<del>YES</del> /NO      Cleared by:
<b>Tackling Health Inequalities implications</b>
<del>YES</del> /NO
<b>Human rights implications</b>
<del>YES</del> /NO
<b>Environmental and Sustainability implications</b>
<del>YES</del> /NO
<b>Economic impact</b>
<del>YES</del> /NO
<b>Community safety implications</b>
<del>YES</del> /NO
<b>Human resources implications</b>
<del>YES</del> /NO
<b>Property implications</b>
<del>YES</del> /NO
<b>Area(s) affected</b>
Corporate
<b>Relevant Scrutiny Board if decision called in</b>
<b>Is the item a matter which is reserved for approval by the City Council?</b> <del>YES</del> /NO
<b>Press release</b>
<del>YES</del> /NO

## **Sheffield City Council**

### **Report to the Council's Audit and Standards Committee**

#### **Fraud and Investigations**

**June 2019**

#### **Purpose of the Report**

1. This is an annual report produced by Internal Audit to show the work that has been undertaken across the Council in relation to Fraud and Investigations. This report is to "those charged with governance" which in the case of Sheffield City Council is the Audit and Standards Committee, to show the work that has been undertaken within Internal Audit and how this fits into the national picture. It will provide assurance on the work undertaken.
2. This report shows the outcomes from the work undertaken in 2018/19 and highlights the work to be undertaken in 2019/20. All of the Council's policies relating to fraud and corruption were fully revised and updated last year. These were presented to the Audit and Standards Committee in June 2018. These are available to all staff on the Intranet have been embedded in the operation of the Council. The policies have been reviewed, and at present no alterations are required.
3. The Cabinet Office is responsible for the National Fraud Initiative (NFI). This is a biennial process, where data is supplied from a number of Council systems and is matched to data supplied from other Councils and third parties such as DWP and banks and building societies. Any data matches are then supplied back to the Council to be investigated. Internal Audit coordinates the process on behalf of the Council. The Council supplied the data to be matched in October 2018. The data is supplied by various services and contractors directly to a secure portal of the Cabinet Office. The transmissions were tracked to ensure that all of them were submitted.
4. The data matches were received between the end of January and the end of May 2019, although some additional matches are being received as the data is further processed.

5. CIPFA produce an annual fraud and corruption tracker report, which correlates data from Councils and draws together an overall picture of fraud in Local Government across the Country. Information from the CIPFA report will be referenced in this report.
6. At the end of this report we have provided a checklist similar to previous years to provide the Audit and Standards Committee with assurance on the robustness of the Council's Counter Fraud arrangements. This has been revised to take account of the work that has been undertaken during the year.
7. As reported previously the Council no longer investigates Housing Benefits frauds. These are undertaken by the Single Fraud Investigation Service (SFIS) which is part of the Department of Work and Pensions (DWP). The team who previously undertook this work in Capita transferred to DWP. This is mentioned, as some of the work referenced particularly in regard to NFI includes figures relating to Housing Benefit fraud. Although these are identified within the Council, they are passed to the DWP for investigation and ultimate sanction.

## **Introduction**

8. It is recognised that each pound lost to fraud represents a loss to the public purse and reduces the ability of the public sector to provide services to people who need them. According to the last set of data from Central Government the cost of fraud to the public sector is estimated to be at least £20.6bn annually and of this £2.1bn is related to local government (including housing benefit fraud).
9. The current level of fraud reported in Local Government in 2018 is approximately £302 million (including housing benefit fraud) this is down from £336m in the previous year and the average value per case has reduced from £4,500 in the previous year to £3,600 in 2018. The largest reduction is in housing benefits frauds, where new process has been introduced to prevent and detect fraud at an earlier stage.
10. The CIPFA report highlights that 80,000 frauds have been detected and prevented across authorities in 2017/18 this is higher than in 2016/17. Approximately 70 percent of all cases detected by volume and value relate to housing benefit fraud, which due to the value of property involved tends to be far greater in London and South East than the rest of the country as a whole.
11. Fraud by its very nature is often difficult to detect. The better the controls that the Council has, the more that those wishing to undertake acts of fraud will look to target weaker and more vulnerable areas. Sheffield is not

complacent and as part of Internal Audits normal work we look to ensure that where fraud is highlighted as a risk that adequate controls are in place.

12. Sheffield City Council has robust processes to try to prevent and detect fraud. These were updated in 2018 and were agreed by the Audit and Standards Committee in June 2018. These are available to all staff and have become embedded into Council processes. This should reduce the amount of fraud and aid in its early detection. The work of Internal Audit should also reduce the prevalence of frauds, by ensuring services and processes have robust controls in place.
13. In Sheffield City Council we require that Capita undertake an annual exercise into Single Person Discounts on Council tax. This exercise significantly reduces the risk of this type of fraud occurring. Internal Audit will be looking for this process to continue when the service returns to the Council.
14. The report highlights the work of Internal Audit in 2018/19 and proposed developments that are going to be undertaken this year.

#### **Work undertaken in 2018/19**

15. The volume of investigations undertaken by the Council has increased slightly this year from 58 cases in 2017/18 to 65 cases in 2018/19. Of these 29 were conducted by Internal Audit and a further 36 cases were undertaken by management with the support of Internal Audit. Internal audit continues to work closely with Human Resources. Human Resources often identify issues such as timesheet fraud as part of wider staffing issues. There are also regular liaison meetings with Internal Audit, Human Resources and the Monitoring Officer where investigations and governance issues are discussed. This ensures consistency of approach on these matters. Internal Audit has only a limited amount of qualified investigator resources and these are therefore targeted at the most appropriate cases.
16. The complexity of some of the investigations undertaken has meant that the resources used were greater than that originally planned for the year.
17. The cases investigated related to members of staff. With such a large workforce covering a large number of services there will always be a range of issues. The cases reported to Internal Audit, covered a similar range of frauds as in previous years, with cases including false claims for services/benefit, cash theft, excessive use of the internet during work time, falsification of expense claims and of timesheets. In all cases these were dealt with efficiently and following investigations appropriate

sanctions were applied where the issues were found to be proven. This resulted in a number of dismissals. In some cases it was also found that there was no or insufficient evidence of fraud for action to be taken. The frauds identified within the Council mirror those found nationally.

18. Parking Services continues to remove Blue Badges where they are being abused and to prosecute where appropriate. In 2018/19 the number of Blue Badge prosecutions was 16 which is lower than the previous year. This was due to less resource being available; however this issue has now been resolved through the reallocation of staff. The cost of each Blue Badge fraud is estimated at £449, which is considerably less than the value in London of £2,150 (as a result of the congestion charge and higher parking fees).
19. It is difficult to fully determine the number of fraudulent tenancy cases as often the tenants will simply hand back their tenancy when they are aware of an investigation taking place. This means that often lengthy and costly legal action is avoided and the houses are once more available to be used by the citizens of Sheffield. The Council will always take the appropriate legal action if fraud can be proved, even if the tenancy has been given up.
20. In 2018/19, 101 cases were investigated by Housing Fraud Team (inc Right to Buy cases). This resulted in two prosecutions and a further 18 properties either being abandoned or the tenancies quit. In addition two right-to-buy transactions were denied.
21. Although the number of cases relating to parking machines went down this year, a small number were targeted and vandalised. Although the cash stolen in each case was only small in relation to the efforts taken by the criminals, the cost of replacing the machines is significant. The Council has undertaken a significant replacement programme for a large number of machines this year. This has reduced the number of the more vulnerable machines and as the machines now take card payments, this should significantly reduce the motive for theft. The police were unable to apprehend the people responsible.
22. Bank mandate fraud continues to be a significant issue. Although we have robust controls in place to detect and prevent this. The Council is still targeted by organised criminal gangs who undertake phishing exercises.
23. During the course of investigations, where control and process issues were identified these were reported to management for action. In addition, where warranted, further work was undertaken in the form of additional audit reviews to ensure that where practicable, suitable measures are in place to minimise the chances of reoccurrence.



