

Committee: Standards Committee	Date: 24 January 2020
Subject: Review of Local Government Ethical Standards by the Committee on Standards in Public Life – Follow Up Actions	Public
Report of: Comptroller & City Solicitor	For Decision
Report author: Edward Wood, Chief Solicitor	

Summary

The Committee on Standards in Public Life advises the Prime Minister on ethical standards across the whole of public life in England. They undertook a detailed review of the arrangements in place to promote and maintain high standards of conduct by public office holders in local government during 2018. The review was considered at your previous meeting on 3 May 2019 and Members indicated a number of recommendations that they would like to look at in more detail in a follow up report.

Recommendations:

Members are asked to consider the individual recommendations set out in the body of this report.

Main Report

Background

1. The Committee on Standards in Public Life (“CSPL”) advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on issues relating to the standards of conduct of all public office holders and promotes the seven principles of public life.

2. The CSPL undertook to review the effectiveness of the arrangements in the Localism Act 2011 once they had bedded in. They therefore carried out a detailed review during 2018 seeking evidence from all interested stakeholders and published their recommendations on 30 January 2019. A copy of the full review was brought to your previous meeting on 3 May 2019.

3. The CSPL made 26 recommendations in total. Many of these recommendations would require new primary or secondary legislation to implement. At the time of writing, the Government's response to the report, setting out whether or not it accepts some or all of the recommendations, is still awaited. However, it was noted at your previous meeting that some of the recommendations could be adopted by the City Corporation at a local level, without waiting for national action.
4. The CSPL also made 15 best practice recommendations as part of the review, which it considered that any local authority could and should implement under the current arrangements. The CSPL intend to review the implementation of these recommendations in 2020.
5. At your previous meeting, Members were asked to review how well the City Corporation's current arrangements reflected these two sets of recommendations, and consider any changes to existing processes that may be desirable and could be implemented immediately.
6. Where the City Corporation had the power to act unilaterally, existing arrangements were in most cases considered to be in line, or broadly in line, with the recommendations of the CSPL. However, Members indicated a number of recommendations that they wanted to receive updates on, or to consider in more detail in a follow up report, which are set out below.

CSPL 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.

7. At your previous meeting it was noted that the implementation of this recommendation was a matter for the Local Government Association ("LGA"). However, officers undertook to report back to Committee once the views of the LGA were known. It has now been announced that the LGA have appointed consultants to draw up a new national model Code of Conduct to be launched at their July conference. There will be a formal consultation with all councils on a proposed draft in the Spring following initial consultations with representative bodies.

Recommendation: To note the latest position.

CSPL 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.

8. The CSPL cite existing concerns in relation to the intimidation of councillors. They point out that one aspect in which this is distinct from the intimidation of MPs and Parliamentary candidates is that councillors' home addresses are often published on a council website or in 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. The fact that individuals' home addresses are public can also make any threats made through electronic means, such as social media, more distressing.
9. As previously advised, any change to the legislative regime would require government action. However, at the previous meeting, Members indicated that they would like to consider the requirements around publishing a home address in the register of interests in more detail, due to security concerns arising from the current arrangements.
10. Under section 29 of the Localism Act 2011 the Monitoring Officer must establish and maintain a register of disclosable pecuniary interests and must secure that the register is available for inspection and published on the authority's website.
11. The categories of disclosable pecuniary interest listed in the 2012 Regulations include any beneficial interest in land which is within the authority's area, any licence to occupy land in the authority's area for a month or longer, and any corporate tenancy. Such an interest is generally described by reference to the postal address of the property, although the 2012 Regulations don't specifically state what property information must be provided. However, in many cases it would be impossible to determine whether an interest in land was affected by a particular decision without this level of detail.
12. The CSPL reference the fact that there is already provision for sensitive interests in section 32 of the Localism Act 2011. This permits the non-disclosure of details (e.g. a home address) in the public version of the register where the Member and the Monitoring Officer agree that their disclosure could lead to violence or intimidation. The CSPL have previously recommended that Monitoring Officers draw councillors' attention to these provisions, and a communication on this subject could certainly be sent to all Members if there is felt to be a lack of awareness.
13. If your Committee wanted to be more proactive, the CSPL point out that some authorities, such as the City of Westminster, already have a blanket policy that home addresses will be recorded in the register of

interests but omitted from the published version, although this may be on the cusp of what is permissible under the sensitive interest provisions.

