

Agenda

Standards and Ethics Committee

Wednesday, 10 April 2019, 10.00 am
County Hall, Worcester

This document can be made available in other formats (large print, audio tape, computer disk and Braille) on request from Democratic Services on telephone number 01905 728713 or by emailing democraticServices@worcestershire.gov.uk

DISCLOSING INTERESTS

There are now 2 types of interests:
'Disclosable pecuniary interests' and **'other disclosable interests'**

WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3rd party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

NB Your DPIs include the interests of your spouse/partner as well as you

WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
 - you must **not participate** and you **must withdraw**.

NB It is a criminal offence to participate in matters in which you have a DPI

WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:
 - You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests** **OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
 - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

Standards and Ethics Committee
Wednesday, 10 April 2019, 10.00 am, County Hall, Worcester,
WR5 2NP

Membership: Mr S J Mackay (Chairman), Mr R C Adams, Mr R M Bennett, Ms P A Hill, Dr A J Hopkins, Dr K A Pollock, Mr R P Tomlinson and Mr R M Udall

Independent Members (Non-voting): Dr M Mylechreest, Mr C Slade and Dr P Whiteman

Agenda

Item No	Subject	Page No
1	Apologies and Named Substitutes	
2	Declarations of Interest	
3	Public Participation Members of the public wishing to take part should notify the Head of Legal Democratic Services in writing or by e-mail indicating both the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case, 9 April 2019). Enquiries about this can be made through the telephone number/e-mail address listed below.	
4	Confirmation of Minutes To confirm the Minutes of the meeting held on 24 October 2018. (previously circulated – pink pages)	
5	Local Government Ethical Standards - Report of the National Committee on Standards in Public Life	1 - 10
6	Code of Conduct - Complaints Update	11 - 12

Agenda produced and published by Simon Mallinson, Head of Legal and Democratic Services, County Hall, Spetchley Road, Worcester WR5 2NP

To obtain further information or a copy of this agenda contact Simon Lewis, Committee Officer on 01905 846621, slewis@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website at <http://www.worcestershire.gov.uk/cms/democratic-services/minutes-and-agenda.aspx>

Date of Issue: Monday, 1 April 2019

This page is intentionally left blank

**STANDARDS AND ETHICS COMMITTEE
10 APRIL 2019****LOCAL GOVERNMENT ETHICAL STANDARDS – REPORT
OF THE NATIONAL COMMITTEE ON STANDARDS IN
PUBLIC LIFE**

Recommendation

- 1. The Head of Legal and Democratic Services recommends that the Committee:**
 - (a) notes the report published by the National Committee on Standards in Public Life (the Nolan Committee) following its review of standards in local government;**
 - (b) notes the various recommendations to Government concerning legislative change;**
 - (c) considers any initial views on what action the Council should take in relation to the relevant Best Practice recommendations in the Nolan report;**
 - (d) notes the Monitoring Officer will be discussing any implications for the pan-Worcestershire Code of Conduct with the other principal authorities in the county; and**
 - (e) receives a further report following those discussions.**

Summary

- 2. The Nolan Committee assessed whether the existing structures, processes and practices are conducive to high standards of conduct in local government. Its report makes recommendations for improvement, to government in relation to the legislative regime, and best practice recommendations to local government to consider.**
- 3. The highlight recommendations are that authorities should regain the power to suspend members (for up to 6 months) as a sanction for breaching the Code; the criminal offence regime in relation to Disclosable Pecuniary Interests should be abolished but the classes of registrable interests broadened; a register of gifts and hospitality be re-established; and independent members of standards committees should be allowed to vote.**
- 4. Local government will have to await the Government's response to legislative recommendations, but this committee is asked for any initial views on what action should be taken in relation to the Best Practice recommendations and receive a further report after discussions between the Monitoring Officers in the county.**

Background information

5. The Committee will recall from previous reports that the National Committee on Standards and Public Life (often called the "Nolan Committee") invited responses to its consultation to inform its review of local government ethical standards. This consultation was reported to the Standards and Ethics Committee in April 2018, which debated the consultation issues and decided a response to be sent on behalf of the Council. In the light of that response, the Nolan Committee visited the Council in September 2018 as part of its gathering of comments and evidence of good practice in local government – the Council was the only county council visited. Following the visit, the Chairman of the Committee was invited to attend the formal launch of the report at the end of January 2019.

6. The Nolan Committee was kind enough to write and say its delegation was impressed by the leadership demonstrated by senior officers and members of the Council, which has allowed the Council to cultivate a culture of high standards and a civil approach to politics. They considered it particularly insightful to see how proper governance structures have a substantial influence on the way in which ethical standards operate at the Council. There are clearly issues elsewhere in the country which have informed the recommendations and which do not exist here, so we need to be mindful of that context and the need for a proportionate response to the Best practice recommendations.

Best practice recommendations

BP1 – the Code of Conduct should include prohibitions on bullying and harassment, with definitions and examples. Our current Code prohibits bullying but gives no definitions or examples. Monitoring Officers could discuss.

BP2 – Code should require councillors to comply with formal standards investigations, and prohibit trivial or malicious allegations by councillors. The Council has very few formal investigations and no history of councillors obstructing them. The best way of dealing with trivial or malicious allegations is through robust filtering right at the start of the process. The Monitoring Officer has some concerns that a Code prohibition will encourage tit for tat complaints that the original complainant breached the Code by making a trivial complaint, possibly round in a circle.

BP3 – Code should be reviewed each year and seek where possible the views of the public and neighbouring authorities. Annual review seems burdensome but could be an annual standing item for the Committee. We already work to create a pan-Worcestershire Code, as expressly recognised in the Nolan report.