24. The number of whistleblowing issues reported remains low. The new policy came in last year and has been publicised. As whistleblowing is often seen as a last resort, it may be that the other Council processes are sufficient to allow for issues to be raised without the need to use the whistleblowing policy.
25. Four pieces of counter fraud work have been undertaken by Internal Audit during the year, these did not identify any instances of fraud being undertaken. These related to vetting of agency staff and consultants in line with the officers code of conduct, staff expense claims, Members interests and Members Allowances and fraud risks relating to organised crime. Recommendations have been made in these areas where required, to improve control processes. Follow-ups of previous year's reviews were undertaken and adequate progress had been made and reported to the Audit and Standards Committee via the Recommendation Tracker report.
26. In addition, there was work on data matches relating to the NFI exercise which are reported later.

#### **The Anti-Fraud Plan for 2019/20**

27. As can be seen from the Internal Audit annual plan for 2019/20 approximately 18% of available resources (or 278 days) are allocated to anti-fraud matters. This is a slight rise on last year's plan of 260 days.
28. The plan covers 5 areas.
  - Time for investigations (this is an allocation of time from which individual investigations are allocated).
  - Time to review and update the Council's policies as applicable.
  - Time to undertake work on the National Fraud Initiative, including the submission of data from across the Council, undertaking checking of the data matches and providing help and support to others reviewing the matches in service.
  - Time to undertake an annual review of the Housing Benefits processes.
  - Six reviews to assess areas from an anti-fraud perspective which have been risk assessed as having a higher potential of fraud. This can be for a number of risk factors such as cash handling, or where control weaknesses were identified in the past. In the current year this will include Taxi Contracts, Parking Services and the use of

Council Vehicles in Social Care, as well as security reviews at three core Council sites.

29. At present, based upon the level of referrals in the past few years the resourcing should be adequate, however if the number of investigations should increase or become more complex, than resources may need to be reallocated to this area.

### **National Fraud Initiative (NFI)**

30. The Council is mandated to supply a number of data sets covering such areas as payroll, pensions, creditors, debtors, housing tenants, supported care home residents, blue badge holders, insurance claims and the electoral roll. These were supplied to the Cabinet Office in October 2018.
31. A national exercise is undertaken to collate this information electronically and where appropriate to provide data matches. These matches were initially provided in February 2019 (with additional matches provided to the end of May). These could be frauds or error, but in most cases is a result of issues like timing differences in the data.
32. The National Fraud Initiative (NFI) for 2018/19 has returned 14,295 data matches for the Council; this is slightly less than the 16,469 matches from the previous exercise in the main because housing benefit figures are no longer included. We have ensured that all of the matches classed as high have been reviewed along with some of the medium and low matches where these have proved fruitful.
33. Currently two frauds and 14 errors with a value of £52,626.86 have been detected. There are still approximately 100 matches which are still in the process of being investigated. Some of these are recent matches whilst the others are often the more complex issues and will be completed in the next few months.
34. Internal Audit have provided support where required and have monitored and followed up actions until the cases were closed. Internal Audit has checked the outcomes and provided the required declaration that the exercise has been undertaken appropriately.

### **Checklist for 'Those Responsible for Governance'.**

35. A checklist similar to previous years is included at Appendix A.
36. The tolerance of fraud within an organisation is a key element of a counter fraud framework. SCC has formally adopted a Policy Statement on Fraud & Corruption that underlines a zero tolerance to such acts. Fraud awareness training has been provided to services throughout the Council.

## **Recommendations**

37. That the Audit and Standards Committee notes the content of this report.
38. That the Audit and Standards Committee notes the completed checklist for those responsible for governance (Appendix A).

Intentionally left Blank



# **Governance Checklist for Fraud 2018/19**

**Sheffield City Council  
June 2019**

**Prepared by Internal Audit  
on Behalf of the Audit and  
Standards Committee**

## **Introduction**

The checklist allows Councils to evaluate their arrangements. This document seeks to evaluate the arrangements in place within Sheffield City Council.

This document has been prepared by Internal Audit to highlight to the Councils Audit and Standards Committee which is referred to as “those charged with governance” that the Council has in place adequate arrangements for the prevention, detection and investigation of fraud that may occur within the Council.

General	Yes	No
1. Do we have a zero tolerance policy towards fraud?	✓	
<p><b><u>Actions</u></b></p> <p>The Council's New Anti-fraud and Corruption Policy Statement and Framework, has a statement that clearly states that the Council has a zero tolerance to fraud, and that it expects its employees to uphold the highest ethical standards and to strictly adhere to its anti-fraud framework and associated policies.</p> <p>As part of the Officers Code of Conduct, the Policy Statement - Fraud &amp; Corruption incorporates a message from the Chief Executive which clearly states the 'zero tolerance' approach of the authority. It incorporates the fact that any instances of fraud or corruption will be treated as gross misconduct.</p> <p>Internal Audit is currently working with the learning, development and training section of Human Resources service to develop a new eLearning package will support the implementation of the anti-fraud policies across the Council.</p>		
	Yes	No
2. Do we have the right approach, and effective counter-fraud strategies, policies and plans? Have we aligned our strategy with Fighting Fraud Locally?	✓	
<p><b><u>Actions</u></b></p> <p>The following fraud related strategies, policies and plans are in place:  Financial Regulations 2018  Code of Conduct for employees  Policy Statement – Fraud &amp; Corruption (Appendix to the above)  Regulation of Investigatory Powers Act Policy  Internal Audit Plan (incorporating pro-active and re-active counter fraud assignments)  Finance Service Plan (including specific counter-fraud related deliverables)  Annual Governance Statement (Fraud Risks)  Fraud awareness e-learning module. ( in development)</p> <p>The Council now has a full suite of policies for Anti-Fraud and Corruption; these have been updated and were endorsed by the Audit and Standards committee in June 2018. The policies are up to date and are designed to fit together in a consistent manner to ensure that they comply with the latest relevant legislation and guidance.</p> <p><u>Anti-fraud and Corruption Policy Statement and Strategy</u> – New overarching document which draws together all of the Councils other policies in relation to the fraud and corruption. It follows the CIPFA code in that it acknowledges the responsibilities of Officers and Members for countering fraud and corruption. It demonstrates how the Council will try to prevent fraud by identifying the fraud and corruption risk and then identifying strategies to mitigate these. It also sets out how the Council will pursue and take action against those who try to perpetrate fraud and</p>		

corruption.

Fraud Risk - This document is significantly updated from the previous document it is designed to help managers in identifying fraud risks in their areas and to put forward strategies to manage and mitigate these risks.

Fraud Response Plan – This document had been rewritten to aid managers in dealing with potential fraud issues and to investigate these in line with the council’s relevant HR policies.

Anti-Money Laundering Policy - This document has been fully revised to comply with the current legislation in this area. It set out what individuals need to do if they become aware of any potential money laundering activity.

Bribery and Corruption Policy – This is new document which has been devised to fill a gap in the Council’s current framework. By having this policy and adhering to it, it ensures that the Council has a defence should it or any of its employees be accused of bribery and corruption.

Know your Customer – This is a new document to aid checking of customers across the Council to comply with bribery and money laundering requirements.

Guidance to Schools – This is a new document that is being made available to schools so that they can more easily identify and mitigate the risks that they face in relation to fraud and corruption.

	Yes	No
3. Do we have dedicated counter-fraud staff?	✓	

**Actions**

Service Managers are responsible for the investigation of fraud within their respective areas. Internal Audit has accredited officers available to investigate larger scale allegations and provide advice to managers.

Internal Audit has a limited resource for fraud investigation as outlined in the Annual Plan. At present there are two qualified fraud investigators in the service.

There are dedicated officers in Trading Standards and in Housing to investigate housing tenancy fraud.

Resource is also provided from across the Council to undertake work on the NFI matches and with any resulting investigations.

	Yes	No
4. Do counter-fraud staff review all the work of our organisation?	✓	

**Actions**



Internal Audit maintains a resource to address fraud issues e.g. policy issues, serious allegations etc. and the Internal Audit plan contains a small number of counter fraud exercises to review specific fraud risks.

Service Management has the primary responsibility for internal fraud investigation (with the support of Human Resources).

Internal Audit operates a risk based approach to auditing and key risks are identified for inclusion in the audit plan in conjunction with Service management. Internal Audit considers fraud risk for inclusion in the scope of each audit review.

