

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

18 September 2020

Local Ethical Framework Developments**1.0 PURPOSE OF REPORT**

- 1.1 To update Members on the development of the ethical framework under the Localism Act 2011.

2.0 BACKGROUND

- 2.1 Members receive a report at each Standards Committee meeting setting out any recent developments in the ethical framework.

3.0 NEW MODEL CODE OF CONDUCT FOR MEMBERS

- 3.1 The Committee has previously considered updates regarding the Committee on Standards in Public Life (CSPL) review of local government standards. The CSPL published its extensive Report on 30 January 2019:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

- 3.2 The CSPL, as part of the review, made a number of recommendations regarding a new national model code of conduct for members. It recommended that the Local Government Association (LGA) should create an updated national model code of conduct for local authorities (to adopt on a voluntary basis) to increase consistency and quality of local authority codes and avoid the potential for confusion amongst multi-hatted councillors. Local authorities should be able to adapt the model code to suit their local circumstances.
- 3.3 The LGA reviewed the Code, ahead of the government's response to the Report recommendations, as part of a wider programme of work on civility in public life; and a new draft model code of conduct was published for consultation (<https://www.local.gov.uk/code-conduct-consultation-2020>), with consultation closing on 17 August 2020.
- 3.4 After liaison with the Chair of the Standards Committee, a response was sent on behalf of the authority to the consultation. A copy of the response is attached at **Appendix 1** to this report.
- 3.5 Members will be kept informed of developments.

4.0 COMMITTEE ON STANDARDS IN PUBLIC LIFE BLOGS DURING PANDEMIC

- 4.1 The CSPL has published a series of blogs on its website, whilst "maintaining a close watch on standards issues arising as a result of the Covid-19 pandemic":

<https://cspl.blog.gov.uk/2020/07/20/principles-in-practice/>

<https://cspl.blog.gov.uk/2020/08/07/do-exceptional-times-allow-for-exceptional-measures/>

<https://cspl.blog.gov.uk/2020/05/04/ethical-standards-in-a-time-of-crisis/>

<https://cspl.blog.gov.uk/2020/06/15/building-equality-into-our-coronavirus-recovery/>

<https://cspl.blog.gov.uk/2020/07/06/leadership-in-times-of-crisis/>

<https://cspl.blog.gov.uk/2020/07/22/clarifying-the-purpose-of-the-committee-on-standards-in-public-life>

4.2 The CSPL considered how the Principles can be used in helping to shape the approach to decision making during these challenging times and noted that continuing to uphold the Principles “is vital to maintaining trust in government and our institutions throughout this crisis”. The Principles are appended to the County Council’s Members’ Code of Conduct.

4.3 Other issues considered in the blogs include whether exceptional times allow for exceptional measures and whether “decision-makers [are] justified in deviating from the principles or the responsibilities of their office in order to avoid extreme threats to the nation or the health of its citizens”: The CSPL “... believes that standards in public life are a public matter. Decision makers who are entrusted with responsibility for making decisions in the public interest do have to exercise their judgements in difficult circumstances, faced with hard choices. However, these judgements can only have legitimacy when they are made in accordance with the principles that are widely shared in society, like accountability, objectivity, and openness.”

5.0 **COMMITTEE ON STANDARDS IN PUBLIC LIFE - LETTER TO LOCAL AUTHORITIES RE LOCAL GOVERNMENT ETHICAL STANDARDS**

5.1 The CSPL wrote to local authorities in July 2020 to follow up the best practice recommendations it made in its 2019 report on local government ethical standards (see hyperlink earlier in this report) and which it would expect any local authority to implement. A copy of the letter and the list of best practice recommendations is attached at **Appendix 2**.

5.2 The intention was expressed in the CSPL report to review the implementation of those best practice recommendations in 2020. Given “the unexpected and unprecedented pressures that local authorities are facing this year with COVID-19”, the CSPL is not yet asking for responses from authorities, but will be contacting authorities again in the autumn, seeking information from them about progress against the best practice recommendations.

5.3 The Monitoring Officer reported to the Standards Committee in March 2019 on the CSPL report and recommendations and considered how the County Council currently complies: it was noted at the time that the Council complies with the spirit of almost all the best practice recommendations. Members are invited to further consider the recommendations in case there are any further comments they would wish to make.

5.4 The CSPL also wrote to the Secretary of State for Housing, Communities and Local Government in July 2020, to ask when it might receive a formal response from the Government to the CSPL’s 2019 local government report.

6.0 CONCLUSION

6.1 Members will be kept informed of all developments.

7.0 RECOMMENDATIONS

7.1 That the Committee notes the contents of this report.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

Background Papers:

None

County Hall
NORTHALLERTON

9 September 2020

Dear Sirs

LGA Consultation on Model Member Code of Conduct

Thank you for the opportunity of commenting, on behalf of North Yorkshire County Council, on the above consultation currently being undertaken.