14. It might be worth noting a couple of points of difference between the City Corporation and other local authorities. In making their recommendation the CSPL draw a parallel with the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. As previously noted, although that requirement has now been removed for other local authorities, it is still an electoral requirement in the City, and would require a separate legislative change to amend.
15. It is also worth pointing out of course that the City Corporation is unique in that the majority of Members are not resident within the local authority area and therefore are not required to register their home address.

Recommendation: To decide what if any action to take in relation to the disclosure of home addresses in the public version of the register of interests.

CSPL 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.

16. The CSPL point out that, at the moment, Codes of Conduct can only apply to local councillors when they are acting in their capacity as a councillor. This is because section 27(2) of the Localism Act 2011 currently refers to the conduct that is expected of Members and Co-opted Members of the authority *when they are acting in that capacity*. This means that in practice a councillor cannot breach a Code of Conduct by, or be sanctioned for, objectionable behaviour in a private context.
17. Their 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 CSPL 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.
18. At the previous meeting, Members requested that this recommendation and the potential issues around it should feature in a further report. It is worth reiterating though that any amendment to the legislation would require government action, so no change to the status quo is imminent. Clearly if the statutory regime is amended in due course then instances

of poor behaviour by Members on social media will more frequently come within the scope of the Code of Conduct, even if a post or tweet is not directly related to their official work. However, it is proposed that the presumption should be capable of rebuttal and the precise details of how this would work are not yet known. If this recommendation is implemented then Members will be fully updated on the new rules at that stage.

19. At the previous meeting Members specifically asked that the complaint relating to social media use that was considered by the Hearing Sub (Standards) Committee in August 2018 should be referenced as part of the discussion. In that case, the Member caused offence through a tweet from his personal Twitter account. Although the tweet itself was unrelated to his work as a Member, there were references at the top of his Twitter account to his position as a Common Councilman, his Chairmanship of one of the City Corporation's Boards, and another office that he held by virtue of being a Common Councilman. The Hearing Sub considered that he was clearly associating himself with those roles and was not therefore seeking to differentiate between his personal actions and his actions as an elected Member. In the circumstances he could not divorce his private capacity from his public one and therefore the Members' Code of Conduct was engaged.
20. It can be seen therefore that even under the current arrangements a Member can be deemed to be acting in an official capacity in circumstances where a post or tweet is unrelated to their work as an elected representative. There is currently nothing in the guidance to Members on the Code of Conduct about social media use and your Committee may wish to consider inserting some suitable wording.

Recommendation: To note the position and to consider whether advice on the use of social media should be included in the current guidance to Members.

CSPL 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.

21. The CSPL note that the 2007 model Code of Conduct 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". The Localism Act 2011 does not include this qualification. As a result, some cases where 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.

22. At your previous meeting, Members were of the view that this recommendation was less controversial but again requested that the potential issues feature in a further report. As above, it is worth reiterating that any amendment to the legislation would require government action, so no change to the status quo is imminent. However it seems unobjectionable that a Member who is seeking to exert influence by virtue of their office should be subject to the Code, whether or not they are actually acting in that capacity. To the extent that a Member might give the impression that they are acting in an official capacity on social media there is some overlap with the previous recommendation. As before, if this recommendation is implemented then Members will be fully updated on the new rules at that stage.

Recommendation: To note the position.

CSPL 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.