The Council has suitably qualified risk advisors who can support services in identifying and mitigating all types of risk across the Council.

	Yes	No
5. Does a councillor have portfolio responsibility for fighting fraud across the council?	✓	

**Actions**

The Deputy Leader and Cabinet member for Finance and Resources has responsibilities that align to the Resources portfolio which encompassed Internal Audit. There is no specific responsibility delegated to the post to cover fighting fraud across the Council. All members of the Cabinet are responsible for fraud in their area, and are held to account by the Council as a whole.

Internal Audit has briefed the Deputy Leader on the work undertaken by Internal Audit in relation to Fraud Investigations.

The Audit and Standards Committee receive reports on Fraud arrangements across the Council and are responsible for reviewing the effectiveness of the arrangements in place.

	Yes	No
6. Do we receive regular reports on how well we are tackling fraud risks, carrying out plans and delivering outcomes?	✓	

**Actions**

The Annual Governance Statement provides a level of assurance that fraud risks have been identified and addressed.

The Internal Audit Plan is endorsed by the Audit and Standards Committee on an annual basis and the Senior Finance Manager (Internal Audit) produces an annual report which includes information on counter fraud activities.

	Yes	No
7. Have we assessed our management of counter-fraud work against good practice?	✓	

**Actions**

A new code of practice was produced by CIPFA at the end of March 2016 and this checklist reviews the Council's policies against the requirements of the Code.

Internal Audit have also attended National Anti-Fraud Network Conference and South and West Yorkshire investigators forums where best practice is shared and this is incorporated into our methods of working.

All of the Council's suite of fraud and corruption policies have been reviewed and updated to ensure that we have a consistent and comprehensive anti-fraud framework for the Council.

	Yes	No
8. Do we raise awareness of fraud risks with:		
■ new staff (including agency staff);	✓	
■ existing staff;	✓	
■ elected members; and	✓	
■ our contractors	✓	

**Actions**

Fraud is specifically covered in the Officer Code of Conduct. It is a requirement that all agency staff must comply with the code and it is the appointing manager's responsibility to ensure that the individuals concerned are fully compliant with the code at the start of their appointment. Specific short term appointments such as those of polling clerks may not cover, the full code, but specific fraud issues pertinent to these posts are specifically raised with the individuals concerned.

Additional training has been provided to key staff on request. In addition there is an online training programme for fraud that is currently in development.

Commercial fraud risks are addressed by a requirement for contractors to comply with all current legislation (and indemnity provision) being incorporated into the standard terms and conditions. In addition specific anti-competitive and anti-bribery conditions apply to the contracting process.

	Yes	No
9. Do we work well with national, regional and local networks and partnerships to ensure we know about current fraud risks and issues?	✓	

**Actions**

Sheffield City Council maintains membership with Core Cities and the South & West Yorkshire fraud Investigators Group.

There are effective working arrangements in place between the Council and Department for Work and Pensions (DWP) to cover the requirements brought in as a result of the new Single Fraud Investigation Service (SFIS).

The National Anti-Fraud Network (NAFN) and the Financial Crime Information Network provide bulletins on current fraud risks. Internal Audit staff are members of professional bodies such as CIPFA, Institute of Internal Auditors and CIMA. These bodies provide periodic updates in areas such as fraud risks. These updates are cascaded throughout the team as appropriate.

CIPFA has now become the lead Accountancy Body for fraud governance arrangements in local government following the demise of the Audit Commission. Internal Audit ensures that the Council complies with CIPFA guidance.

The Internal Audit Service of the Council is required to comply with the Public Service Internal Audit Standards. As part of the requirements of the standards, a peer review was undertaken in 2017 and the service was found to generally conform.

	Yes	No
10. Do we work well with other organisations to ensure we effectively share knowledge and data about fraud and fraudsters?	✓	

**Actions**

As 9 and 10 above plus:

The Cabinet Office National Fraud Initiative (NFI) operates under formal arrangements and provides for the sharing of data between local authorities and other participating organisations. As part of the South and West Yorkshire investigators group information on fraud issues is shared on a regular basis. A shared portal has been developed by Cheshire Council to allow this to be undertaken in an easier way.

We also use the online reporting system to Action Fraud.

	Yes	No
11. Do we identify areas where our internal controls may not be performing as well as intended? How quickly do we then take action?	✓	

**Actions**

The annual Internal Audit Plan includes 'risk-based' audits based on a risk assessment and discussion with Service Directors. Each of these reviews includes an assessment of the internal controls within scope to identify instances in which they are not present or not working effectively. Auditors consider fraud risks for each assignment.

Where appropriate recommendations are made to improve internal controls at the conclusion of each review, implementation is confirmed with the client and followed up.

A small number of pro-active counter fraud reviews are included in the Internal Audit Plan that focuses on activities where, due to the nature of the service, the risk of fraudulent activity is heightened. At the conclusion of appropriate re-active investigations, systems and controls are reviewed to identify weaknesses and to recommend improvements to prevent future instances of fraud both within the relevant service area and corporately.

A number of audits were undertaken following investigations to provide assurance to service areas where flawed internal controls had been identified during the investigation process.

	Yes	No
12. Do we maximise the benefit of our participation in the Cabinet Office National Fraud Initiative and receive reports on our outcomes?	✓	

**Actions**

The Council has been a participant in the NFI since 1995. Data matches are circulated to all relevant service areas and Capita for examination and resolution. Internal Audit maintains a coordinating and advisory role in addition to responsibility for examination of some data matches and validates the outcomes prior to the conclusion of each exercise.

Internal Audit examines areas from the NFI where significant numbers of new matches have been identified to ensure that the procedures in place are adequate to minimise the risk of fraud.

	Yes	No
13. Do we have arrangements in place that encourage our staff to raise their concerns about money laundering?	✓	

**Actions**

SCC has adopted a detailed Anti Money Laundering Policy. This document has been revised and includes an appendix which contains guidance to staff and is available via the Intranet. Incidents are reported to Internal Audit and in turn the National Crime Agency where appropriate.

	Yes	No
14. Do we have effective arrangements for:		
■ reporting fraud; and	✓	
■ recording fraud	✓	

**Actions**

Financial Regulations require Executive Directors to ensure that Internal Audit (on behalf of the Section 151 officer) is notified of all incidents of financial irregularity. Internal Audit records each reported incident.

Perceived Money Laundering attempts against SCC have also been reported promptly to Action Fraud.

Although the above controls are in place, full compliance cannot be assured. Work is ongoing to raise awareness of fraud reporting. This work is continual as staff are always moving and new issues are always arising.

A key issue to be reviewed going forward is to identify and record not only proven fraud activity, but also areas which are serious issues where actual fraud is indicated, but not proven.

	Yes	No
15. Do we have effective whistle-blowing arrangements? In particular are staff:		
■ aware of our whistle-blowing arrangements	✓	
■ have confidence in the confidentiality of those arrangements	✓	
■ confident that any concerns raised will be addressed	✓	

**Actions**

SCC has adopted an extensive Whistleblowing Policy that contains an explanation on whistleblowing arrangements and the reporting access routes including the details of designated contact officers. The Human Resources Service maintains a central register of allegations. Whistleblowing allegations are all reviewed and where appropriate fully investigated by someone independent of the area.

It is noted that during the current year the number of whistleblowing actions with the potential to uncover fraud has risen. These are always dealt in confidence and followed up promptly.

Regular meetings now take place with between Internal Audit, the Head of HR, and the Monitoring Officer to review whistleblowing and investigation cases.

	Yes	No
16. Do we have effective fidelity insurance arrangements?	✓	

**Actions**

SCC has adequate fidelity insurance cover.

There is an annual requirement to complete a pro-forma for the fidelity guarantee

insurance. This is undertaken by the Insurance Section with input from Internal Audit. This has recently been completed for the forthcoming year and accepted by the insurance company.

Fighting Fraud with reduced Resources	Yes	No
17. Are we confident that we have sufficient counter-fraud capacity and capability to detect and prevent fraud, once the SFIS has been fully implemented?	✓	

**Actions**

The Internal Audit plan is produced on an annual basis. The formulation of this plan incorporates new and emerging risks including those associated with the current financial climate. The resources are under review as there is very little capacity in the system should a major incident (or a number of smaller incidents) occur.