BP4 – Code should be readily accessible to the public. It is on our website and in the constitution.

BP5 – In line with proposed new legislation, authorities should update a Gifts and Hospitality Register at least quarterly. Should the Council re-introduce such a Register ahead of any legislation?

BP6 – authorities should publish a clear public interests test for filtering of allegations. Committee has set the filtering standards which are online

BP7 – authorities should have access to at least 2 Independent Persons. Already in place with our Panel arrangements

BP8 – IPs should be consulted on whether a complaint should be investigated. Procedure allows for involvement of IP at early filtering stage.

BP9 – Formal decisions after investigation should be published on website. This is rare for us but part of the process.

BP10 – authorities should have guidance on website on how to complain, process and timescales. Largely in place, details can be reviewed.

BP11 – 12 not relevant

BP13 – there should be procedures for managing conflict of interests for MO. In place.

BP14 – separate bodies set up or owned by the Council should come within annual governance statement, and be Nolan-transparent. Limited application here.

BP15 – senior officers should meet group leaders regularly to discuss standards issues. Could be part of the Group leaders briefing on an annual basis with Monitoring officer.

Supporting Information

Appendix – Nolan Committee – List of recommendations and best practice
Report of the Nolan Committee January 2019 (e-link only)

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

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

Tel: 01905 846670

Email: smallinson@worcestershire.gov.uk

Background Papers

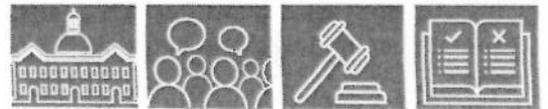
In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.

This page is intentionally left blank

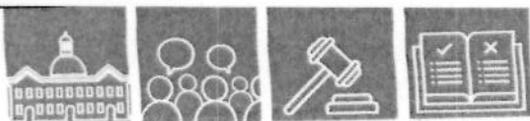


List of recommendations

Number	Recommendation	Responsible body
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.	Local Government Association
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.	Government
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.	Government
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.	Government
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.	Government
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.	Government

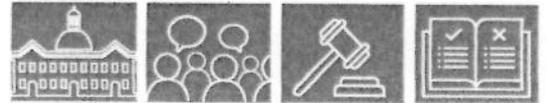


Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, 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

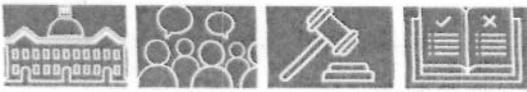


List of recommendations

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.

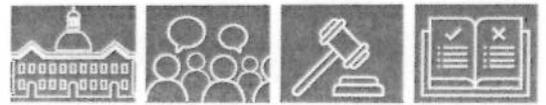
Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

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.

STANDARDS AND ETHICS COMMITTEE

10 APRIL 2019

CODE OF CONDUCT – COMPLAINTS UPDATE

Recommendation

1. The Head of Legal and Democratic Services recommends that the Committee:

(a) notes the formal complaint that has been made about the conduct of County Councillors; and

(b) considers what, if any, further action should be taken to ensure members are aware of and comply with their obligations under the Code of Conduct.

Summary

2. This report is to update the Committee on formal complaints about the conduct of councillors which have been dealt with since the last report in October 2018. The Committee has delegated to the Monitoring Officer the responsibility of filtering complaints received, in consultation with the Chairman and/or Independent person as may be appropriate, and so the MO reports to the committee on the decisions taken.

Background

3. The Council receives a relatively small number of formal complaints concerning the conduct of county councillors. None of these have progressed to formal investigation but have been resolved informally one way or the other through the facilitation of the Monitoring Officer. Calendar year 2018 brought an unusually high number of formal complaints (8), 7 of which have been previously reported to the Committee. There were 4 formal complaints in 2013, 3 in 2014, 2 in 2015, 2 in 2016, and 1 in 2017. There have been none so far in 2019.

Complaint 09/18

4. The complainant had an interest in an ongoing locally contentious matter and objected to the phrasing used by the county councillor when reporting to a meeting of the town/parish council with officers of the Council to explain progress and stumbling blocks.

5. The Code clearly applied to the county councillor when reporting to the town/parish council as doing so in an official capacity. Preliminary enquiries were made by the MO into the circumstances, including consultation with the Committee chairman. The Monitoring Officer considered the filtering guidelines set by the Committee and decided that the matter would not be further investigated as no breach was disclosed by the complaint. The councillor had updated the town/parish council in good faith and with reasonable accuracy. The complaint centred on a minor semantic point of no great significance. Although the Code was engaged, the complaint did not disclose any potential breach. There was a margin of discretion for the councillor to describe the

situation as he or she saw it, and the Code was not breached just because somebody took exception to the accuracy of part of the phrasing. There was no indication the councillor's contribution was disrespectful or brought the office or Council into disrepute and so no breach was disclosed to justify further action or investigation. Members of the public are entitled to disagree with their councillor, and indeed to express that disagreement, but that does not mean there is a breach of the Code. The complainant was notified of the outcome 2 days after the complaint was received.

Elections 2019

6. The Committee will be aware that all 6 district councils in Worcestershire are holding elections on 2 May 2019. Although the Council is not involved in the elections, the Monitoring Officer has provided updated 'traffic light' guidance to all members in relation to the 'Purdah' period which commenced on 22 March. It is hoped that this will ensure that no complaints are received that the purdah restrictions may have been breached.

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

Tel: 01905 846670

Email: smallinson@worcestershire.gov.uk

Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.