23. As the CSPL acknowledge, there is currently 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. Six out of the twenty Codes sampled by the CSPL had no provision for this, although most required councillors to register gifts and hospitality in some way. The value threshold was variously set at £25, £50, or £100.
24. The CSPL are concerned about the use of high thresholds, although the example that they give is that 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. They also point out that £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.
25. At the previous meeting it was noted that the City Corporation currently requires any gift or hospitality with a value of £100 or more, or totalling £200 or more over a year from a single source, to be registered. Whilst this is higher than the CSPL's recommended threshold, it does already

address the issue of multiple gifts and instances of hospitality. Members are invited to consider whether the current threshold in the Code of Conduct – which was the subject of much discussion when it was first agreed – is still the most appropriate for local circumstances, or whether it should be lowered in line with the CSPL recommendation. In the alternative, Members may wish to wait for the publication of the updated model Code of Conduct by the LGA, which will no doubt consider gifts and hospitality as well as all other relevant matters raised in the CSPL review.

Recommendation: To consider whether to make a recommendation to the Court of Common Council to reduce the minimum threshold for registering gifts and hospitality under the Code of Conduct to £50 and £100 (cumulative).

CSPL 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.

26. The CSPL make the point that 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. They therefore recommend a fixed term of two years, with the option of a single re-appointment. They also recommend that the terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.
27. Your Committee has already agreed in principle to introduce a fixed term of office for the City Corporation's Independent Persons, without waiting for any legislative change. As stated in the CSPL report, this has perceived benefits for both the Independent Persons and the City Corporation. However, a view was expressed at your previous meeting that a fixed term of two years, renewable once, was potentially too short, and your Committee requested a further report outlining the pros and cons of introducing fixed terms of different lengths.
28. If your Committee's main motivation for introducing a fixed term of office for the Independent Persons is to guarantee their continued objectivity, then the CSPL recommendation should be adopted in full. Opting for a shorter fixed term of two years, renewable once, would ensure a regular turnover of Independent Persons, with a constantly changing perspective and no opportunity for any bias, or apparent bias, towards the City Corporation or any of its Members to emerge.

29. The flipside to this is that, notwithstanding any staggering of appointments, a shorter fixed term could lead to a lack of continuity that might prove disruptive to the work of your Committee. It has not always been easy to recruit Independent Persons with the necessary skills and experience to carry out the role effectively. The City Corporation is also a unique organisation and it inevitably takes some time for new Independent Persons to learn about the full range of functions and services provided and to fully familiarise themselves with our procedures.
30. For comparison, both Members and Co-opted Members of your Committee are currently able to serve for a maximum of eight years, and this is normally achieved through a four year term, renewable once. Introducing equivalent arrangements for the City Corporation's Independent Persons would provide a level of consistency, whilst still moving away from the undesirable situation of having open-ended appointments. However, Members may feel that this does not give sufficient emphasis to the need for independence in this particular role.
31. A possible compromise option would be a three year term, renewable once. However, if the Government were to subsequently adopt the CSPL recommendation in full, then opting for any other option now would lead to further disruption in the future, as the terms of office of the Independent Persons would have to be adjusted again at that stage.
32. Whichever option is adopted, your Committee will need to give some thought to transitional provisions and the timetable for future appointments. As Members will know, there is currently one vacancy for an Independent Person. The City Corporation's two remaining Independent Persons were appointed by the Court of Common Council on 21 June 2012. Members will therefore need to consider whether both of these existing appointments should come to an end by June 2020, in order to avoid any terms exceeding eight years.
33. In the alternative, the retirements could be staggered, with one each in 2020 and 2021, or 2021 and 2022, in order to spread the recruitment and assist with continuity. In this scenario, your Committee would no doubt wish to consult the current Independent Persons regarding the order and timing of their retirement. Such an arrangement would also ensure that the appointment of new Independent Persons was appropriately staggered going forwards, although this could equally be achieved through initial terms of differing lengths.
34. The Establishment Committee will also need to consider any changes, as the Independent Persons fulfil functions that come under that Committee as well. A recommendation will then need to go to the Court of Common Council for approval, as the appointing body.

Recommendation: To decide on an appropriate fixed term for the Independent Persons, the timetable for new appointments and any transitional provisions, and to make a recommendation to the Establishment Committee and the Court of Common Council on this basis.

CSPL 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.