Current risks and issues	Yes	No
--------------------------	-----	----

**Housing tenancy**

18. Do we take proper action to ensure that we only allocate social housing to those who are eligible?	✓	
--	---	--

**Actions**

The lettings policy ensures that there is a vetting and validation process in place to confirm identity and eligibility of each individual prior to the letting of any property. The Housing Service has a small team in place to investigate any instances of potential tenancy fraud, such as sub-letting and to follow these up and recover properties and prosecute where appropriate.

	Yes	No
19. Do we take proper action to ensure that social housing is occupied by those to whom it is allocated?	✓	

**Actions**

Home visits and day to day contact with tenants provides assurance on occupancy however resources have been allocated to recover properties identified. The NFI process also identifies issues with tenancies.

A recent workshop was arranged in Housing to ensure that all potential tenancy frauds are identified and investigated in the most effective manner, by individual elements of the service, working more closely together.

Procurement	Yes	No
20. Are we satisfied our procurement controls are working as intended?	✓	

<b><u>Actions</u></b>		
Internal Audit work in this area has previously not identified any significant weaknesses.		
	<b>Yes</b>	<b>No</b>
21. Have we reviewed our contract letting procedures to ensure they are in line with best practice?	✓	
<b><u>Actions</u></b>		
Aspects of contract letting feature in the Internal Audit annual plan. All audits covering the letting or management of contracts now include testing in this area.		
<b>Recruitment</b>	<b>Yes</b>	<b>No</b>
22. Are we satisfied our recruitment procedures:		
■ prevent us employing people working under false identities;	✓	
■ confirm employment references effectively;	✓	
■ ensure applicants are eligible to work in the UK; and	✓	
■ require agencies supplying us with staff to undertake the checks that we require?	✓	
<b><u>Actions</u></b>		
The Council has in place controls to ensure that all of the above areas are covered; this included a requirement for the Council's agency staff provider to complete the appropriate propriety checking.		
Internal Audit has completed testing in this area as part of its normal auditing work, and no issues have been found in the performance of the controls linked to the above areas.		
The National Fraud Initiative matches payroll records against Immigration records every two years and reports any instances of potential illegal working for investigation.		
<b>Council tax discount</b>	<b>Yes</b>	<b>No</b>
23. Do we take proper action to ensure that we only award discounts and allowances to those who are eligible?	✓	
<b><u>Actions</u></b>		

The Council Tax and Business Rates systems (including discounts) are regularly reviewed by Internal Audit as part of the assurance provided on the Council's main financial systems.

Capita undertake an annual exercise to review the application of single person discounts. This includes checking with third parties and has consistently controlled the validity of this discount.

Other fraud risks	Yes	No
24. Do we have appropriate and proportionate defences against emerging fraud risks:		
■ Business rates;	✓	
■ Right to Buy;	✓	
■ Council Tax Reduction;	✓	
■ Schools	✓	
■ Grants	✓	
■ PIP – Personal Independent Payment	✓	
■ Blue Badge Fraud.	✓	

**Actions**

Emerging fraud risks are taken into account in the formulation of the Internal Audit annual plan in addition to other identified risks. Examination of emerging risks is included in the scope of planned audits or scheduled for specific future review.





## Audit and Standards Committee Report

---

**Report of:** David Phillips, Head of Strategic Finance

---

**Date:** 13 June 2019

---

**Subject:** Lender Options Borrower Options Objection Report

---

**Author of Report:** David Phillips

### Summary:

This report summarises the findings of the external auditor's (KPMG) review of an objection at the 16/17 accounts into the Council's Lender Option Borrower Option (LOBO) loans. The auditor's actual report is also attached.

---

### Recommendations:

The Committee should note the report, and the auditor's conclusion that no further action is required in respect of the objection.

---

**Background Papers:** KPMG report of 29 May 2018

---

**Category of Report:** Open

---

\* Delete as appropriate

## Statutory and Council Policy Checklist

<b>Financial Implications</b>
No Cleared by: David Phillips
<b>Legal Implications</b>
NO Cleared by Steve Ecclestone:
<b>Equality of Opportunity Implications</b>
NO Cleared by Michelle Hawley:
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO:
<b>Environmental and Sustainability implications</b>
NO
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
NO
<b>Area(s) affected</b>
Corporate
<b>Relevant Scrutiny Committee if decision called in</b>
Not applicable
<b>Is the item a matter which is reserved for approval by the City Council?</b>
NO
<b>Press release</b>
NO

**REPORT TO SHEFFIELD CITY COUNCIL AUDIT AND STANDARDS COMMITTEE  
13 June 2019**

**Lender Option Borrower Option (LOBO) Loans - Objection**

**Purpose of the Report**

1. The purpose of this report is to summarise the work and conclusion of the Council's external auditor (which was KPMG for 2016/17) into an objection received in July 2017, in respect of the Council's 2016/17 accounts. The auditor's detailed report of 27<sup>th</sup> May 2018 is also presented to the Committee. This report is redacted, but only to remove the name and address of the objector (at the auditor's request).

**Summary of the report**

2. In July 2017 an objection was received asking KPMG, in relation to 19 LOBO loans taken out by the Council, to:
  - make an application to the Court for a declaration that the related items of account are contrary to law under section 28 of the Local Audit and Accountability Act 2014; and
  - issue a public interest report under section 24 of the Local Audit and Accountability Act 2014.
3. To address this objection KPMG considered the written submissions of both the objector and the Council, reviewed documentation provided by the Council and, where appropriate, sought legal advice.
4. KPMG submitted their provisional view to the objector in March 2018 and gave them the opportunity to make further representations. No such further representations were received.
5. KPMG concluded (on pages 1 and 2 of their report):
  - the Council entered into the LOBOs lawfully such that there are no related items of account contrary to law
  - the Council had the statutory power to borrow for the permitted purposes
  - the Council took into account all relevant factors when entering into the LOBOs
  - the Council took a rational approach to entering into the LOBOs
  - there are no grounds for the auditor to issue a Public Interest Report.

6. Further detail is contained in the auditor's report, attached for the Committee's information. The report does not contain any recommendations for action by the Council. In particular it comments:

- From the information available, there is nothing to suggest that well-informed choices were not made on the basis of expert advice sought and within the Council's prescribed limits (page 11).
- Having completed our [the auditor's] consideration of the information available in relation to the relevant factors (within the areas outlined above) and the Council's approach, actions and decision making, we have not identified any fundamental departures or significant issues that would, in our view, impact on the lawfulness of the LOBO loans. It is our view, based on the information available, that the Council has taken a rational approach in deciding to enter into the LOBO loans referred to in this objection (pages 11-12).
- There is nothing to indicate that the approach taken by Council officers and the formal reporting to Members was inconsistent with what we would expect to see for other lawful local authorities when making its Treasury Management decisions (page 12).
- We have not identified any fundamental departures or significant issues from our analysis of the particular circumstances of the LOBOs the Council has entered into (page 12).

### **Future Considerations**

7. A further report from the external auditor (KPMG) into an objection into the Council's PFI schemes will be received in due course. We delayed presenting this report to the Committee in the expectation that both areas could be reported on at the same Committee. However delays in the auditor completing their work on the PFI objection have meant we are now taking these two items to the Committee at different meetings.

### **FINANCIAL IMPLICATIONS**

8. There are no direct financial implications arising from the report.

### **LEGAL IMPLICATIONS**

9. The legal implications are contained within paragraph 5 of this report.

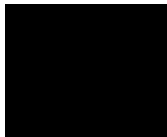
### **EQUAL OPPORTUNITIES IMPLICATIONS**

10. There are no equal opportunities implications arising from the report.

### **RECOMMENDATION**

11. The Audit and Standards Committee notes this report, and the auditor's positive conclusions.

**Private & confidential**



Our ref

(sent by e-mail)

22 May 2018

Dear 

**Sheffield City Council: Audit of accounts for the year ended 31 March 2017 – decision and statement of reasons**

We are writing to advise you of our decision on your objection to the accounts of the Sheffield Council for the year ended 31 March 2017.

