

**ETHICAL STANDARDS IN LOCAL GOVERNMENT
ROUNDTABLE OF MONITORING OFFICERS, CLERKS, AND INDEPENDENT PERSONS
WEDNESDAY 18 APRIL 2018 - BIRMINGHAM**

SUMMARY NOTE OF DISCUSSION

Codes of conduct

- There is a high level of variation in local authority codes: both in length and in provisions. Codes range from those which simply list the Nolan Principles, to long and complex documents.
- This variation creates complexity: for example, public living on the borders don't understand differences between neighbouring counties; and dual- or triple-hatted councillors are subject to multiple regimes. This confusion is particularly acute in respect of specific requirements such as declarations of interests. Participants generally agreed that the public expects the same ethical standards at all tiers of local government.
- A successful code needs to aid public understanding of standards, as well as set expectations for councillors.
- One participant suggested that around half of parish councils used a template a code of conduct drafted by NALC.
- Members of the public can find it difficult to understand provisions in codes sufficient to identify which under which one they should lodge their complaint.
- Shorter codes based on the Nolan Principles alone are the hardest to administer and can lead to disputes or more complaints due to the breadth of interpretations open.
- The availability of case law has meant some councils have retained codes adopted under the previous statutory regime so that they can be more easily interpreted.
- Some authorities do not revise their codes regularly or in light of experience.

Declaration of interests

- The 'disclosable pecuniary interests' introduced in the Localism Act 2011 are a new category of interest in local government law and are difficult to deal with. Some councils use three, overlapping, categories of conflicts (personal, prejudicial, and disclosable pecuniary).
- In small communities, some level of overlapping interests by an individual is inevitable.

- The definition of disclosable pecuniary interests under the Localism Act 2011 is narrower than would be the public's expectation. Councils find that they need to supplement the statutory requirements with their own code.
- The criminal offences relating to pecuniary interests are complex and there is little prospect of follow-up.
- Putting an interest on a register and declaring it at a meeting are both needed for full transparency, but the current regime does not require a declaration as long as the interest is registered.

Gifts and Hospitality

- Most councils include a gifts and hospitality register in their code of conduct, however, councils do not tend to receive complaints about a lack of declaration of gifts or hospitality. Most participants did not consider this a significant problem.
- It is difficult for local authorities officers to advise councillors on registering gifts and hospitality due to a number of roles they might hold, and the capacity in which they are offered gifts and hospitality.

Sanctions

- Participants highlighted an inconsistency with an approach of being able to set a code but not enforce it. Participants strongly felt that a lack of stronger sanctions undermines the system and erodes public confidence.
- Being censured by a council can, depending on the individual and the situation, be seen as a 'badge of honour'.
- Introducing the ability to suspend councillors may require an appeal stage to ensure it is Article 6 ECHR compliant.
- Councils have been creative with the use of sanctions under their existing competency: for example, by withdrawing facilities, including IT, or putting in place bans from council premises.
- Political consensus assists with making disciplinary findings against members in some cases where conduct is very serious. The interaction between political parties and the sanctions process is complex.
- Investigations are currently disproportionately expensive to sanctions available.
- Parish councils are not organised (politically or otherwise) or structured in the same way as principal authorities and, in many cases, are not sufficiently resourced to avail themselves of effective sanctions, even if they were aware that such sanctions were possible.
- Most councillors go into local government to make a difference, conduct themselves well, and would find any sanction very sobering. More sanctions are needed for the small minority of councillors who show poor conduct.

Independent Person (IP) role

- The Independent Person (IP) is a wholly advisory role.
- Their effectiveness heavily depends on the culture of the authority and their relationship with the Monitoring Officer. With the right relationship, the IP can be an effective position.
- Subsequent legislation has found other roles for IPs, for example, on panels for Chief Officer disciplinary hearings and Combined Authority audit committees.

- Some participants suggested strengthening and clarifying the IP role. Others expressed a concern that IPs can lose their independent perspective after serving for a long period and should therefore have a limited term of appointment.

Pressures on Monitoring Officers

- Participants felt that the Monitoring Officer role was difficult. Monitoring Officers need carefully to navigate relationships with councillors - they may have to deal with complaints about them whilst at same time need to build a relationship with them.
- The role is particularly difficult in small authorities as they cannot share the workload among a team.
- The role is more likely to be successful where there is a collaborative, and not adversarial, culture between members and officers.
- Some complaints can become ethical issues due to the escalating nature of the complaint; equally, weak governance can create situations where ethical standards complaints are more likely.
- There is a small number of parish councils that create a disproportionate standards caseload, partly because there are fewer external bodies and processes to oversee town and parish councils.
- A number of participants reported that many clerks would rather walk away from their role than use the employment or code complaints avenues to resolve behaviour directed towards them in their role.

Culture and improvement

- Participants spoke of the need to convince members that it is not in anyone's interest to become involved in formal complaints and sanctions.
- Any standards regime needs to be robust enough to deal with councillors who do not 'buy in' to it.
- Need to improve public understanding of ethical standards expected of councillors and that standards are central to a council's activity.
- Standards committees should not stand alone; ethical standards should be incorporated into the overall governance of a council.
- Equally, standards should not be seen as the exclusive responsibility of the Monitoring Officer, but the responsibility of all statutory officers. An ethical culture is strongest where senior officers work together.
- Many councils do not publish data about the type of complaints investigated and categories of outcomes, which does not meet expectations about transparency.
- Councillors may take up their role without knowing what standards are expected and their responsibilities: early induction is important, but takes resources.

Role of central government

- Participants contrasted the current approach in England to that in the devolved administrations in the UK, describing the Standards Commission in Scotland and Public Service Ombudsman for Wales in particular as 'cheerleader regulators'.
- Only central government could give councils legal power to levy additional sanctions.
- Besides this, participants suggested that many changes could take place at the local level, and that it was important to retain an element of local flexibility.
- Some participants suggested that steps could be taken by central government to enforce transparency data relating to standards issues and complaints.

- Participants generally agreed that it is the duty of councillors to set standards, and that local councils could themselves put in place clearer and fairer codes that more clearly set out expectations for complainants and councillors.