35. This recommendation was the subject of a separate report to your Committee on 4 October 2019, in order to expedite its implementation. The proposal to indemnify and/or insure the Independent Persons in the exercise of their statutory functions was subsequently also approved by the Finance Committee, Establishment Committee and the Court of Common Council, and these arrangements are now in place.

Recommendation: To note the position.

CSPL 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.

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

37. Most of the information recommended for publication is already voluntarily provided in your Committee's annual report, including anonymised details of the number of complaints received, the outcome of those complaints and any sanctions applied. At the previous meeting your Committee agreed in principle that information about the general nature of the complaints received should also be provided in future annual reports, without waiting for any changes to the Local Transparency Code.

38. For the avoidance of doubt, it is not proposed to name the Members concerned in the annual report, nor to go into detail about individual complaints. Members will recall that the Court of Common Council has previously indicated that the annual report is not the appropriate medium

to air such matters, and decisions on the publication of information relating to individual complaints is a matter for the Hearing or Appeal Sub-Committee on a case by case basis (see additional comments on Best Practice Recommendation 9).

39. The proposal is simply to give an indication of the types of complaints received, in order to paint a more accurate picture of the matters coming before the Standards Committee. To illustrate the proposed changes to the format, the relevant text from the most recent annual report is included below:

During 2018/19, four alleged breaches of the Members' Code of Conduct have been considered. The Assessments Sub (Standards) Committee has considered the details of these alleged breaches and decided that no further action should be taken in respect of three of these. In the remaining case, the Sub Committee decided that the alleged breach should be the subject of an investigation and a hearing, which, at the time of reporting, is scheduled to take place in June 2019.

40. An alternative option for presenting the information in a tabular format could be:

Matter No.	Alleged breaches of the Code	Outcome/Status
2018/19-01	<i>Failing to act with integrity; failing to comply with the Corporation's policies and procedures; failing to treat officers with mutual respect; bullying and intimidation; bringing the office or authority into disrepute.</i>	<i>Hearing pending</i>
2018/19-02	<i>Failing to treat others with respect; bringing the office or authority into disrepute.</i>	<i>No further action at assessment stage</i>
2018/19-03	<i>Failing to treat colleagues with mutual respect; bullying and intimidation; bringing the office or authority into disrepute.</i>	<i>No further action at assessment stage</i>
2018/19-04	<i>Failing to treat colleagues with mutual respect; bullying and intimidation.</i>	<i>No further action at assessment stage</i>

Recommendation: To make changes to the format of the annual report to include information about the general nature of the complaints received.

CSPL Best Practice Recommendation 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.

41. The evidence received by the CSPL suggests that most allegations of Code breaches relate to bullying and harassment. At the same time, their sampling found that most Codes of Conduct do not cover this behaviour effectively. Whilst most Codes had a specific prohibition on bullying and intimidation, only two out of twenty Codes sampled included specific behaviours that would amount to bullying, and five only had a broad provision such as 'showing respect for others'.
42. Members will know that when the current version of the City Corporation's Code was adopted in March 2018, the pre-existing reference to "Always treating people with respect, including the organisations and constituents that you engage with and those that you work alongside" was supplemented by the additional explicit wording "...and not bullying, harassing (including sexually harassing), intimidating or attempting to intimidate any person."
43. However, the Code does not currently include a definition of bullying and harassment nor give examples of the sort of behaviour that would be caught. At the previous meeting your Committee were of the view that a suitable form of wording should be adopted.
44. The CSPL quote the Newcastle City Council Code as a good example, which in turn seems to draw its definition of bullying from the Advisory, Conciliation and Arbitration Service ("ACAS"), and its definition of harassment from the Equality Act 2010. The text reads:

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.)
45. The CSPL also include examples from ACAS of bullying behaviour as follows:
 - *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*

46. There is much to commend this wording, which could be inserted in its entirety into the current Code of Conduct. As the Code must be approved by the Court of Common Council, a recommendation would have to be made to that body. In the alternative, Members may wish to wait for the publication of the updated model Code by the LGA, which will no doubt consider bullying and harassment as well as all other relevant matters raised in the CSPL review.