**Your objection**

Your objection is set out in your e-mail dated 24 July 2017 and relates to 19 Lender Option Borrower Option (“LOBO”) loans taken out by Sheffield City Council (the “Council”). It specifically asks us to:

- make an application to the Court for a declaration that the related items of account are contrary to law under section 28 of the Local Audit and Accountability Act 2014; and
- issue a public interest report under section 24 of the Local Audit and Accountability Act 2014.

**Summary of Decision**

*Decision not to make an application to the court for a declaration that an item of account is contrary to law.*

Section 28 of the Local Audit and Accountability Act 2014 gives auditors the discretion to decide whether or not to apply to the Court for an Order in relation to unlawful items of account. Based on the above considerations and assessments, we are satisfied that the LOBO loans in question were entered into lawfully such that there are no related items of account contrary to law. More specifically we find:

- that the Council had the statutory power to borrow for the permitted purposes, these being so widely drawn that the borrowing by the Council by way of the LOBO loans is likely to be lawful; and

- that the Council took into account all relevant factors including the relevant guidance set out above.
- Having completed our consideration of the information available in relation to the relevant factors (within the areas outlined above) and the Council's approach, actions and decision making, we have not identified any fundamental departures or significant issues that would, in our view, impact on the lawfulness of the LOBO loans. It is our view, based on the information available, that the Council has taken a rational approach in deciding to enter into the LOBO loans referred to in this objection.

As we have not identified any items of account contrary to law, the discretion whether or not to seek a declaration from the court under section 28 of the 2014 Act does not arise.

#### *Decision not to issue a public interest report*

We have also decided that we will not issue a public interest report. There is no statutory requirement to provide a reason for this decision, although my reasons are the same as for my decision above and that there is nothing to indicate any lack of prudence in the Council's actions in entering into the loans at the time.

#### **Legal background and relevant guidance**

The Council's current powers to borrow are set out in section 1 of the Local Government Finance Act 2003, which states:

- A local authority may borrow money:
  - (a) for any purpose relevant to its functions under any enactment, or
  - (b) for the purposes of the prudent management of its financial affairs.

However, to be lawful any borrowing must nonetheless: comply with certain limitations; only be undertaken having had regard to certain matters; be such that a reasonable authority could undertake in the circumstances at the time; and be properly authorised.

These requirements/limitations are guided by two Codes that have been developed by the Chartered Institute of Public Finance and Accountancy (CIPFA) to assist authorities in their decision making, including when they are undertaking borrowing.

- *The Prudential Code for Capital Finance in Local Authorities* (the Prudential Code) (as amended or re-issued from time to time) is a professional code of practice to support local authorities in taking decisions on capital investments. Key objectives of the Code are to ensure, within a clear framework, that local authorities' capital investment plans are affordable, prudent and sustainable; that treasury management decisions are taken in accordance with good professional practice; and that local strategic planning, asset management planning and proper option appraisal are supported. A local authority is required to determine and keep under review how

much money it can afford to borrow, having regard to the Prudential Code, and it may not borrow money if doing so would result in a breach of any limit it thus determines.

- In carrying out its functions with respect to borrowing, a local authority is also required to have regard to CIPFA's code of practice contained in *Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes* (as amended or reissued from time to time) (the "TM Code"). The TM Code states that the local authority should put in place formal and comprehensive objectives, policies and practices, strategies and reporting arrangements for the effective management and control of their treasury management activities. These include suitable treasury management practices ("TMPs") setting out the manner in which the local authority will seek to achieve its policies and objectives and prescribing how it will manage and control those activities. The TM Code states that the content of the policy statement and the TMPs should follow the recommendations in the TM Code (unless the particular circumstances of the authority otherwise require).
- In terms of policy, the TM Code recognises that the priority is to manage and control risk effectively and that, while obtaining value for money is to be encouraged, that should only be within the context of effective risk management. The overriding aim is thus recommended to be the effective identification, monitoring and controlling of risk. As CIPFA's Guidance Notes for Local Authority Treasury Management state, local authorities are financially risk-averse and greatly value revenue budget stability: the volatility of variable interest rate loans can be a major risk to council tax levels, so that local authorities may well be prepared to pay (or accept the risk of) higher interest rates for the certainty of fixed rate loans.
- The TM Code is concerned *inter alia* with both interest rate risk (the risk that fluctuations in the levels of interest rates create an unexpected or unbudgeted burden against which the local authority has failed to protect itself adequately) and refinancing risk (the risk that borrowing cannot be refinanced on terms that reflect the provisions made to do so or on terms inconsistent with prevailing market conditions at the time).

There are 18 of the Council's LOBO loans – as detailed below – which were taken out after this legislation was enacted. The other loan (agreement entered into before 1 April 2004) relate to periods that pre-date this legislation. This loan which pre dated the LGFA 2003 was bound by and complied with a legislative framework which was set out in the Local Government & Housing Act 1989. This legal framework stipulated that a Council could borrow money for any purpose relevant to their functions under any enactment. It also stipulated that a Local Authority may not, borrow from a lender outside of the UK. The pre 2004 LOBO was for £20m and was taken out with 'Dexia Public Credit - London Branch', which is registered in England and Wales and therefore this criteria was met.

### **Details of the Council's LOBO loans**

We have set out below a summary of the terms of the 19 LOBO loans that the Council has taken out, which we have considered in terms of your objection:

- LOBO loan taken out with Dexia Credit Local, agreement dated 5 December 2003 (and drawn down on 5 December 2003). The value of the loan is £20m. The interest rate was 3.99% and had a fixed period of 5.5 years, such that the lender was unable to exercise their option until 5 June 2009. The lender is able to exercise their option every 6 months after 5 June 2009. The length of the loan is for 45 years;
- LOBO loan taken out with Barclays Bank, agreement dated 7 April 2004 (and drawn down on 22 April 2004). The value of the loan is £30m. The interest rate was 3.85% and had a fixed period of 6.8 years, such that the lender was unable to exercise their option until 22 February 2011. The lender is able to exercise their option every 6 months after 22 February 2011. The length of the loan is for 49.9 years;
- LOBO loan taken out with Dexia Credit Local, agreement dated 7 April 2004 (and drawn down on 27 April 2004). The value of the loan is £20.5m. The interest rate was 3.29% and had a fixed period of 4.8 years, such that the lender was unable to exercise their option until 27 February 2009. The lender is able to exercise their option every 6 months after 27 February 2009. The length of the loan is for 49.9 years;
- LOBO loan taken out with FMS Wert management, agreement dated 8 April 2004 (and drawn down on 26 April 2004). The value of the loan is £17m. The interest rate was 2.85% and had a fixed period of 3.8 years, such that the lender was unable to exercise their option until 26 February 2008. The lender is able to exercise their option every 6 months after 26 February 2008. The length of the loan is for 50 years;
- LOBO loan taken out with Barclays Bank, agreement dated 5 September 2005 (and drawn down on 6 October 2005). The value of the loan is £20m. The interest rate was 4.13%. The lender is unable to exercise their option every 6 months until 8 April 2024. The length of the loan is for 60 years;
- LOBO loan taken out with Barclays Bank, agreement dated 22 November 2005 (and drawn down on 22 March 2006). The value of the loan is £30m. The interest rate was 3.96%. The lender is unable to exercise their option every 6 months until 24 April 2023. The length of the loan is for 60 years;
- LOBO loan taken out with Barclays Bank, agreement dated 28 September 2006 (and drawn down on 23 October 2006). The value of the loan is £15m. The interest rate was 3.9%. The lender is unable to exercise their option every 6 months until 24 January 2022. The length of the loan is for 60 years;
- LOBO loan taken out with Dexia Credit Local, agreement dated 8 November 2006 (and drawn down on 30 November 2006). The value of the loan is £15m. The



interest rate was 3.78%. The lender is unable to exercise their option every 6 months until 4 April 2022. The length of the loan is for 69.9 years;

