

Standards and Ethics Committee

Wednesday, 18 October 2017, County Hall, Worcester - 10.00 am

		Minutes
Present:		Mr R P Tomlinson (Chairman), Mr R M Bennett, Dr A J Hopkins, Mr S M Mackay and Mr R M Udall Independent Members (non-voting): Dr M Mylechreest and Dr P Whiteman.
Available papers		The Members had before them: A. The Agenda papers (previously circulated); and B. The Minutes of the meeting held on 27 April 2016 (previously circulated).
254	Apologies and Named Substitutes (Agenda item 1)	Apologies were received from Mr R C Adams, Ms P A Hill, Dr K A Pollock and Mr C Slade.
255	Declarations of Interest (Agenda item 2)	None.
256	Public Participation (Agenda item 3)	None.
257	Confirmation of Minutes (Agenda item 4)	RESOLVED that the Minutes of the meeting held on 27 April 2016 be confirmed as a correct record and signed by the Chairman.
258	Councillor Disqualification Criteria - Consultation (Agenda item 5)	The Committee considered a consultation issued by the Department for Communities and Local Government regarding the disqualification criteria for local councillors. The consultation document posed a series of questions and the Committee discussed each one in turn as follows: Question 1 - Do you agree that an individual who is subject to the notification requirements set out in the

Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

- Why did the disqualification criteria exclude existing councillors? Simon Mallinson, the Head of Legal and Democratic Services responded that the proposed change in the law did not provide for retrospective effect. The Government sought to disqualify individuals from being elected in these circumstances and therefore existing councillors were unaffected until the next elections
- Where a councillor was the subject of a pending court case under this legislation, would they be suspended from duty until the case was heard at court? The Head of Legal and Democratic Services advised that being accused of an offence by itself carried no sanction. There were no suspension powers. The proposed law would only impact on conviction or court order leading to being placed on the sex offenders' register. The current disqualification followed conviction and sentencing of 3 months imprisonment or longer (including suspended sentences), not pending court cases
- There was an unfortunate stigma associated with individuals who were the subject of a pending court case. The Head of Legal and Democratic Services added that there was a wider issue around the right of anonymity granted to the complainant but not the accused in some sex cases but these issues were not addressed in the consultation document
- If an individual were held in custody before the matter came to court, would they be able to continue as a councillor? The Head of Legal and Democratic Services commented that they would continue as a councillor, the issue would be the potential for disqualification through non-attendance at meetings for 6 months
- Did the proposed legislation conflict with the Rehabilitation of Offenders Act? The Head of Legal and Democratic Services advised that the Government would need to ensure that the pieces of legislation matched.

The Committee agreed with the question.

Question 2 - Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?

- In response to a query, the Head of Legal and Democratic Services commented that Sexual Risk Orders were in relation to persons who had not been cautioned or convicted in criminal process and thus differed from the categories in question 1
- There was a possibility that a Sexual Risk Order would prevent an individual from having any contact with children and this would impact on the ability of that individual to serve as a councillor in their capacity as a corporate parent
- There was a risk that malicious complaints made against a councillor could have a negative impact upon the democratic process. The full force of the legislation should therefore only come into force at the end of the criminal process.

The Committee agreed with the question. Members were sympathetic in principle to wider disqualification given the Council's role as corporate parent but given the significant impact upon the democratic process and risk of malicious complaint, it was considered that disqualification for sexual misconduct should flow only from the outcome of criminal process and being placed on the sex offenders' register as proposed in question 1 - and so the consultation proposals reflected the right balance.

Question 3 - Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

The Committee agreed with the question.

Question 4 - Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing

for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

- The legislation should be widened to disqualify councillors who had a criminal conviction for a breach of an ASBO
- It was queried why the Government had not included other forms of anti-social behaviour in the proposals
- A disqualification in these circumstances should only come into effect following the court order process, rather than administrative action of police or local authorities, and the consultation was correct to draw this distinction.

The Committee did not completely agree with the question. Although the Committee fully supported the proposals that disqualification should flow only from ASB court orders and not the administrative actions listed, it was considered there was also room to disqualify for criminal conviction for breach of an ASBO

Question 5 - Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

The Committee had no comment to make.

Question 6 - Do you have any further views about the proposals set out in this consultation paper?

The Committee considered that:

- changes in the legal framework for disqualification should await and be informed by the forthcoming report from the Committee on Standards in Public Life
- specific consideration should be given to the re-introduction of local sanctions for breach of the Member Code of Conduct, without which the standards regime is perceived as somewhat toothless
- there was room to query whether the existing disqualification for bankruptcy orders were still relevant in the modern age
- there was a degree of tension whereby a person jailed for under 3 months (other than a sex offender) for a fairly serious criminal offence was not disqualified from office whereas non-criminal

ASB leading to a court order would lead to disqualification.

RESOLVED: that

- a) the report and the consultation document be noted; and
- b) a response be sent to the Department for Communities and Local Government on the consultation questions as set out above.

[a copy of the response sent on behalf of the Committee is attached to the minutes]

259 Code of Conduct and Complaints Update (Agenda item 6)

The Committee received a Code of Conduct and complaints update from the Head of Legal and Democratic Services.

In the ensuing debate, it was commented that not only were the sanctions available to councils minimal at a local level but if a councillor resigned before the investigation was completed then the investigation was dropped. This created the unsatisfactory situation where the complaint was left unresolved which was unfair on the complainant and the accused.

RESOLVED: the outcomes of recent formal complaints that members have breached the Code of Conduct be noted.

The meeting ended at 11.25am.

Chairman

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31st October 2017

Our Ref:
Ask for:

Dear Mr. Young

THE PROPOSED DISQUALIFICATION CRITERIA FOR COUNCILLORS

Thank you for the opportunity for Worcestershire County Council to comment on the proposed disqualification criteria for councillors.

The Council's Standards and Ethics Committee considered the consultation paper on behalf of the Council. The Committee was broadly in support of the proposals, particularly in the context of the Council being a corporate parent. The specific responses on behalf of the Council are as follows:

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Yes.

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?

Yes. Members were sympathetic in principle to wider disqualification given the Council's role as corporate parent but given the significant impact upon the democratic process and risk of malicious complaint, it was considered that disqualification for sexual misconduct should flow only from the final outcome of

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the criminal process and being placed on the sex offenders' register as proposed in question 1 and so the consultation proposals reflected the right balance.

Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Yes.

Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

No. Although the Committee fully supported the proposals that disqualification should flow only from ASB court orders and not the administrative actions listed, it was considered there was also room to disqualify for criminal conviction for breach of an ASBO.

Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

No comment.

Q6. Do you have any further views about the proposals set out in this consultation paper?

Yes. The Committee considered that:

- changes in the legal framework for disqualification should await and be informed by the forthcoming report from the Committee on Standards in Public Life
- specific consideration should be given to the re-introduction of local sanctions for breach of the Member Code of Conduct, without which the standards regime is perceived as somewhat toothless
- there was room to query whether the existing disqualifications for bankruptcy orders were still relevant in the modern age

- there was a degree of tension whereby a person jailed for under 3 months (other than a sex offender) for a fairly serious criminal offence was not disqualified from office whereas non-criminal ASB leading to a court order would lead to disqualification.

I hope this assists consideration of the issues.

Yours sincerely

Simon Mallinson
Head of Legal and Democratic Services
Monitoring Officer

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