Recommendation: To consider whether to include additional clarification on bullying and harassment in the Code of Conduct now, or to wait until the publication of the updated model Code by the LGA.

CSPL Best Practice Recommendation 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.

47. The CSPL state that drawing up a Code of Conduct 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. They

also cite evidence that many authorities have not yet revisited their Codes in the light of learning experiences.

48. At your previous meeting it was noted that, whilst it has not been the practice to review the City Corporation's Code of Conduct on an annual basis, it has been reviewed from time to time, most recently in March 2018. It is likely that the Code will be updated again as a result of this report, or following the publication of the LGA's new model Code of Conduct. However, there was support at your previous meeting for ensuring that regular reviews of the Code were built into the Committee timetable. Members were of the view that an annual review was too frequent but requested further proposals as to how the Code might be reviewed more regularly, on a suitable timescale – possibly every three years – going forward.
49. Whilst a detailed annual review of the Code of Conduct may be unnecessary, it might be prudent to have a 'light touch' annual review of the Code as a standing item in your Committee's work cycle – in much the same way as the Protocol on Member/Officer Relations is presented every year. If Members wished, the Code could then go on to the Court for approval at the start of every municipal year. This would be an opportunity to flag up any minor changes to the Code arising from the events of the preceding year.
50. A more in-depth review of the Code of Conduct could then take place every three years, which could also be built into your Committee's work cycle. Given the current review of the City Corporation's standards arrangements arising from the CSPL report, the next in-depth review could be scheduled for 2023. It has not been previous practice to carry out a public consultation on the contents of the Code, but such a consultation exercise could be incorporated within the in-depth review if Members consider this to be appropriate. Likewise, neighbouring boroughs could also be included in any such consultation process if desired, although the LGA's new national model Code of Conduct could lead to greater homogeneity in any event.

Recommendation: To agree an appropriate timetable for regular reviews of the Code of Conduct.

CSPL Best Practice Recommendation 6

Councils should publish a clear and straightforward public interest test against which allegations are filtered.

51. The CSPL explain that 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. At the City Corporation this filtering process is carried out by Members, but the need for formal assessment criteria remains the same.

52. The CSPL highlight that 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:

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?*

53. At the previous meeting your Committee noted that the City Corporation's Complaints Procedure already sets out a series of tests and assessment criteria to be applied at the initial assessment stage, which address a number of the considerations contemplated by the CSPL under the heading of a public interest test. However it was also noted that the relevant provisions are not identical, and Members therefore requested an opportunity to review the existing wording. For reference, the Complaints Procedure currently states that:

ASSESSMENT OF COMPLAINTS

The Assessment Sub-Committee should firstly satisfy itself that the complaint meets the following tests:-

- (i) It is a complaint against one or more named Members of the Corporation;*

- (ii) The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;*
- (iii) The complaint, if proven, would be a breach of the Code of Conduct under which the Member was operating at the time of the alleged misconduct;*
- (iv) The complaint is about something that happened or came to light within the last three months, or is connected to alleged misconduct within the last three months, unless there are reasonable grounds for the complaint not having been made within that time period.*

If the complaint fails one or more of these tests, it cannot be investigated as a breach of the code and the complainant must be informed that no further action will be taken in respect of the complaint.

ASSESSMENT CRITERIA

The Corporation has developed criteria for the Assessment Sub-Committee to use when assessing new complaints and deciding what action, if any, to take. These criteria should ensure fairness for both the complainant and the subject member. Assessing all new complaints by established criteria will also protect the Assessment Sub-Committee from accusations of bias.

In drawing up assessment criteria, the Corporation has borne in mind the importance of ensuring complainants are confident that complaints are taken seriously and dealt with appropriately, whilst appreciating that a decision to investigate a complaint or to take other action will cost both public money and the officers' and members' time – an important consideration where the matter is relatively minor.