- LOBO loan taken out with Dexia Credit Local, agreement dated 10 November 2006 (and drawn down on 7 December 2006). The value of the loan is £20m. The interest rate was 3.83%. The lender is unable to exercise their option every 6 months until 9 June 2025. The length of the loan is for 70 years;
- LOBO loan taken out with Barclays Bank, agreement dated 22 January 2007 (and drawn down on 23 January 2007). The value of the loan is £10m. The interest rate was 4.65%. The lender is unable to exercise their option every 6 months until 24 January 2011. The length of the loan is for 70 years;
- LOBO loan taken out with Barclays Bank, agreement dated 22 January 2007 (and drawn down on 29 January 2007). The value of the loan is £8m. The interest rate was 4.65%. The lender is able to exercise their option every 6 months after 31 January 2011. The length of the loan is for 70 years;
- LOBO loan taken out with FMS Wert management, agreement dated 25 January 2007 (and drawn down on 29 January 2007). The value of the loan is £10m. The interest rate was 4.64%. The lender is able to exercise their option every 6 months after 28 January 2011. The length of the loan is for 70 years;
- LOBO loan taken out with Euro hypo SA, agreement dated 11 June 2007 (and drawn down on 11 June 2007). The value of the loan is £18m. The interest rate was 4.80%. The lender is able to exercise their option every 6 months after 28 January 2011. The length of the loan is for 70 years;
- LOBO loan taken out with Dexia Credit Local, agreement dated 26 June 2007 (and drawn down on 4 July 2007). The value of the loan is £10m. The interest rate was 4.64%. The lender is unable to exercise their option every 6 months until 6 July 2020. The length of the loan is for 70 years;
- LOBO loan taken out with FMS Wert management, agreement dated 6 June 2008 (and drawn down on 12 June 2008). The value of the loan is £14.5m. The interest rate was 4.69%. The lender is able to exercise their option every 6 months after 12 June 2008. The length of the loan is for 70 years;
- LOBO loan taken out with Dexia Credit Local, agreement dated 16 September 2008 (and drawn down on 30 September 2008). The value of the loan is £10m. The interest rate was 4%. The lender is able to exercise their option every 6 months after 30 September 2010. The length of the loan is for 50 years;
- LOBO loan taken out with Royal Bank of Scotland, agreement dated 17 February 2009 (and drawn down on 19 March 2009). The value of the loan is £20m. The interest rate was 2.75%. The lender is able to exercise their option annually after 19 March 2012. The length of the loan is for 50.5 years;

- LOBO loan taken out with BAE Systems 2000 Pension Plan Trustees Ltd, agreement dated 14 July 2011 (and drawn down on 1 December 2011). The value of the loan is £7m. The interest rate was 4.15%. The lender is unable to exercise their option monthly until 1 December 2021. The length of the loan is for 35 years; and
- LOBO loan taken out with BAE Systems Pension Funds CIF Trustees Ltd, agreement dated 14 July 2011 (and drawn down on 1 December 2011). The value of the loan is £18m. The interest rate was 4.15%. The lender is unable to exercise their option monthly until 1 December 2021. The length of the loan is for 35 years

The terms of the LOBO loan agreements are similar with regards to the 'option' available to the banks, such that on specified dates the bank may exercise its option to increase the interest rate of the LOBO loan. Once the option has been exercised by the bank, the Council can then:

- accept the increase (and pay the new increased interest rate for the remaining LOBO loan period, or until the bank exercises its option again); or
- not accept the increase and repay the LOBO loan in full within a specified period (a minimum of two working days from receiving the notification to increase the interest rate).

### **Work carried out**

In terms of your objection, whether specifically referred to in this letter or not, we have considered the written submissions of both you and the Council, reviewed documentation provided by the Council and, where appropriate, sought legal advice.

We issued a provision view letter to you and the Council on the 26 March 2018 and have received no representations from either party.

An index to the material documents considered is at Attachment 1.

### **Approach**

Given the age of the loans, it is unsurprising that there is some contemporaneous documentation not available setting out the Council's decision making and what was taken into account. As a result, our approach has been guided by the following.

We have considered first whether there is anything to indicate that entering into a long term loan on the LOBO terms would be considered irrational or in some other way outside the Council's powers. In considering this we have considered:

- the information that is available, including all bond certificates and council financial outturn reports;
- what is known about the prevailing financial and economic circumstances, both nationally and at the Council at the time; and
- the applicable statutory and Council financial guidance.

As will be apparent from the consideration below, our decision is that there is nothing which indicates that to be the case. Our understanding is that in these circumstances, the Council is entitled to proceed on the basis that the loans were entered into lawfully despite the lack of detailed contemporaneous minuted documentation evidencing the Council's decision making process.

### **Consideration of lawfulness of LOBO loans: general**

We consider that local authorities have the power to borrow and that the permitted purposes (under which borrowing can be undertaken) are widely drawn.

Our decision, following detailed consideration and legal advice, that LOBO loans are not inherently unlawful and borrowing by a local authority under a LOBO loan is capable of being lawful provided the local authority has taken a rational approach in making a decision about any borrowing.

In terms of assessing whether the Council has taken a rational approach to deciding to enter into the LOBO loans we have considered the particular circumstances of each case. In particular any borrowing must:

- comply with relevant requirements and guidance;
- be such that a reasonable authority could undertake in the circumstances; and
- be properly authorised.

We have therefore considered what, in our view, are the relevant factors that would demonstrate whether the Council has entered into the LOBO loans rationally and therefore lawfully. These include consideration of the CIPFA Codes referred to in the 'legal background and relevant guidance' section above, whether the Council has taken into account all relevant matters, left out of account irrelevant matters and also whether the Council has acted reasonably<sup>1</sup>.

Despite the passing of time there is only one LOBO where the signed LOBO bond agreement could not be located, all documentation for others was provided by the Council.

---

<sup>1</sup> In assessing whether the actions of an authority have been unreasonable, the term 'unreasonable' has a special meaning in law. An authority acts 'unreasonably' or 'irrationally' when its actions are so unreasonable that no reasonable person could have made that decision. This is known as the 'Wednesbury unreasonableness principle' (*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948]). In that case, the court held that it could not intervene to overturn the decision of the defendant simply because the court disagreed with it. Where Parliament has given local authorities a discretion as to their decisions/actions, that discretion may be exercised in different ways according to honestly and reasonably held opinion. It is not the court's job to substitute its own opinion for that of the local authority. This principle applies equally to auditors who are fulfilling their public audit responsibilities.

Our view is that we have sufficient information available from the material documents; discussions with current Council officers (note: that within our provisional view within the work carried out section we enabled both the Council and elector to raise any points regarding this and none were raised); and formal Council / Committee reporting to enable us to form a judgement as regards the objection.

#### *Compliance with relevant requirements and guidance*

The Council's Constitution at the relevant times has set out the framework for treasury management, incorporating the Council's borrowing. With regard to this, the Constitution states that the Council has adopted the CIPFA Code of Practice for Treasury Management in the Public Services. Full Council agrees the Treasury Management policy and objectives, and is responsible for setting out how the policies and objectives will be achieved. The treasury management strategy states that it has had regard to and is in accordance with the Prudential Code as required. The Council's Cabinet is responsible for implementing and monitoring the treasury management policies, practices and performance. The Corporate Governance & Audit Committee is responsible for scrutinising the treasury management policies and practices.

Section 1 of the Local Government Finance Act 2003 (the 2003 Act) is wide ranging regarding borrowing as it refers to any purpose relevant to a local authority's functions or for the prudential management of its affairs. The papers that we have seen in our view clearly indicate that the Council's borrowing was for the purpose of financing its capital programme and, as such, we consider that the purpose is within the requirements of Section 1(b) of the 2003 Act.

The Council has asserted that all of its borrowing is currently within its approved borrowing limits and that the interest due is affordable now, and was at the time each of the loans were taken out. The Council has also noted that the starting rate and initial option interest rates for the majority of the LOBO loans were lower than Public Works Loans Board ("PWLB") 50 year rates at the date the Council entered into the loans. (We have set out our commentary on interest rates and projections for each loan below and in Attachment 2.)