I set out below the response to the consultation on behalf of North Yorkshire County Council.

Application of the Code: I note that the draft model Code seeks to extend the scope of the Code to cover actions of Members when they are acting, or claiming or giving the impression that they are acting, not only in their official capacity but also “in public”. The Council would agree with the requirement for a change to the legislation to allow some actions in Members’ private capacity to be covered by the Code if it damages the reputation of the authority. I think it would be helpful, however, for further clarification to be included in the model Code of exactly what “public” behaviour would encompass (legislative change permitting), eg stipulating in the Code that there will be a rebuttable presumption that a Member’s public behaviour (including statements on publicly accessible social media) is made in their official capacity.

Language: the language also seems to alternate between first, second and third person (I, you, members) and intertwines Code requirements, Members’ commitments and guidance points, which doesn’t always seem to flow properly. Given that the audience for the Code is primarily Members, it would seem most appropriate to use terminology addressing Members (“you”) throughout.

Model member conduct: I note that this section essentially replicates the General Principles. All these statements are unequivocal – “I will” act with integrity and honesty etc. I would suggest slightly reducing this to something like “At all times I will endeavour to...”? It is a sweeping statement to say, for example, “I will avoid conflicts” when a Member may not realise they’re in one until later.

Specific obligations of general conduct: this section sets out the minimum requirements of member conduct and guidance to help explain the reasons for the obligations and how they should be followed. The draft Code states that these obligations “must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media”. Please see our earlier comments re absolute clarity around provisions in the model Code for its application and scope and the meaning of “public” behaviour.

Civility: I note the sentence in the first paragraph of the guidance in this section that “... You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.” I would suggest that there shouldn’t be any personal “attack” at all – it’s fine to challenge actions, and to do so robustly, but historically when matters have strayed into personal attack then it has been deemed to be crossing the line.

Gifts and hospitality:

1. Regarding paragraph 11 “ Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage”, it needs to be clarified in the model Code what would be classed as significant if a definitive threshold is not going to

be used in this part. I note also that this paragraph applies to gifts/hospitality before the event. It would be helpful to clarify whether this also applies after the event.

2. Regarding paragraph 12 “Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt”, I think it would be helpful to clarify in the model Code that gifts/hospitality offered but refused should also be registered. I note this is currently advised in the guidance section, as a voluntary action, but feel it would be better to have it in the requirement itself. If left as voluntary in the guidance section, then if a member is offered a significant gift, refuses it, but then doesn’t register it, this would go against the spirit of the guidance wording but not the commitment of the councillor in the code, so there may be lack of clarity over whether that would amount to a breach of the Code.

Internal resolution procedure: I note that the draft model Code states that the internal resolution process should “make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention....” I would be grateful for your clarification that the appeals process could refer to the Local Government and Social Housing Ombudsman?

Code Appendix B, registering and declaring interests: I note that the draft model Code sets out other non-DPI interests which should be registered. Currently NYCC only has one such category of other interest namely membership of any trade union or professional association (in accordance with guidance) and we currently only require members to register membership of public and charitable bodies if they hold the position for profit or gain. The Council wished to introduce a lighter touch standards regime upon implementation of the new ethical framework in 2012. The interests regime proposed in the draft model Code would become more complicated as drafted and is essentially reverting to the old personal and prejudicial interests split system with different tests depending on the nature of the interest and a subjective element introduced (rather than it’s either a DPI as defined or its not). I could foresee the potential for confusion for Members and would therefore not support identifying other non-DPI interests (other than membership of any trade union or professional association) which should be registered.

I hope these comments are helpful. If I can be of any assistance, please do not hesitate to contact me.

Yours faithfully

COUNTY COUNCILLOR CAROLINE PATMORE
Chair of Standards Committee
North Yorkshire County Council

**Room G.07
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**Committee on
Standards in
Public Life**

Sent by email
to Local Authorities in England
For the attention of the Chief Executive

July 2020

LOCAL GOVERNMENT ETHICAL STANDARDS

I am writing from the Committee on Standards in Public Life to follow up recommendations made in our January 2019 [report](#) on local government ethical standards.

In that report, we identified some best practice recommendations which represent a benchmark for ethical practice and which we expect any local authority should implement.

We said in our report that we would review the implementation of those best practice recommendations in 2020. We completely understand the unexpected and unprecedented pressures that local authorities are facing this year with COVID-19, so we are not of course asking for an immediate response. The purpose of this email is to let you know that we will be writing again in the autumn to ask you for your progress against these recommendations. I have attached a list of the best recommendations for ease of reference, but they are of course also set out in the report.

If you have any questions, please do just let us know. Otherwise, we wish you well and look forward to being in touch again later this year.

Secretariat
Committee on Standards in Public Life

List of Best Practice Recommendations

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. 19 List of best practice

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.