The following questions constitute the current assessment criteria:-

- (i) Has the complainant submitted enough information to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation?*
- (ii) Has the complaint already been the subject of an investigation or other action relating to the code of conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?*
- (iii) Is the complaint insufficiently serious to warrant further action?*

(iv) Does the complaint appear to be simply malicious, politically motivated or tit-for-tat? In relation to politically motivated or tit-for-tat complaints, the Assessment Sub-Committee must decide whether the allegation is genuine and serious despite the motivation, or whether in fact it is reasonable to assume that it is not the expression in good faith of a genuine concern.

54. Members will note that the matters under ‘Assessment of Complaints’ broadly correlate to the ‘Can we investigate’ stage in the Northern Ireland formulation, and the matters under ‘Assessment Criteria’ broadly correlate to the ‘Should we investigate’ stage. If the more succinct treatment in the Northern Ireland example is preferred, then the Complaints Procedure could be amended accordingly. However, Members may recall that the current provisions were finalised following input from Leading Counsel and a Member Working Party. Your Committee retains ownership of the Complaints Procedure but, because the Court of Common Council approved the previous version, the Court must be informed of any changes to that document.

Recommendation: To consider whether to amend the wording in the Complaints Procedure regarding the initial assessment of complaints.

CSPL Best Practice Recommendation 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.

55. Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other members and by the public. The CSPL consider that local authorities should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, they 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.
56. At your previous meeting, Members requested more information on this matter. As previously explained, your Hearing Sub-Committee (and the Appeals Sub-Committee) are subject to the normal rules regarding public access to reports and minutes. A detailed explanation of the categories of exempt information, and the application of the public interest test for maintaining an exemption, are set out in Appendix 2 of the Complaints Procedure.

57. In addition, the Complaints Procedure provides that the relevant Sub-Committee will decide on a case by case basis whether a formal announcement is called for as to its findings and any sanctions imposed. This might, for example, take the form of a notice on the members' notice board, a statement to the Court of Common Council and/or a statement on the City Corporation's website.
58. Where no breach of the Code is found, there is a presumption against a formal announcement being made. Where a breach is found, there is a presumption in favour of a formal announcement being made. However, regard must be had to all of the circumstances of the case including:
- (i) *the nature of the allegation(s);*
 - (ii) *any information already in the public domain;*
 - (iii) *where relevant, the proximity of any election;*
 - (iv) *the effect of publication on the subject Member;*
 - (v) *the views of the parties; and*
 - (vi) *the public interest.*
59. The Complaints Procedure was the result of a lengthy review involving Leading Counsel and a Member Working Party, and the relevant provisions on the publication of decisions were at the time considered to strike a proportionate balance between competing interests. However, if Members wish to amend those provisions in order to require the publication of a decision notice on the City Corporation's website in every case, then this can be implemented. As previously advised, your Committee retains ownership of the Complaints Procedure but, because the Court of Common Council approved the previous version, the Court must be informed of any changes to that document and your Committee might wish to consult them.

Recommendation: To consider whether to amend the Complaints Procedure in order to require the publication on the City Corporation's website of a decision notice on every allegation that has been formally investigated.

CSPL Best Practice Recommendation 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.

60. The evidence received by the CSPL 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 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.
61. This recommendation is clearly not directly applicable to the City of London Corporation, and in terms of support there are many senior officers who could make a complaint on behalf of a more junior colleague in appropriate circumstances. However, in a similar vein, the City of London Corporation's Standards Committee has previously 'self-referred' complaints in appropriate circumstances. At the previous meeting your Committee suggested that some clarification around the self-referral process might be useful.
62. There are two previous occasions where a meeting of the Assessment Sub-Committee has been convened, in the absence of a complaint, to determine whether there should be an investigation. On both occasions there were reasonable grounds to believe a breach of the Code of Conduct had occurred, based on the City Corporation's own knowledge and records i.e. in both cases the minutes of a meeting recorded that the Member had participated in an item of business despite having an engaged disclosable pecuniary interest that was listed in their register of interests.
63. Leading Counsel has previously approved the use of such a process to avoid criticism and reputational damage which could arise from the City Corporation being seen to ignore potential breaches of the Code and the statutory requirements in relation to disclosable pecuniary interests within its knowledge. Furthermore, it also avoids the situation where powerful or influential Members might avoid being held to account simply because no individual is prepared to be seen to challenge them. It is therefore recommended that self-referral is retained as an option.
64. On the two previous occasions that the process was used, it was initiated by a decision of the Town Clerk under urgency, in consultation with the Chairman and Deputy Chairman of the Standards Committee. Your Committee might consider that it would be preferable in future for such decisions to be taken by Members, in which case any decision on referral could be taken by the Standards Committee as a whole. This wouldn't