The Council has also asserted that it complied and continues to comply with the Prudential Code and that the borrowing undertaken was to finance capital expenditure, as determined by reference to its Capital Financing Requirement. Further, the Council also notes that its Treasury Management Policies refer to the use of LOBO loans as approved instruments. Treasury Management Policies also include the roles and responsibilities of officers and reporting requirements and are approved by the Chief Finance Officer under the Constitution and delegated arrangements and are reported to Council (via the Corporate Governance & Audit Committee and Cabinet) for information. We are not challenged to disagree with these assertions.

We have noted that the annual Treasury Management strategy sets out the Council's consideration of what its boundaries are for borrowing. The strategy is monitored, plus

there is a mid-year review reported to Members as well as an annual out-turn report. The mid-year reviews and out-turn reports have not reported any breaches in respect of the indicators the Council has set.

*Reasonableness having regard to the circumstances*

It appears from the documents that we have seen that, when the loans were entered into, the Council's expectations were for long term interest rates to increase. We have set out our commentary on interest rates and projections below. The Council considered the LOBO loans against its 'normal' funding options i.e. PWLB interest rates.

It can be seen from some of the documentation that the Council was taking advice from its treasury advisors about the future projections for interest rates before entering into the loans, even though the evidence that still exists for this is incomplete. The Council also asserts that officers considered the Prudential Code and the Treasury Management Code requirements where applicable when discussing the borrowing proposal with treasury advisors, but also comments that some of these officers have left the Council.

The Council has also referred to the annual reporting that takes place with regard to the Treasury Management Code and the Prudential Code. All of the Council's reporting has stated that the Council has had regard to relevant matters/issues and that there have been no breaches reported.

Five of the nineteen LOBO loans taken out included a discounted starting rate of the loan which offered a reduction from the initial interest rate for a period of between 3 and 6.8 years. Thus we consider that, in the short to medium term, the Council was able to plan clearly what the revenue implications would be. After the initial period there is a risk that the Council would have faced a potentially unforeseen increase in interest rates and/or the need to borrow from PWLB at a rate that (at the time the loan was taken out) would be unknown, but would have been an option as the Council would – on the basis of the information provided – remain within its Prudential Code limits (as reported within the treasury management reports). The interest cost of the LOBO loans is covered within the Council's medium term financial plan. In four of the nineteen cases, the PWLB 50 year interest rate at the time the LOBO loan agreement was signed was lower than the starting rate of the Council's LOBO loan (the maximum difference was 0.4% lowering to 0.05) however all of these LOBO loans were taken out for a period of 70 years and therefore there was no PWLB option available over this term, hence it is inappropriate to compare the interest rates to those on offer through a 50 year PWLB.

There is a risk that the lender might request a rate increase on the loan, although the Council considered that the lender was unlikely to increase the interest rate to trigger the borrower option, with Bank of England interest rates now remaining very low. If a rate increase were to be requested, for example, due to increasing long term interest rates, the Council asserts that it would expect to fund the loan repayment (without penalty) by seeking alternative funding (probably through the PWLB).

The LOBO loan agreements are clear in terms of interest rates and dates on which the lender can exercise its option to change the applicable interest rate.

We have also noted that the Council did not expect to have to consider any breakage costs as it did not foresee any circumstances where a LOBO loan would need to be ended outside of the lender exercising its option to increase interest rates. This appears reasonable and in line with similar activity seen within the sector. From discussions with the Council they expected that should a lender exercise their option to increase interest rates then the Council would meet any repayment from internal resources or applying for a loan on terms deemed the best available and ensuring an appropriate fit with the Council's needs/interest rate projections and yield curve, hence appropriately managing any associated risk.

There is a further consideration here with reference to borrowing from the PWLB. Any decision to repay a PWLB loan early is not a 'free' decision. If a local authority were to decide to repay a PWLB loan early there is a formula to calculate whether any premium or discount is payable. Thus any local authority would only decide to repay a PWLB loan early where it has decided it was necessary for the appropriate management of its loan portfolio e.g. by reference to when future loans reach their maturity and, for example, ensuring that a disproportionate element do not mature in the same year.

We also note that the expectation of the TM Code (and associated CIPFA/Government commentary) is that local authorities borrow in relation to needs (either current needs or to meet future plans/strategies); or to ensure that the local authority's loans portfolio remains balanced and in accordance with the TM Code and prudential indicators. Thus there is an expectation that local authorities would borrow to either meet short-term cash flow needs (say overnight up to six months) or to match to capital projects/asset lives (generally these would be of a significant value and expected to be for the long term). We reviewed this and confirmed its lawfulness.

Therefore we would not normally expect a council to take out medium term loans (say 2 to 10 years) with no explicit reference/thought as to the projects/assets being considered or the timeline of its existing loan portfolio and/or when loan repayments/replacements would be needed. In other words local authorities would not normally be expected to be borrowing for periods of time that do not relate to their needs and not in compliance with the TM Code and other relevant requirements, including the Council's own Treasury Management Strategy.

The Council's available papers do not precisely detail the expenditure being funded. However, the majority of the Council's fixed asset additions were funded within the financial years when the LOBO loans were taken out and the Council state that the expenditure is funding these assets of a very long term nature. This is similar activity to what has been seen within the sector.

The Council's key considerations, from the information available, seem to have been the interest costs; and the projected changes in interest rates (both immediate regarding potential discount; and long term PWLB rates and expected increases in medium term). These considerations, in our view, seem to be relevant to management

of borrowing and prudential financial management decisions to be made by the Council.

From the information available, there is nothing to suggest that well-informed choices were not made on the basis of expert advice sought and within the Council's prescribed limits.

*Authorised appropriately*

Eight of the nineteen LOBO loans were approved by the Council's Deputy Director of Finance in post at that point in time. A further six of the nineteen LOBO loans were approved by the Head of Strategic Finance. Four of the nineteen LOBO loans were approved by a Senior Finance Manager. One of the nineteen LOBO loans were approved by the Section 151 Officer. All of which are in line with the relevant policies in place at the time.

*Interest rates and contemporaneous expectations*

We have also considered the decisions made in the context of the interest rates at the time and also what the future expectations were at the time the LOBO loans were entered into. The details are contained in Attachment 2. In summary:

- For the nineteen LOBO loans there is evidence of the PWLB interest rates available to local authorities, we have based our assessments on the New Loan Maturity 50 year interest rate.
- In fourteen of the nineteen cases, the PWLB 50 year interest rate at the time the LOBO loan agreement was signed is higher than the starting rate of the Council's LOBO loan.
- In four of the nineteen cases, the PWLB 50 year interest rate at the time the LOBO loan agreement was signed is lower than the starting rate of the Council's LOBO loan.
- In one of the nineteen cases, the PWLB 50 year interest rate at the time the LOBO loan agreement was signed is the same as the starting rate of the Council's LOBO loan.
- The span of time over which the Council took out the LOBO loans is lengthy (December 2003 to December 2011) and hence any assessment of the projection of interest rates by the Bank of England shows a range of increases and decreases over that period, as viewed by the movements in the Bank of England Base Rates. Rates fluctuated from 5.75% in 2007 to 0.5% in 2009. This evidence indicates that the unprecedented reduction in interest rates and subsequent sustained period of low interest rates from late 2007 was not predicted.

*Summary of considerations*

Having completed our consideration of the information available in relation to the relevant factors (within the areas outlined above) and the Council's approach, actions

and decision making, we have not identified any fundamental departures or significant issues that would, in our view, impact on the lawfulness of the LOBO loans. It is our view, based on the information available, that the Council has taken a rational approach in deciding to enter into the LOBO loans referred to in this objection.

As we have noted, given the passage of time the retained documentation is relatively comprehensive given there is only one LOBO signed bond certificate that cannot be located. The Council has also reported annually its Treasury Management Strategy; Prudential Indicators; and Treasury Management Annual Report which set out compliance with the Prudential Code and Guidance Notes and TM Code and Guidance Notes in the subsequent financial years.

There is nothing to indicate that the approach taken by Council officers and the formal reporting to Members was inconsistent with what we would expect to see for other lawful local authorities when making its Treasury Management decisions.