prevent individual Members subsequently sitting on any Assessment or Hearing Sub-Committee. Another alternative would be for the Chairman of the Standards Committee to agree to put in an *ex officio* complaint in appropriate circumstances.

65. There is also currently no mention of self-referral in the Complaints Procedure and it might be preferable if some explicit reference to this alternative process were to be included in that document, either now or when that document is next updated.

Recommendation: To consider the appropriate use of self-referral.

CSPL Best Practice Recommendation 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.

66. The CSPL explain that the Monitoring Officer role is particularly varied and includes quite disparate aspects. They will often (as in the case of the City Corporation) have a role in senior management. 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;
 - assessing complaints in the first instance (not applicable to the City Corporation);
 - obtaining and weighing advice from Independent Persons (not applicable to the City Corporation);
 - 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.
67. The CSPL make the point that far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior Member of the local authority. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and senior Members, in providing procedural and legal advice to enable them to pursue their objectives. They recommend that 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.

68. It is worth noting the view of Lawyers in Local Government that the role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities, and that dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, they also observe that many local authorities have arrangements in place so that the Monitoring Officer does not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.

69. The City Corporation's current Complaints Procedure is broadly in line with the views of both bodies by providing that:

Where the Assessment Sub-Committee has decided that an allegation should be formally investigated, an individual other than the Monitoring Officer will be responsible for that investigation ("the Investigating Officer"). The Monitoring Officer will appoint the Investigating Officer, in consultation with the Chairman of the Standards Committee. The Investigating Officer may be another officer from the Comptroller & City Solicitor's Department, or another Chief Officer of the Corporation. Where appropriate the Investigating Officer may be assisted by an external investigator.

70. At the previous meeting your Committee noted the existing arrangements for managing conflicts, which were considered to work sufficiently well. However, Members requested that the pros and cons of using a Monitoring Officer from another local authority should be explored.

71. The option of using an external Monitoring Officer would obviously represent an additional resource. This would be particularly useful where there are other conflicts. For example, there is one ongoing complaint where both the Monitoring Officer and another senior member of his team are unable to act. This inevitably means that it is harder to find suitably experienced officers internally to act as Deputy Monitoring Officer and Investigating Officer. Equally however there are very experienced external investigators who need little or no supervision – the previous investigators we have used have insisted on having full control of their own investigations. It is also possible of course to instruct external counsel to provide legal advice to Committee as and when required, as the City Corporation has done on a number of occasions.

72. Using another authority's Monitoring Officer would inevitably mean that the City Corporation would lose some control over the conduct and timing of its own investigation. An external Investigating Officer would not be as familiar with local issues and procedures, although this is not

an insurmountable problem. No enquiries have to date been made of other authorities and it is not known whether there would be any interest in entering into such an arrangement, reciprocal or otherwise. Given the various approval processes that would be required, it might take some time to put such an arrangement in place.

Recommendation: To consider whether to approach another local authority about using their Monitoring Officer for investigations in appropriate circumstances and, if so, to amend the Complaints Procedure accordingly.

Conclusion

73. At your previous meeting, Members reviewed the City Corporation's current standards arrangements against the recommendations made by the CSPL and indicated a number of subject areas that they wanted to receive updates on, or to consider in more detail. This follow up report contains additional information on those matters and your Committee are invited to consider any changes to existing processes that may be desirable, either now or in the future.

Contacts:

Edward Wood
Chief Solicitor
020 7332 1834
edward.wood@cityoflondon.gov.uk

Background Documents

Report to Standards Committee dated 3 May 2019: Review of Local Government Ethical Standards by the Committee on Standards in Public Life