In terms of interest rates, we have noted that there was no expectation that interest rates would stay at such a low rate for such a long time, as it later transpired. We have also noted that local authorities should not be borrowing to 'play the markets' as a primary aim. There is nothing to indicate that this was the Council's aim. Instead the indications are that its borrowing was appropriately related to the local authority's position (either as part of the funding needed to meet its capital programme or to ensure its loan portfolio remains balanced as to when loans will reach maturity).

We have not identified any fundamental departures or significant issues from our analysis of the particular circumstances of the LOBOs the Council has entered into.

#### **Consideration of other observations in July 2017 e-mail**

Your e-mail refers to several matters, which we do not consider to be formally part of our consideration as to the lawfulness of the Council's LOBO loans, but we have included comments on them below for completeness.

■ *Sheffield Council has 47% of its debt portfolio in callable LOBO loans*

As at 31 March 2017, Sheffield Council had £761.339m of borrowing disclosed in the accounts with a fair value of £1.079bn. We have reviewed the proportion of its borrowing that is in the form of LOBOs and confirm that as at the year-end 31 March 2017 the Council had 26.3% of their loans in LOBOs (excluding PFI arrangements) and 16.8% of loans in LOBOs when including PFI arrangements.

The Council also considers that the costs of repaying any of the LOBO loans (to rebalance its external borrowing portfolio) without a lender exercising their option or imposing breakage costs would be prohibitive, although this has not been formally set out in the Council's Treasury Management Strategy or TMPs. Although the contracts with the various banks do not identify breakage costs it would be highly unlikely to represent value for money for the Council to attempt to extinguish the LOBO loans without the lender recouping foregone interest through breakage costs.



The Council is not required to hold cash balances to meet the LOBO loan call options (annual or bi-annual). At the time the LOBO loans were taken out, the Council agreed varying lengths of time before the lender could consider exercising their option (see details of the Council's LOBO loans set out earlier).

The limited emails and associated reports available relating to the original decisions do not explicitly consider the Council's plans if a lender were to exercise their option (the incompleteness of records is highlighted earlier). Our understanding is that the Council's response would have been to act within the extant approved Treasury Management Strategy and supporting Treasury Management Practices. Also, the Council has noted (in discussions with our staff) that it would have had (and still has) access to PWLB borrowing to replace the LOBO loans if it became prudent to do so i.e. if a lender was to exercise its option the Council would consider the options available and make what it considered to be a prudent decision (note: that within our provisional view within the work carried out section we enabled both the Council and elector to raise any points regarding this and none were raised).

Our understanding from the Council currently is that should a lender exercise their option the Council would consider the position with regards to the Treasury Management Strategy including interest rates offered by the PWLB for various loan lengths and make a decision based on the Council's position at the time. The most likely options would be to either replace the loans via the PWLB (but not necessarily for the same length of time as the LOBO loan) or to extinguish the loans from cash resources available.

The Treasury Management Strategy is agreed annually and sets out the Council's plans and considerations in respect of cash management; loans and investments. The current Treasury Management Strategy is available publicly on the Council's website (as are those from previous years).

- *Butlers received undeclared kickbacks from brokers including ICAP and Tullet Prebon when the Council borrowed from the banks*

As you note in your e-mail, these alleged transactions were not known to the Council and there is insufficient evidence to indicate that anything unlawful with regard to this authority took place, as such this does not warrant further investigation.

If you have concerns in this area we believe the matter should be taken up with the appropriate financial regulators of the entities involved.

### **Right of appeal**

You have a right to appeal our decision not to apply for a declaration under section 28(3) of the Local Audit & Accountability Act 2014. Should you wish to do so, you must issue your appeal to the High Court within a period of 21 days beginning with the day after you receive this statement of written reasons.

Should you wish to appeal this decision, we strongly recommend that you seek legal advice.

We have copied this decision to the Council.

We remind you that Schedule 11 of the Local Audit and Accountability Act 2014 continues to apply. Information relating to this matter is provided solely for the purposes of our audit and for no other purpose. It should not be disclosed to a third party, other than a legal representative, without our consent, or otherwise as permitted by that Schedule 11.

Yours sincerely



Tim Cutler  
Partner

For and on behalf of KPMG LLP

Attachment 1

Material evidence to support our decision:

- 1 Annual Review on Treasury Management Strategy 2004/05, 2005/06, 2006/07, 2007/08, 2008/09, 2009/10, 2010/11 and 2011/12
- 2 Public Works Loan Board interest rates as recorded at <https://www.dmo.gov.uk/responsibilities/local-authority-lending-pwlb/interest-rates/nf-rates/>
- 3 Bank of England base rate as recorded at <https://www.bankofengland.co.uk/-/media/boe/files/monetary-policy/baserate.xls?la=en&hash=EEB8729ABFFF4B947B85C328340AE5155A99AD0F>
- 4 Sheffield Council Constitution (Financial Procedure Rules) as recorded at <http://democracy.sheffield.gov.uk/documents/s28668/Part4RulesofProcedurev154.pdf>



## **Attachment 2**

### **Summary of interest rates and projections at the time the LOBO loans were agreed/ taken out**

We have considered the information and projections available at the time the Council was making its final decisions about the LOBO loans. The information we have used has been drawn from the Bank of England (Monetary Policy Committee (MPC) minutes and quarterly Inflation Reports) and the PWLB historic interest rates for maturity fixed interest loans. All of the information can be obtained from the respective websites of the organisations.

KPMG LLP, a UK limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. Registered in England No OC301540 Registered office: 15 Canada Square, London, E14 5GL For full details of our professional regulation please refer to 'Regulatory Information' under 'About/About KPMG' at [www.kpmg.com/uk](http://www.kpmg.com/uk) **Document Classification - KPMG Confidential**



## Audit and Standards Committee Report

---

**Report of:** Director of Legal and Governance

---

**Date:** 13 June 2019

---

**Subject:** Work Programme

---

**Author of Report:** Abby Brownsword, Democratic Services  
(Tel - 0114 273 5033)

---

**Summary:**

The report provides details of an outline work programme for the Committee.

---

**Recommendations:**

That the Committee:-

(a) considers the Work Programme and identifies any further items for inclusion;  
and

(b) approves the work programme.

---

**Background Papers:** None

---

**Category of Report:** OPEN

---

## Statutory and Council Policy Checklist

<b>Financial Implications</b>
NO Cleared by:
<b>Legal Implications</b>
NO Cleared by:
<b>Equality of Opportunity Implications</b>
NO Cleared by:
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO:
<b>Environmental and Sustainability implications</b>
NO
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
NO
<b>Area(s) affected</b>
NONE
<b>Is the item a matter which is reserved for approval by the City Council?</b>
NO
<b>Press release</b>
NO

## **WORK PROGRAMME**

### **1. Purpose of Report**

1.1 To consider an outline work programme for the Committee.

### **2. Work Programme**

2.1 It is intended that there will be at least five meetings of the Committee during the year with three additional meetings arranged if required. The work programme includes some items which are dealt with at certain times of the year to meet statutory deadlines, such as the Annual Governance Report and Statement of Accounts, and other items requested by the Committee. It also includes standards related matters, including an annual review of the Members' Code of Conduct and Complaints Procedure and an annual report on the complaints received.

2.2 An outline programme is attached and Members are asked to identify any further items for inclusion.

2.3 There is one meeting remaining in the current programme, officers are currently drafting the new work programme, which will be included at the next meeting.

### **3. Recommendation**

3.1 That the Committee:-

(a) considers the Work Programme and identifies any further items for inclusion;  
and

(b) approves the work programme.

**Gillian Duckworth  
Director of Legal and Governance**

<b>Date</b>	<b>Item</b>	<b>Author</b>
25 July 2019	Report to Those Charged with Governance (ISA 260)	External Auditor
	Statement of Accounts	Dave Phillips (Head of Strategic Finance)
	Annual Governance Statement	Gillian Duckworth (Director of Legal and Governance)
	Information Management Annual Report	Mark Jones (Senior Information Management Officer)
	Progress on High Opinion Audit Reports	Kayleigh Inman (Senior Finance Manager)
	Standards Committee Annual Report	Gillian Duckworth (Director of Legal and Governance)
	Strategic Risk Management	Helen Molteno (Corporate Risk Manager)
	Work Programme	Gillian Duckworth (Director of Legal and Governance)